City Council
Council Workshop
Government Services Center - City Office - 131 Main St
4:00 PM on Thursday, November 7, 2024

1. **Call to Order**

   Council Workshop
   1. No public comment. (Public is welcome to attend).
   2. No motions - recommendations will be made for Council meeting.

2. **Additions and Deletions**

3. **Employee Policy**
   1. Work Hours
      a. schedule
      b. flexibility
      c. lunch
   2. Salary vs Hourly
   3. On call vs called in
   4. Clarification for weekends

4. **Snow Removal and Ice Control Policy**

5. **Adjournment**

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Files Attached

- DuFrane Information.pdf
- Fact Sheet 22 Hours worked under the Fair labor Standards Act.pdf
- Fair Labor Standards Act An Overview.pdf
- Fair Labor Standards Act Determining Exempt vs. Non-Exempt Status.pdf

Council workshop clarification for public works.

1. Supervisor.
   a. Am I a supervisor? I have been told by multiple council members that I am a supervisor. I have also been told by a couple that I am not a supervisor. I was led to believe after my last review that I would be Matts supervisor. This has never been to the city council for confirmation. What has been told to me is that I am the director. I am not sure what the difference is.
2. Work hours.
   a. I have been coming in the same time, also leaving the same time since I have been hired since January 2nd 2008. I do not see a problem with the schedule I have kept with myself and the people I have worked with now and in the past. The summer schedule which I have kept was from 7:00 to 4:00PM Monday through Thursday and finishing up on the hours on Fridays or the weekend of being on call. Wintertime has been 7:30 till 4:00 PM. Now we are not coming for weekend duties. We are finishing weekdays on Friday. I would like to see the schedule to be the same.
3. Flexibility.
   a. This job has given us flexibility. In the winter we come in to have the roads cleared, and most of the sidewalks cleaned. At this point we have always come in around 3:00 to 6:00 am depending on the severity of snowstorm or snow removal process “hauling snow out of staged area”.
   b. I would like to see the schedule stay the same, or as the schedule change for emergency events .
4. Lunch break.
   a. Talking with Matt, together we came up with lunch will be 11:45 to 12:15 unless it isn’t the best interest of the time due to the project at hand.
5. On call vs call in.
   a. I’m not sure what that means? I have always believed that we were on call. Sometimes there is emergencies which include but not limited to Water leaks “Mains or water entering house which needs to be shut off at the curb that cannot be turned off inside the house” Sewage backups “in the street or in the publics house or business “Emergency locates from gopher State one call service. Snow emergencies include cleaning up from snow event, cleaning up main street so the county doesn’t throw the snow on the sidewalk in front of main street businesses. cleaning up the event center on the weekend if an event is planned. Those are the major reasons to have someone to respond to any of these events.
   b. Up until this summer matt and I had on call under control. I believe The City of Vergas paying for our half-hour lunch would be adequate compensation for both parties. These emergencies could be costly to the city if they were not responded to appropriately.
6. Salary vs hourly

I’m in favor of hourly myself.

Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)

Revised July 2008

This fact sheet provides general information concerning what constitutes compensable time under the FLSA. The Act requires that employees must receive at least the minimum wage and may not be employed for more than 40 hours in a week without receiving at least one and one-half times their regular rates of pay for the overtime hours. The amount employees should receive cannot be determined without knowing the number of hours worked.

Definition of "Employ"

By statutory definition the term "employ" includes "to suffer or permit to work." The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place. "Workday", in general, means the period between the time on any particular day when such employee commences his/her "principal activity" and the time on that day at which he/she ceases such principal activity or activities. The workday may therefore be longer than the employee's scheduled shift, hours, tour of duty, or production line time.

Application of Principles

Employees "Suffered or Permitted" to work: Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable.

Waiting Time:

Whether waiting time is hours worked under the Act depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was waiting to be engaged (which is not work time). For example, a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is working during such periods of inactivity. These employees have been "engaged to wait."

On-Call Time:

An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.

Rest and Meal Periods:

Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid for as working time. These short periods must be counted as hours worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.

Sleeping Time and Certain Other Activities:

An employee who is required to be on duty for less than 24 hours is working even though he/she is permitted to sleep or engage in other personal activities when not busy. An employee required to be on duty for 24 hours or more may agree with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than 8 hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. No reduction is permitted unless at least 5 hours of sleep is taken.

Lectures, Meetings and Training Programs:

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time only if four criteria are met, namely: it is outside normal hours, it is voluntary, not job related, and no other work is concurrently performed.

Travel Time:

The principles which apply in determining whether time spent in travel is compensable time depends upon the kind of travel involved.

Home to Work Travel:

An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.

Home to Work on a Special One Day Assignment in Another City:

An employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.

Travel That is All in a Day's Work:

Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

Travel Away from Home Community:

Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

Typical Problems

Problems arise when employers fail to recognize and count certain hours worked as compensable hours. For example, an employee who remains at his/her desk while eating lunch and regularly answers the telephone and refers callers is working. This time must be counted and paid as compensable hours worked because the employee has not been completely relieved from duty.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.dol.gov/agencies/whd and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

LEAGUE of MINNESOTA CITIES

INFORMATION MEMO

Fair Labor Standards Act: An Overview

Describes the most common employee protections under this federal law requiring a minimum wage, and overtime compensation for extra hours worked under the Act. Understand city responsibilities for record keeping, child labor standards, how to define a workweek, and when you may offer compensatory time off in place of paid overtime.

RELEVANT LINKS:

29 U.S.C. § 201-219.
See LMC information memo *Fair Labor Standards Act: Determining Exempt vs. Non-Exempt Status.*

I. Coverage

All cities are covered by the Fair Labor Standards Act (FLSA). However, some employees are "exempt" from the overtime provisions of the Act.

II. Requirements

The FLSA requires cities to:

- Pay at least the federal minimum wage (currently $7.25/hour) to all non-exempt employees for all hours worked. In situations where both the federal and the state FLSA address an issue, the employer is required to follow the law that is of greatest benefit to the employee. Effective January 1, 2024, Minnesota's minimum wage will increase to $10.85 per hour for large employers (up $.26/hour from $10.59 per hour in 2023), and to at least $8.853 per hour for small employers (up $0.22/hour from $8.63 per hour in 2023). The League generally advises cities with a total budget of $500,000 or more to comply with the higher Minnesota minimum wage rate (i.e., as of January 1, 2024 paying the $10.85 hour rate). Note that the definition of "employee" exempts certain types of city employees and that there is a separate minimum wage for small employers as defined by statute).
- Pay at least one-and-one-half times the employee's *regular rate of pay* for all *hours worked* over 40 in the *workweek* OR grant *compensatory time off* at the rate of one-and-one-half hours off for each hour worked over 40 in the workweek (words in italics are defined below). While the Minnesota FLSA requires all employers, regardless of gross annual revenue, to pay overtime for all hours worked in excess of 48 hours in a seven-day period, local government employers are also covered under the federal FLSA rules.

