

Hours of Work and Overtime



Purpose

To specify the hours worked by employees, the requirement for documenting hours worked, to clarify exemptions from overtime-eligibility, and to ensure that non-exempt employees are properly compensated for overtime worked.

Coverage

All employees who are not exempt from overtime eligibility under the Fair Labor Standards Act of 1938, as amended (FLSA), and regulations issued by the United States Department of Labor (DOL). The scope of exemptions is explained in greater detail under the policy. The provisions of this policy may be superseded by the terms of a collective bargaining agreement covering the employees in question,

Policy

- (a) With the exception of employees exempt pursuant to section 7 and section 13 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 207, 213, employees shall be entitled to overtime compensation at the rate of one and one-half (1½) hours for each hour worked in excess of forty (40) hours in the designated work week. Exemptions are defined in the regulations issued by the United States Department of Labor (DOL), and include:
 - (1) **Executive employees.** To qualify, the employee must:
 - (i) Have a primary duty of managing the enterprise in which he or she is employed or of a customarily recognized department or subdivision of the business;
 - (ii) Customarily and regularly direct the work of two or more other employees (or the equivalent of two or more full-time employees); and
 - (iii) Have the authority to hire or fire other employees or have particular weight given to suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees.
 - (2) **Administrative employees.** An administrative employee is an employee who has a primary duty that:

- (i) Consists of the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
 - (ii) Includes the exercise of discretion and independent judgment with respect to matters of significance.
- (3) **Professional employees.** Professional employees are exempt when their primary duty is the performance of work:
- (i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction (the "learned professional"); or
 - (ii) Requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor (the "creative professional").

Occupations covered by this exemption include law (lawyers but not paralegals); medicine; accounting and accountants; actuarial computation; engineering; architecture; teaching; physical, chemical, and biological sciences; pharmacy; registered or certified medical technologists; registered nurses (but not LPNs); dental hygienists; and physician assistants, among others.

- (4) **Elected officials and an immediate staff person** who directly serves the elected official and who serves at the pleasure of that official;
- (5) A **highly compensated employee** who earns at least \$100,000 on an annual basis and who performs at least one exempt duty from the executive, administrative, or professional exemptions, often called the "white collar" exemptions;
- (6) **"First responders,"** defined as those whose primary duty is police or fire work. Under the DOL regulations, the white-collar exemptions "do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, parole or probation officers, park rangers, fire fighters, paramedics . . . and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime, or accident victims; preventing or detecting crimes. . . ; pursuing, restraining and apprehending suspects. . . ; preparing investigative reports; or other similar work." This exemption does not apply to officials in such fields whose primary duty is management of the agency.
- (7) **Computer professional exemption.** A computer employee will be exempt if he or she earns at least \$27.63 per hour (or more than \$455 per week if paid on a salary or fee basis), and has a primary duty of:
- (i) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;
 - (ii) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

- (iii) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - (iii) A combination of these duties, the performance of which requires the same level of skills.
- (b) The determination of exemptions is a complex matter involving application of detailed Department of Labor regulations, and many of the terms used above are the subject of additional, lengthy definitions within the regulations. Department heads are advised to consult with the Finance Director when determining exempt status. The City shall endeavor to notify all employees exempt from overtime coverage under subsection (a) of their exempt status either on the job posting or within thirty (30) days of the first date of work. Exemption from eligibility for overtime compensation is a function of the employee's duties, however, and is not dependent upon such notification.
 - (1) Exempt employees are not entitled to any compensation for overtime, whether in cash or compensatory time off.
 - (2) Exempt employees are paid a biweekly salary on the basis of the nature and responsibility of the position held. Accordingly, hours of work of exempt employees may be subject to adjustment with the approval of the City Manager, department head, or designee, provided that the exempt employee's hours worked and hours of authorized leave in a calendar year equal or exceed the standard hours of work per year upon which the employee's salary is based. As an example of this policy, the City voluntarily permits exempt employees to earn flex time, which is earned on an hour-for-hour basis, not time-and-one-half, and is not cashed out on separation and may not be carried over from year to year. This allows exempt employees to adjust their work hours as earned and needed while protecting the City's interest in public accountability for how public employees are compensated and spend their work time.
- (c) Hours used for paid leave or compensatory time off shall not be considered hours worked for purposes of overtime computation. Hours worked shall also not include:
 - (1) Meal periods where the employee is not required to perform any duties;
 - (2) Travel time to and from the employee's home;
 - (3) Time spent overnight while traveling on City business;
 - (4) Sleep time for safety employees where the shift is longer than twenty-four (24) hours; and
 - (5) On-call or stand-by time where the employee is merely required to leave information as to where he or she can be reached or wear a paging device.
- (d) Hours worked by nonexempt, part-time employees in excess of their normally scheduled hours in a work week are compensated at an hour-for-hour basis, not time-and-a-half rates.

