



Work Session Meeting Agenda City Council

Mora City Hall
101 Lake St. S
Mora, MN 55051

Tuesday, March 19, 2024

5:00 PM

Mora City Hall

1. Call to Order

2. Roll Call

- Mayor Jake Mathison
- Councilmember Sadie Broekemeier
- Councilmember Kyle Shepard
- Councilmember Dave Youngquist
- Mayor Pro Tem Jody Anderson

3. City Councilmember Orientation – Good Governance with Campbell Knutson

4. Dual Employee – Employee status, FLSA Overtime and employment status

5. Adjournment



MEMORANDUM

Date: March 19, 2024
 To: Mayor and City Council
 From: Mandi Yoder, Human Resources Director
 RE: Non-Exempt, Dual Role Positions in Employment

SUMMARY

The City Council will discuss a firefighter's request to reconsider a previous decision made at the October 17, 2023 council meeting, which excluded non-exempt employees from a dual role as a firefighter, unless the department can budget for and pay the overtime.

BACKGROUND

On December 5, 2023, the human resources director presented data establishing the fact that a firefighter was an employee therefore, if a full-time non-exempt employee held a dual-role position, overtime pay would be required for hours suffered/worked in the fire department.

City Attorney Leah Koch, of Campbell Knutson, has prepared a memorandum that clarifies the FLSA requirements and will review it with the councilmembers.

Mandi Yoder was tasked with researching the KCSO Reserve program, to see if there could be a similar position with the Mora Area Fire Department (MAFD). The Kanabec County HR Director conveyed the following information:

- Reserve officers are not employed by the county in other capacities, they are volunteers only.
- Reserve officers do not perform the same or similar duties as the KCSO deputies, making it possible to have a volunteer and a paid employee.
- Reserve officers receive zero (\$0.00) in compensation, they receive a uniform and may get reimbursed for mileage.

Discussion remains for corrective action for the pension credits of the exempt employee that also serves as a firefighter and currently receives credits to the Fire Relief Association retirement fund and PERA for the same hours suffered. Per MN Statute "*§424A.01: Subd. 4a. Prohibition on receipt of concurrent service credit. No firefighter may be credited with service credit in a volunteer firefighters relief association for the same hours of service for which coverage is already provided in a fund operated pursuant to chapter 353.*"

Current annual service credit reporting by the Fire Chief credits firefighters for a full year of service instead of by individual credits; this practice prevents the City from excluding PERA pay from hours suffered/worked during the scheduled workdays of Monday – Friday 8:00 am – 4:30 pm, (as is the case of the current exempt employee serving a dual role and noted on the offer letter of employment for the position), and puts the City at risk for repercussions with the Office of the State Auditor.

One solution to this could be for dual-role exempt employees to be permitted to respond to fire calls outside of the scheduled workday only.

Memorandum

Beginning April 1, 2024, the payroll clerk must implement corrective action and adjust the exempt employee's PERA contributions in the bi-weekly pay periods for any hours spent at the fire department during the employee's scheduled work hours.

*Attachments: Memo from City Attorney Leah Koch of Campbell Knutson
DOLI Wage & Hour Division Fact Sheet 8
LMC Information Memo: FLSA Police and Fire Employees, Section V.
MN OSA Statement of Position, Service Credit Determinations
MN Statute 424A.01
September 19, 2023 Council Memo
October 17, 2023 Council Memo*

MEMORANDUM



CAMPBELL KNUTSON
PROFESSIONAL ASSOCIATION

TO: MORA HUMAN RESOURCES DIRECTOR
FROM: LEAH KOCH, CITY ATTORNEY
DATE: MARCH 19, 2024
RE: FLSA, OVERTIME, AND DUAL ROLE EMPLOYEES

Questions Presented:

1. Are Mora firefighters employees according to the Fair Labor Standards Act (FLSA)?
2. Does the City of Mora owe an employee overtime pay when they work over forty hours between a firefighter position and another non-exempt City employment position?

Brief Answers:

1. Yes.
2. Yes.

Discussion:

1. Are Mora's firefighters employees or volunteers under to the Fair Labor Standards Act (FLSA)?

Per the League of Minnesota Cities Information Memo¹ on this topic:

“In situations where both the federal and the state FLSA address an issue, the employer is required to follow the law that is of greatest benefit to the employee. Since Minnesota exempts police officers and firefighters from the state minimum wage and overtime law, cities must look to federal law.”

The U.S. Department of Labor states that firefighters and other first responders are non-exempt under the FLSA and therefore are protected by the minimum wage and overtime provisions of the FLSA.²

Cities are not required to pay overtime to true volunteers. In order to qualify as a true volunteer, firefighters cannot receive anything but expenses, reasonable benefits or a nominal fee for the work they perform. 29 U.S.C. §203(e)(4)(A). A true volunteer fire department would only have the following kinds of payments or benefits: uniforms at no expense, reimbursement for uniform cleaning, meals, and transportation expenses. Due to the level of compensation paid and the reference as “paid on-call” employees many “volunteer” firefighters in Minnesota are technically employees of the City.

