

**Memorandum of Understanding  
Between the  
Professional Airways Systems Specialists  
And the  
Federal Aviation Administration**

This Agreement is made by and between the Professional Airways Systems Specialists, ("PASS" or "the Union") and the Federal Aviation Administration ("the Agency"), collectively known as the Parties. This Agreement represents the complete understanding of the Parties at the national level concerning changes to 5 CFR § 551.531 requiring compensatory time be used within 26 pay periods for non-exempt employees and changes to the accumulation and use of compensatory time for exempt employees. This MOA covers all bargaining unit employees in PASS's five (5) ATO, AFS, AVN, AFS-700 and MIDO bargaining units.

**Section 1.** FLSA nonexempt employees shall continue to be paid for unused compensatory time in accordance with all applicable FLSA laws, rules, regulations and this agreement.

**Section 2.** FLSA exempt employees shall be paid for unused compensatory time in accordance with this agreement and FAA policies.

**Section 3.** Compensatory time must be used within 26 pay periods. After 26 pay periods the compensatory time will expire, be removed from the employee's balance of compensatory time and treated as follows, depending on the employee's FLSA status:

- (a) Beginning May 14, 2007, non-exempt employees who fail to use compensatory time within 26 pay periods of when earned shall be paid for the expired compensatory time.
- (b) As of the second full pay period following the signing of this Agreement, exempt employees who fail to use compensatory time within 26 pay periods of when earned shall forfeit the compensatory time unless the failure to take the compensatory time off is due to an exigency of the service beyond the employee's control. If an exigency exists, as defined in this agreement, the employee shall be paid for the expired compensatory time at the rate which it was earned.

**Section 4.** Compensatory time earned prior to May 14, 2007, shall be grandfathered for a period of three years for non-exempt employees. If this time is not used by the end of the pay period ending three years after May 14, 2007, non-exempt employees shall be compensated for the compensatory time. With respect to the grandfathered compensatory time, non-exempt employees shall be compensated for any balance that remains upon retirement, transfer to another agency, or departure from the federal service.

**Section 5.** Compensatory time earned prior to the second full pay period following the signing of this Agreement by exempt employees shall be grandfathered indefinitely. With respect to the grandfathered compensatory time, exempt employees shall be compensated for any balance that remains upon retirement, transfer to another agency or departure from federal service.

**Section 6.** As of the second full pay period following the signing of this Agreement, compensatory time used shall be subtracted from the compensatory time set to expire first.

**Section 7.** An employee, whether exempt or nonexempt, shall be paid for unused compensatory time under the following circumstances:

- (a) The employee is separated or placed in a leave without pay status to perform military service as defined in 38 U.S.C. 4303 and §358.102
- (b) The employee is separated or placed in a leave without pay status because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81.

**Section 8.** For purposes of administering compensatory time a leave exigency is defined as:

- (a) When an employee has requested and been approved to use compensatory time but the manager later withdraws his/her approval and no other leave dates are available to the employee prior to the expiration of the twenty-six pay periods; or
- (b) When an employee has requested at least twice to use any compensatory time due to expire within 6 months, but is denied approval and the manager is unable to offer the employee another date to use the compensatory time prior to its expiration.

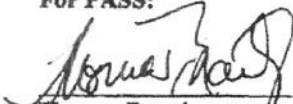
**Section 9.** The terms of this MOU do not apply to compensatory time earned for travel.

**Section 10.** An employee may use compensatory time in lieu of sick leave requested due to the incapacitation of the employee. Compensatory time may not be substituted for sick leave taken under family friendly leave policies

**Section 11.** The Agency has not proposed a change to the 160 hour maximum amount of compensatory time that is allowed to be carried or to the current practice of paying an employee for compensatory time that exceeds the 160 hour cap.

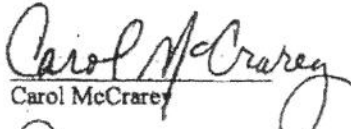
**Section 12.** This MOA shall be effective upon completion of Agency Head Review or thirty (30) days after it has been signed by the Parties' Chief Negotiators whichever occurs first and shall expire upon expiration of the Parties' five successor collective bargaining agreements.

For PASS:

  
Thomas Brantley

2/1/2008  
Date

For the FAA:

  
Carol McCrory

Jan 31, 2008  
Date

\_\_\_\_\_  
Agency Head Review/Date

## Questions about MOU on Compensatory Time

1. In section 3 subparagraph (b) it indicates that “As of the second full pay period following the signing of this Agreement,...”. In our telecom today you stated that this MOU was effective as of 2/14/2008, is this the start date for the exempt employees?

