State of New York
Office of Employee Relations

Over40 Comp Time II Pilot Program Description

A. Program Overview

The Over40 Comp Time II Pilot Program (Over40 II) that began under the 2007-2011 agreements with CSEA and PEF has been continued. Under this pilot program, State employees represented by CSEA, PEF, or DC-37 may opt to earn compensatory time at the time and one-half rate in lieu of overtime pay for overtime worked in excess of 40 hours in a workweek. Up to 240 hours of Over40 II credits may be accumulated under this program. Over40 II credits have no expiration date and cannot be charged as a leave accrual; however, up to 120 hours of accrued Over40 II credits may be cashed out once a year during the pilot program. This program replaces any current agency or local-level policies, practices and labor-management agreements regarding compensatory time for hours in excess of 40 in a workweek.

Over40 II is different from overtime compensatory time earned at the straight-time rate by certain overtime-eligible employees in 37.5-hour-workweek-positions for hours worked between 37.5 and 40 in a workweek.[1] In addition, Over40 II is a separate program from the Over40 Comp Time I Pilot Program (Over40 I) available to CSEA-represented employees under the 2003-2007 agreements.

B. Eligibility

To be eligible to enroll in Over40 II, employees must be in an overtime-eligible position allocated to salary grade 22 or below and in a bargaining unit represented by CSEA, PEF, or DC-37.

C. Enrollment

To enroll in the 2023-2024 program year of Over40 II, employees must complete the attached “Over40 Comp Time II Pilot Program Enrollment Form” and submit it to their agency personnel or payroll office *no later than close of business June 1, 2023.* Employees who enroll in the 2022-2023 program year will be eligible to receive Over40 II credits for overtime worked beyond 40 hours in a workweek for 26 pay periods beginning June 21, 2023, for the Administration Payroll, or June 28, 2023, for the Institution Payroll.

Eligible employees may opt to participate in this program for one or more program years during the term of the pilot but need not participate in all program years. Once employees enroll for a program year, they may not withdraw and must participate for the entire program

[1] Unlike the Over40 II program, overtime compensatory time for hours worked between 37.5 and 40 is available for use as a leave accrual, has no annual cash out, expires at the end of the fiscal year following the fiscal year in which it was earned, and does not count toward the 240-hour Over40 II maximum. Overtime compensatory time must be recorded on employee time records as a separate leave category.

year as long as they continue to be employed in an overtime-eligible position in a participating bargaining unit. Participation also continues if the employee moves to another agency and remains in an overtime-eligible position in a participating bargaining unit.

D. Earning Over40 Comp Time II

Under this program, eligible employees will earn Over40 II credits at the time and one-half rate for all overtime hours worked in excess of 40 hours in a workweek until they reach the 240-hour maximum. Employees who reach the 240-hour maximum for Over40 II are prohibited from earning any additional Over40 II credits until that balance is reduced below the 240-hour maximum, and those employees must be paid at the overtime rate for any additional overtime worked until their balance is reduced below 240 hours.

Participating firefighters in the Division of Military and Naval Affairs will earn Over40 II credits when they have worked in excess of 106 hours in a biweekly pay period.

E. Prohibition on Use of Over40 Comp Time II Credits as a Leave Accrual

Over40 II credits cannot be charged as a leave accrual, even when all other credits have been exhausted. Such credits cannot be charged to cover absences from work, as is permitted with regular overtime compensatory time credits for hours worked between 37.5 and 40 in a workweek. Employees who are absent and have exhausted all other credits are deemed to have exhausted all available leave credits for purposes of being eligible for sick leave at half-pay or receiving donated leave under the Leave Donation Program, even though they have a balance of Over40 II credits on their time record.

F. Annual Cash-Out of Over40 Comp Time II Credits

Employees who have accrued Over40 II credits may cash out up to 120 hours of accrued credits once per year during each year of the pilot program, payable in the payroll period closest to December 1, at the employee's straight-time rate of pay at the time of that cash-out. In any given program year, employees need not be enrolled in the program and need not be currently employed in an eligible position in order to participate in the annual cash-out, provided they have Over40 II credits on their time records. Credits an employee elects to cash out are deducted from the employee's time record as of the date the agency receives the employee's election form.

There will be an annual cash-out election period in October of each year. Appropriate election forms will be distributed before the start of the annual election period.

G. Liquidation of Over40 Comp Time II Credits

An employee receives a lump sum payment for all accrued Over40 II credits whenever one of the following occurs:

- separates for any reason from state service
- moves from the classified service to the unclassified service (including the State University system)

- moves to a position subject to Attendance Rules for Institution Teachers
- moves to an agency or entity subject to a reciprocal agreement
- moves to a position in the classified service in another agency

Over40 II credits are valued at the employee's straight-time rate of pay at the time of liquidation, but in no event shall the rate be less than the Fair Labor Standards Act (FLSA) requirements.

H. Retention of Over40 Comp Time II Upon Movement Within the Same Agency

Whenever an employee moves between a classified service position in the same agency or within the classified service between facilities or institutions within the same agency (SUNY, DOCCS, DOH, OMH, and OPWDD), Over40 II credits are carried forward on the employee's time record. This is true regardless of whether the employee continues to be employed in an overtime-eligible position in a participating bargaining unit or moves to an overtime-ineligible position or a position in a bargaining unit that does not participate in Over40 II.

The Over40 II credits are carried forward on the employee's time record as a separate leave category subject to the provisions of Over40 II, including eligibility to participate in the annual cash-out and the prohibition on use as a leave accrual. Over40 II credits have no expiration date. Employees retain their credits, even if they no longer participate in the program, until they liquidate accrued credits by participating in the annual cash-out or become eligible for a lump sum payment.

