

Association of Career Employees, Inc.

A 501(c)(3) Public Charity

www.acewisconsin.org

Compensatory Time and Flexible Work Schedules

This article explains, in plain language, how Wisconsin and federal law address compensatory time and flexible work schedules for salaried and hourly state employees. It focuses on clarity while preserving legal accuracy.

Executive Summary — Key Takeaways

- **Compensatory time is lawful** for salaried professional Wisconsin state employees who work more than 40 hours per week, when provided in lieu of overtime under federal and Wisconsin law.
- **Wisconsin law affirmatively encourages flexible work schedules** and expressly exempts employees on flexible schedules from standard 8-hour, 5-day workweek rules.
- **Many professional positions require flexibility by design**, including irregular hours, travel, meetings set by outside entities, and work beyond 40 hours per week.
- **Position descriptions and actual job duties matter**: if the work requires flexibility, agencies must account for that reality.
- **Vacation and compensatory time are protected benefits**. Unreasonable denial of their use may violate Wisconsin wage and civil service laws.
- **State employees may sue state agencies directly** for unpaid wages, including vacation pay, and may recover attorney fees if they prevail.

Compensatory Time Under Federal and Wisconsin Law

The Federal Labor Standards Act (FLSA) laws apply to state and local government employees. In general, FLSA exempts professional, salaried employees from overtime pay for hours worked beyond 40 in a week. Instead of overtime pay, compensatory time (“comp time”) may be provided by agreement.

Wisconsin law expressly allows this practice. Under Wis. Stat. 103.025(2), state and local government employers may provide compensatory time off in lieu of overtime, consistent with federal law. The statutory definition of “employer” includes the State of Wisconsin and its agencies.

As a matter of policy, state and local agencies routinely allow reasonable compensatory time for professional, salaried employees who work more than 40 hours per week.

Flexible Work Schedules Under Classified Civil Service Law

Wisconsin law affirmatively encourages flexible work schedules for state employees. The Legislature has declared that flexible scheduling:

- Increases productivity
- Reduces absenteeism

- Improves employee morale
- Promotes efficient use of time, energy, and public resources

Wis. Stat. 230.215 reflects a clear legislative intent that all state agencies participate in developing flexible time schedules and other alternative work arrangements, consistent with operational needs.

Although the Classified Civil Service Law generally describes a standard 40-hour, five-day work week, those provisions expressly do *not* apply to employees working under approved or required flexible schedules. Wis. Stat. 230.215(5) states that the standard work-hour rules in Wis. Stat. 230.35(5) do not apply to employees subject to flexible time scheduling.

In short, when a flexible schedule is approved or required, the usual “8 hours per day, 5 days per week” rules do not control.

Salaried vs. Hourly Employees Under Federal and Wisconsin Law

Federal and Wisconsin employment laws draw an important distinction between **hourly (non-exempt)** employees and **salaried professional (exempt)** employees. Understanding this distinction is essential to understanding compensatory time and flexible scheduling.

Federal Law (Fair Labor Standards Act)

Under the Fair Labor Standards Act (FLSA), employees are classified as either **non-exempt** or **exempt** from overtime requirements:

- **Hourly / Non-Exempt Employees** are paid based on hours worked and are generally entitled to overtime pay for hours worked over 40 in a workweek.
- **Salaried Professional / Exempt Employees** are paid a fixed salary and are exempt from overtime requirements because their positions involve professional judgment, discretion, and responsibility rather than fixed hourly production.

For exempt employees, the FLSA does not require overtime pay. Instead, public-sector employers may provide **compensatory time off** by agreement when work exceeds 40 hours per week.

Wisconsin Civil Service Law

Wisconsin’s Classified Civil Service Law mirrors this functional distinction.

- **Hourly employees** are typically subject to defined daily and weekly schedules, timekeeping requirements, and overtime rules.
- **Salaried professional employees** are appointed to positions that assume responsibility for completing assigned duties, regardless of when those duties must be performed.

While Wisconsin statutes describe a standard 40-hour work week, those provisions are expressly overridden when an employee is subject to a **flexible time schedule** under

Wis. Stat. 230.215. In those cases, the law focuses on fulfillment of job responsibilities rather than adherence to fixed daily hours.

