



REVISED 5-30-13

Milwaukee County

Department of Human Resources

Date: May 24, 2013

To: Chairwoman Marina Dimitrijevic

From: Kerry Mitchell, Director, Department of Human Resources

A handwritten signature in black ink, appearing to be "KM", written over the printed name of Kerry Mitchell.

Subj: **Revisions to Chapter 17.16 relating to Overtime Compensation**

Issue

The Federal Fair Labor Standards Act (FLSA) requires Milwaukee County to provide overtime compensation to those employee classes whom the FLSA qualifies as “non-exempt.” FLSA further identifies classes of employees who would be considered “exempt” from the requirement to provide overtime compensation. Milwaukee County’s Overtime Compensation ordinance, as set forth in Chapter 17.16 of the Milwaukee County Code of General Ordinances (MCGO) meets FLSA requirements for non-exempt employees, but exceeds the FLSA requirements for FLSA-exempt employees.

The Department of Human Resources is proposing to fully incorporate the FLSA guidelines to remove all exempt-level positions from the Milwaukee County’s overtime ordinance, with the exception of certain health care positions and Assistant Chiefs of Airport Rescue and Firefighting, and convert those employees to salaried status.

Background

Employees governed by the Fair Labor Standards Act are either “exempt” or “non-exempt” from the provisions of the Act. Non-exempt employees are to receive overtime compensation, while exempt employees are not. The majority of positions in Milwaukee County service are non-exempt and will not be affected by the proposed revision. The FLSA exempts executive, administrative and professional level employees from its overtime requirements because it recognizes those types of employees as salaried rather than hourly.

Beyond FLSA, overtime compensation is also addressed in Chapter 17.16 of the Ordinances. Historically, this chapter has provided overtime compensation in excess of the federal requirements, both for non-exempt and exempt level employees. Prior to 2009, the County allowed for overtime for work in excess of 8 hours per day, and time and a half for exempt employees who were below pay range 29M.

In 2009, Human Resources proposed revisions to 17.16 to change the overtime standard to hours worked beyond 40 in a week, and eliminate all overtime compensation for exempt level (non-executive) employees. The County Board adopted a substitute

proposal that preserved straight-time overtime accruals for professional, non-executive exempt-level staff but incorporated the 40-hour threshold for all overtime-eligible employees (File No. 09-257).

Current Overtime Provisions for FLSA-Exempt Employees

Among the positions that are currently provided straight-time overtime accruals under our ordinances are management and professional positions that would not be entitled to overtime under FLSA guidelines. As of May 2013, there are 698 authorized positions (468 filled) that are classified as FLSA-exempt and are currently entitled to overtime accruals or payments. Attached to this report is a listing of title codes and pay ranges of positions currently classified as exempt that will be affected by the proposed revision.

Since the beginning of 2012, FLSA exempt employees, both represented and non-represented, have accrued 18,131 hours of overtime. Under current ordinances and practices, the accrued overtime total of 18,131 can be used as compensatory time to be used as time off, or will be converted to a cash payment upon the employee's termination from County service. Based on current hourly wage rates for those positions, the accrued overtime in that span has a dollar value of approximately \$700,000. It should be noted that the value of the accrued time increases as the underlying hourly wage rates increase. For example, the general 1.5% increase that took effect May 12, 2013 will increase the value of the accrued time if it is paid when the employee terminates employment.

Revised Overtime Considerations

The proposed ordinance revision would have two primary impacts. First, by fully incorporating FLSA guidelines, the County's FLSA-exempt level employees would be considered salaried. Generally, those employees are currently paid at a wage rate multiplied against actual hours worked and reported. Under the proposed change, those employees would become salaried (based on current rates) and would report time on an exception basis (i.e., report only time used rather than time worked).

Additionally, as salaried employees, FLSA-exempt level employees who work beyond 40 per week would not receive compensatory time on a straight-time basis, but may be allowed manager-approved time adjustments based on hours worked and work completed.

The proposed revision would continue the practice of permitting straight time accruals for Assistant Chiefs of Airport Fire and Rescue (as permitted by FLSA) and allow certain medical positions to receive overtime due to retention and recruitment considerations.

Recommendation

Responses to a survey of Wisconsin counties indicated that the vast majority, more than 75%, do not provide overtime for FLSA-exempt employees. Some counties have specific exceptions (e.g., for crisis social workers), but the clear majority of counties do not provide overtime compensation for FLSA-exempt employees. The State of Wisconsin and the City of Milwaukee follow federal law and do not pay exempt-level staff

overtime. Also, in the private sector, providing overtime compensation when it is not required by FLSA is simply not done.

