

DEPARTMENT OF EMPLOYEE RELATIONS

1/10/2020

Wage Payment Compliance Policy for General City Employees

1. Purpose

The purpose of this policy is to ensure the City's compliance with the Fair Labor Standards Act (FLSA) of 1938, as amended, Chapter 109, Wis. Stats., and with the provisions of Chapter 350 of the Milwaukee Code of Ordinance (MCO) and the Salary Ordinance, Part II, Section 7 & 9. This policy contains guidance in the administration and enforcement of applicable provisions distinguishing between exempt and nonexempt work and explaining provisions related to payment for overtime, compensable time, rest/meal periods, training, on-call time, and travel time.

2. Applicability

This policy applies to general city employees (including civilian personnel in the Fire and Police Departments).

3. Authority

This policy is created under the authority of MCO 350-6(1), which states that the director of employee relations shall transmit appropriate guidelines and instructions for carrying out the applicable provisions of the Fair Labor Standards Act.

4. Policy

The City of Milwaukee's pay practices and procedures are governed by the FLSA, its amendments, and its regulations. The City is committed to paying its employees in accordance with the requirements of the FLSA. Under the FLSA, positions may be classified as either "Nonexempt" or "Exempt." Nonexempt positions are subject to the recordkeeping and overtime provisions of the FLSA. Exempt positions are Exempt from overtime provisions. A position's Exempt/Nonexempt status is based upon the amount of salary paid to the employee, the duties of the job, and the standards set forth in the FLSA.

The FLSA and this Policy do not regulate:

- vacation, holiday, or sick pay benefits and accruals
- premium pay for weekend or holiday work
- pay raises
- discharge or termination

5. Definitions

Compensable Time – Compensable time (working time) is time that an employee is required or permitted to work. In addition to regularly scheduled hours, compensable time (work time) may include overtime, certain types of travel time, training, on-call, and shift preparation/transition time.

Compensatory (comp) time – Comp time is paid time off given to a non-exempt employee instead of overtime pay. Rather than giving employees time and a half in overtime pay, comp time provides paid time off from work. Comp time must be paid at the same rate as overtime pay - one and one-half hours of compensatory time for each hour worked. Each department shall establish a comp time policy documenting how it will compensate eligible employees for overtime work (cash or comp time). If there is no established comp time policy, employees must be paid in cash. The accumulated compensatory time credit for each employee at no time shall exceed 180 hours of banked compensatory time, which is equivalent on a time and one-half basis to 120 hours worked. MCO 350-3-1.

Flex Time – As set forth in MCO 350-5-2, Employees holding positions covered under the flexible schedule provisions of the Milwaukee Code (FLSA exempt employees) are eligible to work schedules that are different from the regular schedule (8:00am to 4:45 pm), if allowed by departmental work rules and as approved by the supervisor. This provision allows the daily work schedule of an FLSA exempt employee to be adjusted as necessary and appropriate to fulfill his/her assigned duties and responsibilities.

These adjustments may include starting and quitting times that are earlier or later than established in the normal work schedule of the department and may include hours of work that are more or less than 8 hours in any particular day. This flexible schedule provision shall not be construed as allowing compensatory time off at the rate of time and a half, allowing time off for extended personal illness without charge to sick leave, or allowing time off for extended vacation.

FLSA Exempt – An employee in a position classified as Exempt is paid on a regular biweekly basis, is not required by law to receive overtime pay for hours worked in excess of forty (40) hours worked in a workweek, and receives a predetermined amount of compensation on a "salary basis." The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to exceptions listed in this policy, an Exempt employee must receive the full salary for any workweek in which the employee performs any work, regardless of the number of days or hours worked. However, an Exempt employee need not be paid for any work week where he/she performs no work.

FLSA Nonexempt – An employee in a position classified as Nonexempt is paid biweekly for each hour worked and is eligible for overtime pay for hours worked in excess of 40 in a workweek or as otherwise authorized in the MCO and/or Salary Ordinance. Hours worked by a nonexempt employee are recorded on a timecard/sheet that is submitted to the department's payroll personnel. All hours worked by nonexempt employee must be entered in CityTime.

