Payroll Policies you Need

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This training is designed to provide general information about the subject matter covered. Neither TAC nor the trainers are engaged in rendering legal advice. If you need legal advice, TAC recommends that you seek the services of a competent attorney who is familiar with your specific situation.
Learning Objectives

Payroll Policies

• FLSA required policies
• Practices not in writing
• Importance of record keeping
Fair Labor Standards Act (FLSA)

• Requires proper wage payment, including minimum wage and overtime
• Requires employees to properly complete timesheets
The FLSA does six things:

- Sets minimum wage
- Establishes overtime pay requirements
- Sets recordkeeping requirements
- Sets equal pay for equal work
- Restricts child labor – restrictions for 14-15 and 16-17 year olds
- Provides nursing mothers breaks
Fair Labor Standards Act

The FLSA does not require:

- Vacation, holiday, sick or severance pay
- Meal or rest periods (except nursing mothers)
- Premium pay for weekends or holidays
- No daily overtime is required
- Pay raises or fringe benefits
- Discharge notices or immediate discharge pay
- Limits to number of hours worked (except for under the age of 16)
FLSA Policy Requires:

• Policy that sets your work week
• Policy that sets when employees get paid
• Policy saying how overtime will be paid
• Formal adoption of partial overtime exemptions (law enforcement)
Employment Relationship

Must be an employer-employee relationship

• Employ means “suffer or permit” to work
• Timesheets with actual hours worked are critical to the employment relationship
FLSA 207(k) Policies Require:

Law Enforcement Requirements (207)k:

1. Resolution adopting the rules
2. Written policy describing your practice
3. Policy and practice must match
4. Include any additional benefits; straight time
5. Be able to produce resolution during an audit
6. Penalty for errors – 40 hour workweek
Hours Worked

For law enforcement: Pre-duty or Post-Duty activities that are an integral part of the employee's principal activity:

- Reports, washing car, taking care of police dog  29 C.F.R. 553.221
- Training, lectures, meetings 29 C.F.R. 553.226

Attendance outside of normal work hours which is required for your certification is not compensable hours

Meals and rest periods (20 min.) 29 C.F.R. 553.223
Hours Worked

For law enforcement: Pre-duty or Post-Duty activities that are an integral part of the employees’ principal activity:

- Drug Dog Policies in writing
- Must prove time spent on dog is documented on every single timesheet
- Can be incorporated into regular schedule
- Stipends might be problematic; overtime
- Every single day the dog is in the employees care, days off, vacation days, sick days, etc.
- 30 minutes of work
Defined Workweek

Non Law Enforcement

• Required for each employee
• 7 day (168 hour) recurring period
  • May begin on any day of week and any hour of day
  • 207(k) is an exception to this work week rule
• All time actually worked in workweek must be counted to determine if overtime has been worked – Paid leave not counted
• Each 7 day work week stands alone
Defined Work Period

**Law Enforcement**

- Required for each employee
- It can be 7 day/43 hour work period up to a 28 day/171 hour work period
- All time actually worked in work period must be counted to determine if overtime has been worked – *Paid leave not counted*
- Each work period stands alone
Policy vs Practice

• Complete a self audit
• Make sure written policy and payroll practice match
• Add details to leave policies for adjustments as needed (reduce leave so total does not go above 40/171, etc.
• Problems will be refigured in a way that benefits the employee and costs $$$
Overtime

Overtime includes all hours actually worked over 40 in the workweek

Daily overtime is not required

Dual employment counts time from both jobs worked as a county employee

Workweeks cannot be averaged

Paid leave is not counted as hours worked
Overtime

Overtime for non-exempt employees who actually work over 40 hours:

• Paid at 1 1/2 times regular (hourly) rate OR

• Compensatory time at 1 1/2 hours comp time for each overtime hour worked

• Employees cannot give up their right to overtime if they actually work it

• They will receive comp time or pay depending on the county policy for actual hours worked
Overtime

Overtime for non-exempt employees who actually work over 40 hours:

• Make sure written policy give the county the right to buy back
• Consider a policy that visits buy back every budget cycle
• Every raise you give raises the comp time liability
Overtime

- Overtime includes all hours actually worked in the work period
- 7 day/43 hour up to 28 day/171 hour
  - Daily overtime is not required
  - Dual employment counts time from both jobs worked as a county employee
- Work periods cannot be averaged
- Paid leave is not counted as hours worked
Comp Time Policy

- Applies only to state and local government
- Employee can use at any time unless absence unduly disrupts department **29 C.F.R. 553.25**
- Can require employee to use at county’s convenience *(Christensen v Harris County)*
- Can require employee to use at county’s convenience - even before use of vacation or sick - **Caution**
- You must keep records **29 C.F.R. 553.50**
Comp Time

Employee cannot lose comp time \textit{29 C.F.R. 553.27}
\begin{itemize}
  \item Used
  \item Cashed out at any time by County Choice
  \item Paid at termination
\end{itemize}

Maximum accruals allowed \textit{29 C.F.R. 553.24}
\begin{itemize}
  \item 240 hours all employees except law enforcement
  \item 480 hours law enforcement
\end{itemize}
Comp Time

• If you set a lower limit in your written policy, you must follow it
• Consider paying overtime as it is earned – reduces liability
Three Tests for Exemption

Salary Level
• If this is not met; automatically a non-exempt employee entitle to overtime pay.

Salary Basis
• salary free and clear from deductions

Job Duties
• usually administrative in nature
• apply the included test to be sure
Salary Level Test

The minimum salary level must be:

- Annually: $23,660.00
- Monthly: $1,971.66
- Bi-Weekly: $910.00
- Weekly: $455.00
Salary Level Test Proposed 2019
The minimum salary level must be:

- **Annually:** $35,308.00
- **Monthly:** $2,942.33
- **Bi-Weekly:** $1,358.00
- **Weekly:** $679.00
Exempt Employees

- Exempt from receiving overtime pay
- Must be able to prove how you came to exemption
- Should have written documentation as back up
- No deductions for quality or quantity of work
- Can require set hours and set times to be at work
- Adopt a safe harbor policy – sample in docs
Best Advice for Recordkeeping

To be compliant with DOL

• Keep a complete and accurate record of all hours worked – Actual Start and Stop Times
• Pay all overtime hours at
  • 1 1/2 times employee’s regular rate; or
  • 1 1/2 comp time rate
Record Keeping

• Time and day of week when employee’s workweek begins
• Actual hours worked each day
• Total hours worked each week
• Basis on which employees wages are paid (hourly or salary)
• Total daily, weekly and work period straight time earnings
• Regular Rate for overtime calculation
Record Keeping

What about timekeeping?

• Employers may use any method they choose, but it MUST be accurate and complete for each non-exempt employee.

• Employees are responsible for completing timesheets accurately and turning them in timely.
Time Sheets

- Complete and accurate record required
- Governmental Record

**Falsification: Texas Penal Code 37.10**

- Absence of Records = PROBLEMS
- Need signed timesheets – Need both employee and supervisor signature
- If you make changes on the timesheet initial each change you make
- Write a policy
We suggest...

- Review job duties and job descriptions
- Apply the standard test for exempt employees
- Conduct a self audit – correct errors ASAP
- Review timesheets
- Review recordkeeping methods
Questions
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