1. *Over40 Comp Time II and Management-Confidential Compensatory Time Program*

When employees with Over40 II credits on their time record move to an overtime-eligible management-confidential (M/C) position in the same agency, Over40 II credits are retained as a separate leave accrual category on the employee's time record, subject to the provisions of the Over40 II program, including eligibility to participate in the annual cash-out and the prohibition on use as a leave accrual. If the employee later enrolls in the M/C FLSA Overtime Compensatory Time Program (M/C Comp) to receive compensatory time at the time and one-half rate for hours worked over 40 in a workweek, the credits the employee earns are recorded in a separate column on the employee's time record and are subject to the provisions that apply to M/C Comp, including availability for use as a leave accrual and ineligibility to participate in the annual cash-out. However, the balances of Over40 II credits and M/C Comp credits when added together cannot exceed a combined maximum of 240 hours, and the employee cannot earn any additional M/C Comp credits until the combined balance drops below the 240-hour maximum.

Similarly, when employees with M/C Comp credits on their time record move to an overtime-eligible position in the same agency in a bargaining unit participating in Over40 II, M/C Comp credits are carried forward as a separate leave accrual category on the employee's time record subject to the provisions that apply to that program, including availability for use as a leave accrual and ineligibility to participate in the annual cash-out. If the employee in the new position enrolls in Over40 II during the annual enrollment period, credits earned under that program are recorded in a separate category on the employee's time record and

are subject to the provisions that apply to the Over40 II program, including eligibility to participate in the annual cash-out and prohibition on use as a leave accrual. However, the balances of Over40 II credits and M/C Comp credits when added together cannot exceed a combined maximum of 240 hours, and the employee cannot earn any additional Over40 II credits until the combined balance drops below the 240-hour maximum.

When that movement occurs, an employee who is already at the 240-hour maximum is permitted to enroll in the appropriate program in the new bargaining unit during the enrollment period but cannot actually earn time and one-half overtime compensatory time in the new program until the employee's balance drops below 240 hours. For example, an employee with 240 hours of M/C Comp credits is appointed to an overtime-eligible CSEA-represented position in the same agency. The employee is permitted to enroll in the Over40 II program during the annual enrollment period, but receives overtime pay for overtime worked and cannot receive Over40 II credits for such overtime until the balance drops below 240 hours.

I. Previous Participation in Over40 Comp Time I

Employees who participated in Over40 I under the 2003-2007 State-CSEA negotiated agreements and who enroll in Over40 II will carry unused Over40 I balances forward to be merged with credits earned under Over40 II into a single leave category subject to the provisions of Over40 II. Employees who participated in Over40 I and who do not elect to participate in Over40 II will retain their Over40 I credits subject to the provisions of Over40 I, including the continuing ability to charge Over40 I credits as a leave accrual. However, they are not eligible to earn any additional Over40 I credits.

1. *Over40 Comp Time I Participants Who Enroll in Over40 Comp Time II*

Employees who have accrued Over40 I credits and who elect to enroll in Over40 II are entitled to charge the Over40 I credits as leave accruals only until the date they begin participating in Over40 II. For example, an employee who first participates in Over40 II during the 2023-2024 program year can continue to use previously accrued Over40 I credits as a leave accrual until participation in Over40 II begins for the 2023-2024 program year.

After enrollment in Over40 II, unused Over40 I credits are carried forward under the terms of Over40 II and are merged with Over40 II credits earned under the new program into a single leave category. They are subject to a combined maximum of 240 hours and are administered under the terms of the Over40 II program. Once an employee participates in Over40 II, provisions of that program apply even if the employee elects not to participate in subsequent program years.

2. *Over40 Comp Time I Participants Who Do Not Enroll in Over40 Comp Time II*

Employees who previously participated in Over40 I under the 2003-2007 State-CSEA agreements and who do not enroll in Over40 II retain unused credits earned under the previous program, subject to the 120-hour maximum that applies to that program. Unused Over40 I credits are retained on the employee's time record in a separate leave category

and have no expiration date. However, employees are not eligible to earn any additional Over40 I credits.

Over40 I credits may continue to be used as a leave accrual and therefore must be exhausted before an employee can be granted sick leave at half-pay or become eligible for leave donations under the Leave Donation Program. Eligibility to use Over40 I credits as a leave accrual ceases if and when the employee commences participation in the Over40 II program, at which point Over40 I credits are carried forward and become part of the Over40 II credit balance, subject to provisions of that program.

Employees are entitled to retain Over40 I credits until they are exhausted or until the employee becomes eligible for a lump sum payment for unused credits upon movement to the unclassified service, movement under a reciprocal agreement, movement to an institution teacher position, movement to a classified service position in another agency, or upon separation from state service for any reason. The lump sum value of Over40 I credits is the employee's straight-time rate of pay at the time of liquidation, but in no event shall the rate be less than the FLSA requires. Over40 I credits cannot be cashed out during the annual cash-out period for Over40 II credits.

Over40 I credits are carried forward when employees move between classified service positions in the same agency, including movement between facilities and institutions.

When employees with Over40 I credits on their time record move to an overtime-eligible M/C position in the same agency and enroll in M/C Comp to receive compensatory time at the time and one-half rate for hours worked over 40 hours in a workweek, Over40 I credits are retained as a separate leave accrual category on the employee's time record, subject to the provisions of that program. However, the balances of Over40 I credits and M/C Comp credits cannot exceed a combined maximum of 240 hours.

Questions

Employee questions about Over40 II and any other compensatory time program should be directed to the employee's personnel office.