Overtime – Overtime is time worked by a Nonexempt employee that exceeds forty (40) hours in a workweek. A Nonexempt employee is compensated at one and one-half (1.5) times his/her regular rate for hours worked over forty (40) in a workweek. For the purposes of calculating overtime, hours worked do not include vacation, sick, or other paid/unpaid time off. There are

other instances under Chapter 350 and that Salary Ordinance that authorize overtime pay as explained in the "Overtime" section of this policy, which includes: All hours worked on a holiday as specified under s. 350-1, s. 350-2-2-a or s. 350-2-2.5 by an eligible, fair labor standards act non-exempt employee shall be considered overtime; for emergency overtime work as defined by MCO 350-3-5.5; and for departments that have regularly-scheduled multiple shifts, employees who are provided with less than 48 hours notice of a change in shift shall receive overtime for all hours worked during the subsequent 48-hour period.

Recordkeeping – Every employer covered by the FLSA must keep certain records for each covered, nonexempt worker. There is no required form for the records, but the records must include accurate information about the employee and data about the hours worked and the wages earned.

Regular Rate of Pay - Regular Rate is determined by dividing the total regular pay actually earned for the workweek by the total number of hours worked.

Workday – According to MCO 350-209-1, Department heads shall determine hours of work, but the basic workday of all employees of the city shall consist of 8 hours in a calendar day. As far as it is practicable this workday shall conform with the established hours of business. This conformity shall not interfere with the special time schedules governing departments operating more than 8 hours in each calendar day, nor shall this provision for an 8 hour day for city employees be construed as prohibiting the creation of part-time employment or the establishment of rotative, staggered or shortened work periods.

Workweek – The City of Milwaukee defines the workweek as Sunday to Saturday.

According to MCO 350-209-2, work week is the service week of every employee or officer of the city shall be limited to 5 days' employment or duty per week, except in cases where such reduction would conflict with some legal requirement. This in no way prohibits a department head from establishing an alternative work schedule. So far as is practicable the days on which employees and officials shall not be required to work shall be Saturdays and Sundays in order to provide uniformity and an opportunity to take advantage of the economies of a complete shutdown of city activities. If the regular schedule of departmental operation requires work on these days, this work shall not be considered overtime work, and the employee shall be entitled to time-off during such periods as the department head may designate.

6. Determination of Exempt and Nonexempt Status

The Department of Employee Relations is responsible for determining the positions and classes that are covered by the FLSA and transmit appropriate guidelines and instructions for carrying out the applicable provisions of the act to city departments and agencies. MCO 350-6-1.

If there is any doubt about the Exempt/Nonexempt status of a position, please contact the Compensation Division of the Department of Employee Relations.

7. Salary Deductions for Exempt Employees

Deductions from pay are permissible when an exempt employee:

- is absent from work for one or more full days for personal reasons other than sickness or disability;
- for absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness;
- to offset amounts employees receive as jury or witness fees, or for military pay;
- for penalties imposed in good faith for infractions of safety rules of major significance; or
- for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions (not job performance), such as a violation of the anti-harassment policy.

Also, the City is not required to pay the full salary in the initial or terminal week of employment, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.

Disciplinary suspensions for exempt employees must be issued in full week increments. Any exceptions to this must have a written policy that is applicable to all employees and be discussed with the Department of Employee Relations or the City Attorney's Office before proceeding.

Without affecting an employee's exempt status, an employer may deduct from the employee's accrued leave account for partial absences, so long as the employee's full guaranteed salary is paid for the workweek when the deductions are taken. (69 F.R. 22178)

An employer can require exempt employees to track and record the hours they work without losing the exemption. Employers can also require exempt employees to work a specified schedule. (69 F.R. 22178)

8. Overtime

Each Nonexempt employee is subject to the overtime and record keeping provisions of the FLSA and must be compensated for all hours worked in cash or compensatory time at the appropriate rate.

