

875—220.6(91D) Payments for unused compensatory time.

220.6(1) Payments for accrued compensatory time may be made at any time and shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

220.6(2) Upon termination of employment, an employee shall be paid for unused compensatory time at a rate of compensation not less than:

a. The average regular rate received by the employee during the last three years of the employee's employment, or

b. The final regular rate received by the employee, whichever is higher.

220.6(3) The phrase "last three years of employment" means the three-year period immediately prior to termination. Where an employee's last three years of employment are not continuous because of a break in service, the period of employment after the break in service will be treated as new employment. However, a break in service must have been intended to be permanent and any accrued compensatory time must have been cashed out at the time of initial separation. Where the final period of employment is less than three years, the average rate still must be calculated based on the rate(s) in effect during the period.

SOURCE: 29 CFR 553.27.

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