

# City of Minneapolis

## Fair Labor Standards Act Procedures for Exempt Employees

**Applies to:** All employees classified as exempt as defined by the Fair Labor Standards Act (FLSA). These procedures apply to exempt employees under the jurisdiction of the Mayor and City Council.

**Synopsis:** These procedures are designed to provide information about the FLSA and the management of exempt employees.

**Council Approval Date:** June 12, 1998 (City Policy)      **Department Approval:** September 2008

**Last Updated:** April 28, 2020 (Contact information updated)

**Links to Related Regulations:** [Fair Labor Standards Act \(FLSA\)](#)

**Administering Department:** Human Resources      **Phone:** 612-673-2282

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- I. Purpose:** To establish City of Minneapolis procedures for managing and compensating exempt employees. These procedures are designed to help City employees understand the application of the Fair Labor Standards Act (FLSA) to exempt employees. For clarification on issues related to exempt employees, please contact the Human Resources (HR) Department.

**II. Roles and Responsibilities**

<b>Role</b>	<b>Responsibility</b>
Department Heads	<ol style="list-style-type: none"> <li>1. Ensure that managers and supervisors in their departments comply with the FLSA policy and procedures.</li> <li>2. Approve administrative leave for employees in their department.</li> </ol>
Managers and Supervisors	<ol style="list-style-type: none"> <li>1. Comply with the FLSA policy and procedures.</li> <li>2. Manage exempt employees in accordance with the FLSA, City policies and procedures and applicable labor agreements.</li> </ol>
HR Generalist	<ol style="list-style-type: none"> <li>1. Provide advice and counsel to managers and supervisors on the FLSA policy and procedures.</li> <li>2. Upon request provide training to managers and supervisors in assigned departments on the FLSA policy and procedures.</li> </ol>
HR Director	<ol style="list-style-type: none"> <li>1. Develop and maintain procedures for implementation and ongoing maintenance of the FLSA Policy.</li> <li>2. Ensure HR Staff are carrying out their responsibilities.</li> <li>3. Ensure that the City is complying with the FLSA.</li> <li>4. Determine the appropriate means of communicating the FLSA policy and procedures to all employees.</li> </ol>

**III. Overview of the FLSA**

The FLSA was originally passed into law in 1938. In 1985, Congress amended the FLSA to address some of the situations unique to public sector employment. Effective April 1986, the FLSA of 1985 applied to state and local governments. The FLSA requires employers to:

- A. Pay at least the Federal minimum wage to all non-exempt employees for all hours worked;
- B. For non-exempt employees, pay at least one and one-half times the employee's regular rate of pay for all hours worked over 40 in the workweek OR grant compensatory time at a rate of one and one-half hours off for each hour worked over 40 in the workweek;
- C. For non-exempt employees, pay overtime wages for the pay period in which the wages are earned;
- D. Comply with the child labor standards; and
- E. Comply with FLSA record keeping requirements.

The FLSA requires that cities must compensate non-exempt employees at the rate of time and one-half for hours worked over 40 in one workweek. All cities are covered by the FLSA, but some employees are "exempt" from the overtime provisions of the act. U.S. Department of Labor regulations provide the definitions of exempt and nonexempt.

Exempt employees receive a predetermined amount of pay every pay period, which is generally not subject to reductions or based on the quantity or quality of work. The FLSA does not require that these individuals be compensated for hours worked more than their regular schedule. Some

exempt employees are covered by a labor agreement. Managers need to check the labor agreements to see how employees are recognized for work that exceeds their normal work schedule.

The HR Department determines the FLSA exemption status for each job classification. The FLSA status for a position or a job classification is reviewed at the time of a position audit or as part of a Classification maintenance study conducted by staff from the HR Department. Exempt and non-exempt statuses are determined using the guidelines established by the United States Department of Labor and the FLSA.

Contact your HR Generalist if you have any questions about an employee's FLSA status.

#### **IV. Application of the FLSA to Exempt Employees**

##### **A. Standard Work Schedule**

The standard City of Minneapolis work schedule is Monday through Friday. For payroll purposes, the standard workweek consists of seven days, 12:01 a.m. Sunday through midnight the following Saturday.