¹ LMC Memo “Fair Labor Standards Act (FLSA): Police and Fire Employees” <https://www.lmc.org/wp-content/uploads/documents/FLSA-Police-and-Fire-Employees.pdf>

² DOL Fact Sheet #17J <https://www.dol.gov/agencies/whd/fact-sheets/17j-overtime-first-responders>

If the Council is interested in reforming the fire department to truly be a ‘volunteer’ operation, certain policies will need to be revised in order to ensure that firefighters are not receiving more than reasonable benefits and a nominal fee for their volunteering.

2. Does the City of Mora owe an employee overtime pay when they work over forty hours between a firefighter position and another non-exempt City employment position?

Under the Fair Labor Standards Act (FLSA), an employer must pay an employee at a rate not less than one and one-half times the *regular rate of pay* for all *hours worked* over 40 in one *workweek*.³ 29 U.S.C. § 207(a)(1); 29 C.F.R. §§ 778.100-.101.

Therefore a nonexempt employee who works two jobs for same employer must be paid overtime for hours worked over 40 in a workweek.

- A. What is “regular rate of pay”?

The next question is what must be included in his “regular rate of pay.” The City pays firefighters to be “on-call” as well as to respond to calls. Under the FLSA, on-call payments are included in the regular rate of pay. 29 C.F.R. § 778.223. An employee cannot waive his or her rights under FLSA. *See generally Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697 (1946).

Regular rate of pay is “all remuneration for employment paid to, or on behalf of, the employee.” 29 U.S.C. § 207(e); *see also* 29 C.F.R. § 778.108 (regular rate is “the hourly rate actually paid the employee for the normal, nonovertime workweek for which he is employed”). It is an hourly rate. 29 C.F.R. § 778.109. The regular hourly rate is the total remuneration for employment during any workweek divided by the total number of hours actually worked during that workweek for which compensation was paid. *Id.* If an employee is employed solely on the basis of a single hourly rate, the hourly rate is the regular rate of pay. *Id.* at § 778.110(a).

- B. An employee with two City jobs may be paid one of two ways.

When an employee works at two rates of pay during one workweek, the regular rate of pay is the weighted average of the two rates. *Id.* at § 778.115. In the alternative, when an employee performs two or more kinds of work with different rates of pay, the employee may agree in advance to be paid overtime at a rate determined by the type of work that is performed during the overtime hours. 29 U.S.C. § 207(g)(2).

If a dual employee is responding to firefighting calls and is working overtime hours, that employee will be earning significantly more than the other firefighters for the same work. This can cause morale issues amongst the firefighters. The alternative to this outcome is to manage overtime so that the dual employee either works less hours at the non-firefighter position or the employee is directed to not respond to some firefighter calls.

- C. What does “hours worked” mean?

³ Employees that are employed in fire protection and law enforcement activities may have a 28 day work period. 29 U.S.C. § 207(k).

The FLSA defines “hours worked” as “the hours for which an employee is employed. . .” 29 U.S.C. § 203(o). Hours worked “ordinarily includes ‘all the time⁴ during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” 29 C.F.R. § 785.7. If an employer knows or has reason to know that an employee is working, the employer must count that time as hours worked. *Id.* at §§ 785.11-12. If the employer does not want work performed, the employer must make that known. *Id.* at § 785.13. Employers and employees may agree to more stringent terms than those in the FLSA. *See Id.* at §§ 778.316, 778.317, and 778.319. An employer need not pay overtime to an employee for working more than eight hours in one day. *Id.* at § 778.102.

The employer must total all hours worked in a workweek to determine whether overtime compensation is owed. *Id.* at § 778.103.

Conclusion:

In short, the City does not need to adopt a rule or a policy concerning these questions. The City is allowed to consider dual employment issues when hiring.

I will caution the Council and staff to not discuss a particular hiring circumstances in public meetings for data privacy reasons. The Council can discuss the concept generally.

Dual employment and issues surrounding overtime is a complicated and fact-specific inquiry that takes into account: differing pay rates, whether one position is exempt or non-exempt, number of firefighters at that time, nature of the two kinds of employment, pension credits, how pay is calculated, and how hours are counted. It is so fact-specific that I would encourage the Council to address dual employment opportunities on a case-by-case basis as each job posting and candidate will have unique facts that require the City to administer dual employment situations differently.

⁴ The FLSA does not prescribe a specific format for keeping time. *Id.* at § 516.1. Employers must maintain and preserve records of compensatory time. *Id.* at § 553.50. Time clocks are not required. *Id.* at § 785.48.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LAE

Fact Sheet #8: Law Enforcement and Fire Protection Employees Under the Fair Labor Standards Act (FLSA)

Revised March 2011

This fact sheet provides general information concerning the application of the FLSA to law enforcement and fire protection personnel of State and local governments.