29 U.S.C. § 206(a)(1)(C).

Minn. Stat. § 177.24, subd. 1.
MN Dep't of Labor and Industry: Minimum wage rate will be adjusted for inflation as of Jan. 1, 2024.

Minn. Stat. § 177.23 subd. 7.

A guide to Minnesota's overtime laws.
U.S. Dep't of Labor: Fact Sheet #7: State and Local Governments under the fair labor standards act (FLSA).

29 U.S.C. § 207.

29 C.F.R. § 778.106.

29 C.F.R. § 570.

29 C.F.R. §§ 516.2 –.9.

RELEVANT LINKS:

Thus, because in many cases both federal and state FLSA laws will apply to local governments, then the stricter requirement (overtime for over 40 hours in a workweek) would need to be followed.

- Pay overtime wages on the regular payday for the pay period in which the wages were earned.
- Comply with the child labor standards.
- Comply with the record-keeping requirements.

29 U.S.C. § 207 (j).

Many cities pay overtime for hours worked over eight in one day; however, this is not a requirement of the FLSA (except for certain municipal hospitals and nursing homes). Some cities have this requirement in their personnel policies or union agreements. These should be honored unless and until they are changed.

III. Definition of "hours worked"

29 C.F.R. §§ 785.10 - .45.

"Hours worked" includes all hours the employee actually performs duties that are for the benefit of the city, including:

Minn. R. 5200.0120 Subp. 1.
29 C.F.R § 785.18.
Minn. Stat. § 177.254.
29 C.F.R. § 785.19.
Minn. Rules 5200.0060.

- Rest periods or "breaks" of 20 minutes or less. Per the Minnesota FLSA, employers must permit employees who work eight or more consecutive hours sufficient time to eat a meal and adequate time to use the restroom. The meal period is unpaid only if the employee is completely relieved from duties. The Federal Labor Standards Act contains no provision requiring meal breaks. However, the federal regulations state if meal breaks are provided, they are unpaid only if an employee is completely relieved from duty. Ordinarily, provided the employee is off-duty, thirty minutes, is considered a sufficient unpaid meal break, but of course can be longer. Less than 20 minutes for a mealtime is generally considered not sufficient and must be paid.
- Meetings and training programs.
- Travel between work sites during the workday.
- Time spent performing duties after hours or on weekends due to emergencies (call backs).
- The Minnesota Department of Labor has defined "hours worked" to include, "training time, call time, cleaning time, waiting time, or any other time when the employee must be either on the premises of the employer or involved in the performance of duties in connection with his or her employment or must remain on the premises until work is prepared or available."

Minn. R. 5200.0120 Subp. 1.

RELEVANT LINKS:

29 C.F.R. § 782.12.

- Any time performing duties outside of the normal shift, even if it is not "authorized." (Although unauthorized hours must be compensated, nothing precludes an employer from taking disciplinary action for failure to follow a policy that requires prior approval before working overtime). This can include duties performed away from the primary job site (e.g., city hall), such as work performed at home.

All of the "hours worked" must be added together to determine if the employee exceeded 40 hours in one workweek. When computing "hours worked," a city does not need to include time the employee was gone for vacation, sick leave, or holidays, even if the time off is paid time off. Although some cities have policies or union contracts requiring such hours to be included, it is not required under the FLSA.

There are also several examples of time that does not have to be included as "hours worked:"

DOL Opinion Letter FLSA2018-1.
29 C.F.R. § 785.14.
Minn. R. 5200.0120, Subp. 2.

- On-call hours where the employee wears a pager and is free to come and go as he or she chooses, or merely leaves a telephone number where he or she can be reached but is not required to wait by the phone. As a case in point, in the Department of Labor Opinion Letter linked to the left, the Department established on-call time was not considered "hours worked" for county ambulance service personnel since pager call-backs were relatively infrequent, the five- minute response time was not a significant hindrance to the employee's personal time, and employees were not disciplined for failing to respond within five-minutes from the call to the ambulance garage.

Minn. Stat. § 177.254.
Minn. Stat. § 177.253.

- Meal periods of at least one-half hour where the employee is not performing any work.

29 C.F.R. § 785.18.

Minn. Stat. § 181.939.

- Breaks for Nursing Mothers - FLSA requires employers with 50 or more employees to allow nursing mothers reasonable unpaid break time to express milk for a nursing child age one year or younger. However, Minnesota's nursing mother's and lactating employee break law applies to any employer with one or more employees and does **not** limit any timeframe on the nursing mothers accommodations, thus a limit to the 12 months following the birth of the employee's child is not permissible under MN law. In Minnesota the break time may run concurrently with any paid break time already provided to the employee., but the city may not reduce any employee's compensation for time used for the purpose of expressing milk.

29 U.S.C. § 207(r).
DOL: FLSA Break Time for Nursing Mothers Provision.
Minn. Stat. § 181.939.

RELEVANT LINKS:

DOL: Wage and Hour Division, Travel Time.

Further, the city must make reasonable efforts to provide a clean, private and secure room or other location, in close proximity to the work area, other than a bathroom or toilet stall, that is shielded from view and free from intrusion from coworkers and the public, with access to an electrical outlet.

- Ordinary home to work travel.

IV. Regular rate of pay

29 U.S.C.§ 207 (e).

29 C.F.R. § 778.109.

29 C.F.R. § 778.103.
29 C.F.R. § 778.104.
Minn. R 5200.0130.

U.S. Dep't of Labor: Final Rule: Regular Rate under the FLSA.
Federal Register: Regular rate under the FLSA.

The regular rate of pay includes all compensation for employment, including base wages, longevity pay, on-call, or standby pay, educational incentive pay, and most other forms of pay. The regular rate is calculated as an hourly rate, regardless of whether employees are paid on an hourly basis or by another method. Further, the regular rate must generally be calculated workweek-by-workweek, and cities may not average hours over two or more weeks, even when employees are paid on a biweekly basis.

On December 12, 2019, the U.S. Department of Labor (DOL) announced a Final Rule effective January 15, 2020, defining what forms of payment employers must include and may exclude in the FLSA's "time and one-half" calculation when determining overtime rates.

The DOL addressed call back types of pay designed to compensate employees for unanticipated work after the employee's scheduled hours have ended. The Final Regs stated call back pays made "without prearrangement" are excludable from the regular rate of pay, whereas call back pays for anticipated work are included in the regular rate of pay calculation. Previously there was a restriction in §§ 778.221 and 778.222 that "call-back" pay and other similar payments must be "infrequent and sporadic" to be excludable from an employee's regular rate. In the Final Rule, the reference to "infrequent and sporadic" has been eliminated, but again, employers will want to determine whether there was a prearrangement or anticipated need for work. Only those call back pays without prearrangement are excludable from the regular rate of pay.

