

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY**MEMORANDUM**

TO: Chair Phyllis J. Randall and Members
Northern Virginia Transportation Authority

FROM: Michael Longhi, Chief Financial Officer

DATE: July 1, 2021

SUBJECT: Approval of Compensation Time Amendments for Employee Handbook

- 1. Purpose:** To seek the Northern Virginia Transportation Authority (NVTA) approval of revisions to the Employee Handbook to comply with HB2063 (2021), which removes the option to pay compensatory time off, in lieu overtime pay, for nonexempt employees.
- 2. Suggested Motion:** *I move the Authority approve the attached changes to Section 3.5 of the NVTA Employee Handbook as noted below.*
- 3. Background:**
 - a.** The NVTA Employee Handbook (Handbook) was originally adopted in December 2014 and sets policy for NVTA human resource functions. The Handbook has had minor revisions since originally adopted.
 - b.** The Handbook notes in Section 3.1 that all policies and personnel actions will be in compliance with the Fair Labor Standards Act (FLSA) and all other applicable Federal and State regulations.
 - c.** FLSA classifies employees who are not subject to overtime provisions as exempt, these positions are commonly referred to as salaried. Employees who are subject to overtime provision (paid overtime) are referred to in FLSA as nonexempt, and commonly referred to as hourly.
 - d.** A prior practice of many employers was to compensate nonexempt employees, who worked excess hours (generally above 40 hours per week) through time off at an overtime rate.
 - e.** The General Assembly's 2021 passage of [HB2063](#), or the Virginia Overtime Wage Act, Virginia Code [§ 40.1-29.2 \(B\)](#) now requires that employers "shall pay [any nonexempt] employee an overtime premium at a rate not less than one and one-half times the employee's regular rate, pursuant to 29 USC § 207."
 - f.** The Commonwealth Department of Labor and Industry (DOLI) and, the Office of the Attorney General have provided guidance that employers will no longer be allowed to offer compensatory time in lieu of overtime pay starting July 1, 2021.

- g. The Authority does not currently employ any nonexempt employees and therefore has no immediate fiscal or operational impact from this change.
- h. One section of the NVTA Employee Handbook is required to change to comply with the new legislation. The proposed changes (all deletions) are noted below:

3.5 Overtime and Compensatory Time

General

The NVTA's overtime policies comply with those established under the Fair Labor Standards Act (FLSA) and the Code of Virginia. All hours worked beyond the authorized workday, workweek or regularly scheduled hours must be pre-approved by the supervisor. It is the supervisor's responsibility to ensure any hours worked in excess of the authorized scheduled hours are necessary in order to provide or maintain services, the work could not be delayed until the next authorized workday or work schedules could not be flexed to accomplish the work. The supervisor exercises control and management of work activity so that only authorized and directed work is performed.

Non-Exempt Employees

All hours that a Non-Exempt employee is permitted to work are subject to compensation, pursuant to FLSA. Overtime or compensatory compensation is due for time worked over forty (40) hours during the established seven (7) day work week for employees. Overtime is compensated at one and one-half times employee's regular rate of pay. ~~Compensatory time is awarded at the rate of one and one-half times the number of hours that the employee works (excluding vacation and sick leave) in excess of forty (40) hours in any one established work week. It is preferred that compensatory time be taken in the same work week overtime is incurred, however, it can be taken up to one month later, with CFO approval. The CFO can choose to pay the employee in overtime or compensatory time as the needs of the Authority require.~~