

COUNTY OF MILWAUKEE
Inter-Office Communication

Date: October 15, 2009

To: Supervisor, Paul Cesarz, Chairman, Personnel Committee
Supervisor Elizabeth M. Coggs, Chairwoman, Committee on Finance and Audit

From: Jerome J. Heer, Director of Audits

Subject: Amendment of Chapter 17.16(1)(b) of Milwaukee County Code of General Ordinances Related to Overtime and the Fair Labor Standards Act (FLSA) (File No. 09-257)

Background

On July 10, 2009 the Committee on Personnel referred the attached report from the Director of Human Resources dated April 26, 2009 to the Department of Audit for review and comment.

Analysis

The analysis provided by DAS provides support for bringing overtime payments for non-represented employees in line with the provisions of the Fair Labor Standards Act (FLSA). This would be accomplished in two ways. First, non-represented employees who are exempt from FLSA would no longer be paid overtime (either time and one half or straight time). Second, non-represented employees would have overtime calculated on the basis of hours worked over 40 hours in a week rather than hours worked in excess of eight hours in a day. The proposal does not cover executive employees who are not eligible for overtime now and would continue in that status.

The analysis, however, does not make a strong and clear distinction between overtime that is "paid" and overtime that is "used". "Paid" overtime is a cash expense to the County that is triggered either by the active approval of management or by a default payment if overtime is not liquidated within 180 days. Overtime that is "used" is a non-cash item that is incurred when overtime is liquidated as compensatory time off. An assessment that incorporates this distinction results in a fiscal note of \$277,578 as "paid" in 2008 in contrast with \$238,728 as "used". The value of the total amount that was accrued in 2008 was \$365,093 and this amount incorporates any amount that was built up during the year because it was not "paid" in the period in which it was earned and has not yet been used.

Given the current environment in Milwaukee County where it is anticipated that there will be considerable pressure on the County workforce, including the employees affected by this DAS initiative, we question the wisdom of banning any overtime for the group affected by this proposal. We suggest that a more fair, reasonable approach is to allow overtime to only be accumulated as straight time, not time and a half, and that it only be liquidated as "used" compensatory time off, not "paid". Executive Directors and Executive Compensation Plan employees should, of course, continue to be prohibited from accruing any overtime. But civil service employees who work additional hours should not be treated the same as executives. It is also advisable to have DAS report back to the County Board on the effect of this initiative on the 2010 budget and on programs. Specifically, the Board should receive a report that identifies amounts "paid" and "used" by department.

We also note that the list of affected employees is the subject of a consulting engagement that is currently in process. The study could also provide some clarity to long-standing questions about the proper classification of Executive Directors and ECP employees as civil service positions. The committee may want to see the results of the consultant's study before taking any action. The report is also expected to provide a review of compensation for all non-represented classifications.

The County Executive's Recommended 2010 Budget also addresses overtime for employees who are both covered by, and exempt from, FLSA. These elements, which are subject to collective bargaining for represented employees, are included in Org. 1972 Wage and Benefit Modification Account and include:

Overtime Reform

- Overtime pay will not be paid for hours in excess of eight during the workday unless the employee has exceeded 40 hours in the workweek. This is consistent with federal law and will provide consistency among Milwaukee County labor agreements.
- Employees will only receive overtime pay for hours worked instead of credited. This is consistent with federal law and will provide consistency among Milwaukee County labor agreements.
- Management will be provided with the discretion to either pay out overtime or allow deputy sheriffs and nurses to accrue the overtime as paid time off to provide staffing flexibility and reduce overtime cost.
- Amend Chapter 17.16(1)(b) to eliminate overtime for salaried non-represented employees in positions that are exempt from the overtime requirements of the Fair Labor Standards Act (FLSA).

Based on our analysis of the April 26, 2009 proposal by the Director of Human Resources, we concur that the provisions listed above should be pursued with the exception of the elimination of all overtime for professional employees.

Conclusions and Recommendations

We believe that the DAS recommendations to bring Milwaukee County in line with FLSA for non-represented employees should be adopted except that these employees should be allowed to earn overtime at a straight time rate and that it should be liquidated as compensatory time off rather than cash. An alternative to the Ordinance change proposed by DAS is attached. Further, DAS should be directed to report back to Personnel and Finance and Audit Committees in the April Board cycle on the amount of overtime paid in the first quarter of 2010 with specific details on the department, division and programs where overtime is occurring and an analysis of the underlying rationale in each unit.

