

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: July 12, 2013

Original Fiscal Note

Substitute Fiscal Note

SUBJECT: Authorization to amend Chapter 17.16 of the Milwaukee County Code of General Ordinances relating to Overtime Compensation for Most Fair Labor Standard Act Exempt Employees (Note this is a supplemental fiscal note from the Office of the Comptroller.)

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		
	Revenue		
	Net Cost		

***The annual savings of this policy has been calculated by the Office of the Comptroller and is estimated to be \$175,582. Since these expenditures are typically not budgeted, they are not included in the table above.**

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.

Proposed Legislation

The Department of Human Resources is requesting to amend Milwaukee County Code of General Ordinances to terminate the current practice of allowing accrual of and/or payment for overtime earned by Fair Labor Standard Act (FLSA)-exempt employees. At Milwaukee County, FLSA-exempt employees are professional and managerial employees, including Parks community center managers and park coordinators, Zoo curators, departmental administrative assistants (NR), departmental coordinators and supervisors, correctional managers, psychologists, psychiatrists, and Sheriff's deputy lieutenants and captains. This is not an exhaustive list, but a sample of the types of positions in departments that are exempt from FLSA.

Per County Ordinance, these staff may accrue, on a one-for-one basis, overtime hours for every hour worked in excess of 40 hours in a week. (Note that assistant chiefs of airport rescue and firefighting (ACARFs) are eligible for overtime after 260 hours worked in a 35-day pay cycle, which based on their schedule, is the equivalent of overtime after 40 hours.) The ordinance further states that payment of overtime can only occur upon the approval of the Director of Human Resources, which may be paid in cash in lieu of accrual. However, at the time of an employee's separation from employment or transfer to the unclassified service, the accrued overtime becomes due and payable to the employee.

Should this request be approved, only ACARFs and doctors at the Behavioral Health division would be allowed to accrue for or be paid for hours worked over 40 in a week. All other FLSA-

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.

exempt staff who work over 40 hours in a week would no longer be allowed to accrue for or be compensated for overtime hours.

Direct Fiscal Impact

In 2012, all FLSA-exempt employees eligible for overtime worked 15,428.1 hours of overtime, with a dollar value of \$711,071.04. The table below shows the total hours accrued or paid under the current policy of accruing straight time overtime for hours worked in excess of 40 in a week.

Overtime Paid/Accrued at Time Earned					
	New Policy	2012	2012	2012	2012
	Status	OT Hours Accrued	OT Hours Paid	Total OT Hours	Total OT Dollars
1) Asst Chief of Airport Rescue and Firefighting	Status Quo	2.0	884.0	886.0	\$ 28,811.46
2) BHD Medical Staff	Status Quo	719.2	2198.6	2915.8	\$ 276,587.79
3) Other Staff Approved for Overtime Payout	Eliminate OT	0.0	1070.4	1070.4	\$ 28,184.28
4) Other Staff Allowed Accrual Only	Eliminate OT	10542.9	13.0	10555.9	\$ 379,707.51
Total		11264.1	4164.0	15428.1	\$ 711,071.04

Table 1 -- Overtime Paid/Accrued at Time Earned

Any direct fiscal impact is explainable in four buckets. These buckets include an estimate based on the total accrued overtime hours paid at separation and total overtime hours paid out at the time earned, further broken down by those affected by the policy change and those unaffected. This is illustrated below:

	OT Paid When Earned	OT Paid at Separation
BHD Docs/ACARF	Status Quo	Status Quo
All Other FLSA-Exempt Staff	Eliminated	Eliminated

Overtime Paid when Earned:

One direct fiscal cost associated with overtime is that which is paid when earned. The practice of paying overtime when earned was terminated for most employees in 2009. However, there remains a small number of FLSA-exempt individuals allowed payment for overtime when earned. The County will receive a direct fiscal savings for those no longer eligible for this payment under the new policy.

Overtime Paid at Separation:

Another direct fiscal cost associated with overtime is that which is paid at separation. Although the 2009 policy terminated payment for overtime when earned for most employees, it did not terminate the accrual of overtime hours for hours worked in excess of 40. Therefore, for each hour worked, an employee may bank an hour of overtime. If this overtime is not used as off-time, it is carried forward as a liability until it is either 1) used as off-time or 2) paid at separation. This carry forward or accrual of overtime hours has been increasing since the 2009 policy was implemented. The County will not achieve savings for the current liability as it is payable at any time, but will avoid any additional costs associated with an increasing accrued liability in future years. This results in a direct fiscal savings for those no longer eligible for this accrual under the new policy.

FLSA-Exempt Employees No Longer Eligible For Overtime Compensation

The following two buckets refer to staff that will lose overtime privileges in its entirety. This includes all FLSA-exempt staff except BHD doctors and ACARFs. The total number of employees currently affected by this policy is 437. For 2012, only 203 of those employees received payment for or accrual of overtime hours.

Overtime Paid When Earned:

Within this bucket, the new policy would affect those employees currently allowed payment for overtime when earned. Overtime earned and paid to the employees in this bucket was \$29,939 in 2012. The proposed policy completely eliminates this payment and provides a direct savings annually of \$29,939.

Overtime Paid at Separation:

For future years, the County will no longer accrue for overtime earned during the year for payment in future years. During 2012, approximately 3,358 hours were added to the accrued liability for a dollar value of \$145,643 as shown below.