Exempt employee work schedules are dependent upon job requirements and are established by their immediate supervisors and department management. Managers and supervisors of exempt employees will need to check specific language in labor agreements for appropriate break and lunch privileges for the employees under their supervision.

The FLSA allows employers to require exempt employees to record and track time, require exempt employees to work a specified schedule and implement across-the-board schedule changes without jeopardizing the exempt status of employees. It is important to also consult applicable labor agreements for additional language and guidance.

##### **B. Timekeeping Practices**

Supervisors have the responsibility to approve time sheets for exempt employees. Supervisors and exempt employees must *not* maintain an informal or secondary record of time and attendance that does not match the time sheets submitted for payroll processing.

##### **C. Workloads and Assignments**

The workloads and assignments of exempt employees are dependent upon job requirements and are established by management. Performance management is the key to managing exempt employees. Scheduling and managing the work of exempt employees requires regular performance communication between the supervisor and employees. Rather than monitor the number of hours an exempt employee works, supervisors need to manage the work product and work quantity of each exempt employee.

Exempt employees are expected to work whatever hours are necessary in order to meet the performance expectations outlined by their supervisors. Exempt employees may vary their schedules to accommodate the variations in work requirements. Exempt employees do not receive extra pay for the hours worked over 40 in one workweek.

## **D. How Types of Appointment and Types of Position Assignments May Affect FLSA Status**

Determining exempt or non-exempt status under the FLSA may be more difficult for the types of appointments and position assignments listed below. If you are unsure whether the employee is exempt, track the employee's hours and contact HR immediately.

### **1. Temporary Employees**

Temporary employment means any employment other than permanent or seasonal. No temporary employment will be construed as giving an employee permanent rights. Generally, temporary employees should be treated as non-exempt because their hours of work (and therefore wages) may vary from week to week. Thus, these employees will be paid on an hour for hour basis and are entitled to overtime pay for working more than 40 hours in one week. Partial-day deductions may be taken for less than full-day absences. However, if a temporary employee regularly earns at least \$455 per week and satisfies "the duties test" set forth in federal regulations, that employee is exempt and not eligible for overtime payments. Full-day deductions from accrued sick and vacation are permissible for exempt employees.

### **2. Employees on Detail**

Detail means the temporary assignment of current City employees to different job classes than their permanent status class. Non-exempt employees who are detailed to an exempt position will be treated as an exempt employee for the duration of the detail. The exempt employee is not eligible for overtime or compensatory time, unless the applicable labor agreement provides it.

### **3. Part-time employees**

Part-time means a position that requires the services of an incumbent for less than the full working day or week and may or may not be intermittent in nature. The FLSA salary test (at least \$455 per week) and duties test will determine if the part-time position is exempt or non-exempt.

Supervisors who receive requests from full-time salaried employees to work a part-time schedule should contact Human Resources before granting or denying the request.

### **4. Position Status**

Staff from the HR Department determines the FLSA exemption status for each job classification. The FLSA status for a position or a job classification is reviewed at the time of a position audit or as part of a Classification maintenance study conducted by staff from the HR Department. Exempt and non-exempt statuses are determined using the guidelines established by the United States Department of Labor and the FLSA. The fact that a position is represented by a union, is appointed (not part of the classified service) or is non-represented (not in a union or appointed and covered by Civil Service Commission Rules) does not determine if a position is exempt or non-exempt.

### **5. Alternative or Flexible Scheduling**

Some labor agreements may allow the City to consider granting an employee's request for a schedule other than the standard 8:00 a.m. to 4:30 p.m., Monday through Friday work schedule, but that would still constitute full-time employment. Supervisors may work with employees to define alternative schedules. Some labor agreements address flexible scheduling and should be reviewed by the supervisor if a scheduling request is received.

The City's Alternative Work Arrangements Policy and Procedures also discuss alternative schedules including compressed work weeks, flextime and job shares. Please confer with your HR Generalist regarding alternative scheduling options.

## **V. Administrative Leave**

The City recognizes that the work requirements of FLSA exempt employees may exceed, with varying degrees of frequency, the work expectations of a normal workweek. Because of this the City has adopted a procedure whereby exempt employees may be granted Administrative Leave. When an exempt employee's work regularly exceeds normal work week expectations, as demonstrated by results or outputs, the Department Head, or his/her designee, may grant the employee an Administrative Leave. An Administrative Leave may be granted for up to three consecutive workdays. More than three consecutive workdays of Administrative Leave may be granted with the approval of the Mayor, the City Coordinator or a Charter Department Head.