Practical Effect of the Distinction

Because salaried professional employees are not compensated by the hour:

- Their work time cannot realistically be measured solely by daily or weekly clock hours.
- Irregular schedules, evening meetings, travel, and extended workdays are often inherent in the position.
- Flexible scheduling and reasonable compensatory time are the lawful mechanisms used to balance workloads.

Applying rigid hourly controls—such as fixed daily schedules, mandatory leave usage for work activities, or excessive timekeeping—to salaried professional employees blurs this legal distinction and conflicts with the purpose of exempt classification and flexible scheduling laws.

Examples of Exempt Salaried Employees

Both federal law and Wisconsin civil service rules recognize that many state positions are properly classified as **exempt salaried professional employees** because of the nature of their duties. Exempt status is determined by **job responsibilities**, not by job title alone.

Common Examples Under Federal (FLSA) Standards

Under FLSA, the following categories of employees are commonly treated as exempt when they meet salary and duties requirements:

- **Professional employees**, such as attorneys, engineers, architects, scientists, environmental specialists, planners, and policy analysts whose work requires advanced knowledge and independent judgment.
- **Administrative employees**, including program managers, agency analysts, budget and policy staff, grants administrators, and regulatory coordinators who exercise discretion on significant matters.
- **Executive employees**, such as supervisors, section chiefs, bureau directors, and managers responsible for directing the work of others and making operational decisions.

These roles are not structured around hourly production. Instead, they are evaluated based on outcomes, professional judgment, and responsibility for programs or decisions.

Examples Under Wisconsin Civil Service Practice

Within the Wisconsin state service, there is a total of 1,486 classified job titles of which 893 are exempt, 530 non-exempt and 63 are mixed. There are approximately 33,318

employees, of which 15,878 are exempt, 16,453 are **non**-exempt, and 987 are mixed. The exempt salaried positions commonly include:

- Doctors and nurses
- Teachers
- Attorneys and hearing examiners
- Engineers, geologists, and environmental scientists
- Program managers, policy advisors, and legislative liaisons
- Auditors, investigators, and compliance specialists
- IT professionals, systems analysts, and project managers
- Field-based professionals whose duties require travel, public meetings, inspections, or coordination with other governmental units

These positions routinely require evening meetings, irregular hours, travel time, and responsiveness to external schedules. Flexible work hours and compensatory time are therefore integral to how the work is performed.

What These Examples Clarify

These examples demonstrate that exempt salaried employees:

- Are hired to **complete defined responsibilities**, not to work a fixed number of daily hours
- Are expected to manage their time to meet operational demands
- Cannot realistically perform their duties within rigid, hourly constraints

Accordingly, treating exempt salaried professionals as if they were hourly employees—by imposing strict clock-based controls or denying reasonable flexibility—conflicts with both federal exemption principles and Wisconsin’s flexible scheduling statutes.

Sidebar: Federal FLSA Exemption Categories (Citations)

The Fair Labor Standards Act recognizes several categories of employees who are **exempt from overtime requirements** based on salary level and job duties. The most relevant exemptions for Wisconsin state professionals are:

Professional Exemption

29 USC 213(a)(1); 29 CFR 541.300 to 541.304

Applies to employees whose primary duty requires advanced knowledge in a field of science or learning customarily acquired through prolonged specialized education, and who exercise consistent discretion and judgment.

Administrative Exemption

29 USC 213(a)(1); 29 CFR 541.200 to 541.203

Applies to employees whose primary duty is office or non-manual work directly related to management or general business operations, and who exercise discretion and independent judgment on matters of significance.

Executive Exemption

29 USC 213(a)(1); 29 CFR 541.100 to 541.106

Applies to employees whose primary duty is management, who regularly direct the work of other employees, and who have authority or significant influence over personnel decisions.

These federal exemption categories form the legal basis for treating many salaried professional state employees as exempt from hourly overtime rules and support the use of flexible scheduling and compensatory time in the public sector.