Characteristics

Fire protection personnel include firefighters, paramedics, emergency medical technicians, rescue workers, ambulance personnel, or hazardous materials workers who:

1. are trained in fire suppression;
2. have the legal authority and responsibility to engage in fire suppression;
3. are employed by a fire department of a municipality, county, fire district, or State; and
4. are engaged in the prevention, control and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

There is no limit on the amount of nonexempt work that an employee employed in fire protection activities may perform. So long as the employee meets the criteria above, he or she is an employee “employed in fire protection activities” as defined in section 3(y) of the FLSA. The above criteria defines an employee that is a firefighter.

Law enforcement personnel are employees who are empowered by State or local ordinance to enforce laws designed to maintain peace and order, protect life and property, and to prevent and detect crimes; who have the power to arrest; and who have undergone training in law enforcement.

Employees engaged in law enforcement activities may perform some nonexempt work which is not performed as an incident to or in conjunction with their law enforcement activities. However, a person who spends more than 20 percent of the workweek or applicable work period in nonexempt activities is not considered to be an employee engaged in law enforcement activities under the FLSA.

Coverage

Section 3(s)(1)(C) of the FLSA covers all public agency employees of a State, a political subdivision of a State, or an interstate government agency.

Requirements

Hours of work generally include all of the time an employee is on duty at the employer's establishment or at a prescribed work place, as well as all other time during which the employee is suffered or permitted to work for the employer. Under certain specified conditions time spent in sleeping and eating may be excluded from compensable time.

The FLSA requires that all covered nonexempt employees be paid the statutory minimum wage of not less than \$7.25 per hour effective July 24, 2009.

The FLSA requires that all covered nonexempt employees be paid overtime pay at no less than time and one-half their regular rates of pay for all hours worked in excess of 40 in a workweek.

Section 13(b)(20) of the FLSA provides an overtime exemption to law enforcement or fire protection employees of a public agency that employs less than five employees during the workweek in law enforcement or fire protection activities.

Section 7(k) of the FLSA provides that employees engaged in fire protection or law enforcement may be paid overtime on a "work period" basis. A "work period" may be from 7 consecutive days to 28 consecutive days in length. For work periods of at least 7 but less than 28 days, overtime pay is required when the number of hours worked exceeds the number of hours that bears the same relationship to 212 (fire) or 171 (police) as the number of days in the work period bears to 28. For example, fire protection personnel are due overtime under such a plan after 106 hours worked during a 14-day work period, while law enforcement personnel must receive overtime after 86 hours worked during a 14-day work period.

Under certain prescribed conditions, a State or local government agency may give compensatory time, at a rate of not less than one and one-half hours for each overtime hour worked, in lieu of cash overtime compensation. Employees engaged in police and fire protection work may accrue up to 480 hours of compensatory time.

An employee must be permitted to use compensatory time on the date requested unless doing so would "unduly disrupt" the operations of the agency.

At the time of termination an employee must be paid the higher of (1) his or her final regular rate of pay or (2) the average regular rate during his or her last three years of employment for any compensatory time remaining "on the books" when termination occurs. For more information on state and local governments under the FLSA, see [Fact Sheet #7](#).

No covered employer may employ any minor in violation of the youth employment provisions of the FLSA. The Act establishes specific provisions concerning prohibited occupations and/or hours of employment of minors under age 18.

Covered employers must make, keep and preserve payroll-related records as described by regulations [29 CFR Part 516](#).

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website:

<http://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.





INFORMATION MEMO

Fair Labor Standards Act (FLSA): Police and Fire Employees

Learn about special issues in applying the FLSA to police and fire employees such as the option to define an extended workweek, FLSA application to small departments, different ceilings on accrual of compensatory time, and rules for volunteer versus paid on-call fighters.

RELEVANT LINKS:

[Minn. Stat. § 177.23, Subd. 7.](#)

[29 U.S.C. § 207\(a\).](#)
Dep't of Labor, Wage & Hour Div., [Fact Sheet #17J: First Responders and the Part 541 Exemptions Under the Fair Labor Standards Act.](#)

See LMC information memo [Fair Labor Standards Act: Determining Exempt and Non-Exempt Status.](#)

I. Administrative and executive exemptions

Police officers and firefighters are exempt from Minnesota minimum wage and the state's overtime laws. With FLSA, state provisions must be coordinated with federal law. In situations where both the federal and the state FLSA address an issue, the employer is required to follow the law that is of greatest benefit to the employee. Since Minnesota exempts police officers and firefighters from the state minimum wage and overtime law, cities must look to federal law.

Generally, employees who perform police and firefighter work will be considered non-exempt under the federal Fair Labor Standards Act (FLSA) and must receive overtime or compensatory time off unless they fall under the small police/fire department exemption discussed below.

However, certain high-ranking police and fire department employees such as police or fire chiefs, deputy chiefs, captains, lieutenants, and corporals may meet the requirements of the administrative or executive exemption. Each city should determine on a case-by-case basis whether these positions meet the requirements of those tests.

Some guidelines cities may look at to help determine whether a police or fire employee would meet those requirements include the following.

