

CITY OF PORTSMOUTH

ADMINISTRATIVE POLICY

#8

August 2015

SUBJECT: Work Period and Overtime - Public Safety Sworn Personnel

I. PURPOSE

The purpose of this Administrative Policy is to establish procedures and guidelines for the administration of work periods, overtime with regard to eligibility, rates of pay, hours to be paid, overtime pay, record keeping, and other requirements necessary to fully comply with the provisions of state law and the federal Fair Labor Standards Act (FLSA).

II. APPLICABILITY

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

III. GENERAL PRINCIPLE

In order to ensure compliance with state law and the 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 funding for payment prior to the time overtime work is performed subject to the provisions of section VIII of this policy. If overtime payment is anticipated, the Department Head shall ensure that budgeted funds are available or, where necessary, shall initiate a budget transfer to cover overtime costs that have been approved in advance of the overtime assignment(s). 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 public safety sworn 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 areas, 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", "weekly" or "bi-weekly" identify the status of an employee with regard to overtime eligibility. The Director 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 days, 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 or 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. FLSA WORK PERIODS FOR SWORN NON-EXEMPT PUBLIC SAFETY EMPLOYEES

FLSA provides for the declaration of longer work periods for law enforcement and fire protection personnel. For FLSA purposes, the City has adopted work periods for fire protection and law enforcement personnel pursuant to section 207 (k) of FLSA and Title 29 Code of Federal Regulations (29 C.F.R.) Part 553. The partial overtime exemption of section 207 (k) allows the City to set work periods from 7 to 28 days in length and to pay overtime for hours worked in the work period by fire protection personnel in a ratio of 212 hours per 28-day period and by law enforcement personnel in a ratio of 171 hours per 28 days.

Number of Hours Worked for FLSA Overtime Eligibility

<u>Work Period</u>	<u>Fire Department</u>	<u>Police Department</u>
14 days	106	86
27 days	204	N/A

VII. CITY WORK PERIODS FOR SWORN NON-EXEMPT PUBLIC SAFETY EMPLOYEES

The City has chosen the following work periods:

A. Fire Department

1. All sworn non-exempt fire suppression employees will have a work period of 27 days. These employees will be scheduled for two 12-hour shifts, with the exception of Kelly Days, for a total of 204 hours per 27-day work period, which shall include paid meal and sleep periods. Employees will receive overtime pay in accordance with sections VIII and IX for all hours worked in each 27-day work period in excess of 204 hours.

2. All sworn non-exempt administrative employees will have a work period of 14 days. These employees will be scheduled for 9-hour shifts to include an unpaid meal break of one hour duration permitted during each shift for a total of 80 hours in each 14-day work period. These employees will receive overtime pay in accordance with sections VIII and IX for all hours worked in each 14-day work period in excess of 80 hours.

B. Police Department

1. Uniform Patrol Division - All sworn non-exempt police employees assigned to the uniform patrol division work 12-hour shifts including a one-half hour paid meal period each shift for a total of 84 hours per 14-day work period. Employees will receive overtime pay in accordance with sections VIII and IX for all hours worked in each 14-day work period in excess of 84 hours.
2. K-9 and Mounted Patrol Unit - All sworn non-exempt police employees assigned to the K-9 and mounted patrol unit work 8.5 hour shifts, including a one half hour paid meal period each shift for a total of 85 hours per 14-day work period. Employees will receive overtime pay in accordance with sections VIII and IX for all hours worked in each 14-day work period in excess of 85 hours.
3. All Other Police Units - Other sworn non-exempt police employees are scheduled to work either 9-hour or 11-hour shifts, depending on specific assignment. This includes a one hour **unpaid** meal break permitted each shift, for a total of 80 hours per 14-day work period. These employees will receive overtime pay in accordance with sections VIII and IX for all hours worked in each 14-day work period in excess of 80 hours.

Each employee will be informed in writing by the Department Head of his or her work period and shall sign his or her acknowledgment of such work period. This acknowledgment shall be on the official City form.

Any exceptions to these work periods must be recommended by the Department Head and approved in advance of scheduled implementation by the Director of Human Resource Management.