Further, all overtime changes proposed by the County Executive in his 2010 Recommended Budget should be pursued with the exception of the outright ban of any overtime for any non-represented employees. Instead, that ban should be replaced with a change to only allow straight time accrual of overtime with compensatory time off rather than payment. Again this applies primarily to professional staff and in no event would apply to executives who are not eligible for any overtime. Managers should be charged with ensuring that large balances do not accumulate that might be paid out at separation of service from the County. The overtime report provided to the County Board should identify overtime accumulation by position to provide oversight that will help mitigate any concern about overtime payouts.

Supervisor, Paul Cesarz, Chairman, Personnel Committee
Supervisor Elizabeth M. Coggs, Chairwoman, Committee on Finance and Audit
October 15, 2009
Page Three

Jerome J. Heer

JJH/cah

Attachment

cc: Finance and Audit Committee Members
Personnel Committee Members
Scott Walker, Milwaukee County Executive
Cynthia Archer, Director, Department of Administrative Services
Steve Kreklow, DAS-Fiscal & Budget Administrator
Terrence Cooley, Chief of Staff, County Board Staff
Steve Cady, Fiscal & Budget Analyst, County Board Staff
Rick Ceschin, Senior Research Analyst, County Board Staff
Delores Hervey, Chief Committee Clerk, County Board Staff

COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION

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DATE: April 26, 2009
TO: Lee Holloway, Chairman, Milwaukee County Board of Supervisors
FROM: Dr. Karen Jackson, Director, Division of Human Resources 
SUBJECT: Proposed Ordinance Revision Regarding Overtime Compensation

Issue

Milwaukee County Ordinance Section 17.16 governs overtime compensation for employees:

1. Pursuant to Sec. 17.16, currently non-represented employees who hold positions in pay range 29M and above who are **exempt** from the FLSA, receive straight time overtime for all hours worked in excess of forty hours in a week.
2. Pursuant to Sec. 17.16, currently non-represented employees who hold positions in pay range 28M and below, who are **exempt** from the FLSA, receive time and one half for all hours worked in excess of eight hours in a day or forty hours in a week.
3. Pursuant to Sec. 17.16, currently non-represented employees who hold positions that are **non-exempt** (covered by the FLSA) receive time and one half for all hours worked in excess of 8 hours in a day or forty hours in a week regardless of their pay range.

The proposed changes to Sec. 17.16(1)(b) would eliminate the payment of overtime for **exempt** employees referenced in paragraphs 1 and 2 consistent with the FLSA.

The proposed changes to Sec. 17.16(1)(b) would continue the payment of time and one half for all hours worked in excess of forty hours in a week by employees who are **non-exempt** (covered by the FLSA), consistent with the requirements of the FLSA. However, since federal law does not require overtime pay for hours worked in excess of eight hours per day, the proposed changes would remove that provision from the County Code.

To sum up, non-represented employees who are exempt from the provisions of the FLSA and who are not entitled to overtime pay under the FLSA will no longer be paid overtime (either time and one half or straight time). Non-represented employees subject to the FLSA (non-exempt employees) will have their overtime calculated on the basis of hours worked over 40 hours in a workweek and not hours worked in excess of 8 hours in a day.

Background

The FLSA exempts executive, administrative, and professional employees from its minimum wage and overtime requirements. Milwaukee County employees are subject to the requirements of the FLSA unless the law does not cover them. If employees are covered by the FLSA, certain tests are applied to determine if certain covered employees should be exempt (not covered by) the provisions of the FLSA. The primary exemptions involve executive, administrative, professional and some computer employees who earn salaries not less than \$455 per week. Generally if you are an hourly employee, you are not exempt from the provisions of the FLSA.

Executive employees are management employees who customarily and regularly direct the work of at least two or more other full-time employees. Executive employees must possess the power to hire or

fire other employees or have substantial weight in making such decisions regarding hiring, firing, promoting or any other change of status of other employees.

Administrative employees perform office or non-manual work directly related to the management or general business operations of the employer or the employer's customers. Administrative employees customarily and regularly exercise discretion and independent judgment with respect to matters of significance.

Professional employees perform work primarily requiring advanced knowledge acquired by a prolonged course of specialized education. The work product of professional employees is predominately intellectual and varied in character and requires the consistent exercise of discretion and judgment.