The 2009 revision was a substantial correction to a benefit that exceeded FLSA standards, and began to standardize County practices with those of most employers. The proposed revision takes the final step and fully incorporates the Federal Fair Labor Standards Act, aligning the practices with County FLSA-exempt employees with overtime practices elsewhere in the public and private sectors.

The Department of Human Resources respectfully requests that this item be referred for consideration by the Committee on Finance, Personnel and Audit in the June 2013 meeting cycle.

Cc: A. Moreen
D. Tyler
S. Manske
J. Fudge
S. Cady
J. Jensen

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3 (ITEM) From the Director, Department of Human Resources,
4 recommending adoption of a resolution/ordinance to amend Chapter 17.16 of the
5 Milwaukee County Code of General Ordinances relating to Overtime Compensation,
6 by recommending adoption of the following:

7 **A RESOLUTION**

8 WHEREAS, the Federal Fair Labor Standards Act (FLSA) establishes
9 requirements regarding overtime compensation for employees and determines which
10 employees shall be covered by the Act; and

11 WHEREAS, FLSA classifies employees as either “non-exempt”, who are
12 covered by the Act, and “exempt” who are not covered by the Act; in Milwaukee
13 County, most employees are “non-exempt” and are required to receive overtime
14 compensation; and

15 WHEREAS, FLSA exempts those positions considered executive, managerial
16 and professional from the overtime provisions of the Act, meaning Milwaukee County
17 is not required to provide overtime compensation to those positions; and

18 WHEREAS, as currently set forth in Chapter 17.16 of the Milwaukee County
19 Code of General Ordinances, the County allows non-executive FLSA exempt
20 employees to accrue compensatory time for hours worked in excess of 40 in a week
21 and to use that time as paid time off at a later date; and

22 WHEREAS, under Milwaukee County practices, overtime accrued by FLSA
23 exempt employees is held as compensatory time to be used as time off or to be paid
24 upon termination of employment at the wage rate in effect for the employee at that
25 time; and

26 WHEREAS, since the beginning of 2012, FLSA-exempt employees accrued
27 18,131.5 hours of overtime, with a dollar value based on current wage rates of
28 approximately \$700,000; the value of that accrued time is based on the underlying
29 wage rate and increases as the wage rate increases; and

30 WHEREAS, public and private employers, including most Wisconsin counties,
31 do not provide overtime compensation for FLSA-exempt employees, although some
32 may allow exempt employees to accrue overtime for positions related to protective
33 services or health care for recruitment or retention purposes, or in recognition of
34 higher service requirements; and

35 WHEREAS, the proposed revision to the ordinance conforms Chapter 17.16 to
36 the guidelines of Federal FLSA by eliminating overtime compensation for all exempt
37 positions with the exception of Assistant Chiefs of Airport Rescue and Firefighting
38 and for health care positions as determined by the Director of Human Services; and

39 WHEREAS, the proposed revision does not change overtime compensation
40 for any non-exempt employees or employees represented by the Deputy Sheriffs
41 Association or the Milwaukee County Association of Firefighters; now, therefore,

42 BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby
43 amends Chapter 17.16 of the Milwaukee County Code of General Ordinances by
44 adopting the following:

45 **AN ORDINANCE**

46 The County Board of Supervisors of the County of Milwaukee does ordain as
47 follows:

48 **SECTION 1.** Chapter 17.16 of the General Ordinances of Milwaukee County is
49 amended as follows:

50 **17.16. - Overtime compensation.**

51 This section shall be applied in the following manner, ~~and~~ consistent with collective
52 bargaining agreements and state and federal regulations:

53 ~~(1) Employees may be assigned to overtime work provided that such overtime shall~~
54 ~~be limited to emergency conditions which endanger the public health, welfare or~~
55 ~~safety; or for services required for the protection or preservation of public property;~~
56 ~~or to perform the essential functions of a department which cannot be performed~~
57 ~~with the personnel available during normal work hours, either because of vacancies~~
58 ~~in authorized positions or because of an abnormal peak load in the activities of the~~
59 ~~department; or for other purposes which specific provision for overtime~~
60 ~~compensation has been made by the county board. Employees required to work~~
61 ~~overtime shall be compensated according to the provisions of the Fair Labor~~
62 ~~Standards Act, with the exception of certain FLSA-exempt medical positions as~~
63 ~~determined by the Director of the Department of Human Resources. as follows.:~~