The person approving the Administrative Leave shall submit a memorandum detailing the supporting reasons for the Administrative Leave to the HRIS, or payroll representative. Departments are discouraged from keeping records of "exceptional" hours worked for the purposes of granting Administrative Leave for exempt employees who qualify for such leave. Employees who have been granted an Administrative Leave will continue to earn benefits just as if they were working their normal schedule. Administrative leave is paid time off in increments of one day not charged to other leave.

Such leave may be granted upon the supervisor's own initiative or upon the request to the supervisor from the employee. Such leave may also be granted upon the department head's own initiative or upon the request to the department head from the supervisor or the employee. A supervisor or department head may deny administrative leave if an employee has failed to meet performance expectations. When administrative leave is granted, the employee's supervisor and the employee shall work together to schedule administrative leave when the impact on the department's operations will be minimized.

**Note:** Administrative Leave under this section is different than paid investigatory leave or administrative leave following a critical incident. Please be sure to use the correct payroll code when entering Administrative Leave for exempt professionals.

**A. GENERAL EMPLOYMENT ISSUES**

**1. How are employees designated as exempt or nonexempt?**

The U.S. Department of Labor (DOL) Regulations provide the definitions of exempt and nonexempt. For an individual's position to be an exempt position, two tests must be met -- the duty test and the salary test (\$455 weekly minimum). Employees meet the duty test if they perform executive, administrative or professional duties. Employees meet the salary test if they receive full salary for any workweek in which the employee performs any work without regard to the number of days or hours actually worked.

**2. How is an employee paid on a salary basis under the salary test?**

An employee is paid on a salary basis if the employee regularly receives a predetermined amount each pay period, which amount is not subject to reduction because of variations in the quality and quantity of the work performed. Therefore, an employee's paycheck will not be reduced if the employee works less than 40 hours in a week.

**3. What deductions are permissible from an exempt employee's salary?**

The following deductions from an exempt employee salary are permissible under the FLSA:

- a. Absences for one or more full days for personal reasons, other than sickness or disability;
- b. Absences because of sickness or disability and the deduction is made pursuant to bona fide plan, policy or practice of paying wage replacement benefits;
- c. When an exempt employee is absent from work for less than one week for jury duty, as a witness or for military duty, the daily compensation received may be offset from the employee's salary;
- d. Deductions for partial day absences from salary for the violation of a major safety rule;
- e. Deductions for one or more full days as discipline for violation of workplace conduct rules;
- f. Deductions for the first and last week of an employee's employment if the employee works less than a full pay period;
- g. Partial-day deductions for reduced or intermittent leave taken under the Family and Medical Leave Act, unless the applicable labor agreement limits deductions from accrued vacation or sick leave in full-day increments;
- h. Deductions for a full workweek in which the employee performs no work.

**4. Can two employees with the same job title have different designations (i.e., one individual is exempt and the other is nonexempt)?**

It is possible that two employees with the same job title could, over time, perform duties different from each other. The duties performed, not the job title, are the determining factors in designating the positions as exempt or nonexempt. For instance, if one employee performs supervisory duties, that individual could be an executive, while the other individual,

with the same title but non-supervisory duties, may not be an executive. If major differences occur, one or both of the positions may need to be studied for possible reclassification. The supervisor can forward an updated job description to the Director of Employee Services for review.

**B. TIMEKEEPING**

**1. How will the City account for exempt employees who need to report their work in hourly blocks for grants or special projects?**

The City has a separate time card that allows the exempt employee to record his or her work in hourly increments for cost accounting purposes and record workdays on an exception basis.

For convenience, the data will be collected on one form, but the exempt employee is still being paid as a salaried employee and is only required to report time in full day increments.

**2. What happens to an employee's accrued compensatory time when they go from a position that is non-exempt to one that is exempt?**

Accrued compensatory time will be liquidated in cash at the employee's current rate of pay at the time the employee transfers or promotes to an exempt position.