Computer software employees must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field of skills.

As of April, 2009, a total of 1,005 County employees are not represented. Of that total, 387 employees are classified as exempt and as such are not entitled to overtime payments under the Fair Labor Standards Act. The attachment references the title codes and pay ranges of those positions that are currently classified as exempt from the FLSA and that will be impacted by amending Section 17.16 of the County Code.

Recommendation

Adopt the attached resolution and ordinance amending Section 17.16 (1) (b) of the ordinances to conform to and be consistent with the requirements of the Fair Labor Standards Act.

Prepared by: Davida Amenta/Mary Ann Grimes
 278-5330/278-4782

cc: Cynthia Archer, DAS Director
 Bill Domina, Corporation Counsel
 Rick Ceschin, County Board Staff
 Tom Nardelli, County Executive Chief of Staff

Attachment - Classifications that are Non-Represented and FLSA Exempt

| Job Code | Position Description | Pay Grade |
|----------|--------------------------------|-----------|
| 00085770 | Student Intern | 01IM |
| 00087700 | Adm Intern | 01IM |
| 00086700 | Adm Sec 1-Office Asst 1 | 09M |
| 00012240 | Fiscal Mgt Analyst 3 | 17JM |
| 00085360 | Adm Sec Princ Exec Asst | 18M |
| 00086654 | Adm Sec 3-Pol Res Anlys | 23M |
| 00012230 | Fiscal Mgt Analyst 3 | 26JM |
| 00007899 | Economic Development Specialis | 26M |
| 00045080 | Utilization Review Coord | 28MN |
| 00045110 | Nursing Prog Coord | 28MN |
| 00011291 | Airport Properties Mgr | 29 |
| 00009410 | Felony Court Coord | 29M |
| 00011290 | Airport Properties Mgr NR | 29M |
| 00020402 | Mechanical Mtce Supt Ho | 29M |
| 00041360 | Conservatory Director | 29M |
| 00045115 | Nursing Adm Coord | 29M |
| 00045121 | Adm Claims Examiner - W C | 29M |
| 00055495 | Food Stamp Paymnt Acc Mg | 29M |
| 00058024 | Quality Assur Coord - DHHS | 29M |
| 00062190 | Asst Dir Emerg Mgmt | 29M |
| 00064300 | Airport Fire Chief | 29M |
| 00085495 | Adm Sec Public Inf Mgr | 29M |
| 00054865 | Ems Program Director | 29MN |
| 00054875 | Gamp Program Director | 29MN |
| 00005735 | Hr Coordinatord Tpw | 30M |
| 00005750 | Human Res Coord Zoo | 30M |
| 00005890 | Safety Coordinator- | 30M |
| 00006980 | Human Res Coord MHD | 30M |
| 00008710 | Asst Chief Depclk Divad | 30M |
| 00010836 | Office Coord Corporation Couns | 30M |
| 00020220 | Operations Coord | 30M |
| 00028230 | Fleet Services Coord | 30M |
| 00041340 | Safety And Train Coord Pk | 30M |
| 00051610 | Staff Veterinarian | 30M |
| 00055732 | Contract Services Officer | 30M |
| 00061710 | Dep Sheriff Lt | 30M |
| 0006580 | Human Res Coord Sheriff | 30M |
| 00065830 | Human Res Coord CSE | 30M |
| 00065850 | Human Res Coord Aging | 30M |
| 00065860 | Prog And Policy Coord- | 30M |
| 00065870 | Prog Planning Coord | 30M |
| 00065880 | Facilities Mtce Coord | 30M |
| 00002746 | Business Manager | 31M |
| 00008730 | Asst Chief Dpty Clrk Prob | 31M |
| 00020385 | Facilities Assesmnt Co | 31M |
| 00053356 | Rehabilitation Coordinator | 31M |
| 00057760 | Integrated Service Coord- | 31M |
| 00086170 | Econ Dev Coord | 31M |
| 00088810 | Adm Sec Asst Dir I-R | 31M |