Per Section 12, the MOA is effective upon completion of the Agency Head Review or 30 days after being signed by the Parties’ Chief Negotiators . The Agency Head Review signature date is 2/14/08, so that’s the effective date of MOA as I stated.

The date referred to in Section 3 (b) regarding the exempt employees pertains to the second full pay period following the signing of this Agreement by the Parties. Tom was the last of the two Parties to sign it on 2/1/08, which was in pay period 03. The second full pay period would be pay period 05, which began 2/17/08.

2. In the case of a non-exempt employee who has comp time prior to his/her promotion to an exempt position, is this time treated as non-exempt even though the employee is now exempt? What if an exempt employee accepts a downgrade to a non-exempt position?

The system will treat the comp time in accordance with the FLSA status the employee is in at the time the employee is using the comp time.

3. Why are the exempt employees allowed to “grandfather indefinitely” in Section 5 and the same is not allowed for non-exempt employees?

One of the FAA’s main purposes of the overall change is to get the old comp time balances off the FAA’s books. This has been an ongoing push off and on over the years, but this is the most serious they’ve ever been about it.

The FAA’s original proposal was that the grandfather period would be only 3 years starting May 14, 2007, for both exempt and non-exempt employees. The worst case scenario for non-exempt employees if they do not use the old comp time balance in 3 years is they get paid for it per FLSA law.

Per the FAA’s original proposal, however, after the 3 years, the exempt employees would have forfeited the expired comp time and received nothing for it. When we started negotiating this, we were already well into 2007 and discussed the reality of the exempt employees being able to use what comp time they had on the books before May 2007 along with they had earned after May which needed to be used in 26 pay periods. We agreed to give them a different start date and grandfather period in

order to give them the maximum opportunity to use their comp time since 1) nothing other than this MOA negotiated on their behalf by PASS allows them to be paid for it and 2) they have no choice between working OT vs comp time.

4. Section 6. - “As of the second full pay period following the signing of this Agreement, compensatory time used shall be subtracted from the compensatory time set to expire first.” Is this applicable to both types of employee or only the exempt employees? **Both. The payroll system will be changed to do this for all employees.**
5. Section 7 - Identifies the circumstances under which comp time is paid. If the agency has placed an employee on leave and the employee has time that expires during this period. Will the compensatory time be lost, paid for or can it be restore the employee? **In the two leave circumstances identified in Section 7(a) and (b), the comp time will be paid to the employee at stated in Section 7.**
6. Section 8 – I assume that this applies to both types of employees (exempt and non-exempt)? If the employee disagrees with Management about the available dates can the manager/supervisor or supervisor simple act on their choice and not inform the employee?

Under Section 3(b), an exigency applies only to exempt employees.

The manager/supervisor cannot act on their choice and not inform the employee, but they can order the employee to take the time off if the employee has scheduled all of his/her use or lose leave for the year. Also, this does not preclude the employee from making a third, fourth, etc. request for the leave until the 26 pay periods runs out. In fact, the more requests the employee makes, and the manager turns down, the stronger the employee’s case that the manager was being uncooperative about scheduling the comp time.

7. Since it seems that the agency will not spend the money to update the DOI application can an employee request to have their comp time earned put under travel comp? **No. Travel comp is treated differently and tracked separately from regular comp time. As Section 9 says, none of the terms of this MOU apply to travel comp time.**
8. When an employee donates comp time will it come for the oldest time or the time that is about to expire? **When the payroll system is changed, it will draw from the time that is about to expire first.**
9. Is the order in which leave is used first be use or lose leave, and then comp time? If the employee has comp time that expires during the same time period, will the comp time be lost, paid for or restored?

Use or lose leave will be used first.

Having use or lose on the books or scheduled does NOT negate the employee's obligation to use the comp time within the 26 pay periods or grandfather period. The comp time must be used within the 26 pay periods or grandfather period or it will be lost, paid for or restored depending on the applicable section of this MOA.

Keep in mind that the provisions in FAA Order 3550.10, Chapter 2, Premium Pay, regarding comp time state that employees are obligated to use accrued comp time as soon as possible and to work with their supervisor to get it off the books. This includes an employee being directed by his/her supervisor to take the comp time off. See FAA Order 3550.10, which will be used in conjunction with this MOA, not replaced by this MOA.