

PERSONNEL POLICY 21-1

SUBJECT: Overtime and Compensatory Time

PURPOSE: To develop standardized procedures under which City of Clarksville employees are compensated for overtime work.

APPLICABILITY: These procedures apply to all full-time regular employees of the City of Clarksville.

REFERENCES:

1. Section 1.5 – 407 “Overtime” Clarksville City Code
2. Tennessee Wage Protection Act Tenn. Code Ann. § 50-2-101 et seq.
3. Fair Labor Standards Act of 1938 (FLSA) 29 U.S.C. 201 et seq. as amended and such other regulations issued by the U.S. Department of Labor.

A. POLICY STATEMENT: The City of Clarksville will comply with the requirements of the Fair Labor Standards Act (FLSA) in determining employee hours and wages, overtime compensation and use of compensatory time in lieu of wages. It may approve more liberal standards, but the minimum acceptable standards are those established by the FLSA.

Overtime compensation or compensatory time in lieu of overtime compensation may be approved only after a non-exempt (hourly) employee has worked 40 hours in a workweek or in accordance with approved FLSA exemptions for public safety employees or employees engaged in seasonal activities. Compensatory time may be given to employees with whom the City has a prior agreement or understanding that the employee will accept compensatory time in lieu of cash payment for overtime hours worked.

B. DEFINITIONS:

1. **EXEMPT (SALARIED) EMPLOYEES:** Those employees who are not covered or are outside the applicability of the FLSA. Personnel in the City of Clarksville who are exempt from the FLSA fall into either the Executive, Administrative, Professional, or Computer exemptions of the FLSA.
2. **NON-EXEMPT (HOURLY) EMPLOYEES:** Those employees who are protected by the provisions of the FLSA. Generally, those other than exempt employees.

3. **OVERTIME COMPENSATION:** Overtime pay, pursuant to the FLSA, is extra pay for the hours worked over the authorized number of hours in a workweek, or work period for sworn police and firefighter positions, and is paid at the rate of one and one-half times an employee's regular rate. Only non-exempt (hourly) employees are required to be paid overtime compensation.
4. **COMPENSATORY TIME:** Time off from work, granted by the employer in lieu of overtime compensation. Compensatory time is granted at the rate of not less than one and one-half hours of compensatory time for each hour of overtime worked.

C. POLICY

1. WORKWEEK OR WORK PERIOD:

- a. A workweek is a fixed and regularly recurring period of 7 consecutive 24 hour periods, i.e., 168 consecutive hours as designated by the Department Head.
- b. A work period is a fixed and regularly recurring period of consecutive 24 hour periods, i.e., 27 consecutive days (Fire) or 28 consecutive days (Police).
- c. All employees shall have a defined workweek (or for Fire and Police - a defined work period). The defined workweek shall be documented by the employee's supervisor. There may be one defined workweek (or work period) for all employees or different workweeks (or work periods) for different groups of employees or individual employees. The workweek (or work period) shall be fixed and consistently applied but may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of FLSA.

2. FLEXIBLE SCHEDULING

A department head may provide a flexible work schedule to avoid incurring overtime by allowing employees to take time off during the workweek or work period to compensate for time worked in excess of the number of hours authorized in a workweek or period. The department head may change the employee's hours of work on a daily basis to meet the employer's work requirements, even if such schedule changes are intended to limit hours worked to no more than 40 hours for a workweek or the number of hours authorized in a work period.

3. VOLUNTEERS/INTERNS

Generally defined as an individual who performs hours of service for the City for civic,

educational, charitable or humanitarian reasons without promise, expectation or receipt of compensation for those services rendered. These volunteers are not subject to the FLSA. A City employee may not volunteer hours of service for the City in the same type of service which the individual is employed to perform for the City.

4. EMPLOYEES WORKING FOR MULTIPLE DEPARTMENTS

An employee who is a regular full-time employee of a department of the City may not also work part-time for another department of the City. A part-time employee of a department of the City may also work part-time for another department of the City but may not work more than a combined 40 hours during a workweek between the different departments.