64 ~~(a) Employees represented by a collective bargaining unit shall be~~
65 ~~compensated for overtime in accordance with provisions of the Fair Labor~~
66 ~~Standards Act and the respective collective bargaining agreement.~~

67 ~~(b) Employees who are not represented by a collective bargaining unit shall~~
68 ~~be compensated for overtime as follows: employees holding positions which are~~
69 ~~non-exempt from the Fair Labor Standards Act shall receive time and one-half for~~
70 ~~all hours worked over forty (40) hours per week regardless of the pay range to~~

71 which the position held is assigned. Employees holding a position exempt from
72 the Fair Labor Standards Act who are not in an executive classification shall be
73 compensated for overtime for all hours worked in excess of forty (40) hours in a
74 week on a straight time basis and may only liquidate accrued overtime as
75 compensatory time off unless approved by the DAS director of human resources
76 who shall also provide the personnel committee with quarterly reports of all
77 overtime that is paid rather than used as compensatory time off.

78 ~~(c) — Employees holding positions authorized on a seasonal basis shall receive~~
79 ~~time and one half for all hours worked in excess of forty (40) hours per week.~~

80 ~~(d) — Unless a collective bargaining agreement deems otherwise, an appointing~~
81 ~~authority may approve payment, or the accrual of compensatory time, for~~
82 ~~overtime. However, no employee may accrue more than two hundred forty (240)~~
83 ~~hours of compensatory time, unless permitted by the provisions of the Fair Labor~~
84 ~~Standards Act.~~

85 ~~(e) — Employees holding positions which are covered by the annual work year~~
86 ~~who are eligible for time and one half overtime shall receive payment for the half~~
87 ~~time portion of the overtime and shall accrue the straight time portion of the~~
88 ~~overtime as compensatory time, up to a maximum of two hundred forty (240)~~
89 ~~hours of compensatory time, after which all overtime shall be paid.~~

90 ~~(f) — Elected officials, members of boards and commissions, and employees~~
91 ~~compensated on a per diem, per call or per session basis shall not be~~
92 ~~compensated for overtime.~~

93 ~~(g) — Employees included in the executive compensation plan are to be~~
94 ~~considered salaried employees and therefore are not eligible for accrual of~~
95 ~~compensatory time or payment of overtime. Executive level employees shall be~~
96 ~~expected to work sufficient hours to perform their assigned duties effectively.~~

97 ~~(h) — Unless overtime is required in accordance with the provisions of the Fair~~
98 ~~Labor Standards Act, employees shall not receive overtime for hours worked, or~~
99 ~~credited, in excess of eight (8) hours per day or forty (40) hours per week, if such~~
100 ~~overtime is due to holding dual employment status.~~

101 ~~(i)(2) — Notwithstanding subsection 17.16(1)(b), employees holding the position of~~
102 ~~assistant chief of airport rescue and firefighting shall be compensated for~~
103 ~~overtime accrued only after the two hundred and sixtieth hour worked in a thirty-~~
104 ~~five-day pay cycle and may only liquidate accrued overtime as compensatory~~
105 ~~time off unless approved by the DAS director of human resources.~~

106 ~~(2) — Under the conditions specified for emergency overtime, employees may~~
107 ~~be permitted to work on holidays or during vacation periods without compensatory~~
108 ~~time and receive double time for each day so worked provided that only the hours~~

109 actually worked on each of these days shall be considered in any computation of
110 overtime for the biweekly period in which they occurred; except that

111 (a) — ~~Physicians and psychiatrists employed in the classified service shall~~
112 ~~receive time and one-half for each holiday so worked, if such compensation is so~~
113 ~~authorized by the provisions of section 17.36~~

114 ~~(3) — No payment shall be made for overtime unless funds have been provided~~
115 ~~for such payment in the appropriation for personal services or unless a surplus~~
116 ~~exists in such appropriation, by reason of vacancies and turnover in authorized~~
117 ~~positions.~~

118 ~~(4) — The director of human resources may review the time records submitted~~
119 ~~by the departments for the purpose of determining the extent to which overtime is~~
120 ~~being worked and compensation time allowed; and may require the heads of~~
121 ~~departments to submit reports, supplementary information or other data relative to~~
122 ~~the need for overtime work; may investigate the cause and justification for such~~
123 ~~overtime; and may prescribe such rules or regulations as in his/her opinion are~~
124 ~~necessary to control and restrict overtime to emergency conditions. The director is~~
125 ~~further empowered to recommend changes in procedure or administrative practices~~
126 ~~which in his/her opinion will eliminate the need for overtime work, and to report to the~~
127 ~~appropriate committee of the county board instances in which the department head~~
128 ~~refuses to comply with the recommendations.~~

