**Overtime and Compensatory Time, LMC Model Policy**

*League models are thoughtfully developed by our staff for a city’s consideration. Models should be customized as appropriate for an individual city’s circumstances in consultation with the city’s attorney. Helpful background information on this model may be found in the* [Compensation Chapter](https://www.lmc.org/resources/hr-reference-manual-chapter-4-compensation/) *of the Human Resources Reference Manual.*

**This icon marks places where the city must customize the model. They offer additional provisions, optional language, or comments for your consideration. The icon, and language you do not wish to include, should be deleted from this model before use. Make other changes, as needed, to customize the model for your city.**

City of \_\_\_\_\_\_\_, Minnesota

Overtime and Compensatory Time Policy

The city of \_\_\_\_\_\_\_ has established this overtime policy to comply with applicable state and federal laws governing accrual and use of overtime. The \_\_\_\_\_\_\_ will determine whether each employee is designated as “exempt” or “non-exempt” from earning overtime. In general, employees in executive, administrative and professional job classes are exempt; all others are non-exempt.

*Insert the title of the position responsible for determination of status, such as City Administrator, Human Resources Director, or City Clerk.*

**Non-Exempt (Overtime-eligible) Employees**

All overtime-eligible employees will be compensated at the rate of time and one-half for all hours worked over 40 in one workweek. Vacation, sick leave, Earned Sick and Safe Time and paid holidays do not count toward “hours worked.” Compensation will take the form of either time and one-half pay or compensatory time. Compensatory time is paid time off at the rate of one and one-half hours off for each hour of overtime worked.

The workweek is \_\_\_\_\_\_\_.

*A workweek may be stated “usually Sunday morning from 12:00 a.m. to Saturday evening at 11:59 p.m.”. It can be any recurring 7-day period. Different work weeks can be established for different departments or different job classes.*

The employee’s supervisor must approve overtime hours in advance. An employee who works overtime without prior approval may be subject to disciplinary action.

Overtime earned will be paid at the rate of time and one-half on the next regularly scheduled payroll date, unless the employee and the \_\_\_\_\_\_\_ mutually agree in advance that the overtime will be banked as compensatory time in lieu of payment.

*Insert “department head” or “administrator”. This advance agreement can take the form of the employee checking a box on his timesheet indicating he would prefer to receive compensatory time rather than paid overtime for the overtime hours worked on that payroll period.*

 **Note:** *To avoid constructive receipt implications, consider the following language options:*

Option A: [However, the employee may make an irrevocable election prior to the beginning of a year to have all overtime earned in the year to be recorded as compensatory time in lieu of payment.]

Option B: [However, the employee may make an election prior to working the overtime hours to have future overtime earned to be recorded as compensatory time in lieu of payment. Such an election is irrevocable with respect to overtime hours worked but may be changed for future overtime hours.]

Option C: [However, the employee may indicate on his/her timesheet that the overtime earned is to be recorded as compensatory time in lieu of payment. In this case, all compensatory earned during a year will be paid to the hourly by the end of the year at the hour pay rate the employee is earning at that time.]

The maximum compensatory time accumulation is \_\_\_\_\_\_\_ unless a lower amount is established by the \_\_\_\_\_\_\_. Once an employee has earned [for example, 40] hours of compensatory time in a calendar year, no further compensatory time may accrue in that calendar year. All further overtime will be paid.

*The League recommends keeping the time accumulation fairly low, for example 40 hours. The legal maximum is 240 hours for most job classes. Insert the title of the person who has the authority to set a lower amount such as “department head”, or “administrator”.*

Employees may request and use compensatory time off in the same manner as other leave requests.

 ***Note:*** *For cities, without any elective cash outs of accrued comp. time, could consider the following language:*

All compensatory time will be marked as such on official timesheets, both when it is earned and when it is used. The \_\_\_\_\_\_\_ will maintain compensatory time records. All compensatory time accrued will be paid when the employee leaves city employment at the hourly pay rate the employee is earning at that time.