**C. PERFORMANCE MANAGEMENT**

**Hours of Work:**

**1. Is an exempt employee expected to work 40 hours per week?**

Exempt employees are expected to work whatever hours are necessary in order to meet the performance expectations outlined by their supervisors. Generally, the workload of an exempt employee will require approximately 40 hours per week, on average. Exempt employees may vary their schedules to accommodate the variations in work requirements. Exempt employees do not receive extra pay for the hours worked over 40 in one workweek.

The FLSA allows employers to require exempt employees to record and track time, require exempt employees to work a specified schedule and implement across-the-board schedule changes without jeopardizing the exempt status of employees. However, consult applicable labor agreements regarding work schedules and deductions from accrued leave.

**2. Can an exempt employee leave early without notifying the supervisor in advance or seeking permission?**

Employers may require exempt employees to work a specified schedule. Employees are expected to discuss scheduling with their supervisor in advance of absences, leaving early or coming in late.

## **Discipline:**

### **1. What are the guidelines for disciplining an exempt with respect to unpaid suspensions?**

Deductions may be made in full-day or more increments for infractions of workplace conduct. The discipline must be imposed in good faith and must be made pursuant to a written policy which permits discipline. However, this disciplinary suspension exception only applies to violations of rules of conduct, not for performance or attendance rules. In addition, an employer may make partial-day deductions from salary for violation of a major safety rule.

Depending on the circumstances, the DOL may consider an unpaid suspension to be an improper deduction from an exempt employee's salary. The regulations explain in very clear terms when an employer can legally impose an unpaid disciplinary suspension on an exempt employee. Deductions may be made for disciplinary suspensions of one or more full days for violating "workplace conduct rules." The suspensions can be taken against employees only if the "workplace conduct" rule is a written policy applicable to all employees.

The DOL offers two examples of appropriate unpaid disciplinary suspensions: (1) an employer may suspend an exempt employee without pay for one or more full days for violating its written sexual harassment policy; and (2) an employer may suspend an exempt employee without pay for one or more full days for violating its workplace violence policy.

The DOL explains that it doesn't intend the term "workplace conduct" to be interpreted broadly. Rather, it says workplace conduct means just that, conduct — not performance or attendance issues. The DOL intends for unpaid disciplinary suspensions to be reserved for "serious" workplace misconduct like sexual harassment, violence, drug or alcohol policy violations or for violations of state or federal laws.

### **2. Do you have to pay an exempt employee for the whole day if the suspension begins at some point during the workday?**

Yes. The FLSA clearly states that an employee may be suspended without pay in increments of one full day or more. Therefore, if an employee works for part of the day but then is suspended for violating the employer's sexual harassment policy, the employee must be paid his full pay for that day.

## **Workloads:**

### **1. How will an individual's workload be determined? Who will make this determination?**

Supervisors and managers must make sure that the employees under their supervision have a workload that reflects the duties and responsibilities associated with their position. The supervisor assigns work to the exempt employee. FLSA does not alter supervisory responsibility to assign work and assess performance. Workloads are affected by many factors, and it is not possible to have a perfectly balanced or "normal" workload on a day to day or even week to week basis. Managers must consider workloads and staffing needs to accomplish their goals. Managers with limited resources must determine how to enhance efficiency, set priorities, and determine what can be delayed.



## **2. What about job classifications that have multiple incumbents and similar responsibilities?**

Exempt employees who work in the same job classification and with similar responsibilities may perform at different levels because of differences in knowledge, skills, abilities and other motivational factors. The supervisor of exempt employees must ensure that all employees are contributing to the mission of the organization, and that workloads are fairly distributed amongst employees. This is accomplished through regular performance communication and evaluation of employee outputs.

The City has a performance appraisal system for exempt employees. Supervisors and employees should develop performance standards and work plans that guide the employee's work during the appraisal period. When there is a gap between what is expected and what the employee is accomplishing, the supervisor should work more closely with the employee to identify why the gap exists and/or why the employee is not meeting the minimum performance standards of the position.