Accrued Liability - FLSA Exempt Employees No Longer Eligible For Overtime Compensation			
		Hours	Dollars
1	Beg Balance Accrd OT (as of 1/1/12)	16,430.4	\$ 638,014.00
2	Total Overtime for 2012	11,626.3	\$ 407,891.79
3	Paid to Exempted	(1,083.4)	\$ (29,939.36)
4	Paid at Separation	(961.6)	\$ (32,724.70)
5	Used as Off-Time	(6,223.8)	\$ (199,585.08)
6	Subtotal	3,357.5	\$ 145,642.65
7	Ending Bal Accrd OT (as of 12/31/12)	19,787.9	\$ 783,656.65

Of the current year overtime earned (11,626 hours), 1,083 hours were paid when earned and 6,224 hours were used as off-time. In total, this results in an annual accrual increase of \$145,643 which would be a direct savings in future years under the proposed policy as no additional liability would be incurred.

The County's current policy implemented in 2009 directly contributes to the increase in overtime liability over the past five years. Because a majority of employees are no longer eligible for payment of overtime when earned, they will accrue those hours until they are used or paid at separation. A history of the accrued liability is shown below.

Accrued Liability History - FLSA-Exempt Employees No Longer Eligible For Overtime Compensation			
		Hours	Dollars
	Balance - 12/31/2009	9,914.2	\$ 388,161.00
	Balance - 12/31/2010	12,880.6	\$ 489,809.00
	Balance - 12/31/2011	16,430.4	\$ 638,014.00
	Balance - 12/31/2012	19,787.9	\$ 783,656.65

With respect to the County's long-term liability under the proposed legislation, the County's future liability would be reduced to zero for this bucket at some point in the future. This would either occur as employees use accrued overtime as off-time or as the County pays out these hours at separation. With regards to the actual payout at separation, the County paid out \$32,725 in 2012. It is reasonable to assume that a similar amount would continue to be paid in future years until the liability was completely eliminated for this bucket.

It is notable that eliminating overtime for FLSA-exempt staff is not the only mechanism to eliminate or reduce the accrued liability. This accrued liability could be eliminated or reduced through management policies concerning the use of overtime. Management could implement policies in which accrued balances must be used in a certain time period thereby ensuring the use of accrued overtime as off-time; a use-it-or-lose-it policy could be adopted; or a cap on the number of hours that are accruable could be implemented.

FLSA-Exempt Employees Who Remain Eligible for Overtime Compensation

The following two buckets refer to staff that will retain overtime privileges as they currently exist. This includes only BHD doctors and ACARFS. The total number of employees exempted by the proposed policy at present is 47. For 2012, only 26 of those employees received payment for or accrual of overtime hours in this bucket.

Overtime Paid When Earned:

The proposed legislation would continue to allow BHD doctors and ACARFs to be paid for overtime earned if exempted by the Director of Human Resources as they currently are. Overtime earned and paid to the employees was \$236,695 in 2012 and would be continue to be payable under the new policy. The proposed policy retains the liability for this bucket and maintains the current cost for future years of \$236,695 under the proposed policy.

Overtime Paid at Separation:

For future years, the County will continue to accrue for overtime earned during the year for payment in future years for this bucket. During 2012, approximately 176 hours were added to the accrued liability for a dollar value of \$21,075 as shown below.

Accrued Liability - FLSA-Exempt Employees Who Remain Eligible for Overtime Compensation			
		Hours	Dollars
1	Beg Balance Accrd OT (as of 1/1/12)	1,355.0	\$ 124,505.00
2	Total Overtime for 2012	3,801.8	\$ 303,179.25
3	Paid to Exempted	(3,080.6)	\$ (236,694.98)
4	Paid at Separation	(193.9)	\$ (17,613.37)
5	Used as Off-Time	(351.0)	\$ (27,796.36)
6	Subtotal	176.3	\$ 21,074.54
7	Ending Bal Accrd OT (as of 12/31/12)	1,531.3	\$ 145,579.54

Of the current year overtime earned (3,802 hours), 3,081 hours were paid when earned and 351 hours were used as off-time. In total, this results in an annual accrual increase of \$21,075 which would be maintained as a direct cost in future years.

It is reasonable to assume that these employees will accrue a similar number of hours until they are paid at separation. With respect to the County's long-term liability under the proposed legislation, the County's future liability would therefore continue to grow for this bucket by approximately \$21,075 annually. A history of the accrued liability is shown below.

Accrued Liability History - FLSA-Exempt Employees Who Remain Eligible for Overtime Compensation			
		Hours	Dollars
	Balance - 12/31/2009	536.8	\$ 47,562.00
	Balance - 12/31/2010	774.2	\$ 68,974.00
	Balance - 12/31/2011	1,355.0	\$ 124,505.00
	Balance - 12/31/2012	1,531.3	\$ 145,579.54

Direct Budgetary Savings

On a budgetary basis, it is difficult to predict any savings. Since overtime is typically accrued for and not paid out, departments tend not to budget for overtime for FLSA exempt employees.

Department/Prepared By CJ Pahl

Authorized Signature Scott B. Manske 

Did DAS-Fiscal Staff Review? Yes No

Did CDBP Review?² Yes No Not Required