- (e) The designated work week for all employees shall commence Monday at 5:00 p.m. and ends the following Monday at 4:59 p.m., except as otherwise provided by the City Manager.
- (f) No nonexempt employee shall work overtime without the approval of the City Manager or the department head. No employee shall refuse a reasonable request of the City Manager, department head, or supervisor to work overtime, as determined by the City Manager or department head.
- (g) Hours of work for employees in City Hall are generally set from 8:30 a.m. to 5:00 p.m., Monday through Friday, with an unpaid, half-hour lunch break. Hours may be varied with the approval of the department head for coverage needs. The City Manager may, in his or her sole discretion, set different hours for summer or on specific days based on operational needs. Hours for Public Works and the Police Division are set by the respective department heads, based on the need to provide services to the public.
- (h) Employees (other than those exempt from overtime compensation) must record their actual start and stop time of work each day and the amount of meal time taken on their time cards or an electronic timekeeping system, if adopted by the City. The times recorded each day must be accurate and list actual arrival and departure times (*e.g.*, 7:58 a.m), though for payroll purposes the City may round the time to the nearest quarter-hour or smallest increment used in the timekeeping system in that office or department (*e.g.*, some electronic timekeeping systems keep time in one-tenth of an hour increments). Some departments may use automatic time recording systems, such as time clocks or swipe cards that record data in a computerized form. Under no circumstances may an employee record hours worked that are not correct, or fail to record time worked, and an employee who submits an incorrect record of time worked is subject to discipline or discharge for falsification of records. Where time clocks or electronic timekeeping systems are available, employees are required to use the time clock or electronic system. Employees who record false time for another employee, such as “clocking in” on that employee’s time record, time card, or sign-in sheet, or who misrepresent their own work times in order to claim pay for time not worked, are subject to immediate discharge. Employees who have claimed pay for hours not actually worked are also subject to criminal investigation and prosecution.
- (i) Employees (other than those exempt from overtime compensation) who are required to report for work at any time disconnected from the beginning and end of the employee’s scheduled work shift, and who actually report to a work location other than the employee’s home, shall receive credit for a minimum of three hours worked, unless the actual hours of work are greater, in which case the employee shall be paid on the basis of the actual hours worked. Those additional hours shall be recorded on the employee’s time card and shall be paid at the overtime rate unless the employee has not worked more than 40 hours in the total work week, including that additional time. If an employee is working under a three-hour minimum guarantee under this provision and receives a second call-out the work for which can be completed within that original, three-hour period, the employee receives no additional compensation beyond that first, three-hour minimum guarantee. If, on the other hand, the work on the second call-out received during that first, three-hour period carries past the original, three-hour guarantee, then the employee shall be paid for the first, three-hour guarantee plus the additional hours worked past that three-hour period, but still not a

second, separate three-hour call out payment. The provisions of this subsection are also subject to the following qualifications:

- (1) Public Works employees who are scheduled to perform parks and garbage can maintenance on weekends or holidays shall receive a minimum guarantee of four hours' pay, and as above, shall be paid more than four hours if the actual time worked exceeds that minimum guarantee. Because the time needed to complete that particular work is unlikely to exceed four hours, the Maintenance Worker must call the Public Works Director to notify him or her of the unanticipated, extra work time. The actual work time to be measured against the four-hour minimum guarantee in this instance shall be counted from the employee's arrival to begin work until his or her departure after completing the last work duty, because in this instance the employee has control over when those duties are performed and it is not an emergency call-out. As is true above, an employee who receives a second call-out during that first, four-hour minimum guarantee period is not entitled to a new guaranteed call-out period, unless the actual work time on the second call-out carries past the end of the four-hour period, in which case the employee shall be paid for the four-hour guarantee plus the additional, actual work time that carried past the end of that four-hour period.
 - (2) In other cases, when the work time outside the normal shift is either prior scheduled or at the employee's discretion to schedule, the actual work time (measured against the three-hour minimum guarantee) shall be measured from when the employee first arrives to perform duties to when he or she completes the work and is free to leave. In this case, the employee's actual work time does not include commuting to and from home because the employee either knows in advance when the work is to be performed or has discretion when to schedule the work, with no unexpected interruption to the employee's personal life or plans.
 - (3) When an employee is called in on an emergency basis without prior notice and actually reports to work at a location other than the employee's home, however, the employee's actual work time (measured against the three-hour minimum guarantee) shall be measured from when the employee leaves his or her home until the employee's return home, and the employee should so record on his or her time card. If the actual work time plus commuting time in this instance exceeds three hours, the employee will be paid for the actual work time and commuting time at the applicable rate of pay.
 - (4) For any employee covered by a collective bargaining agreement, the terms of that agreement govern for court time or other time worked when an employee is called back into work disconnected from his or her regular work shift.
- (j) Employees who have accrued overtime pursuant to this policy shall be compensated according to the following requirements:
- (1) Employees shall be compensated for overtime worked in compensatory time off, unless the City Manager or department head approves cash payment of overtime, subject to the provisions of the Fair Labor Standards Act.

(2) Under federal law, employees may accrue compensatory time off, for hours worked in excess of 40 hours, to a maximum amount of:

- (i) 480 hours for employees engaged in public safety, emergency response, or seasonal work; or
- (ii) 240 hours for all other employees.

The City may, however, set a lower limit for accrual of compensatory time off, and the City of Loveland currently restricts the accrual of compensatory time off to a limit of 80 hours.

(3) Overtime worked in excess of forty (40) hours in any work week, once the employee's accrual limits in subsection (g) (2) have been reached, must be paid in cash at the rate of one and one-half (1½) times the employee's regular rate of pay.

(4) An employee requesting to use compensatory time off shall be permitted to use the time within a reasonable time of the request, unless its use would unduly disrupt the operations of the department, in which case the Employer may (i) deny the requested compensatory time off, offering another time at which the employee could use the time off, or (ii) pay the employee in cash in lieu of the compensatory time off. The City may, at any time, choose to convert a portion or all of the employee's balance of compensatory time off to cash, at the employee's regular rate of pay at the time of the conversion. The employer may also require an employee to schedule and use compensatory time off.

(k) As provided by the FLSA, upon termination of employment, the employee shall be paid for unused compensatory time at a rate which is the higher of:

- (1) The final regular rate of pay received by the employee; or
- (2) The average regular rate received by the employee during the last three years of employment.

(l) It is the intention of the City of Loveland that this policy is an alternative policy for the compensation of overtime work to the provisions set forth in Section 4111.03 (C) of the Revised Code so that employees do not have to use compensatory time off within 180 days of its accrual.



Approved by: _____
David Kennedy, City Manager

Effective Date: _____
July 1, 2013

Amended Date: August 31, 2016

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(Cross references: Fair Labor Standards Act of 1938, as amended; regulations of the United States Department of Labor)