A. Police or firefighting work

Does the employee perform police or firefighting work (e.g. preventing, controlling, extinguishing fires, crime prevention, investigations, apprehending suspects, interviewing witnesses, etc.) on more than just an occasional basis? The more direct police and firefighting work performed, the less likely the employee will be considered exempt.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

B. Discretion

Is the employee dispatched to calls, or does he or she have discretion to determine whether and where his or her assistance is needed? Employees who are not dispatched to calls but have discretion to determine their own involvement are more likely to be considered exempt.

C. Managerial tasks

Does the employee meet all the requirements to be exempt under the executive or administrative exemption and primarily perform managerial tasks? Managerial tasks include:

- Evaluating performance of employees under their supervision.
- Enforcing and imposing penalties for violations of rules/regulations.
- Making recommendations as to hiring, promotion, discipline or termination.
- Coordinating and implementing training programs.
- Maintaining payroll and personnel records.
- Handling community complaints, including decisions whether to refer them to internal affairs for further investigation.
- Preparing budgets and controlling expenditures.
- Ensuring operational readiness through supervision and inspection of personnel, equipment and quarters.
- Deciding how and where to allocate personnel.
- Managing the distribution of equipment.
- Maintaining inventory of property and supplies.
- Directing operations at a crime, fire or accident scene, including deciding whether additional personnel or equipment are needed.

Employees who spend a majority of their time performing duties such as those listed above are more likely to be considered exempt.

A police or fire supervisor who directs the work of assigned staff during his or her shift but is also expected to routinely respond to dispatch calls and primarily does work investigating crimes or fighting fires is probably not going to be considered exempt.

However, a police or fire supervisor who primarily manages the department and performs administrative and office work and seldom does any work “on the street” fighting fires or investigating crime is likely to meet the qualifications to be considered “exempt.”

RELEVANT LINKS:

29 U.S.C. § 213(b)(20).

29 C.F.R. § 553.200(c).
29 C.F.R. §§ 553.211.

U.S. Dep't of Labor: Fact Sheet #8: Law Enforcement and Fire Protection Employees Under the FLSA Act.

29 U.S.C.A. § 203(y).

29 U.S.C. § 213(b)(20).

U.S. Dep't of Labor: Minimum Wage.

29 U.S.C. § 207(k).

29 C.F.R. § 553.230(c).
See Appendix A, Maximum Hours Worked Before Overtime is Earned.

II. Small police/fire departments

The FLSA provides a complete overtime (but not federal minimum wage) exemption for any city employee who performs law enforcement work if the city has fewer than five employees who perform law enforcement work during the workweek. Part-time employees and employees on leave are counted. This exemption holds true for fire protection work as well. This exemption applies on a workweek basis, so it is possible for a city to use the exemption some weeks and not others. In many cities, union contract provisions may require overtime and those provisions must be followed regardless of whether the city qualifies for the small department exemption.

This means that if you have four or fewer than four law enforcement officers, the city does not have to pay overtime. You must be sure your officers receive a minimum of \$7.25 per hour (federal minimum wage) for all hours worked in a work period.

In order to qualify for the small city fire department FLSA overtime exemption, fire staff must first qualify as a fire protection employee. As the DOL Fact Sheet linked to the left notes, staff must be:

- trained in fire suppression;
- have the legal authority and responsibility to engage in fire suppression;
- employed by a fire department of a municipality, county, fire district, or State; and
- engaged in the prevention, control and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

Generally speaking, even cities with four or fewer fire department staff, will want to ensure their firefighters are paid at least the federal minimum wage rate of \$7.25 per hour for all hours on duty during the work period. Please also refer to Section V of this memo on volunteers.

III. Extended workweek exemption; “7(k)” or “207(k)”

A city can establish a workweek for police and firefighters of anything between seven and 28 days, but the period must be regularly recurring. The police or fire protection employee would then earn time and one-half overtime only for those hours that exceed the limits under their workweek schedule.

RELEVANT LINKS:

[29 C.F.R. § 553.51.](#)

[29 C.F.R. § 553.224.](#)

[29 C.F.R. § 553.210.](#)
[29 C.F.R. § 553.211.](#)

[29 U.S.C. § 207\(o\)\(3\)\(A\).](#)
U.S. Dep't of Labor: Fact Sheet #8: [Law Enforcement and Fire Protection Employees Under the FLSA Act.](#)

[29 C.F.R. § 553.232.](#)

[29 C.F.R. § 553.21.](#)

[Christensen v. Harris County](#), 529 U.S. 576, 120 S.Ct. 1655 (2000).

[29 U.S.C. § 207\(o\)\(5\).](#)

[29 C.F.R. § 553.21.](#)

[29 U.S.C. § 203\(e\)\(4\)\(A\).](#)

[DOL Opinion Letter 2007-3NA](#), September 17, 2007.

The workweek does not have to be the same as the pay period, but there must be a notation on the payroll records that shows the workweek for each employee and indicates the length of the period and the starting time. Different workweeks may be established for different positions or groups of employees as long as each employee group is told what their workweek is, and it is documented.