5. SALARY DEDUCTIONS AND OFFSETS

An employee's wages may not be deducted for jury duty, military service or when called as a witness to testify in a lawsuit or administrative matter in which the City is a party. Any checks paid to a City employee for service on a jury or for witness fees shall be endorsed over to the City and submitted to the Department of Finance for deposit. If the payment is not endorsed to the City by the employee, the City may offset any amounts received by the employee for jury or witness fees for a particular week against the compensation due the employee that week.

6. GENERAL

Overtime work should only be required in cases of emergency or under other unforeseen or unusual circumstances and only when approved by the Department Head. The Department Head is not required to approve every situation in advance when overtime is required, but those overtime situations which occur with regularity may be approved by a departmental policy statement signed by the Department Head, but may not exceed the standards established by this policy.

When it becomes necessary to have employees exceed the number of hours in the authorized workweek or work period, non-exempt (hourly) employees must be compensated or provided compensatory time in lieu of compensation in accordance with established law, policies and procedures.

7. OVERTIME

Overtime pay must be paid at the rate of not less than one and one-half times the non-exempt (hourly) employee's regular rate of pay for each hour worked in excess of the maximum hours applicable to the type of employment in which the employee is engaged. This usually means overtime for hours worked in excess of 40 hours per workweek. For the purpose of overtime calculation, paid leave, such as leave of absence, bereavement time, and jury pay do not apply toward work hours.

For the Clarksville Police Department, non-exempt (hourly sworn) employees are paid the overtime rate for hours worked in excess of 171 hours in a 28 day work period. For the Clarksville Fire Department, non-exempt (hourly sworn) employees are paid the overtime rate for work in excess of 204 hours in a 27 day work period. These exemptions for public safety personnel are referred to as the 207(k) or 7(k) exemptions from the normal 40 hours in a 7-day workweek.

8. COMPENSATORY TIME

For non-exempt (hourly) employees other than Public Safety and those employees engaged in seasonal work, the City allows compensatory time to be accumulated up to 80 hours. Should additional compensatory time be needed, such an employee may accrue up to a maximum of 240 hours of compensatory time (160 hours actual overtime worked) upon approval of their Department Head.

Public Safety employees and those engaged in seasonal work may accumulate up to 80 hours of compensatory time. Should additional compensatory time be needed, such an employee may accrue up to a maximum of 480 hours of compensatory time (320 hours actual overtime worked) upon approval of their Department Head.

An employee must deplete any banked compensatory time before using any accrued paid vacation leave. The City will make every effort to grant reasonable requests for the use of compensatory time when sufficient advance notice is given and the grant would not unduly disrupt the operations of the agency.

Department Heads or their designees shall be responsible to report (through timekeeping) banked compensatory time to Payroll every pay period. Any employee who has reached the maximum allowable accumulated compensatory time shall not work any additional overtime compensated as compensatory time until the employee's accrued compensatory time has fallen below the maximum amount allowable.

The City reserves the right at any time to pay an employee in cash for any or all accrued compensatory time and/or to require the employee to use accumulated compensatory time.

Upon separation from employment with the City, compensatory time will be paid at the current rate of pay as of separation.

Each departmental payroll section will monitor the accumulation of compensatory time to ensure compensatory time does not exceed the limits set by the Department of Labor. **Any overtime worked beyond the maximum limit of compensatory time must be paid in cash overtime compensation.**

9. COMPUTING THE WORK PERIOD

When an employee is absent from work during the workweek or work period for any reason except a City approved holiday, the absent hours such as sick leave, annual leave or compensatory time leave are deducted from the total hours worked in the cycle and overtime compensation will not be paid until the employee exceeds the maximum work hours in the workweek or work period.

10. VOLUNTARY EMPLOYMENT

Employees who, albeit voluntarily, either begin work before their prescribed starting time or who continue to work after their shift is over are engaged in compensable working time. The reason for the work is immaterial; as long as the Department Head “suffers or permits” (causes or allows) employees to work on behalf of the employer, proper compensation must be paid. Essentially, this means that once an employer allows the employee to work, or knows that the employee is working, then the employee must be compensated. Management must make certain that overtime work it does not want performed is not in fact performed. Mere promulgation of a rule to the effect is not sufficient to avoid compensation for additional hours worked.