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|----------|--------------------------------|------|
| 00004605 | Accting Manager | 32M |
| 00004700 | Fiscal Officer-Ers | 32M |
| 00012205 | Grant Coordinator | 32M |
| 00037335 | Noise Program Coord | 32M |
| 00076154 | Acct Manager CMO - AR | 32M |
| 00076165 | Fiscal And Budget Mgr-Chp | 32M |
| 00012220 | Fiscal Mgt Analyst 3 | 33JM |
| 00012243 | Capital Finance Plan Anal 3 | 33JM |
| 00004506 | Prog Coord - Community Progs | 33M |
| 00004509 | Prog Admin Coord (CMO) | 33M |
| 00008575 | Labor Relations Analyst | 33M |
| 00012244 | Fiscal and Budget Manager | 33M |
| 00012340 | Judicial Rev Coord (Child Ct) | 33M |
| 00012345 | Judicial Rev Coord (Courts) | 33M |
| 00037210 | Mechanical Utility Engr | 33M |
| 00041600 | Senior Staff Veterinarian | 33M |
| 00054210 | Forensic Tech Supv | 33M |
| 00056665 | Comm Relations Coord | 33M |
| 00057315 | Contract Compliance Mgr Dbe | 33M |
| 00057780 | Asst Program Admin Catc | 33M |
| 00070851 | Recreation-Aquatic Prog Mgr | 33M |
| 00059270 | Legal Cnsl Chld Supp 2 | 34EM |
| 00004444 | Fiscal Operations Mgr HOC | 34M |
| 00010875 | Airport Pub Saf & Secur Manage | 34M |
| 00040730 | Golf Superintendent-Pga | 34M |
| 00057090 | Clinical Prog Dir-Psych | 34M |
| 00002740 | Buss Systms Proj Mgr | 35M |
| 00003490 | Project Coord Appls | 35M |
| 00003495 | Project Coord - Technical | 35M |
| 00012268 | Contract Manager CMO | 35M |
| 00076635 | Human Res Mgr | 35M |
| 00003095 | It Operations Mgr | 36M |
| 00008600 | Support Services Manager | 36M |
| 00059210 | Dep Corp Counsel | 37AM |
| 00085100 | Adm Crt Comm | 37AM |
| 00042880 | Coord Zoo Oper And Mtce | 37M |
| 00008605 | Principal Architect | 38M |
| 00008610 | Site Development and Civil Eng | 38M |
| 00009415 | Fin Analyst Employee BE | 38M |
| 00011876 | Operations Mgr Med Examiner | 38M |
| 00020235 | Airport Engineer | 38M |
| 00020245 | Sustainability and Environ Eng | 38M |
| 00059260 | Legal Cnsl Chld Supp Su | 38M |
| 00084960 | Adm Sec Co Bo Fiscal | 38M |
| 00088550 | Purchasing Administrator | 38M |
| 00047301 | House Physician 1 Hrly | 40XM |
| 00047301 | House Physician 3 | 40XM |
| 00050770 | Staff Psychiatrist | 44XM |
| 00050841 | Med Prog Dir CATC | 45XM |
| 00050843 | Med Director Acute Serv | 46XM |
| 00050844 | Med Director Crisis Serv | 46XM |
| 00050845 | Med Director Forensic Se | 46XM |

| | | |
|----------|--------------------------|------|
| 00050847 | Med Director Adult | 46XM |
| 00050851 | Med Director Detent Serv | 46XM |
| 00082500 | Deputy Dist Attorney | 61 |

A RESOLUTION

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To amend County Ordinances regarding limit overtime compensation to make them consistent with ~~to~~ the provisions of the Fair Labor Standards Act (FLSA),

WHEREAS, Section 17.16 of the Milwaukee County Code provides for overtime compensation to non-represented employees which exceeds the provisions of the FLSA,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors does hereby approve the following:

AN ORDINANCE

The County Board of Supervisors of the County of Milwaukee does ordain as follows:

SECTION 1. Section 17.16 (1)(b) is hereby amended, as follows:

17.16 (1)(b) Employees who are not represented by a collective bargaining unit shall be compensated for overtime as follows: employees holding positions which are non-exempt from the Fair Labor Standards Act shall receive time and one-half for all hours worked in excess of eight (8) hours in a twenty four (24) hour period or over forty (40) hours per week regardless of the pay range to which the position held is assigned, ~~employees holding positions authorized in pay range 28M and below which are deemed to be exempt from the Fair Labor Standards Act shall receive time and one half for all hours worked in excess of eight (8) hours in a twenty four (24) hour period or forty (40) hours per week; employees holding positions authorized in pay range 29M and above shall receive straight time overtime for all hours worked in excess of forty (40) hours in a week; and employees holding a position exempt from the Fair Labor Standards Act authorized in the executive compensation plan shall be considered as salaried and shall not be compensated for overtime.~~