*Insert the title of the appropriate record-keeper, for example “Finance Department”, “Clerk”, or “Treasurer”.*

**Exempt (non-overtime-eligible) Employees**

Exempt employees are expected to work whatever hours are necessary to meet the performance expectations outlined by their supervisors. Generally, to meet these expectations, , an exempt employee will need to work 40 or more hours per week. Exempt employees do not receive extra pay for the hours worked over 40 in one workweek.

Exempt employees are paid on a salary basis. This means at they receive a predetermined amount of pay each pay period and are not paid by the hour.

Their pay does not vary based on the quality or quantity of work performed, and they receive their full weekly salary for any week in which any work is performed. All exempt employees will be paid a salary of at least $684 per week; however, exempt computer employees can be paid either $684/week or $27.63 an hour. [Reference:<https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime> ]

The city of \_\_\_\_\_\_\_ will only make deductions from the weekly salary of an exempt employee in the following situations:

* The employee is in a position that does not earn vacation or personal leave and is absent for a day or more for personal reasons other than sickness or disability;
* The employee is in a position that earns sick leave, receives a short-term disability benefit or workers’ compensation wage loss benefits and is absent for a full day due to sickness or disability, but he is either not yet qualified to use the paid leave or he has exhausted all of his paid leave.
* The employee is absent for a full workweek, and, for whatever reason, the absence is not charged to paid leave (for example, a situation where the employee has exhausted all of his or her paid leave, or a situation where the employee does not earn paid leave).
* The very first workweek or the very last workweek of employment with the city in which the employee does not work a full week. In this case, the city will prorate the employee’s salary based on the time actually worked.
* The employee is in a position that earns paid leave and is absent for a partial day due to personal reasons, illness, or injury, but:
	+ Paid leave has not been requested or has been denied;
	+ Paid leave is exhausted;
	+ The employee has specifically requested unpaid leave;
* The employee is suspended without pay for a full- or partial-day for violating safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees.
* The employee is suspended without pay for a full day or more for disciplinary reasons for violations of any written policy that is applied to all employees.
* The employee takes unpaid leave under the Family and Medical Leave Act (FMLA).
* The city of \_\_\_\_\_\_\_ may for budgetary reasons implement a voluntary or involuntary unpaid leave program and, under this program, make deductions from the weekly salary of an exempt employee. In this case, the employee will be treated as non-exempt for any workweek in which the budget-related deductions are made.

The city of \_\_\_\_\_\_\_ will not make deductions from pay due to exempt employees being absent for jury duty or attendance as a witness but will require the employee to pay back to the city any amounts received by the employee as jury fees or witness fees.

An employee who believes an improper deduction has been made to their salary should immediately report this information to their direct supervisor or to the \_\_\_\_\_\_\_ .

*Insert the appropriate title, such as “Human Resources Department”, “City Administrator”, or “City Clerk”, etc.*

If the city inadvertently makes an improper deduction to the weekly salary of an exempt employee, the city will promptly investigate and if it is determined that an improper deduction has occurred, the employee will be promptly reimbursed. The city will also make appropriate changes to comply in the future.

**Requirement to Work Overtime**

All employees, in all departments, are required to work overtime as requested by their supervisors as a condition of continued employment. Refusal to work overtime may result in disciplinary action. Supervisors will make reasonable efforts to balance the personal needs of their employees when assigning overtime work.

**Union Agreements**

Where there is a conflict between this policy and an agreement with an employee union, the union agreement shall take precedence. However, where the union agreement does not address a specific practice or issue, this policy shall take precedence.

**Improper Deduction and Overpayment Policy**

Refer to Improper Deduction and Overpayment Policy within City Personnel Policy

*[****Note:*** *For model or language, refer to Section 8.03 in the League’s Model Personnel Policy: https://www.lmc.org/media/document/1/personnelpolicytemplate.docx]*

Adopted \_\_\_\_\_\_\_

*Insert the date the policy was adopted.*