VIII. OVERTIME PAYMENT CALCULATION

Overtime hours worked beyond regularly scheduled work hours, as defined in Section VII, will be paid at a rate of one-and one half times the employee's regular rate of pay. The regular rate of pay is defined by the applicable FLSA statutes and regulations. The overtime rate includes the prorated amounts for the following allowances, in accordance with the adopted Classification and Pay Plan:

1. Educational allowances
2. Special Weapons and Tactics Team allowances
3. Hazardous Materials Team allowances
4. Cardiac Technician/Intermediate and Paramedic Certifications
5. Self-Contained Breathing Apparatus allowances

6. Field Training Officers allowances
7. Fire Staff allowances
8. Master Police and Master Fire Fighter allowances
9. Retirement Offset Payments (if eligible)

Clothing allowances are not applicable for overtime calculation.

IX. HOURS WORKED

Hours worked shall include all time during which an employee is performing work functions. It is expected that employees will primarily perform their required work functions on the City's premises or at a prescribed work place, except for unpaid meal breaks or other periods when free from duty, and when an employee is in a paid status during his regularly scheduled work hours, including sick leave, annual leave, funeral leave, jury duty, compensatory time leave, and city holidays, all of which will be counted as hours of work.

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.
- Special activities for other City departments and City-related agencies.
- Time spent in court.
- Travel time, under certain circumstances. If employees travel out of town for work related reasons, it may result in hours worked or overtime payment and employees must have the approval of the Chief of the Department.

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 of work 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 of work.

XI. SECONDARY EMPLOYMENT

An employee may not accept a secondary job except in accordance with the approval process set forth in AP #5, which governs the acceptance of outside employment.

For the purposes of this section, the term "City" shall include, but is not limited to: any City of Portsmouth Department (Parks, Recreation and Leisure Services, Convention and Visitors Bureau, etc.), Portsmouth Public Schools; PortsEvents, including Willett Hall; Portsmouth Redevelopment and Housing Authority; Hampton Roads Regional Academy of Criminal Justice; Federal and State grants. The term "outside" shall include, but is not limited to, employers such as: Southland Corporation (7-11); privately-owned and operated carnivals; retail stores and businesses; private dances or events.

All hours spent on City secondary jobs or on paperwork or court actions associated with such employment will be counted as hours of work for FLSA timekeeping purposes.

Time spent on outside secondary jobs will not be counted as hours of work until the employee actually engages in activities that require use of official police/fire powers or performance of police/fire duties. In such cases, an on-duty employee should be summoned as soon as possible to relieve such employee and to complete performance of the official duties.

Police

Sworn Police Officers shall not be permitted to accept a secondary or part-time job with the City or for any outside employer except as set forth in the Portsmouth Police Department Policy Manual, ADM-09, Part-time and Off-Duty Employment in accordance with AP #5.

Fire

Sworn Fire personnel are required to submit an Off-duty Employment Form to the Fire Chief for approval for any secondary employment in accordance with AP #5.

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 certification of all hours of work. The official City Time and Attendance Record form for sworn personnel must be used for this purpose unless a substitute form has been approved by the Director of Human Resource Management. Hours of work must be approved and accounted for by the appropriate supervisor. An accurate record of hours of work must be kept each day, and it is the responsibility of both the employee and the supervisor to maintain such records. Employees shall certify that the written accounting is correct.

XIII. RESPONSIBILITY AND ACCOUNTABILITY

In order to comply with the Fair Labor Standards Act and leave records requirements 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.
5. Failure to accurately record and report all time worked.

B. Supervisors, for purposes of this policy, are 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 Police Sergeant, Police Lieutenant, Police Captain, Fire Lieutenant, Fire Captain, Battalion Chief, Assistant Department Head, and Department Head. Supervisors are 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:
 - submit leave records to the City Payroll Office in the Finance Department within 30 days after the leave occurs.
 - keep overtime under control.
4. Signing a non-exempt employee in or out for work.
5. Violations of any provisions of the Fair Labor Standards Act or this policy.

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

XIV. 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.

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 Administrative Policy.