

**CITY OF PORTSMOUTH**  
**ADMINISTRATIVE POLICY**

#7

**August 2004**

**SUBJECT:** Work Period and Overtime - City Employees (excluding sworn public safety personnel)

**I. PURPOSE:**

The purpose of this policy is to establish procedure and guidelines for the administration of work periods, overtime with regard to eligibility, rates of pay, hours to be paid, compensatory time off, record keeping, and other requirements necessary to fully comply with the provisions of the Federal Fair Labor Standards Act (FLSA).

**II. APPLICABILITY:**

All City employees, except public safety sworn personnel, both full-time and part-time, without regard to funding source.

**III. GENERAL PRINCIPLE:**

In order to ensure compliance with FLSA, the Director of Human Resource Management has the authority to audit leave, pay and time records and any and all record keeping required by the Act. In addition, the Director of Human Resource Management shall report any violations of this policy to the Department Head and City Manager which may include recommending appropriate disciplinary action and remedies for future compliance.

Department Heads are ultimately responsible for the control of hours worked and compensation for overtime work. Careful planning and supervision will minimize the need for overtime work. When conditions requiring overtime work occur, the Department Head or authorized designee has the right to require employees to work beyond their regularly scheduled hours, and the responsibility to determine the mode of payment (compensatory time or monetary payment), subject to the provisions of Section VII of this policy, prior to the time overtime work is performed. If compensatory time has been authorized, it is the responsibility of the Department Head to ensure that the employees' subsequent work schedules are arranged to accommodate employees' requests to use compensatory time while reducing the compensatory time accumulation in a methodical and timely manner. If monetary payment is anticipated, the Department Head shall ensure that budgeted funds are available or, where necessary, a budget transfer to cover overtime costs has been approved in

advance of the overtime assignment. Any requests for budget transfers for overtime shall require a written request to the City Manager or designee and shall include full justification for the request.

#### **IV. CLASSIFICATIONS**

All City employees are classified as either exempt or non-exempt.

Exempt employees are those who, on the basis of actual work performed in the executive, administrative, or professional area, are exempt from the provisions of the Fair Labor Standards Act.

Non-exempt employees are those who, on the basis of work performed, are covered by the provisions of the Fair Labor Standards Act. A list of all non-exempt positions currently in use in the City is available from the Human Resource Management Department.

Neither the position title nor such terms as "hourly," "salaried," or "bi-weekly" identify the status of an employee with regard to overtime eligibility. The Department of Human Resource Management will review and make a determination on all questions of classification and rulings with regard to exempt or non-exempt status will be final.

#### **V. EXEMPT EMPLOYEES**

Exempt employees, by virtue of their executive, administrative, or professional duties, will encounter routine overtime requirements as part of their normal responsibilities. Neither monetary payment nor compensatory time will be provided in such cases. Leave records for such employees are for whole work periods, i.e., if an exempt employee is absent for an entire shift, normally an 8-hour day, a leave slip must be submitted as soon as possible after the leave is taken but no later than 30 days thereafter. Exempt employees working a partial day are not to have such absences recorded as leave time. Exempt employees are expected to work all the hours necessary to complete the assigned, expected tasks of their position. Department Heads and supervisors are responsible for work assignments and schedules and must approve partial work days for exempt employees.

#### **VI. WORK PERIODS FOR OVERTIME ELIGIBILITY FOR NON-EXEMPT EMPLOYEES**

All regular City employees, (see applicability), will work a 40-hour work week. Normal office working hours will be 8 a.m. to 5 p.m., with an hour non-paid time for lunch.

Some departments, due to the nature of their work, will work a different schedule, but all will perform work for 40 hours a week.

The work period for such non-exempt employees, for purposes of overtime eligibility, shall be seven days. Each employee will be informed in writing by the Department Head of his or her work schedule and shall sign their agreement to such conditions. This agreement shall be on the official City form as prescribed by the City Attorney. Overtime will be compensated at the rate of one and a half times the regular rate of pay for all hours worked over 40 hours in a work period.

## **VII. OVERTIME PAYMENT CALCULATION**

Overtime will be paid at the rate of one and one-half times the regular rate of pay for all hours worked beyond 40 hours in a work period. The regular rate of pay is defined as the rate per hour actually paid for normal non-overtime work. Certain allowances are included in the base rate of pay, and they must be prorated and added to the hourly rate of pay in order to calculate the proper overtime pay rate. Examples of such allowances include educational allowances, radio communications allowances, equipment maintenance allowances, etc. Examples of payments not included are Employee of the Month, Tuition Assistance payments, travel reimbursements, etc. The Department of Information Technology will automatically include the appropriate allowances when calculating the proper rate of overtime pay. No employee will receive a monetary payment for overtime until that employee has accumulated 120 hours of compensatory time based on 80 hours of overtime worked. Compensatory time will be accumulated as explained in Section IX.

## **VIII. DEFINITION OF HOURS WORKED**

All time during which an employee is required to be on the City's premises or at a prescribed work place, except for meals or other periods when free from duty, shall be considered as hours worked.

Computation of hours worked to determine overtime eligibility shall be based on hours worked rather than on hours paid. Sick leave, annual leave, funeral leave, jury duty, holidays, count as hours paid, but not hours worked. For example, an employee who was on paid sick or annual leave in the work period and who is required to work beyond his or her normally scheduled hours in the same work period is not eligible for payment or compensatory time at the overtime rate until the total hours worked exceeds 40. The following activities are also considered to be included in hours worked:

- . Time spent in training classes required by the City.
- . Preparatory activities which are an integral part of the employee's principal work activity and which are specifically required by the Department Head.