Dispatchers, clerks, secretaries, and janitors of police and fire departments are on a 40-hour work week with time and one-half for all hours over 40 hours per week. Thus, they do not qualify for the law enforcement officers or firefighters “7(k)” or “207(k) work period” hours exemption.

IV. Compensatory time

Police and firefighters may accrue up to 480 hours of compensatory time (equivalent to 320 hours worked), as opposed to the 240-hour limit for other employees. After an employee has accrued maximum compensatory time, the employee must be paid in cash for overtime worked. If the employer pays cash wages for overtime hours rather than in compensatory time, the wages must be paid at one and one-half times the employee’s regular rate of pay.

An employee is permitted to use accrued comp time within a reasonable period after requesting use, provided doing so would not unduly disrupt the operations of the employer. The Supreme Court of the United States has held a public employer may require its employees to use their accumulated compensatory time. Although the FLSA limits an employer's ability to prohibit the use of compensatory time when requested, that does not restrict the employer's ability to require employees to use compensatory time.

In most cases, cities should set much lower limits on compensatory time accrual than the 480-hour max. Since cities need to have constant coverage in police and fire services, it is difficult to give employees time off without calling in another employee to cover the shift, often at overtime rates. Also, compensatory time earned in lieu of overtime must be paid when an employee leaves the city, which is usually at a higher rate of pay.

V. Volunteer and paid on-call firefighters

Cities are not required to pay minimum wage or overtime to true “volunteers.” However, in order to qualify as volunteers, individuals cannot receive anything but “expenses, reasonable benefits or a nominal fee” for the work they perform. For example, a fire department might provide uniforms at no expense or reimburse volunteers for their uniform cleaning, meals, and transportation expenses.

RELEVANT LINKS:

29 C.F.R. § 553.106(e).

Generally, pension benefits provided to volunteer firefighters are also viewed by the Department of Labor (DOL) as “reasonable.”

“Nominal fee” is not specifically defined in the law; however, the closer compensation is to minimum wage, the less likely it will be viewed as “nominal.” Many fire protection employees in Minnesota cities would probably not meet this definition due to the level of compensation paid and are often referred to as “paid on-call” employees.

29 C.F.R. § 553.106(e).
IRS: Issues for Firefighters.

The regulations do provide some guidance on factors to examine to determine whether fees and stipends are nominal. These include:

- The distance traveled and the time and effort expended by the volunteer;
- whether the volunteer has agreed to be available around-the-clock or only during certain specified time periods;
- and whether the volunteer provides services as needed or throughout the year.

DOL Opinion Letter 2007-3NA, September 17, 2007.

The DOL has stated that fees and stipends paid to volunteer firefighters that are less than 20 percent of what would be paid to a full-time firefighter are likely to be found to be nominal. *“So long as the City’s calculations are based on an approximation of the prevailing wages of a driver or firefighter within its area and the fee amount does not exceed 20 percent of that driver or firefighter’s wages for the same services, the Department would find that such a fee would be nominal within the meaning of 29 C.F.R. § 553.106. Moreover, in evaluating whether a fee is nominal, the City should consider that, in addition to paying a nominal fee, as noted above the City may reimburse an individual for the approximate out-of-pocket expenses incurred.”*

29 C.F.R. § 553.106(e).

Cities should also avoid paying employees on an hourly basis or on any basis tied to productivity. Per-call rates are, however, specifically allowed within the regulations.

29 C.F.R. § 553.103(a).

City employees cannot “volunteer” to perform the same or similar duties on their off-hours as they perform during their regular employment with the city (e.g. a fire inspector probably cannot “volunteer” to perform fire protection duties after-hours). Even if the work is different, employees who hold two jobs with the city are likely to qualify for overtime if they exceed 40 hours in one workweek in either or both jobs. With the agreement of the employee, the overtime wages can be paid at one and one-half times the regular rate for the actual work that is being performed during the overtime hours. Otherwise, the city must determine a weighted average hourly rate earned for that workweek and pay the overtime hours at one and one-half times that rate.

29 C.F.R. § 778.419.

29 C.F.R. § 778.115.

RELEVANT LINKS:

LMC MN Cities Magazine
Article: [Compensating
Employees Working More
Than One Job.](#)

For example, a city has a street department maintenance worker who also serves as a paid on-call firefighter. The maintenance worker puts in 40 hours of work (Monday-Friday) in his regular job at \$20/hour, then, in the same workweek, puts in an additional six hours (on Saturday) as a firefighter at an hourly wage of \$10/hour. If the employee agrees **in advance**, the six hours over 40 can be paid at \$15/hour (\$10 x 1.5 time), as the firefighter hours came after working 40 hours. Of course, if the six hours had occurred earlier in the week, then the overtime would have to be paid at 1.5 times the rate for the maintenance worker position.