U.S. Dep't of Labor: Final Rule: Regular Rate under the FLSA.

The Final Regulations also clarify employers may exclude the following payments when calculating an employee's regular rate of pay:

- Costs of providing certain parking benefits, wellness programs, onsite specialist treatment, gym access and fitness classes, employee discounts on retail goods and services, certain tuition benefits (whether paid to an employee, an education provider, or a student-loan program), and adoption assistance.

RELEVANT LINKS:

- Payments for unused paid leave, including paid sick leave or paid time off.
- Certain penalties employers must pay under state and local scheduling laws (not currently common in Minnesota).
- Business expense reimbursement for items such as cellphone plans, credentialing exam fees, organization membership dues, and travel expenses that don't exceed the maximum travel reimbursement under the Federal Travel Regulation system or the optional IRS substantiation amounts for certain travel expenses.

FOH 32d03e(b).
29 C.F.R. § 778.219(a).

- Certain bonuses/sign on incentives and longevity incentive payments. Per the regulations, in order for a bonus to qualify for exclusion as a discretionary bonus under section 7(e)(3)(a) the employer must retain discretion both as to the fact of payment and as to the amount until a time quite close to the end of the period for which the bonus is paid. The sum, if any, to be paid as a bonus is determined by the employer without prior promise or agreement. Cities will want to consult with their legal counsel on the nuances of any hiring or retention incentives offered since the MN State Auditor has previously released guidance requiring the programs to be in writing with clear objectives prior to a recognition program or incentive be awarded.

29 C.F.R. § 778.211.

- Complimentary office coffee and snacks; and
- Contributions to benefit plans for accidents, unemployment, legal services, or other events that could cause future financial hardship or expense.

LMC Information Memo: *Public Purpose Expenditures.*

Because this rule involves somewhat complex interpretations of payroll and human resources policies and practices, we strongly suggest your city request review by your attorney prior to implementing any changes.

The regular rate of pay also does not include tuition. The final rules effective in January 2020 note provided tuition reimbursements not tied to an employee's hours worked, services rendered, or other conditions related to the quality or quantity of work performed are indeed excludable from the regular rate of pay. Nor does it include expense reimbursement, or premium pay for overtime hours required by the FLSA itself or by union agreement. However, some cities may specify the regular rate of pay will include such items either by policy or union agreement. In such cases, the policy or agreement must be honored until it is changed.

RELEVANT LINKS:

V. Workweek

29 C.F.R. § 778.105.

The workweek is a "fixed and regularly occurring period of 168 hours-seven consecutive 24-hour periods," thus, it can be any period of time the city chooses consisting of seven days in a row. It can begin at any time of day. However, the city must consistently use the same seven-day period (for example, Sunday at 12:00 a.m. through Saturday at 11:59 p.m. of every week). The city can also have different workweeks for different groups of employees as long as each employee group is told what their workweek is, and it is documented in writing. In addition, police officers and firefighters can have a longer work week, up to 28 days. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade overtime requirements.

LMC information memo, *Fair Labor Standards Act Police and Fire Employees.*

VI. Compensatory time off

Cities are not required by the FLSA to provide the option of compensatory time off in lieu of paid overtime. (Be aware that a city policy or union contract may require the city to provide this option). As noted above, under certain circumstances, a city may give compensatory time off in lieu of paid overtime. Cities may do this when it is:

29 C.F.R. § 553.23.

- Established as a term or condition of employment (at time of hire).
- Negotiated under a collective bargaining agreement.
- Mutually agreed upon with individual employees, before the overtime hours are worked (a record of the agreement must be retained).

Some cities establish a "checkbox" on their employee timesheets whereby a non-exempt employee can indicate his or her preference to be paid for overtime either through cash payment or compensatory time off. Since the employee is given the choice, this method is likely to be seen as meeting the intent of the law.

29 U.S.C. § 207(o)(5).

Unless modified by the collective bargaining agreement, the employee must be allowed to take compensatory time within a reasonable time period, unless it "unduly disrupts" the city's operation.

Beck v. Cleveland, 390 F.3d 912 (6th Cir. 2004) (citing Department of Labor's Wage and Hour August 19, 1994 opinion letter).

(Courts have found that cities are not "unduly disrupted" if cities are required to pay one employee overtime in order to allow another employee to use compensatory time off). Cities cannot establish "use it or lose it" policies for compensatory time earned in lieu of overtime because compensatory time is a replacement for earned overtime and therefore is owed to the employee, as required by the law.

RELEVANT LINKS:

29 U.S.C. § 207(o).

29 C.F.R.§ 553.24.

LMC information memo, *FLSA: Police and Fire Employees.*

The FLSA sets an accrual limit of 240 hours of compensatory time for most employees (160 hours at time-and-one-half). Certain "public safety," "emergency response," and "seasonal" employees may be subject to a higher limit of 480 hours (320 hours at time-and-one-half). Most cities set a lower limit (e.g., 40 hours) because of the difficulty of granting employees so much time off.

Remaining compensatory time must be paid at the time the employee terminates employment at what may be a higher rate of pay, so the cost of payout increases over time.

See HR Reference Manual *Chapter 1*, Section IV-E-1-a on Constructive receipt.

To avoid this, some cities periodically cash out compensatory time (for example, paying off all compensatory time balances each December before starting the new year). This should be established in writing as a city policy and/or in a union agreement. However, providing employees the ability to choose when the compensatory time is paid out, unless properly designed, can create significant taxability issues for both cities and employees alike under the tax doctrine known as Constructive Receipt. For additional information on Constructive Receipt implications, please refer to the link to the left.

VII. Child labor standards

29 C.F.R. § 570.
Minn. Stat. § 181A.01.
Minn. R. 5200.0900 - .0960.
HR Reference Manual, Chapter 2.

The FLSA has certain restrictions on the type of work and the hours of work that may be performed by minors. The requirements of the FLSA must be coordinated with state laws on child labor.

VIII. Youth minimum wage

29 U.S.C. § 206(g)(1).
U.S. Dep't of Labor wage and hour division: Fact sheet #32: Youth Minimum wage- Fair Labor Standards Act.

As of January 1, 2024, both large and small Minnesota employers must pay employees under age 18 at least $8.85 per hour (increased by $0.22/hour from $8.63 in 2023). Since small employers must pay at least $8.85 per hour to all employees as of January 1, 2024, the youth wage rate now does not allow small employers to pay employees under the wage of 18 less than the $8.85 hour minimum.

Minn. Stat § 177.24, subd. 1(e).
MN Dep't of Labor and Industry: Minimum wage rate will be adjusted for inflation as of Jan. 1, 2024.

