

**TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES****PART III - EMPLOYEES****Subpart E - Attendance and Leave****CHAPTER 61 - HOURS OF WORK****SUBCHAPTER II - FLEXIBLE AND COMPRESSED WORK SCHEDULES****§ 6123. Flexible schedules; computation of premium pay**

(a) For purposes of determining compensation for overtime hours in the case of an employee participating in a program under section 6122 of this title—

(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542 (a), 5543 (a)(1) and section <sup>1</sup> 5544(a) of this title, section 7453(e) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other provision of law; or

(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

(b) Notwithstanding the provisions of law referred to in subsection (a)(1) of this section, an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 6126 of this title or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

(c) (1) Notwithstanding section 5545 (a) of this title, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which such premium pay is otherwise authorized, except that—

(A) if an employee is on a flexible schedule under which—

(i) the number of hours during which such employee must be present for work, plus

(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,

which occur outside of the nightwork hours designated in or under such section 5545 (a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545 (a), such premium pay shall be paid for such hours so designated.

(2) Notwithstanding section 5343 (f) of this title, and section 7453 (b) of title 38, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized, except that such differential shall be paid to an employee on a flexible schedule under this subchapter—

(A) in the case of an employee subject to subsection (f) of such section 5343, for which all or a majority of the hours of such schedule for any day fall between the hours specified in such subsection, or

(B) in the case of an employee subject to subsection (b) of such section 7453, for which 4 hours of such schedule fall between the hours specified in such subsection.

**Footnotes**

<sup>1</sup> So in original. The word "section" probably should not appear.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 228; amended Pub. L. 102–40, title IV, § 403(c)(2), May 7, 1991, 105 Stat. 240; Pub. L. 102–378, § 2(44)(D), Oct. 2, 1992, 106 Stat. 1352.)

### **Amendments**

1992—Subsec. (a)(1). Pub. L. 102–378 substituted “5543(a)(1) and section 5544 (a)” for “5543(a)(1), 5544(a), and 5550”.

1991—Subsec. (a)(1). Pub. L. 102–40, § 403(c)(2)(A), substituted “section 7453 (e)” for “section 4107 (e)(5)”.

Subsec. (c)(2). Pub. L. 102–40, § 403(c)(2)(B), in introductory provisions substituted “section 7453 (b)” for “section 4107 (e)(2)” and in subpar. (B) substituted “subsection (b) of such section 7453” for “subsection (e)(2) of such section 4107”.