

Memorandum

City of Lawrence

TO: David L. Corliss, City Manager

FROM: Jonathan Douglass, Assistant to the City Manager
Lori Carnahan, Personnel Manager
Marlo Cohen, Management Analyst

CC: Casey Liebst, Budget Manager
Frank Reeb, Director of Administrative Services

DATE: August 29, 2007

RE: Analysis of Lawrence Overtime Policy vs. FLSA Requirements

FLSA requirements compared to City of Lawrence policy

Under the Fair Labor Standards Act (FLSA), employers are generally required to pay their nonexempt employees at time and one-half the employees' regular rate of pay for hours worked over 40 in a seven day work week. FLSA does not require that sick leave, vacation, holiday and other paid time off be considered in the calculation of "hours worked."

The City of Lawrence goes beyond the requirements of FLSA by counting sick leave, vacation, holiday and other paid time off as hours worked. This results in employees earning overtime pay in excess of that which is required by FLSA. An example of how a work week would be different under FLSA and City policy is illustrated below.

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Hours worked			4	8	8		8	28
Sick Leave						8		8
Vacation			4					4
Holiday		8						8
Total								48

Under FLSA (w/City Paid Time off Policies)		Under City Overtime Policy	
Hours paid at regular rate	Hours paid at overtime rate	Hours paid at regular rate	Hours paid at overtime rate
48	0	40	8

In the example above, the employee only physically worked 28 hours, so FLSA would not require the payment of overtime for any of the 48 hours compensated for the week. Because the City's policy on overtime counts sick leave, vacation and holiday as hours worked, the employee would be paid overtime for the final eight hours worked in the week.

Hours worked and overtime policies in other cities

The City surveyed its market comparison group along with three secondary market organizations. Six of the nine surveyed responded. 33% of the respondents included sick leave in the calculation of hours worked, 66% included vacation and 83% included holiday.

Primary and Secondary Market Survey			
	Sick Leave	Vacation	Holiday
Include	33% Lee's Summit, Water One Note: Overland Park included for 24hr Fire Staff	66% Lee's Summit, Overland Park, Unified Gov't, Water One	83% Lee's Summit, Lenexa, Overland Park, Water One, Wichita
Exclude	66% Lenexa, Overland Park, Unified Gov't, Wichita	33% Lenexa Wichita	17% Unified Gov't
No Response	Olathe, Topeka, Johnson Co Wastewater	Olathe, Topeka, Johnson Co Wastewater	Olathe, Topeka, Johnson Co Wastewater

Analysis of the effect of Lawrence policy compared to FLSA

To illustrate the fiscal impact of our current policy, the payment of overtime in the Public Works, Utilities, Police and Fire & Medical departments has been analyzed for first quarter 2007. These departments were chosen because they are some of the biggest users of overtime, and because they utilize significant amounts of shift work. Tammy Bennett, Beth Frailey Krishtalka, Chris Mulvenon, Morley Bregman and Alicia Holliday examined each individual time sheet in their respective departments that had overtime listed in the specified time frame. They then determined how much of the overtime paid was due to our policy of counting sick leave, vacation and holiday as hours worked. The results of the analysis are summarized below:

First Quarter 2007: Overtime Costs Attributable to Various Categories of Paid Time Off in Selected Departments¹							
	Sick	Vacation	Holiday	Personal Leave	Wellness/ Fitness	Emerg. Leave	Total
Public Works	\$1,333	\$1,921	\$9,740 ²	\$782	\$0	\$43	\$13,820
Utilities	\$838	\$1,446	\$6,706	\$737	\$0	\$0	\$9,728
Police	\$1,012	\$1,109	\$7,740	\$629	\$0	\$0	\$10,490
Fire & Medical	\$4,772	\$650	\$64	\$0	\$0	\$0	\$5,486
Total	\$7,955	\$5,127	\$24,251	\$2,148	\$0	\$43	\$39,523

¹This table does not account for all overtime costs, only overtime that is attributable to the City's policy of counting paid time off as hours worked. These figures only represent the extra one-half time that is paid for each overtime hour, not the full time and one-half rate, using current rate of pay rather than rate of pay at the time the overtime was incurred. Results for this quarter may not be easily compared to other quarters because 33% of holidays for the year were in the first quarter.

²In the Public Works calculation only, overtime attributable to holidays includes overtime paid for working on the holiday itself, which would not be affected by a change in City policy regarding definition of "hours worked". Although the total overtime cost attributable to Holiday is somewhere between \$0 and \$9,740 less than this table reports, Holiday remains the largest driver of overtime costs.

The table above illustrates the amount of money that would have been saved during the first quarter 2007 if the City used FLSA definition of "hours worked" instead of the City's definition that includes paid time off. The \$39,523 that would have been saved represents 0.25% of total payroll for these departments in the time period analyzed. Annualized (weighting holiday) it is approximately \$133,843. In 2006 the first quarter represented 22% of our total payroll however in 2005 and 2004 it represented 39% and 48% respectively.

Options for implementing a policy change

It is clear that the current policy of counting paid time off as hours worked results in higher overtime costs than if the City used the minimum requirements of FLSA. It is also understood that employees' total compensation would be reduced if the policy is changed to the FLSA requirements. There would be various options for implementing a change, including the following:

1. ***Address the greatest savings.*** From this analysis it appears that counting holidays as hours worked results in the most amount of overtime. If only one of the categories of paid time off was excluded from the calculation of hours worked, then excluding holidays would have the biggest fiscal impact.
2. ***Exclude all paid time off from the hours worked calculation immediately.*** An even bigger fiscal impact would be realized by adopting the FLSA definition of hours worked all at once. However, the impact on employees' compensation would be more significant.
3. ***Phase in the policy change.*** In the past, benefit increases (such as vacation accrual rate increases and health care contributions by retirees) have been phased in over time, and from an equity standpoint it makes some sense to phase in a policy change that would be felt as a benefit decrease. A suggested phasing method follows:
 - a. ***Phase I:*** Exclude sick leave and shared leave. We want people to be at work and our policies should reflect and support that initiative. The current practice is contradictory to our objective. Our survey shows that sick leave is also the paid time off category most frequently excluded by our market organizations.
 - b. ***Phase II:*** All remaining categories of paid time off except for holidays. This would include vacation, personal days, wellness day, etc. Again supported by survey results as the 2nd phase. It is also a category of paid time off that is managed by the employee. Allowing the employee as much flexibility as possible without the possibility of inadvertently incurring overtime is desirable.
 - c. ***Phase III:*** Holidays. Holidays are imposed on employees by the City rather than being taken at the employees' discretion. It is not possible for either the employee or the supervisor to cancel the holiday during a workload increase in order to address operational concerns. It would be the least desirable option to exclude from overtime. This is also supported by the survey data.

MOU considerations

Changing the definition of "hours worked" should be discussed with the IAFF and LPOA prior to implementation. The definition is spelled out in the Employee Handbook, and both MOUs state that if the Employee Handbook is changed during the course of the MOU, the change is not applicable to the covered employee groups.