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: 4/27/09

Original Fiscal Note

Substitute Fiscal Note

SUBJECT: Proposed Ordinance Revision Regarding Overtime Compensation

FISCAL EFFECT:

- | | |
|--|--|
| <input type="checkbox"/> No Direct County Fiscal Impact | <input type="checkbox"/> Increase Capital Expenditures |
| <input type="checkbox"/> Existing Staff Time Required | <input type="checkbox"/> Decrease Capital Expenditures |
| <input type="checkbox"/> Increase Operating Expenditures (If checked, check one of two boxes below) | <input type="checkbox"/> Increase Capital Revenues |
| <input type="checkbox"/> Absorbed Within Agency's Budget | <input type="checkbox"/> Decrease Capital Revenues |
| <input type="checkbox"/> Not Absorbed Within Agency's Budget | |
| <input checked="" type="checkbox"/> Decrease Operating Expenditures | <input type="checkbox"/> Use of contingent funds |
| <input type="checkbox"/> Increase Operating Revenues | |
| <input type="checkbox"/> Decrease Operating Revenues | |

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

| | Expenditure or Revenue Category | Current Year | Subsequent Year |
|-----------------------------------|--|---------------------|------------------------|
| Operating Budget | Expenditure | -212,970 | -365,093 |
| | Revenue | 0 | 0 |
| | Net Cost | -212,970 | -365,093 |
| Capital Improvement Budget | Expenditure | | |
| | Revenue | | |
| | Net Cost | | |

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. ¹ If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

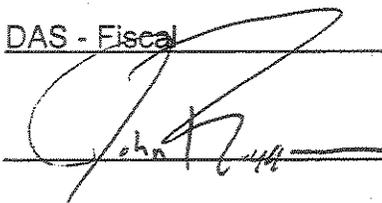
A. Adoption of the proposed amendment to the ordinance will bring overtime compensation for non-represented employees into compliance with the provisions of the FLSA. For employees that are non-exempt from the FLSA, overtime will be not be accrued until an employee had worked 40 hours a week. For employees that are exempt from the FLSA, no overtime will be accrued.

B. Cost savings on an annual basis (for 2010) are based on the value of 2008 overtime earned by non-represented exempt employees of \$365,093. The fiscal impact for the 2009 budget year is reduced proportionally assuming that the ordinance becomes effective 6/1/2009. Overtime payments are generally absorbed into each department's budget for salary costs.

C. The budgetary impact is limited to departments with non-represented employees. To the extent that these employees no longer earn overtime, these departments will realize salary savings.

D. See above.

Department/Prepared By DAS - Fiscal

Authorized Signature 

Did DAS-Fiscal Staff Review? Yes No

¹ If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

A RESOLUTION

To amend County Ordinances regarding ~~limit~~ overtime compensation to make them consistent with ~~to~~ the provisions of the Fair Labor Standards Act (FLSA),

WHEREAS, Section 17.16 of the Milwaukee County Code provides for overtime compensation to non-represented employees which exceeds the provisions of the FLSA,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors does hereby approve the following:

AN ORDINANCE

The County Board of Supervisors of the County of Milwaukee does ordain as follows:

SECTION 1. Section 17.16 (1)(b) is hereby amended, as follows:

17.16 (1)(b) Employees who are not represented by a collective bargaining unit shall be compensated for overtime as follows: employees holding positions which are non-exempt from the Fair Labor Standards Act shall receive time and one-half for all hours worked in excess of eight (8) hours in a twenty-four (24) hour period or over forty (40) hours per week regardless of the pay range to which the position held is assigned; ~~employees holding positions authorized in pay range 28M and below which are deemed to be exempt from the Fair Labor Standards Act shall receive time and one-half for all hours worked in excess of eight (8) hours in a twenty-four (24) hour period or forty (40) hours per week; employees holding positions authorized in pay range 29M and above shall receive straight time overtime for all hours worked in excess of forty (40) hours in a week; and e~~Employees holding a position exempt from the Fair Labor Standards Act who are not in an executive classification shall be compensated for overtime on a straight time basis and may only liquidate accrued overtime as compensatory time off unless approved by the DAS Director of Human Resources who shall also provide the Personnel Committee with quarterly reports of all overtime that is paid rather than used as compensatory time off.