



May 18, 2024

Substitution

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Substitution

Reference Number: CTAS-998

Employees, solely at their own option and with the approval of their employer, may substitute for one another during scheduled work hours in performance of work in the same capacity. The regulations on this topic are found at 29 C.F.R. §553.31. The hours worked are excluded by the employer in the calculation of the hours the substituting employee would be considered as having worked for FLSA purposes. In other words, each employee will be treated as if he or she worked their normal work schedule. For example: When Officer B substitutes eight hours for Officer A, recordkeeping of Officer B's time worked is credited toward Officer A's work period. Officer A now "owes" Officer B eight hours of working time. Officer A can repay that debt by substituting for Officer B.

A DOL opinion letter dated January 2, 1987, addressed the issue of overtime compensation where police officers trade or substitute time with one another and whether it would be permissible for an officer to have part of the officer's accrued comp time hours transferred to another officer's comp time as repayment for trading time. Such a transfer would not be permissible under the regulations because it would require the employer to maintain a separate recordkeeping system, which is specifically not required by the FLSA. However, DOL states the same result could be permissibly obtained under the following scenario: Officer A may pay back Officer B by using Officer A's own accrued compensatory time while substituting the appropriate number of hours for Officer B. Thus, both officers would receive pay for the time worked, Officer A would not have to work those eight hours, and Officer B's accrued comp time balance would be reduced by eight hours.

Paying back the time is a matter left to the police officers who traded with one another. There is nothing under the FLSA that specifies the period for repayment of the time substituted or stipulates the number of trades allowed.

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