While federal law permits cities to pay a "youth minimum wage" of not less than $4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment and as long as their work does not displace other workers, this federal youth wage must also be coordinated with Minnesota law. Under Minnesota Law, the "youth wage rate" as of January 1, 2024, is set at $8.85/hour (up $0.22/hour from $8.63 in 2023). The rate may increase again on January 1, 2025.

RELEVANT LINKS:

Minn. Stat. § 177.24, subd. 1(c). MN Dep't of Labor and Industry: Minimum wage rate will be adjusted for inflation as of Jan. 1, 2024.

Another change in state law increases the 90-day training wage for employees under age 20 to $8.85/hour on January 1, 2024, for large employers, with another possible increase on January 1, 2025. Following the first 90-days, an employee of a large employer aged 18 or older, would then be paid $10.85/hour, beginning January 1, 2024.

A small employer is not eligible for an under 20 years wage reduction rate, because the small employer minimum wage rate in 2024 is already $8.85/hour for small Minnesota employers.

IX. Record-keeping requirements

The FLSA requires employers to:

29 C.F.R. § 516.4.
29 C.F.R. § 525.14.

- Display a minimum wage poster.

Download posters at the U.S. Department of Labor website.

29 C.F.R. §§ 516.2 –.9.

- Maintain detailed records of hours worked and wages paid to non-exempt employees and similar records on exempt employees, including: name, employee number, home address, birth date if under 19, sex, occupation, workweek, regular rate of pay, hours worked each day and total for week, total daily or weekly straight time earnings, total premium pay for overtime, total additions to or deductions from wages each pay period, total wages paid each pay period, and date of payment and the pay period covered.

29 C.F.R. § 553.50.

- Maintain records on compensatory time earned, used, and paid in cash as well as union agreements regarding compensatory time, even if they are verbal agreements.

29 C.F.R. § 516.5.

- Preserve payroll records and union agreements for at least three years.

Minn. Stat. § 177.30.

In May 2019, a new law, the Minnesota Wage Theft Prevention Act, was passed which includes in part, labor standards recordkeeping requirements for a period of three years to include the following records:

- Name, address and occupation of each employee.
- Each employee's rate of pay and the amount paid each pay period.
- Each employee's hours worked each day and each workweek, including, for all employees paid at piece rate, the number of pieces completed at each piece rate.
- A list of personnel policies with brief descriptions of each policy that were provided to each employee, including the date the policies were given to the employee.
- A copy of the new notice that is required to be provided to and signed by each employee at the start of employment and a copy of any written changes to the notice that were provided to each employee.

RELEVANT LINKS:

- For each employer subject to Minn. Stat. §§ 177.41 to 177.44 (Minnesota Prevailing Wage Act), and while performing work on public works projects funded in whole or in part with state funds, the employer shall furnish under oath signed by an owner or officer of an employer to the contracting authority and the project owner every two weeks, a certified payroll report with respect to the wages and benefits paid each employee during the preceding weeks specifying for each employee: name; identifying number; prevailing-wage master job classification; hours worked each day; total hours; rate of pay; gross amount earned; each deduction for taxes; total deductions; net pay for week; dollars contributed per hour for each benefit, including name and address of administrator; benefit account number; and telephone number for health and welfare, vacation or holiday, apprenticeship training, pension and other benefit programs.
- Other information the commissioner finds necessary and appropriate to enforce Minn. Stat. §§ 177.21 to 177.435.
- Effective January 1, 2024, employers will need to include the total number of earned sick and safe time hours accrued and available for employee use to an employee statement of earnings, as well as the total number of earned sick and safe time hours used during the pay period.

2023 Minn. Laws Ch. 53, art. 1 § 3 amending Minn. Stat. § 181.032.

The records must be either kept at the place where employees are working or kept in a manner that allows the employer to comply with a Minnesota Department of Labor Commissioner's demand within 72 hours.

Effective July 1, 2023, MN law was amended requiring an employer to inform employees in writing of their rights to express milk and pregnancy accommodation at the time of hire and when an employee requests parental leave, as well in an employee handbook. The MN Commissioner of Labor will be providing text to be included in the notice.

Minn. Stat. § 181.939 subd. 3.

X. Further assistance

If you have questions on this topic, please contact the League's Human Resources and Benefits Department.

800.925.1122
651.281.1200
HRbenefits@lmc.org

LEAGUE of MINNESOTA CITIES

INFORMATION MEMO

Fair Labor Standards Act: Determining Exempt vs. Non-Exempt Status

Learn how to determine which employees are covered (non-exempt employees) and which employees are not covered (exempt employees) under the Fair Labor Standards Act. Understand the two tests (salary test and duties test) that qualify an employee as exempt and become familiar with general definitions and guidelines of this law.

RELEVANT LINKS:

29 U.S.C. § 201-219.
See LMC information memos *An Overview of the Fair Labor Standards Act (FLSA).* and *Police and Fire Employees and the Fair Labor Standards Act (FLSA).*

Minn. R. Ch. 5200.
Minn. Stat. § 177.21.
Minn. Stat. Ch. 181.

29 C.F.R. § 541.700(a)

Federal Register: Defining and Delimiting the Exceptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.

I. Coverage

The federal Fair Labor Standards Act (FLSA) became law in 1938 and requires, among other things, that cities compensate covered employees at the rate of time-and-one-half for hours worked over 40 in one workweek as well as maintain employee wage records. In Minnesota, the primary statute governing minimum wage, overtime and recordkeeping is the Minnesota Fair Labor Standards Act (MLFSA). In general, an employer must follow the law which provides a greater benefit to the employee. In this memo you will learn which employees are covered (non-exempt) employees and which are not covered (exempt) employees. However, police and fire department employees have some unique exemptions discussed elsewhere.

All cities are covered by the FLSA, but some employees are "exempt" from the overtime provisions of the act. To be "exempt," employees must meet both of two separate tests:

- A duties test. Whether the employee's primary duty meets the definition of the particular exemption.
- A salary level test. Since 1938, the DOL has increased the salary levels many times- in 1940, 1949, 1958, 1963, 1970, 1975, 2004, 2019 and now in 2024, with a scheduled increase as of January 1, 2025, and subsequent changes on a triennial basis. Inherent to this level test is a salary basis test requiring an employee to be paid a predetermined and fixed salary "that is not subject to reduction because of variations in the quality or quantity of work."

  Non-exempt employees must be paid overtime for all hours worked over 40 in one work week; while exempt employees do not earn overtime. Being "salaried" does not mean the same thing as being "exempt."

RELEVANT LINKS:

Federal Register: Defining and Delimiting the Exceptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.

Federal Register: Defining and Delimiting the Exceptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.

With a few exceptions (e.g., doctors, lawyers), any employee who does not earn $684 per week is not considered exempt. Again, this salary threshold increases in two phases, beginning July 1, 2024, with automatic increases every three years thereafter. The first increase to the salary threshold is July 1, 2024, to $844/week (equivalent to $43,888/year), and then rises to $1,128/week (equaling $58,656/year) as of January 1, 2025.