11. START OF THE WORK PERIOD

Employees who wait before starting their duties because they arrived at the workplace earlier than the required time are not entitled to be paid for the waiting time. However, if an employee arrives at the required time and then waits because there is not work to start on, then waiting time is compensable work time.

12. ON CALL TIME OR ON-DUTY WAITING TIME

a. On-Call Time

Whether or not the time an employee is on call is counted as compensable time depends on the employee's freedom while on call. If employees must remain at their workplace or so near that they cannot freely use the time, the time is compensable. But if employees can come and go freely, even though they must leave a telephone number where they can be reached, or if they carry a cell phone or other communication device, the time can be excluded from hours worked. A Department Head may, by agreement with the employees who are on call, pay a fixed dollar amount for the time the employee is on call. If the employee is paid for this time by arrangement (ex. 1 hour pay at regular rate for the entire on-call period) this time is not counted as time worked in the number of hours worked in the workweek or work period.

b. On Duty Waiting Time

Workers, who are required to stand by their posts ready for duty, whether during lunch periods, during equipment breakdowns, or during other temporary work shut-downs, must be paid for this time. Such periods of time are usually short duration and their occurrence is not predictable. Since the employee is controlled by the employer during these periods, and is not able to use the time for his or her own purpose, this is compensable time. The following are examples of on duty waiting time for which the employee must be compensated:

- A secretary who reads a book while waiting for a work assignment.
- A firefighter who plays checkers while waiting for alarms.
- A utility worker who talks to fellow employees while waiting for equipment to be repaired.

This rule also applies to employees who work away from the employer's place of business.

An employee would not have to be paid if they are allowed to leave the work site and given a definite time to return to work.

13. REST PERIODS

The FLSA does not require that employees be given rest periods, but if rest periods are provided, they must be counted as time worked if they last 20 minutes or less. Coffee

and snack breaks are compensable rest periods and cannot be excluded from hours worked if they last 20 minutes or less. The compensability of rest periods that last longer than 20 minutes depends upon an employee's freedom during the breaks.

14. MEAL PERIOD

Any employee scheduled to work six (6) hours or more consecutively, shall be given a thirty (30) minute unpaid meal break. The meal break shall not be scheduled within the first or last hour of the scheduled work day or shift or before the first hour of scheduled work activity.

During meal breaks the employee must be completely relieved of all duties; if the employee must sit at a desk and incidentally answer the phone, for example, this would be compensable time. An employee who chooses to remain at his or her desk during the meal time period is not working so long as he or she is completely relieved of all duties and is not required by the employer to remain at the desk.

15. OTHER MEAL PERIODS

a. Voluntary Work at Meal Time

All voluntary work done during meal periods must be counted as compensable working time if the employer knows or has reason to believe the work is being performed. Where the employer has no reason to know of the work, and the employee's work during meal time is of little or no consequence, no compensation is required. If the employer knows that work is being performed during meal time which is not necessary or wanted, the employee must be informed to that effect and told to stop the unnecessary work.

b. Meals on Business Trips

Meal time spent out of town on business trips is not compensable.

c. Meal Time for Police Officers and Firefighters

The meal periods for on-duty sworn police officers and firefighters is counted as working time.

16. TRAINING PROGRAMS, LECTURES AND MEETINGS

Time spent in training, lectures and meetings, approved by the employee's Department Head, by non-exempt personnel is compensable if it meets any of the following conditions:

- a. Attendance occurs during regular working hours;
- b. Attendance is required by the employer; and/or
- c. The program, lecture or meeting is related to the employee's job.

It is important not to confuse the concept of training with trainees. Trainees, within the definition of the FLSA are exempt from the provisions of the act when they meet certain tests. An example of an exempt trainee is when a police recruit who attends the Training Academy. The time the trainee spends working or studying in excess of 40 hours per week is not compensable.