Another option is to calculate a weighted average based on blending the two separate rates of pay together. To calculate a blended rate in our example, a city would calculate:

$$40 \text{ hours} \times \$20 = \$800$$

$$6 \text{ hours} \times \$10 = \$60$$

$$\$800 + \$60 = \$860$$

$$\$860 / 46 \text{ hours} = \$18.70 \text{ (blended rate)}$$

$\$18.70 \times .5 = \9.35 additional overtime rate for the 6 hours worked above 40 for the week. Note, since you already recognized the employee's regular rate of pay in the earlier calculation you only need to calculate the additional overtime rate for the hours worked above 40 for the week.

$$\$9.35 \times 6 \text{ hours} = \$56.10$$

$$\$860 + \$56.10 = \mathbf{\$916.10 \text{ Total Gross Pay}}$$

VI. Hours worked

Time that is spent on pre-shift or post-shift activities is generally included when computing "hours worked." For example, the time a police officer spends at "roll call" before or after each shift generally counts as hours worked. Time spent writing reports at the end of the shift and time spent racking up fire hoses after a fire call are also counted.

Regular home-to-work travel, even if it is in a take-home patrol car, does not count toward "hours worked." Once an officer responds to a call, however, the time counts as "hours worked."

Time spent caring for a police canine is generally considered "hours worked." However, some court and arbitration decisions have upheld agreements that are in place specifying a set amount of paid time or extra compensation that an officer will receive for caring for the dog.

[29 C.F.R. § 553.221\(b\).](#)

[29 C.F.R. § 553.221\(e\).](#)

[29 C.F.R. 785.12.](#)

*Rudolph v. Metropolitan
Airports Com'n.*, 103 F. 3rd
677 (8th Cir. 1996).

RELEVANT LINKS:

[DOL Opinion Letter 2004-23, November 23, 2004.](#)

[29 C.F.R. 553.31.](#)

[29 C.F.R. 553.31 \(b\).](#)

[29 C.F.R. 553.31.](#)

[29 C.F.R. 553.227.](#)

A. Shift swapping/time trading

The substitution of one employee to work hours (partial or full shifts) scheduled for another of the same rank or position is often referred to as “shift swapping” or “time trading,” and is a common practice in many public safety departments. The Fair Labor Standards Act provides guidance on how shift swapping/time trading should be administered.

The Fair Labor Standards Act (FLSA) under certain circumstances, permits two employees of a public agency, with that agency’s approval, to substitute for one another during scheduled work hours in the same capacity without those hours being subject to overtime. Even though a substitution has occurred, each employee will be considered to have worked his or her normal schedule, and the traded time will not be considered in calculating hours for overtime for the substituting employee. The arrangement for trading time and payback is left to the two employees involved. The regulations state that this time trading may occur “only if employees’ decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee substitute or ‘trade time’ with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision.” Employers are not required to maintain a record of time traded and there is no specific period of time in which the shift must be paid back. Therefore, the employee’s paycheck for that period would not reflect the switch in additional hours or overtime pay. Key points of a shift swap/time trade for hours that would not be overtime for the substituting employee include:

- The employee’s decision to substitute must be freely made, and without coercion, direct or implied, so the request is exclusively for the scheduled employee’s convenience. Again, each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision.
- The employer must be aware and approve of the substitution beforehand, thus the city must know what work is being done, by whom it is being done, and where and when it is being done.
- However, the employer is not required to keep a record of the hours of substituted work.

VII. Outside employment

There are special provisions for police and fire employees who perform special duty work in fire protection, law enforcement, or related activities for a separate and independent employer during their off-duty hours.

RELEVANT LINKS:

The hours of work for the separate and independent employer are not combined with the hours worked for the city for purposes of overtime compensation if both of the following guidelines are met:

- The special duty work is performed solely at the employee's option.
- The two employers are, in fact, separate and independent.

The City may facilitate the employment or affect the conditions of employment of such employees. For example, a police department may:

- Maintain a roster of officers who wish to perform special duty work during their off-duty hours.
- Select the officers from a list of those wishing to participate, negotiate their pay, and retain a fee for administrative expenses.
- Require that the separate and independent employer pay the fee for such services directly to the department and establish procedures for the officers to receive their pay for the special duty work through the police department's payroll system. For the purposes of calculating overtime, the officers would not be eligible for overtime pay since the employee opted to perform this special duty work and the work was performed for a separate and independent organization.

There may be times that a state law or local ordinance requires police or fire protection at an event and that only law enforcement or fire protection employees of a public agency in the same city perform the work. For example, a city ordinance may require the presence of city police officers at a convention center or during concerts or sporting events.

If the officers perform such work at their own option, the hours of work do not need to be combined with the hours of work for the city in computing overtime compensation.

VIII. Further assistance

If you have any additional questions, please contact the League's Human Resources and Benefits Department.

(800) 925-1122
(651) 281-1200
HRbenefits@lmc.org

424A.01 MEMBERSHIP IN A VOLUNTEER FIREFIGHTERS RELIEF ASSOCIATION.

Subdivision 1. **Minors.** No volunteer firefighters relief association associated with a municipality, a joint powers entity, or an independent nonprofit firefighting corporation may include as a relief association member a minor serving as a volunteer firefighter.