Position Descriptions and Actual Job Duties

Official position descriptions often require scheduling flexibility. Common examples include duties that involve:

- Extended or irregular hours
- Work beyond 8 hours per day
- Travel within the state, including overnight stays
- Attendance at meetings set by outside entities
- Coordination with federal, state, county, municipal, or private parties

Over time, actual work performance may also demonstrate that a position cannot reasonably be performed without a flexible schedule or work in excess of 40 hours per week.

These are precisely the situations the Legislature contemplated when it promoted flexible scheduling and compensatory time as lawful and beneficial employment practices.

Ethics Rules and Discipline

Wisconsin's Code of Ethics emphasizes that public employees hold their positions as a public trust. Ethical standards are intended to prevent conflicts of interest while respecting employees' legitimate personal and economic interests.

Disciplinary action is broadly defined and includes any action that functions as a penalty. Policies or practices that improperly restrict lawful use of flexible scheduling, compensatory time, or earned leave may raise legal and disciplinary concerns.

Statutory Right to Vacation Leave

Wisconsin law grants salaried state employees a statutory right to annual leave. For long-service employees, this entitlement can reach up to 216 hours per year.

Unreasonably denying the use of accrued vacation time may violate state law.

Wage Claims and Enforcement Rights

Wisconsin law defines “wages” broadly to include salary, vacation pay, and other agreed-upon benefits. Courts have held that:

- State employees may sue state agencies directly for unpaid wages, including vacation pay.
- The State has waived sovereign immunity for such claims under Wis. Stat. ch. 109.

Employees who prevail may recover back pay and, in most cases, attorney fees and costs. *German v. DOT*, 223 Wis. 2d 525 (Ct. App. 1998 ([98-0250](#)) Affirmed 235 Wis. 2d 576([2000 WI 62](#), [235 Wis. 2d 576](#), [612 N.W.2d 50](#), [98-0250](#).)

“We conclude that 109.03(5), STATS., waives the State's sovereign immunity with respect to claims by state employees for wages due. We also conclude that the right of action created by 109.03(5), permits employees to sue employers for wage claims ... without first pursuing the claim with DWD.” *Id.*

“The court is authorized to award attorney fees in WIS. STAT. ch. 109 wage claims as "reasonable expenses" pursuant to 109.03(6). *Jacobson*, 222 Wis. 2d at 398-99...”

Accordingly, an employee may bring a private legal action if an agency improperly denies vacation time or refuses reasonable use of compensatory time. The court is also authorized to award attorney fees if the employee prevails.

There is an internal resolution process that allows any current employee of any state agency to file a written complaint alleging that the agency has violated state overtime related policies. If no resolution is reached at the agency level, the employee may file a written complaint with the DMRS Administrator of the Division of Personnel Management/Director of the Bureau of Classification and Compensation. See Wisconsin Human Resources Handbook, Chapter 520, Merit Recruitment and Selection Issue Date: April 2002 Revised: June 2012, Section 520.120. This internal process ceases when an employee files a lawsuit.

Practical Guidance for Employees

- Review your position description to ensure it accurately reflects your duties and required flexibility.
- Review past performance evaluations for confirmation that flexible scheduling has been accepted or expected.
- Requiring salaried professionals to use leave time for work-related meetings during normal working hours is generally unreasonable.
- A “fixed flexible schedule” is a contradiction. By definition, a flexible schedule allows adjustment as work demands require.

- Excessive administrative requirements—such as unnecessary telework agreements or weekly logs—may be unreasonable and potentially unlawful if imposed punitively.
 - Comp Time hours will be converted to cash only upon termination from State service or movement to another state agency or branch of state government. See Wis. Stat. 230.125 (2026) and November 6, 2025 Bulletin DPM-0650-CC/POL for additional details.
-

Association of Career Employees, Inc.

A 501(c)(3) Public Charity
www.acewisconsin.org

James S. Thiel
Treasurer / Attorney, State Bar of Wisconsin #1012582

Jack Lawton
Member, Board of Directors

The Association of Career Employees is organized exclusively for charitable purposes, including advancing a sound civil service system in the public interest, attracting the best employees on a merit basis, and retaining them to benefit all Wisconsin residents, and to encourages public recognition of the value of civil service, under section 501(c)(3) of the Internal Revenue Code. <https://acewisconsin.org/join-ace/>