129 ~~(5) — Upon the earlier of the legal effective date of 2011 Wisconsin Act 10, or~~
130 ~~the legal effective date of a substantially similar state law that grants Milwaukee~~
131 ~~County the authority, in the same manner as 2011 Wisconsin Act 10, to take the~~
132 ~~following action, the provisions of subsections 17.16(1) — (4) shall also apply to~~
133 ~~employees represented by the American Federation of State, County and Municipal~~
134 ~~Employees District Council 48 in the same manner that those sections apply to~~
135 ~~nonrepresented employees, notwithstanding any bargaining unit representation by,~~
136 ~~or any collective bargaining agreement with, American Federation of State, County~~
137 ~~and Municipal Employees District Council 48, or any language to the contrary in~~
138 ~~subsections (1) — (4) above.~~

139 ~~(6) Upon the earlier of the legal effective date of 2011 Wisconsin Act 10, or the legal~~
140 ~~effective date of a substantially similar state law that grants Milwaukee County the~~
141 ~~authority, in the same manner as 2011 Wisconsin Act 10, to take the following~~
142 ~~action, or January 1, 2012, whichever is later, the provisions of~~
143 ~~subsections 17.16(1) — (4) shall also apply to employees represented by District No.~~
144 ~~10 of the International Association of Machinists and Aerospace Workers; the~~
145 ~~Technicians, Engineers and Architects of Milwaukee County; the Federation of~~
146 ~~Nurses and Health Professionals; the Building Trades of Milwaukee County and the~~
147 ~~Association of Milwaukee County Attorneys, in the same manner that those sections~~
148 ~~apply to nonrepresented employees, notwithstanding any bargaining unit~~

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~~representation by, or any collective bargaining agreement with, those bargaining units, or any language to the contrary in subsections (1)–(4) above.~~

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SECTION 3. The provisions of this ordinance shall be effective upon passage and publication.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: May 24, 2013

Original Fiscal Note

Substitute Fiscal Note

SUBJECT: A Resolution/Ordinance revising Chapter 17.16 relating to overtime compensation for Fair Labor Standards Act (FLSA) exempt employees.

FISCAL EFFECT:

- | | |
|--|--|
| <input type="checkbox"/> No Direct County Fiscal Impact | <input type="checkbox"/> Increase Capital Expenditures |
| <input type="checkbox"/> Existing Staff Time Required | <input type="checkbox"/> Decrease Capital Expenditures |
| <input type="checkbox"/> Increase Operating Expenditures
(If checked, check one of two boxes below) | <input type="checkbox"/> Increase Capital Revenues |
| <input type="checkbox"/> Absorbed Within Agency's Budget | <input type="checkbox"/> Decrease Capital Revenues |
| <input type="checkbox"/> Not Absorbed Within Agency's Budget | |
| <input checked="" type="checkbox"/> Decrease Operating Expenditures | <input type="checkbox"/> Use of contingent funds |
| <input type="checkbox"/> Increase Operating Revenues | |
| <input type="checkbox"/> Decrease Operating Revenues | |

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure		
	Revenue		
	Net Cost		
Capital Improvement Budget	Expenditure	\$0	\$0
	Revenue	\$0	\$0
	Net Cost	\$0	\$0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. ¹ If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. The proposed action would revise Chapter 17.16 of the County Ordinances to eliminate overtime compensation for most FLSA exempt employees. This change will not apply to overtime provisions for FLSA-Non-exempt classifications.

B. In 2012, FLSA exempt employees accrued 12,998.5 hours of overtime, with a corresponding dollar value of approximately \$510,000 at current rates, with the value increasing as underlying wage rates increase. Due to County pay policies, the direct cost of the accrued time is not realized until cash payment for accrued time is made, generally at separation. Since employees are able to use accrued time throughout the year, it is necessary to assume that the true cash liability would be less than \$510,000. However, this action would completely eliminate any future accrued liability to the County.

C. There are no direct budgetary implications for 2013 for this action. For 2014, departments may be able to reduce budgeted overtime expenses based on the number of FLSA-exempt staff who have accrued overtime. A precise figure could not be determined at this time.

D. No additional assumptions were made to provide the information on this form.

Department/Prepared By Human Resources/ Ceschin _____

Authorized Signature _____



Did DAS-Fiscal Staff Review? Yes No

Did CDBP Review?² Yes No Not Required

¹ If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

² Community Business Development Partners' review is required on all professional service and public work construction contracts.