Subd. 2. **Status of substitute volunteer firefighters.** No person who is serving as a substitute volunteer firefighter may be considered to be a firefighter for purposes of chapter 477B or this chapter and no substitute volunteer firefighter is authorized to be a member of any volunteer firefighters relief association governed by chapter 477B or this chapter.

Subd. 3. **Status of nonmember volunteer firefighters.** No person who is serving as a firefighter in a fire department but who is not a member of the applicable firefighters relief association is entitled to any service pension or ancillary benefits from the relief association.

Subd. 3a. [Repealed, 1989 c 319 art 10 s 8]

Subd. 4. **Exclusion of persons constituting an unwarranted health risk.** The board of trustees of every relief association may exclude from membership in the relief association all applicants who, due to some medically determinable physical or mental impairment or condition, is determined to constitute a predictable and unwarranted risk of imposing liability for an ancillary benefit at any age earlier than the minimum age specified for receipt of a service pension. Notwithstanding any provision of section 363A.25, it is a good and valid defense to a complaint or action brought under chapter 363A that the board of trustees of the relief association made a good faith determination that the applicant suffers from an impairment or condition constituting a predictable and unwarranted risk for the relief association if the determination was made following consideration of: (1) the person's medical history; and (2) the report of the physician completing a physical examination of the applicant undertaken at the expense of the relief association.

Subd. 4a. **Prohibition on receipt of concurrent service credit.** No firefighter may be credited with service credit in a volunteer firefighters relief association for the same hours of service for which coverage is already provided in a fund operated pursuant to chapter 353.

Subd. 5. **Fire prevention personnel.** (a) If the applicable municipality or municipalities approve, the fire department may employ or otherwise utilize the services of persons as volunteer firefighters to perform fire prevention duties and to supervise fire prevention activities.

(b) Personnel serving in fire prevention positions are eligible to be members of the applicable volunteer firefighter relief association and to qualify for service pension or other benefit coverage of the relief association on the same basis as fire department personnel who perform fire suppression duties.

(c) Personnel serving in fire prevention positions also are eligible to receive any other benefits under the applicable law or practice for services on the same basis as personnel who are employed to perform fire suppression duties.

Subd. 5a. **Volunteer emergency medical personnel.** Volunteer emergency medical personnel are eligible to be members of the applicable volunteer firefighters relief association and to qualify for service pension or other benefit coverage of the relief association on the same basis as fire department personnel who perform or supervise fire suppression or fire prevention duties if:

(1) the fire department employs or otherwise uses the services of persons solely as volunteer emergency medical personnel to perform emergency medical response duties or supervise emergency medical response activities;

(2) the bylaws of the relief association authorize the eligibility; and

(3) the eligibility is approved by:

(i) the municipality, if the fire department is a municipal department;

(ii) the joint powers board, if the fire department is a joint powers entity; or

(iii) the contracting municipality or municipalities, if the fire department is an independent nonprofit firefighting corporation.

Subd. 6. Return to active firefighting after break in service. (a) This subdivision governs the service pension calculation requirements of a firefighter who returns to active service after a break in service and applies to all breaks in service, except that the resumption service requirements of this subdivision do not apply to leaves of absence made available by federal statute, such as the Family Medical Leave Act, United States Code, title 29, section 2691, and the Uniformed Services Employment and Reemployment Rights Act, United States Code, title 38, section 4301, and do not apply to leaves of absence made available by state statute, such as the Parental Leave Act, section 181.941; the Leave for Organ Donation Act, section 181.9456; the Leave for Civil Air Patrol Service Act, section 181.946; the Leave for Immediate Family Members of Military Personnel Injured or Killed in Active Service Act, section 181.947; or the Protection of Jurors' Employment Act, section 593.50.

(b)(1) If a firefighter who has a break in service of any duration resumes performing active firefighting with the fire department associated with the relief association, and if the bylaws of the relief association so permit, the firefighter may again become an active member of the relief association, subject to the requirements of this paragraph and the service pension calculation requirements under this section.

(2) A firefighter who has been paid a service pension or disability benefit must wait at least 60 days following receipt of the pension or benefit before resuming active firefighting with the fire department and active membership in the relief association.

(3) A firefighter who has been granted an approved leave of absence not exceeding one year by the fire department or by the relief association is exempt from the minimum period of resumption service requirement of this section.

(4) A person who has a break in service not exceeding one year but has not been granted an approved leave of absence may be made exempt from the minimum period of resumption service requirement of this section by the relief association bylaws.

(5) If the bylaws so provide, a firefighter who returns to active relief association membership after a break in service of any duration may continue to collect a monthly service pension from the relief association, notwithstanding the requirement under section 424A.02, subdivision 1, that the firefighter has separated from active service.

(c) If a former firefighter who has been paid a service pension or disability benefit returns to active relief association membership under paragraph (b), the firefighter may qualify for the receipt of a service pension from the relief association for the resumption service period if the firefighter meets the service requirements of section 424A.016, subdivision 3, or 424A.02, subdivision 2, as applicable, or meets the resumption minimum service requirements specified in the relief association's bylaws. No firefighter may be paid a service pension more than once for the same period of service.