- . Travel time, under certain circumstances. For non-exempt employees, certain travel out of town may result in overtime payment. Before committing to any such travel for non-exempt employees, Department Heads must consult with the Director of Human Resource Management.

## **IX. COMPENSATORY TIME**

Subject to certain limitations discussed in this section, compensatory time will be given instead of overtime compensation to non-exempt employees. All such compensatory time must be at the appropriate rate of pay (one and one-half or straight time) times the number of overtime hours worked, in accordance with FLSA requirements. Under City policy, employees may accumulate a maximum of 120 hours of compensatory time, (80 hours worked overtime equals 120 hours of compensatory time).

Illustrative examples of the calculations for compensatory time and/or overtime pay are available from the Department of Human Resource Management.

When 120 hours have been accumulated by a non-exempt employee, all additional overtime must be compensated by monetary payment until the employee reduces the hours accumulated below 120 by taking time off. Additional overtime may be authorized only when sufficient funds are budgeted.

Upon the termination of employment, whether due to resignation, discharge, retirement, or death, all accumulated compensatory time must be paid in cash. Payment will be at the rate the employee is earning upon termination. In order to reduce payment liability, Department Heads will not permit employees to routinely accumulate compensatory time.

It is the responsibility of each Department Head to monitor and schedule the use of compensatory time which employees have earned. Employees should be allowed to schedule the use of compensatory time as soon as operationally feasible after it is earned. In addition, the Department Head cannot require an employee to take compensatory time off in order to reduce the accumulation of compensatory time.

## **X. VOLUNTEERS**

### **Employee Volunteers**

In all cases in which a Department Head is considering the use of a City employee as a volunteer, the Department Head will consult with the Director of Human Resource Management prior to entering into any agreement with the employee. If, while off duty, an employee performs volunteer work for the City which is of the same type as his or her regular duties, the time spent in a volunteer status will be considered as hours worked for purposes of calculating

pay and overtime. The employee cannot waive this right. An employee may volunteer to perform work which is different from his or her normal duties. Such volunteer hours will not be counted as hours worked.

**XI. SECONDARY EMPLOYMENT**

An employee of the City shall not be permitted to accept a secondary job with the City except in accordance with the approval process as set forth in AP #5, which governs the acceptance of outside employment. No employee will be permitted to take a secondary job that counts as hours worked for overtime purposes. However, subject to the provisions of AP #5, work in a different capacity from the employee's regular job may be allowed on an occasional or sporadic basis after approval of the Director of Human Resource Management.

**XII. RECORD KEEPING**

Each department shall keep a daily time and attendance record for all non-exempt employees. All non-exempt employees must either punch a time clock or sign in and out of work thereby creating a written accounting of all hours worked. The official City Time and Attendance Record form must be used for this purpose unless a substitute form has been approved by the Director of Human Resource Management. Work hours must be approved and accounted for by the appropriate supervisor. An accurate record of time worked must be kept each day, and it is the responsibility of both the employee and the supervisor to maintain such records.

**XIII. IMPROPER PAY DEDUCTIONS – SAFE HARBOR PROVISION**

It is the intention and policy of the City to comply with the Fair Labor Standards Act, including the new regulations adopted effective August 23, 2004 that includes the “Safe Harbor” Provision of 29 CFR 541.603. If an employee believes that a deduction has been improperly made to his/her paycheck or does not understand the reason for the deduction, the employee should contact the Department of Human Resource Management. If the City finds that there has been an improper deduction, as defined under 29 CFR 541.602, the deducted amount will be reimbursed to the employee in a subsequent paycheck(s). The City will thereafter continue to make a good faith effort to comply with the regulations and prevent future improper deductions.

**XIV. RESPONSIBILITY AND ACCOUNTABILITY**

In order to comply with the Fair Labor Standards Act and leave records of the City, Department Heads are responsible for thorough and accurate record keeping for their respective departments. Time records must be kept by departments for 6 years. Accurate record keeping is a shared responsibility between management and employees.

Failure to do so is not in line with our values.

- A. Employees will be subject to disciplinary action for violations of this policy, including, but not limited to:
1. Refusing to work overtime.
  2. Failure to sign in and out/punch a time clock.
  3. Working overtime without authorization.
  4. Signing in and out for another non-exempt employee.
- B. Supervisors, for purposes of this policy, will be defined as individuals having responsibility for assigning work, approving leave, and overall management of the work unit and shall include, but not be limited to, individuals holding such job titles as Crew Leader, Supervisor, Manager, Administrator, Superintendent, Assistant Department Head, and Department Head. Supervisors will be subject to disciplinary action for violations of this policy, including, but not limited to:
1. Improper record keeping.
  2. Approving or permitting payment of overtime without adequate funds being budgeted and available.
  3. Failure to:
    - . schedule employees to be off to decrease the accumulation and liability of compensatory time.
    - . submit leave records to the City Payroll Office in the Finance Department within 30 days after the leave occurs.
    - . keep overtime and compensatory time under control.
  4. Signing a non-exempt employee in or out for work.
  5. Violations of any provisions of the Fair Labor Standards Act.

**It is the responsibility of each Department Head to ensure that each employee receives a copy of this policy.**

**XV. FLEXIBLE SCHEDULES**

Prior to implementation of any flexible work scheduling, such schedules must be approved by the Director of Human Resource Management.

**XVI. OTHER**

The Director of Human Resource Management should be consulted on all questions concerning the application of this policy.