For the two phased increases, the DOL permits employers to either meet the increase salary thresholds on July 1, 2024, and January 1, 2025, or opt for a single adjustment at the July 1 date to the higher threshold of $1128/week (equivalent to $58,656/year). Beginning July 1, 2027, and every three years thereafter, the salary thresholds will automatically update, as part of a triennial updating process to keep pace with changes in earnings, using the methodology in effect at the time of each update. Future DOL salary threshold updates will be published in the Federal Register with a notice of no less than 150 days before the effective date and the Wage and Hour Division will publish the updated threshold on their website before the effective date as well.

Previous salary threshold increases have been challenged in court, so it is possible this final rule may be challenged as well.

II. Duties test

29 U.S.C. § 213.

There are generally four types of exemptions used by cities.

Employees must meet the criteria outlined in one of the following four exemptions (executive, administrative, professional, and computer) in order to meet the "duties" test and be considered exempt. There are additional special considerations for performing a combination of exempt duties and for highly compensated individuals.

A. Executive duties

29 C.F.R. § 541.100.

Executive employees must:

See Appendix A flow chart, "Executive Exemption under FLSA". U.S. Dep't of Labor: Final Rule: Restoring and Extending Overtime Protections.
29 C.F.R § 541.100(a)

- Be paid at least $684 per week on a salary basis (equivalent to $35,568/annually) as of January 1, 2020. This salary threshold increases in two phases, beginning July 1, 2024, with automatic increases every three years thereafter. The first increase to the salary threshold is July 1, 2024, to $844/week (equivalent to $43,888/year), and then rises to $1,128/week (equaling $58,656/year) as of January 1, 2025.

29 C.F.R. § 541.701.

RELEVANT LINKS:

- "Customarily and regularly" supervise two or more employees (at least 80 hours' worth of employee work per week).
  The regulations define "customarily and regularly" as a "frequency greater than occasional but …less than constant." "Tasks or work performed 'customarily and regularly' includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks."
- Have the authority to hire or fire other employees or have their recommendations on hiring/firing, advancement, promotion, or other change of status decisions be given "particular weight."

29 C.F.R. § 541.102.

"Managing" includes spending approximately 50 percent of work time on management activities such as:

- Interviewing, selecting, and training employees.
- Setting and adjusting employee rates of pay and hours of work.
- Directing employee work.
- Evaluating employee performance.
- Handling employee complaints/grievances.
- Disciplining employees.
- Planning work and determining techniques.
- Determining materials, supplies, equipment, and tools to be used.
- Planning and controlling the budget.
- Providing for employee safety.

29 C.F.R. § 541.103.

"Department or subdivision" means a unit with permanent status and a continuing function. For example, in a larger city, there may be separate subdivisions within the public works department for "streets," "utilities," and "parks," and these subdivisions may meet the definition of a "department or subdivision" under the FLSA regulations. However, "department or subdivision" does not mean a group of employees assigned from time to time to work as a team on a specific job or project.

29 C.F.R. § 541.105.

"Particular weight" refers to the requirement that a certain amount of consideration be given to an employee's recommendations if that employee's position is to meet the executive exemption. The following questions are used to determine "particular weight":

- Is it part of the employee's job duties to make hiring/firing/job change recommendations?
- How often does the employee make such recommendations?
- How often are the employee's recommendations taken (vs. overridden) by the council or higher management?

RELEVANT LINKS:

See section IV-B.

An employee can still meet the executive exemption duties test if he or she sometimes performs non-exempt work (e.g., the labor or production work of the employees he or she supervises). However, the employee's "primary duty" must be management.

B. Administrative duties

29 C.F.R. § 541.200.
29 C.F.R. § 541.201(a).

The administrative exemption is meant to apply to employees who have the primary duty of performing office or non-manual work directly related to the management or general business operations of the employer (the city). Administrative employees must:

See Appendix B flow chart, "Administrative Exemption under FLSA". U.S. Dep't of Labor: Final Rule: Restoring and Extending Overtime Protections.
Federal Register: Defining and Delimiting the Exceptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.

- Be paid at least $684 per week on a salary basis (equivalent to $35,568/annually) as of January 1, 2020. This salary threshold increases in two phases, beginning July 1, 2024, with automatic increases every three years thereafter. The first increase to the salary threshold is July 1, 2024, to $844/week (equivalent to $43,888/year), and then rises to $1,128/week (equaling $58,656/year) as of January 1, 2025.

29 C.F.R. § 541.202(a).

The office or non-manual work must require the exercise of discretion and independent judgment on significant matters. Discretion and independent judgment involves comparing and evaluating possible courses of conduct, and action in decision making, which is the opposite of routine work.

"Matters of significance" are defined as the "level of importance or consequence of the work performed."

29 C.F.R. § 541.201.

If the employee's primary duty is to administer the business affairs of a city, the employee is likely an "administrator." If the employee's primary duty is providing the goods/services of the organization, the employee is likely a "production" employee. Work performed in areas such as finance, accounting, insurance, purchasing, human resources, computer network, Internet, and database administration is likely to be seen as administering the business affairs of the city.

29 C.F.R. § 541.202.

To determine whether an employee exercises discretion and independent judgment on significant matters, the city should ask these questions:

- Does the employee have authority to formulate, interpret, or implement management policies?
- Does the employee carry out major assignments and perform work that affects business operations to a substantial degree?
- Does the employee have authority to commit the city in matters with a significant financial impact?

RELEVANT LINKS:

- Does the employee have authority to waive or deviate from established policies and procedures without prior approval?
- Does the employee have authority to negotiate and bind the company on significant matters?
- Does the employee provide expert advice to management?
- Is the employee involved in planning long- or short-term business objectives?
- Does the employee investigate and resolve important matters for management?
- Does the employee handle complaints, arbitrate disputes, or resolve grievances?

The more "yes" answers to the above questions, the more likely the employee would be considered exempt under the administrative exemption.

29 C.F.R. § 541.202(c).

An employee can still qualify for the administrative exemption even if his or her decisions or recommendations are reviewed at a higher level and occasionally revised or reversed.

C. Professional exemption

29 C.F.R. § 541.300.

Professional employees must:

See Appendix C flow chart, "Professional Exemption under FLSA". U.S. Dep't of Labor: Final Rule: Restoring and Extending Overtime Protections.
Federal Register: Defining and Delimiting the Exceptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.

Be paid at least $684 per week on a salary basis (equivalent to $35,568/annually) as of January 1, 2020. This salary threshold increases in two phases, beginning July 1, 2024, with automatic increases every three years thereafter. The first increase to the salary threshold is July 1, 2024, to $844/week (equivalent to $43,888/year), and then rises to $1,128/week (equaling $58,656/year) as of January 1, 2025

Primarily perform work that requires knowledge of an advanced type in a field of science or learning ("learned professionals"), or work requiring invention, imagination, originality, or talent in a recognized artistic or creative field ("creative professionals").

