

THE ORANGE COUNTY

REGISTER

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BUSINESS MONDAY

Monday, Oct. 16, 2006

Comp time or overtime pay? It depends

Q. Does comp time apply to hourly employees? I am an hourly employee working eight hours daily, five days per week. If I need to work over the eight hours, I am not paid overtime, as my company has a strict policy against overtime and will not approve it. If I take a vacation day during any given week and work some necessary overtime hours on other days, shouldn't I be able to claim that time as regular pay since I won't get overtime pay?

A. "To resolve issues involving compensatory time and overtime, first investigate with your company's human resources department," says Keith G. Bremer, partner at the Newport Beach office of law firm Bremer Whyte Brown & O'Meara LLP.

"Assuming you are a non-exempt (i.e. hourly) California

employee who is working for a private employer, California law does provide a mechanism by which private employers may elect to give employees compensatory time instead of overtime pay. Such an agreement must be in writing, and subject to certain expressed conditions.

"A California employer is under no obligation to offer compensatory time instead of overtime pay. But, when compensatory time is allowed in lieu of overtime, it must be awarded at a rate of 1½ the rate of overtime hours worked.

"Based on your question, it does not appear that you have any such written arrangement with your employer.

"Assuming there is no collective bargaining agreement gov-

erning your employment, your employer can prevent you from working overtime. If your employer does allow you to work overtime, you are entitled to compensation at 1½ times your standard hourly rate.

"If you believe that your employer may not be in compliance with current law governing overtime compensation and/or compensatory time, you should contact an attorney."

IF YOU HAVE QUESTIONS:

Write: Work Q&A

The Orange County Register

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Letters cannot be individually answered.