## **3. What if an employee works less than 40-hours per week but says the work is done?**

It is the manager's responsibility to determine if the job is done. The manager should look at the job assigned to determine if it is a full job assignment, and should look at the employee's work product to determine if it is quality work, or if the employee is rushing through it without doing a thorough job. If there are others in similar jobs, the manager should look at their workloads and the hours it is taking them to complete their jobs to determine if there is a fair balance of work. If necessary, the manager should redistribute work to assure that the workload balance is as equitable as possible.

## **4. What about work performed by exempt employees that is done outside the normal workday?**

Exempt employees may have to work outside the standard workday of 8:00 a.m. to 4:30 p.m. An example would be to attend a community meeting in the evening. Does this employee need to be at work at the beginning of the next workday? The answer will be dependent on a number of factors:

- ◆ The employee's schedule.
- ◆ Important or regularly scheduled meetings that occur the next morning.
- ◆ Needs of citizens or customers served by the exempt employee.
- ◆ The effect on the department if the employee comes in at a later time.
- ◆ Administrative leave with advance approval.

## **5. Some City operations workloads are driven by seasonal variations. One example is the snow emergency. When an exempt employee is required to work long hours, that exceed the regular work schedule, can the employee take time off, or work a reduced schedule during non-peak times of the year?**

Some City departments experience dramatic increases in workloads during different seasons. (e.g. snow emergencies) Exempt employees are expected to work whatever hours are necessary to meet the performance expectations outlined by their supervisors. A manager can usually adjust the regular work schedule to recognize the seasonal variations in work demands. Employees should also be encouraged to use accrued vacation during

non-peak times of the year. Departments may want to look at job redesigns, workforce utilization, or other changes within the organization that will make the workloads more even throughout the year.

## **Role of the Supervisor**

### **1. Are there problems with staff being out of the office a large part of the day?**

Many exempt employees are away from their offices for some periods of time. Exempt employees should let their immediate supervisor in the office know when they will be away from the office, and make sure the necessary coverage exists for customer-oriented operations.

### **2. Can exempt employees set their own hours and work schedules? Will evaluating the exempt employee be more difficult?**

Supervisors should not allow exempt employees to independently set their own schedules. The Supervisor should determine the normal schedule based on the services delivered and the needs of the department. Exempt employees must attend important meetings, events and provide overall coverage for important duties as the work schedule demands.

Exempt employees do have greater flexibility than non-exempt employees in determining how long they need to work in order to get their assignments completed. Exempt employees may arrange to be absent from work if there are no important appointments and if there is adequate coverage for service delivery.

Supervisors evaluate exempt employees on performance outcomes rather than attendance. The desired outcome is a sufficient quantity of quality work. Supervisors must appraise the employee's performance against a standard, rather than the number of hours worked. An exempt employee who is often absent from work will have difficulty meeting the performance standards established for the position.

### **3. How will the performance measurement process be standardized?**

The HR Department developed a performance management tool for exempt employees. Departments may modify the form to accommodate unique department needs or suggest an alternative form. HR will review each form to ensure consistency in the City. Performance appraisals are expected to include a performance plan; a review of performance and comments to support the ratings; an overall statement about the employee's performance; and, a plan for future performance.

**RESOLUTION 98R-208**

Adopting City policy and authorizing the Human Resources Department to promulgate rules for implementing City policy related to City compliance with the Fair Labor Standards Act (FLSA).

Whereas, the Human Resources Department has reviewed all City positions which are covered under the Fair Labor Standards Act (FLSA) to determine which positions are exempt or non-exempt; and

Whereas, City policy does not clarify the City's responsibilities and limitations under the FLSA; and

Whereas, the adoption by the Minneapolis City Council of a policy related to the FLSA and the promulgation of rules and procedures to implement and follow such a policy will create uniformity throughout the City; and

Whereas, the uniform application of such a policy and rules and procedures will be beneficial to the City in maintaining and monitoring compliance with the FLSA;

Now, Therefore, Be It Resolved by the City Council of the City of Minneapolis:

That the City Council of the City of Minneapolis adopts the following policy for all City departments:

That the City of Minneapolis shall follow the minimum requirements of the FLSA of 1938, as amended, and the Minnesota FLSA.

Be It Further Resolved that the City of Minneapolis does hereby authorize the Human Resources Department to promulgate rules and procedures to administer the minimum requirements of the FLSA of 1938, as amended, and the Minnesota FLSA.