29 C.F.R. § 541.301.

In general, to meet the "learned professional" definition, the employee must do work that is mostly intellectual and requires the consistent exercise of discretion and judgment (not routine mental, manual, mechanical, or physical work). The employee must use the advanced knowledge to analyze, interpret, or make deductions from varying facts or circumstances. Advanced knowledge cannot be obtained at the high school level.

RELEVANT LINKS:

Lawyers, doctors, accountants (but not accounting clerks or bookkeepers), and engineers are examples of professionals that are likely to meet the requirements of this exemption. Occupations that can be performed with only the general knowledge of an academic degree in any field are not likely to qualify under this exemption. Nor are occupations in which the employees generally learn "on-the-job" rather than by obtaining an advanced degree.

Dep't of Labor, Wage & Hour Div., Fact Sheet 17D: Exemption for Professional Employees Under the Fair Labor Standards Act (FLSA).
29 C.F.R. § 541.303.
29 C.F.R. § 541.304.

Keep in mind the salary basis test does not apply to bona fide teachers, doctors, or lawyers.

29 C.F.R. § 541.302.

To qualify for the "creative professionals" exemption, the employee must perform work in fields such as music, writing, acting, and graphic arts. These must be determined on a case-by-case basis; cities may want to contact the League or work with a consultant/attorney in determining these exemptions.

D. Computer exemption

While Minnesota law also exempts anyone employed in a bona fide executive, administrative, or professional capacity from overtime pay requirements, the state does not exempt computer systems analysts, programmers, software engineers, or other similarly skilled workers from its minimum wage or overtime requirements like Federal law does.

Thus, assuming the computer employee does not meet the other exemptions (executive, administrative or professional), that employee in Minnesota would be eligible for minimum wage as well as overtime pay.

29 C.F.R. § 541.400.

For reference, under federal FLSA computer employees must meet the following tests:

See Appendix D flow chart, "Computer Exemption under FLSA".
U.S. Dep't of Labor: Final Rule: Restoring and Extending Overtime Protections.
29 C.F.R. § 541.600(d).
Federal Register: Defining and Delimiting the Exceptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.

Be paid at least $684 per week on a salary basis or at least $27.63/hour if paid on an hourly basis (equivalent to $35,568/annually) as of January 1, 2020. This salary threshold increases in two phases, beginning July 1, 2024, with automatic increases every three years thereafter. The first increase to the salary threshold is July 1, 2024, to $844/week (equivalent to $43,888/year), and then rises to $1,128/week (equaling $58,656/year) as of January 1, 2025

Perform work in the area of computer systems analysis, computer programming, or computer software engineering.

RELEVANT LINKS:

Have a primary duty consisting of:

- Using systems analysis techniques and procedures to determine hardware, software, or system-functional specifications.
- Designing, developing, documenting, analyzing, creating, testing, or modifying computer systems or programs based on and related to user or system design specifications.
- Designing, documenting, testing, creating, or modifying computer programs related to machine operating systems.
- A combination of the above duties requiring the same level of skills.

E. Combination exemption

29 C.F.R. § 541.708.

U.S. Dep't of Labor: Final Rule: Restoring and Extending Overtime Protections.
Federal Register: Defining and Delimiting the Exceptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.

Employees who perform a combination of various types of exempt duties may qualify for exemption if the exempt duties, taken altogether, comprise the employee's primary duty. However, the employee must still be paid at least $684 per week (equivalent to $35,568/annually) as of January 1, 2020. This salary threshold increases in two phases, beginning July 1, 2024, with automatic increases every three years thereafter. The first increase to the salary threshold is July 1, 202

4, to $844/week (equivalent to $43,888/year), and then rises to $1,128/week (equaling $58,656/year) as of January 1, 2025.

F. Highly compensated employees

29 C.F.R. § 541.601.

Federal Register: Defining and Delimiting the Exceptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.

In 2004, the DOL created an HCE (Highly Compensated Employees) test for certain highly compensated employees based on the "rationale that employees who earn at least a certain amount annually- an amount substantially higher than the annual equivalent of the weekly standard salary level- will almost invariably pass the standard duties test." Thus, this test serves as a streamlined alternative for very highly compensated employees based on the rationale "a very high level of compensation is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed duties analysis." As outlined in the regulations, to be exempt under the HCE test as of July 1, 2024, an employee must earn at least $132,964/year (up from $107,432/year), of which at least $1,128 per week (the standard salary level) must be paid on a salary or fee basis the employee customarily and regularly performs at least one of the exempt duties or responsibilities of an executive, administrative, or professional employee. Employers can satisfy up to 10 percent of the new salary level (equivalent to $112.80 as of July 1, 2024) through the payment of nondiscretionary bonuses and incentive payments (including commissions) paid annually or more frequently, but does not include payments for medical insurance, life insurance, retirement plans or other fringe benefits.

RELEVANT LINKS:

This HCE test applies only to employees who primary duty includes performing office or non-manual work. The $132,964 increases to $151,164 as of January 1, 2025, and then is scheduled for subsequent updates every three years, starting on July 1, 2027. The DOL permits employers to choose to make a single adjustment on July 1 to the higher amount of $151,164 if they so choose rather than making an increase on July 1, 2024, and January 1, 2025.

III. Salary basis

29 C.F.R. § 541.602(a).

To be compensated on a salary basis, the employee:

Federal Register: Defining and Delimiting the Exceptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.

- Must receive a predetermined full amount of pay each pay period, without regard to the number of days or hours worked. The employee must be paid at least $684 per week (equivalent to $35,568/annually) as of January 1, 2020. This salary threshold increases increase in two phases, beginning July 1, 2024, with automatic increases every three years thereafter. The first increase to the salary threshold is July 1, 2024, to $844/week (equivalent to $43,888/year), and then rises to $1,128/week (equaling $58,656/year) as of January 1, 2025.
- Cannot be paid by the hour.
- Cannot be subject to deductions from pay based on quality or quantity of work.
- Must receive the full salary for any week in which any work is performed.

29 C.F.R. § 541.602(b).

Deductions from the weekly salary can be made when:

- The employee is absent for a day or more for personal reasons unrelated to illness or injury.

29 C.F.R. § 541.602(b) (5).

- The employer imposes penalties for a major safety violation (e.g., suspension without pay). The suspension must be for a violation of workplace conduct rules and be imposed pursuant to a written policy, applying to all employees.
- No work is performed in that week.

29 C.F.R. § 541.710(a).

Public-sector employers who have a personal leave and sick leave system that employees must use for partial-day absences due to personal reasons or illness/injury can make deductions for these partial-day absences when:

- Accrued leave is exhausted, and the employee takes a partial or full day off.
- The employee did not request paid leave, or the paid leave was denied, but the employee still takes the time off as unpaid leave (partial or full day).
- The employee requests the use of unpaid leave (partial or full day off).