17. TRAVEL TIME

Whether travel time is compensable depends entirely on the kind of travel involved. Generally, the employer is not responsible for time spent by the employee in walking, riding or otherwise traveling to his or her principal activity. The following additional rules apply:

- a. Home to work travel is not compensable. Generally an employee is not at work until he or she reaches the work site;
- b. Travel from one job site to another during the work day is compensable; and
- c. There "may" be instances when travel from home to work will be compensable if, for example, the employee has gone home after completing a day's work and is subsequently called out at night on an emergency job. All time spent traveling to the emergency job may be compensable.

18. OUT-OF-TOWN TRAVEL

Time spent by non-exempt (hourly) employees while traveling out of town on behalf of the employer is compensable, except for time spent eating while traveling. Travel time as a passenger on an airplane, train, bus or automobile outside of regular work hours is not compensable. For example, if an employee drives from Clarksville to Nashville, to attend a one-day seminar, and the amount of time spent in travel and attending the seminar, minus mealtime, is greater than a normal workday, the additional time is compensable. If an employee travels by air to attend a conference which lasts several days, only the additional time spent in travel from Clarksville to the airport and from the airport to Clarksville is counted as compensable travel time. Time spent at the conference is considered compensable work-time, free time outside of the conference is not compensable.

19. HOLIDAY PAY

There is no requirement under the FLSA that employees be paid premium (time and ½) pay for holidays, weekends or evening shifts. The exception is that non-exempt (hourly) employees will be credited for holidays at their regular rate of pay even if they do not work on that day. If the employee is scheduled to work on a City approved holiday, they will be credited for 8 hours annual leave, or, for law enforcement and fire service personnel, for the holiday plus their regular rate of pay for the hours worked on that day or they may opt to bank the holiday to use at another time. If an employee is called in to work on a City approved holiday, he/she will be credited for 8 hours for the holiday plus straight time for the hours worked on that day, and both the holiday and the hours worked will be credited to the number of hours worked in the cycle.

20. TRAINING TIME FOR 207(K) EMPLOYEES

All time spent by non-exempt (hourly) law enforcement and fire service personnel in training sessions is counted as hours of work but are not compensated at the overtime rate unless the total hours worked, including training time, exceeds 171 hours in 28 days for police or 204 hours in 27 days for fire service personnel.

21. COMPENSABLE HOURS WHEN USING CITY VEHICLES

City employees, including police and fire service personnel who have vehicle take home privileges, are not compensated for time driving from their residence to their place of work and when returning to their homes, even if they are required, as a condition of this privilege to have their radios on so that they can respond to emergencies. Once the officer or employee responds to the emergency call however, the time involved is compensable.

22. TRADING SHIFTS – POLICE OFFICER AND FIREFIGHTERS

Sworn police officers and firefighters may trade or substitute tours of duty without being subject to overtime compensation by virtue of the voluntary trading of time by such employees. The following criteria must be met in order for there to be no effect on hours worked to the employer:

- a. Substitution or trading time is done voluntarily, i.e., solely at the employee's option; and;
- b. The substitution or trading is approved by the employer. The employee's decision to substitute for each other should be made without any coercion by the employer and

the employee should be able to refuse such substitution without sanction or explanation.

23. ACKNOWLEDGEMENT OF DYNAMIC WORKFORCE

The FLSA establishes a floor under which wage protections cannot drop. The City recognizes that in certain situations individual departments may need to provide their employees with flexibility that goes above the requirements of the FLSA in order to accomplish their mission. Any such flexibility that is above the FLSA floor or outside of this policy shall be approved by the Human Resource Director in writing.

24. QUESTIONS AND DISPUTES

Questions or disputes arising from the interpretation or implementation of this procedure shall be submitted in writing by the affected Department Head to the Human Resource Department. The Human Resource Director will coordinate the resolution of the dispute or question and will respond to the Department Head.

EFFECTIVE DATE: This policy is in effect as of April 10, 2021 until formal approval.

FREQUENCY OF REVIEW AND UPDATE: This policy shall be reviewed biannually.

DATE OF APPROVAL:

SIGNATURE OF POLICY OWNER:

WILL WYATT, HUMAN RESOURCES DIRECTOR