

**CITY OF NEW ORLEANS  
CHIEF ADMINISTRATIVE OFFICE**

POLICY MEMORANDUM NO. 70 (R)

April 30, 1990

**TO:** All Departments, Boards, Agencies and Commissions  
**FROM:** Stewart Walker, Chief Administrative Officer  
**SUBJECT:** APPLICATION OF THE FAIR LABOR STANDARDS ACT (FLSA) TO  
GOVERNMENTAL ENTITIES

1. **PURPOSE**

This memorandum is reissued to note the increase in the hourly minimum wage. Section 9, **DISTRIBUTION OF POSTERS**, and Section 10, **INQUIRIES**, have been revised.

2. **HISTORY**

- a. On February 19, 1985, the U.S. Supreme Court in Garcia v. San Antonio Municipal Transit Authority (SAMTA) reversed its 1976 National League of Cities v. Usery decision by applying the Fair Labor Standards Act (FLSA) to state and local governments. This decision now subjects state and local governments to the FLSA in areas of traditional functions (fire fighting, law enforcement, etc.,) which were not previously covered by the FLSA.
- b. The U.S. Congress adopted legislation which amended the FLSA on November 13, 1985, (PL99-150). Liability for a municipality commenced on April 15, 1986.
- c. The U.S. Department of Labor will enforce the provisions of the FLSA.

3. **GENERAL INFORMATION ABOUT FLSA.**

- a. Overtime must be paid only after 40 hours of actual working time or actual time that the employee is required to be at the job site by the employer in a work period. Overtime will not be paid after eight (8) hours in a workday. The various types of leaves with pay, such as sick leave, do not count toward actual working time for the payment of overtime at the FLSA prescribed rates. Hours actually worked on a holiday count toward the computation of overtime at the completion of the maximum allowable hours in the respective work period.
- b. A work period is defined as any seven (7) consecutive day, 168-hour period. States and local governments may opt for a "7(k)" exemption for law enforcement and fire protection personnel. A "7(k)" exemption allows the employer to select longer work periods than a seven (7) consecutive day period, and to pay overtime after personnel

work past the maximum number of allowable regular time hours prescribed in the statute.

- c. An employee's work period cannot be changed on a weekly basis.
- d. The FLSA provides criteria for the divisions of the employees' classifications into exempt and non-exempt categories. The Civil Service department designates the Classified Service classifications into these categories. An exempt (EAP) employee is not subject to the FLSA guidelines.
- e. Volunteer workers generally are not covered by the FLSA.
- f. Seasonal employees are exempt from the FLSA if they are employed in a program activity lasting seven (7) months or less or if six (6) months of receipts from the activity total 1/3 of what they were for the six (6) month period of predominant usage. Employees whose duties assist in the administration of seasonal programs are subject to the FLSA since they are employed on a continuous basis.
- g. The City will not be liable under the FLSA for contractors' employees.

4. **PENALTIES FOR VIOLATIONS.**

The FLSA provides penalties for the employer's violations of the FLSA.

5. **PROCEDURES.**

- a. Appointing authorities must designate the respective work periods of all employees who are not engaged in fire protection or law enforcement areas. Work periods need not commence on a Sunday. Appointing authorities are allowed to change the daily hours of work in a work period in order to operate the department/agency efficiently.
- b. The fire protection and law enforcement personnel's work periods will consist of consecutive 28-day periods as outlines in Section 207(k) of the FLSA. Fire protection personnel will be paid overtime when actual working hours exceed 212 hours in a work period. Law enforcement personnel will be paid overtime when actual work hours exceed 171 hours in a work period.
- c. The FLSA requires the record keeping of actual hours worked for non-exempt personnel. Every department, board, agency and commission should establish internal procedures for the daily record keeping of all hours worked by non-exempt personnel, particularly for those employees whose RAMS time cards reflect the employees' salary payments other than on an hourly basis. Such procedures may use sign-in/sign-out sheets and/or time clocks.

RAMS time cards will act as primary documentation for the City in order to comply with the record keeping provisions of the FLSA. All non-exempt personnel except route personnel, will record all hours worked on a daily basis on their RAMS time cards. This procedure will affect some departments which use different methods of marking the RAMS time cards.

- d. RAMS time cards of route personnel will need manual adjustments if non-exempt personnel work past 40 hours in a work period. Departments employing this type of employee will be responsible for monitoring their employees' working hours for payment of overtime.

6. **OVERTIME PAYMENT-PROHIBITION COMPENSATORY TIME/STAND-BY PAY**

Although the FLSA permits compensatory time in lieu of monetary compensation for overtime, the City's policy will not use compensatory time as a means of overtime payments to non-exempt personnel. Nevertheless, appointing authorities may change days of work, and hours of work only within an employee's workweek. The provisions for stand-by pay are no longer applicable to City employees.

7. **ADHERENCE TO WORKING HOURS.**

- a. Appointing authorities are to insure that non-exempt employees work only their designated hours specified for performance of the departmental operations. An employee will be paid for overtime only if the supervisor directs the employee to work hours in excess of the employee's normally established hours in a work period. Supervisors should monitor that the employees' performance of productive work occurs only during the employees' regularly established hours.
- b. Breaks and lunch periods should be uninterrupted unless departmental operations necessitate different arrangements.

8. **EXEMPT AND NON-EXEMPT EMPLOYEES.**

- a. An employee can determine if his/her job classification is exempt or non-exempt by referring to the published EAP listings in Policy Memorandum NO. 38 in the Chief Administrative Office's Policy Memorandum Manual, issued in October, 1985. (That policy memorandum was designated formerly as Policy Memorandum NO. 156, issued January 21, 1982).
- b. Classified Service Personnel can contact the Civil Service Department Classification and Pay Division, for additional information on current exempt (EAP) designations. Personnel whose classes of work are listed in the Unclassified Service Pay Plan of the

City of New Orleans can contact the Chief Administrative Office, Personnel Management and General Services Division, for additional information on current exempt (EAP) designations.

9. **DISTRIBUTION OF POSTERS/NEW MINIMUM WAGE**

- a. Effective April 1, 1990, the hourly minimum wage was increased from \$3.35 hourly to \$3.80 hourly. Minimum wage provisions are governed by the Fair Labor Standards Act (FLSA). This law requires employers to display a minimum wage notice to employees where they can readily see it.
- b. A photocopy of the FLSA notification to the employee is enclosed. This poster notification must be placed in a conspicuous place which is readily accessible and which can be read by all employees. Full size posters can be obtained from the Personnel Management and General Services Division of the Chief Administrative Office.
- c. Old minimum wage posters should be removed immediately. Either a photocopy of the attachment to this amendment or a full size poster should be posted as soon as possible upon receipt of this memorandum.

10. **INQUIRIES.**

All questions concerning this policy memorandum should be addressed to the Personnel Management and General Services Division of the Chief Administrative Office at 565-6550, 565-6513, or 565-6511. All questions on the FLSA's Provisions which are affected by the Civil Service Rules should be addressed to the Civil Service Department.

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**Stewart Walker**  
**Chief Administrative Officer**

**SW/JMR/snw**

**Attachment**