RELEVANT LINKS:

29 C.F.R. § 541.710(b).

Deductions from the pay of an exempt employee of a public agency for absences due to budget-required leave-without-pay programs shall not disqualify the employee from being paid "on a salary basis" except in the workweek in which the budget-required leave without pay occurs and for which the employee's pay is accordingly reduced.

29 C.F.R § 541.604(a).

A city may pay an exempt employee extra compensation for additional hours worked beyond the person's normal work schedule. Paying the extra compensation, on any basis, even time-and-one-half, does not change the employee's designation as an exempt employee, assuming that the position has met both the salary and duties tests.

29 C.F.R. § 541.602(b)(3).

The city may not dock an exempt employee's wages for an absence due to jury duty, attendance as a subpoenaed witness, or for a temporary military leave. However, if the city does not provide paid time for these situations, the only "penalty" is that the employee will not be considered exempt for the week in which the absence occurs; in most of these situations, the employee is unlikely to work overtime.

The city also may offset from paid time any amount paid to the employee for the service.

U.S. Dep't of Labor: Final Rule: Restoring and Extending Overtime Protections.

Part-time employees must meet the same requirements as full-time employees to be exempt, including the requirement to be paid at least $684/week (equivalent to $35,568/annually) as of January 1, 2020. This salary threshold increases in two phases, beginning July 1, 2024, with automatic increases every three years thereafter. The first increase to the salary threshold is July 1, 2024, to $844/week (equivalent to $43,888/year), and then rises to $1,128/week (equaling $58,656/year) as of January 1, 2025.

29 C.F. R. § 541.603(d).

In 2004, the U.S. Department of Labor amended the regulations to provide a "safe harbor" for improper salary deductions. An employer who violates the salary basis test by making an improper deduction in an exempt employee's paycheck can avoid liability by:

Overtime and Compensatory Time, LMC Model Policy.

- Maintaining a clearly communicated policy prohibiting improper pay deductions.
- Including a complaint mechanism in the policy.
- Reimbursing employees for the improper pay deduction.
- Making a good faith commitment to comply in the future.

IV. General definitions and guidelines

A. Exempt vs. non-exempt work

29 C.F.R. § 541.707.

Exempt work is the work performed by executive, administrative, professional, and computer employees.

RELEVANT LINKS:

The definition of exempt work includes "closely related work" that exempt employees perform. An example of "closely related work" is when the finance director uses computer software to prepare a budget presentation for the city council. While technically this may be a non-exempt duty, it is closely related to his or her exempt duty of preparing the budget. By definition, any work that is not exempt work is non-exempt work.

B. Primary duty

29 C.F.R. § 541.700.

To qualify for any of the above exemptions, an employee's primary duty must be executive, administrative, professional, or computer work.

Primary duty means the principal, main, major, or most important duty that an employee performs. Factors to consider include:

- The relative importance of the exempt duties compared with other types of duties. (If the job exists mainly for the purpose of performing the exempt duties, it is likely to be considered exempt).
- How much time the employee spends performing exempt work. (Ideally it should be 50 percent or more of the time, but this is not an absolute requirement).
- How much supervision the employee receives and how free the employee is to determine how to spend his or her time. (The more independence and freedom, the more likely it is to be considered exempt).
- The relationship between the employee's salary and the wages paid to other employees for the kind of non-exempt work performed by the employee. (If the employee's pay is relatively close to the level of non-exempt workers, this may harm the employee's chance of being considered exempt).

V. Special exemptions

A. Separate seasonal amusement and recreational establishments

29 U.S.C. § 213(a)(3).

Employees working in separate seasonal amusement and recreational establishments are exempt from the federal wage and hour law if the establishment is physically separated from the rest of the city's operations, either by distance or structurally (e.g., a fence). In addition, it must be open no more than seven months of the year, or its average receipts for any six months of the preceding year must not be more than one-third of its average receipts for the other six months of the year.

RELEVANT LINKS:

Minn. Stat. § 177.24.

Federal Register: Defining and Delimiting the Exceptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.

If the city does not meet this federal exemption, and meets the large employer definition, then effective January 1, 2024, the city will pay $10.85 per hour (up $0.26/hour from $10.59 per hour in 2023), and small employers will pay at least $8.85 per hour (up $0.22/hour from $8.63 per hour in 2023). The League generally advises cities with a total budget of $500,000 or more to comply with the higher Minnesota minimum wage rate (i.e., as of January 1, 2024, paying the $10.85 hour rate).

Beginning in 2017 and each year after, the Department of Labor and Industry determines with feedback of stakeholders any appropriate minimum wage increase. The minimum wage increase, if any, will be effective in August of the following year. If it does meet this federal exemption, one or more of the following state law exemptions and provisions may apply:

Minn. Stat. § 177.23 subd. 7(14).

- The city is not required to pay minimum wage/overtime to any individual under 18 working less than 20 hours per workweek for a city as part of a recreational program.
- During the first 90-days of training, as of January 1, 2024, a large employer may pay employees under the age of 20 a wage of $8.85/hour (up $0.22/hour from $8.63/hour in 2023).

  After the 90 days, the minimum hourly rate for the employee working for a large employer becomes the 2024 minimum wage rate of $10.85/hour). The city must pay time-and-one-half overtime for all hours worked over 48 in one workweek.

Minn. Stat. § 177.25.
Minn. Stat. § 177.24.

B. Occasional and sporadic employment

29 U.S.C. § 207(p)(2).

Employees who freely choose to work part-time for the city in a different job than their normal job on an occasional and sporadic basis do not need to be paid time-and-one-half for the additional hours if the duties in the two jobs are substantially different.

C. 1040/2080 Plans for unionized employees

A 1040/2080 plan provides a partial exemption from the FLSA overtime requirement. Such plans are only valid in union environments, and the parameters of the plan must be defined in a collective bargaining agreement. While a 1040/2080 plan provides the employer with increased flexibility, such plans may also present bookkeeping and payroll challenges.

29 C.F.R. § 778.602 (b).

Examples of how overtime might be calculated under a 1040/2080 plan are provided in the regulations.

RELEVANT LINKS:

1. 1040 Plans

Overtime compensation is not required for hours worked over 40 in a workweek if there is an agreement that no employee shall be employed more than 1,040 hours during a period of 26 consecutive weeks.

When such a plan is in place, unionized employees can work an average of 40 hours per workweek (over the 26-week period, for a total of 1,040 hours) without receiving overtime compensation for each hour worked over 40 in a given week.

At the end of the 26-week period, all hours worked over 1,040 must be compensated as overtime at time-and-one-half. In addition, employees must receive overtime for any hours worked in excess of 12 hours in a workday or 56 hours in a workweek.