According to the FLSA, a Nonexempt employee who works more than forty (40) hours in a workweek, must be paid an overtime rate of one and one-half (1.5) times his/her regular rate of pay for all time actually worked in excess of forty (40) hours in the workweek. In the public sector, employees may be compensated in compensatory time. The FLSA requires overtime payment for hours worked in excess of 40 in a week; there is no provision for paying overtime for hours worked in excess of eight in a day. If a Nonexempt employee works more than the regularly scheduled hours in a workday, but less than or equal to forty (40) hours per workweek, the employee is paid at the straight hourly rate.

MCO 350-3 sets forth additional provisions as to when overtime is paid: All hours worked on a holiday as specified under s. 350-1, s. 350-2-2-a or s. 350-2-2.5 by an eligible, fair labor standards act non-exempt employee shall be considered overtime; for emergency overtime work as defined by MCO 350-3-5.5; and for departments that have regularly-scheduled multiple shifts, employees who are provided with less than 48 hours notice of a change in shift shall receive overtime for all hours worked during the subsequent 48-hour period.

When calculating overtime at one and one-half (1.5) times the regular rate of pay for time worked in excess of forty (40) hours in a given workweek, actual time worked, holiday and Furlough time are counted as hours worked. Time charged to vacation, sick, or other paid/unpaid time-off must not be included in this calculation.

A Nonexempt employee should not work in excess of his/her regularly scheduled work hours without prior supervisory approval. If an employee works overtime hours without prior supervisory approval, the employee must be compensated for the work but may also be subject to discipline for violation of this policy and MCO 350-3-4. Departmental work rules and protocols must be followed by employees when requesting permission to work beyond the assigned schedule.

When overtime hours are required, it is the City's policy to give the affected employee as much advance notice as is practical. To the extent practical, the City will seek to equalize overtime opportunities among employees performing similar work within a unit. The Department of Employee Relations will meet and confer with employees and employee groups, including currently and previously-certified employee groups, for the purpose of communicating, soliciting and exchanging information, views, ideas and interests concerning wages, hours, and other conditions of employment. MCO 340-3-2(a).

An Exempt employee is not subject to the overtime provisions of the FLSA and does not receive additional pay or compensatory time for working more than forty (40) hours in a week.

The Salary Ordinance sets forth certain positions (which are FLSA exempt) in which if certified by the Commissioner of Public Works as being, when appropriate, regularly involved in snow and ice control operations which result in an excessive amount of overtime work, to receive 4.8% additional biweekly salary as compensation for such overtime work.

There are exceptions to this section that are contained in Salary Ordinance, Part II, Section 9, Letters H, I, J, K, L.

9. Rest/Meal Periods

Breaks are not required if the employee is age 18 or older. However, the City has the ability to require that any employee take a break.

Under the FLSA, rest periods of 20 minutes or less are common practice but not required. These short duration breaks are used to promote efficiency and are to be paid and considered as hours worked. Each department is required to document department specific provisions for rest or meal periods in their work rules.

Unauthorized extensions of authorized work breaks need not be counted as hours worked (but will still be paid) when the department has expressly and unambiguously communicated to its

employees that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the works rules, and any extension of the break may result in disciplinary action.

Bona fide meal periods of thirty (30) minutes or longer do not count as compensable time if the Nonexempt employee is completely relieved from working. If a Nonexempt employee engages in job-related duties during the meal period or is not permitted to leave the work area, he or she must be paid for that time.

10. Training

If an employer requires a Nonexempt employee to attend training sessions or meetings during the employee's regular work hours, the time is compensable. Training time is paid unless all of the following criteria are met: (1) attendance is voluntary; (2) the program is scheduled outside of the employee's regular work hours; (3) the program is not directly related to the employee's job; and (4) the employee does not perform any productive work during such attendance.

11. On-Call Time

A Nonexempt employee who is required to remain on-call on City premises is working while "on-call" and must be compensated.