2. 2080 Plans

This plan is more complicated than the 1040 plan. Employees must be guaranteed at least 1,840 hours of work and may not work more than 2,240 hours in a 52-week period even if they are paid overtime. Exceeding 2,240 hours during the 52 weeks may negate the plan and retroactively entitles employees to overtime compensation for any week in which they worked more than 40 hours.

At the end of the 52 weeks, all hours worked over 2,080 must be compensated as overtime at time-and-one-half. Like the 1040 plan, employees must be paid overtime for hours worked in excess of 12 hours in a workday or 56 hours in a workweek.

Dep't of Labor, Wage & Hour Div., Admin. Ltr. Rul. (Apr. 1, 1985).

To be valid, a 1040/2080 plan must be created as part of a collective bargaining agreement. In addition, the employee representative(s) must be certified as "bona fide" by the National Labor Relations Board (NLRB). While the NLRB does not generally have jurisdiction over public employers, a Wage and Hour Opinion Letter, dated Nov. 1, 1985, advises that the NLRB has the authority to process petitions from unions of government employees requesting certification as "bona fide" for the purpose of forming a 1040/2080 plan. Petitions for certification may be filed in the NLRB Regional Office.

Minneapolis Office - National Labor Relations Board.

D. Belo Plan

29 C.F.R. § 778.404.

The Belo Plan was named after a Supreme Court decision, Walling v. Belo Corporation (316 U.S. 624 (1942)) and was given legislative sanction by FLSA amendments. A Belo Plan provides guaranteed compensation that includes a predetermined amount of overtime.

RELEVANT LINKS:

It offers employees with irregular hours of work a set weekly income and enables the employer to anticipate labor costs and payroll calculations.

The U.S. Department of Labor (DOL) notes that few jobs qualify for a Belo Plan as the interpretation of "irregular hours of work" is strictly enforced.

There are a number of requirements for a valid Belo Plan, including the following:

- A specific agreement must be in place between the employer and the employee(s). There is no requirement that the agreement be in writing. However, it is a good practice to put it in writing so as to avoid any ambiguity surrounding the arrangement.
- The employees' duties must necessitate irregular hours of work. In other words, the irregular hours must be dictated by the work itself, not scheduled by the employer. The employees' work must fluctuate such that they sometimes work more than 40 hours a week and other times work less than 40 hours a week. If virtually the only work hours that fluctuate are those over 40, the DOL has usually held that the irregular hours requirement is not met.
- The weekly overtime payment must be guaranteed. For example, if the Belo Plan calls for 60 hours of work and the employee works 40 hours, he or she still gets full payment. The employer must pay a premium rate at time-and-one-half for all guaranteed hours over 40, or the Belo Plan will not be valid.
- The number of weekly hours guaranteed cannot exceed 60 hours per week. Any hours worked beyond 60 in any workweek must be compensated at an additional time-and-one-half.

VI. Further assistance

If you have any additional questions, please contact the League's Human Resources and Benefits Department.

800.925.1122
651.281.1200
HRbenefits@lmc.org

4. Snow Removal and Ice Control Policy

Files Attached

• 2024-snow-removal-and-ice-control-policy.pdf

City of Vergas
Snow Removal and Ice Control Policy

INTRODUCTION: The City will provide snow removal and ice control operations in a safe and cost-effective manner; keeping in mind safety, budget and environmental factors. The city will utilize its employee's and equipment and/or private contractors, when necessary, to provide this service.

POLICY:

1. The City Utilities Department decides when to begin snow or ice control operations using the following guidelines:

   - Single event snow accumulation of 3 or more inches Monday-Friday and 4 inches or more on Saturday, Sunday and holidays.
   - Drifting of snow that causes problems for travel.
   - Icy conditions that seriously affects travel.
   - Time of snowfall in relationship to heavy use of streets.

2. Snow plowing and ice control operations:

   - Priority and schedule of street plowing is based on street function, traffic volume and importance to the welfare of the community. The main business streets, adjacent business areas and high-volume traffic routes are plowed first. Per an agreement with the Ottertail County Highway Department, the county plows snow on main street of Vergas (Highway 4), to the curb or middle, and the City of Vergas removes the snow from along the curb or middle of street. The City is reimbursed by the county for snow removal.
   - Operations continue until all roads are passable.
   - Generally, gravel roads are not plowed until frozen, unless over 5 inches of snow or based on conditions impacting road passage.
   - Widening and clean-up operations may occur immediately or on a following work day depending on conditions.
   - Sand and salt mixtures, here and after referred to as sanding, are utilized for ice and slippery areas. Sanding is done the first initial time of plowing operations or whenever hazardous ice or slippery conditions develop. Priority is given to intersection's, curves and hills. Additional sanding is at the discretion of the City Utilities Department. The City of Vergas does not have a dry pavement policy, so drivers will always have to be careful during the winter season.
   - Subject to availability of time, walking paths will be plowed and maintained, however to avoid killing vegetation there will be no sanding.

3. As outlined in City Ordinance 71.04 during a declared snow emergency or after 2 or more inches of snow has accumulated; no motor vehicle shall be left parked on any street or public way in the city until street cleared on both sides of accumulated snow or declared emergency canceled.

4. Snow and ice control operations will be conducted only when weather conditions do not endanger the safety of city employee's and equipment. Factors that may delay snow and ice control operations include; severe cold, significant winds limiting visibility and rapid accumulation prohibiting effective operations. The City Utilities Department will determine when snow and ice removal operations need to be suspended due to weather conditions.

5. Snow and ice removal from driveways and sidewalks are the responsibility of residential and business property owners. Exceptions may occur as determined by the City Utilities Department in instances of extreme snow volume or other circumstances. It is not the intent to fill resident driveways or sidewalks with snow.

6. The Utilities Department will haul snow away from intersections within city limits when accumulated snow has created an unsafe condition for vehicular or pedestrian passage. Any other hauling away of snow is at the discretion of the Utilities Supervisor.

7. The City Office is kept informed and updated regarding snow and ice operations. Questions or concerns can be directed to the City Office.

8. OTHER CONSIDERATIONS:

- Property owners are responsible for clearing snow and ice away from mailbox to insure delivery of mail.

- To allow for effective snow removal, trash containers should be placed on driveway aprons or boulevards at least 10 feet behind the street curb or edge. Do not place on the street. The City is not responsible for tipped, spilled or damaged containers.

- Fire Hydrants need to be kept clear of snow to allow for quick access in the event of a fire. The City Utilities Department make's every effort to keep hydrants clear, however due to workload, fire hydrants may not be immediately cleared. City residents are asked for support to keep fire hydrants clear of snow in their neighborhood.

- Refer to City Policy regarding damage to mailboxes, sod, sprinkler systems located in the right-of-way.

Adopted this 9th day of Febraury, 2020 by the City Council of the City of Vergas.

Julie Bruhn
Mayor

ATTEST:

Julie Lammers
City Clerk-Treasurer