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 while on-call and may not need to be compensated. Additional constraints on the employee's freedom could require this time to be compensated.

The Salary Ordinance, Section 9(c), sets forth a provision regarding on-call pay: employees holding positions designated as non-exempt from FLSA required by the department to be on a mandatory on-call rotation to respond to emergencies shall be paid \$15 per 24-hour regularly scheduled workday and \$36 for regularly scheduled off days, holiday or furlough days. If employees are required to be on-call for a period of less than 24 hours, the amounts shall be prorated. This benefit shall apply to employees in the Department of Public Works performing snow and ice operations who are designated by the department as members of the C-Team. An employee who is on a mandatory on-call assignment must be available to work and be able to report to work within a short timeframe as established by the department. An eligible employee on an authorized on-call assignment who is called into work shall be compensated at straight time or overtime in accordance with applicable overtime policies.

12. Travel Time

To determine whether time spent in travel is compensable time for a Nonexempt employee, the type of travel involved must be considered. Below are scenarios to explain when travel time is or is not compensable. For a case by case analysis, contact the Labor Negotiator in Department of Employee Relations.

- A. A Nonexempt 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 and it is not compensable.

- B. If a Nonexempt employee regularly works at a fixed location and commutes to a different location to work, the time spent traveling to and from the other location is work time and it is compensable. The City will deduct (not count) that time the Nonexempt employee would normally spend commuting to the regular work site.
- C. Time spent by a Nonexempt employee in travel as part of his/her principal activity, such as travel from job site to job site during the workday, is work time and is compensable.
- D. Travel that keeps a Nonexempt employee away from home overnight qualifies as work time if it takes place during the Nonexempt employee's regularly scheduled workday. This travel time qualifies as work time even if it occurs during the employee's corresponding working hours on nonworking days. Time spent traveling outside of the employee's regular working hours is not considered work time and it is not compensable.
- E. Regular meal period times are not considered compensable time while traveling.

An Exempt employee is not subject to the travel provisions of the FLSA. Since an Exempt employee is not paid per hour, he/she does not receive additional pay for time spent traveling.

13. Record Keeping/Tracking Absences

Each department is required to maintain a record of each employee's paid and unpaid absences. The Comptroller is responsible for establishing payroll recordkeeping, payment inclusions and payroll practices to ensure good faith compliance with the act. MCO 350-6-2.

The following is a listing of the basic records that an employer must maintain:

- Employee's full name and social security number;
- Address, including zip code;
- Birth date, if younger than 19;
- Sex and occupation;
- Time and day of week when employee's workweek begins. Hours worked each day and total hours worked each workweek.
- Basis on which employee's wages are paid;
- Regular hourly pay rate;
- Total daily or weekly straight-time earnings;
- Total overtime earnings for the workweek;
- All additions to or deductions from the employee's wages;
- Total wages paid each pay period;
- Date of payment and the pay period covered by the payment.

14. Break Time for Nursing Mothers

Employees are entitled to a reasonable break time to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk. The City must provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast

milk. The City is required to provide a reasonable amount of break time to employees to express milk as frequently as needed by the nursing mother. Breaks are not required to be paid.

15. Contact Information

Any City employee who is an employee as defined by the FLSA who wishes to file an internal complaint regarding his or her compensation as it pertains to the FLSA, may contact the Labor Negotiator in the Department of Employee Relations. The Department of Employee Relations will promptly investigate the matter and make a good faith effort to resolve the matter by working with the department and the employee. Nothing in this policy prohibits an employee from filing a State or Federal complaint for unpaid wages. An employer and an employee do not have the authority to reach an agreement to waive a state law or regulation concerning overtime pay. Since federal law may also require an employer to pay its employees overtime pay, it should be noted that a modification or waiver of state overtime rules would not exempt the employer from any federal overtime requirement.

If a department learns that an employee was not paid in accordance with the provisions in the FLSA, the department shall promptly report the error to the Labor Negotiator in the Department of Employee Relations and work with the Labor Negotiator to correct the error.