(d) If a former firefighter who has not been paid a service pension or disability benefit returns to active relief association membership under paragraph (b), the firefighter may qualify for the receipt of a service pension from the relief association for the original and resumption service periods if the firefighter meets the service requirements of section 424A.016, subdivision 3, or 424A.02, subdivision 2, based on the original and resumption years of service credit.

(e) A firefighter who returns to active lump-sum relief association membership under paragraph (b) and who qualifies for a service pension under paragraph (c) must have, upon a subsequent cessation of duties, any service pension for the resumption service period calculated as a separate benefit. If a lump-sum service pension had been paid to the firefighter upon the firefighter's previous cessation of duties, a second lump-sum service pension for the resumption service period must be calculated by applying the service pension amount in effect on the date of the firefighter's termination of the resumption service for all years of the resumption service.

(f) A firefighter who had not been paid a lump-sum service pension returns to active relief association membership under paragraph (b), who did not meet the minimum period of resumption service requirement specified in the relief association's bylaws, but who does meet the minimum service requirement of section 424A.02, subdivision 2, based on the firefighter's original and resumption years of active service, must have, upon a subsequent cessation of duties, a service pension for the original and resumption service periods calculated by applying the service pension amount in effect on the date of the firefighter's termination of the resumption service, or, if the bylaws so provide, based on the service pension amount in effect on the date of the firefighter's previous cessation of duties. The service pension for a firefighter who returns to active lump-sum relief association membership under this paragraph, but who had met the minimum period of resumption service requirement specified in the relief association's bylaws, must be calculated by applying the service pension amount in effect on the date of the firefighter's termination of the resumption service.

(g) If a firefighter receiving a monthly benefit service pension returns to active monthly benefit relief association membership under paragraph (b), and if the relief association bylaws do not allow for the firefighter to continue collecting a monthly service pension, any monthly benefit service pension payable to the firefighter is suspended as of the first day of the month next following the date on which the firefighter returns to active membership. If the firefighter was receiving a monthly benefit service pension, and qualifies for a service pension under paragraph (c), the firefighter is entitled to an additional monthly benefit service pension upon a subsequent cessation of duties calculated based on the resumption service credit and the service pension accrual amount in effect on the date of the termination of the resumption service. A suspended initial service pension resumes as of the first of the month next following the termination of the resumption service. If the firefighter was not receiving a monthly benefit service pension and meets the minimum service requirement of section 424A.02, subdivision 2, a service pension must be calculated by applying the service pension amount in effect on the date of the firefighter's termination of the resumption service for all years of service credit.

(h) A firefighter who was not receiving a monthly benefit service pension returns to active relief association membership under paragraph (b), who did not meet the minimum period of resumption service requirement specified in the relief association's bylaws, but who does meet the minimum service requirement of section 424A.02, subdivision 2, based on the firefighter's original and resumption years of active service, must have, upon a subsequent cessation of duties, a service pension for the original and resumption service periods calculated by applying the service pension amount in effect on the date of the firefighter's termination of the resumption service, or, if the bylaws so provide, based on the service pension amount in effect on the date of the firefighter's previous cessation of duties. The service pension for a firefighter who returns to active relief association membership under this paragraph, but who had met the minimum period of resumption

service requirement specified in the relief association's bylaws, must be calculated by applying the service pension amount in effect on the date of the firefighter's termination of the resumption service.

(i) For defined contribution plans, a firefighter who returns to active relief association membership under paragraph (b) and who qualifies for a service pension under paragraph (c) or (d) must have, upon a subsequent cessation of duties, any service pension for the resumption service period calculated as a separate benefit. If a service pension had been paid to the firefighter upon the firefighter's previous cessation of duties, and if the firefighter meets the minimum service requirement of section 424A.016, subdivision 3, or meets the resumption minimum service requirements specified in the relief association's bylaws, as applicable, based on the resumption years of service, a second service pension for the resumption service period must be calculated to include allocations credited to the firefighter's individual account during the resumption period of service and deductions for administrative expenses, if applicable.

(j) For defined contribution plans, if a firefighter who had not been paid a service pension returns to active relief association membership under paragraph (b), and who meets the minimum service requirement of section 424A.016, subdivision 3, based on the firefighter's original and resumption years of service, must have, upon a subsequent cessation of duties, a service pension for the original and resumption service periods calculated to include allocations credited to the firefighter's individual account during the original and resumption periods of service and deductions for administrative expenses, if applicable, less any amounts previously forfeited under section 424A.016, subdivision 4.

History: 1979 c 201 s 11; 1981 c 224 s 274; 1982 c 460 s 7; 1983 c 219 s 5; 1989 c 319 art 10 s 2; 1996 c 438 art 8 s 3; 2009 c 169 art 10 s 21; 2010 c 359 art 13 s 4,5; 2012 c 286 art 12 s 10; 2013 c 111 art 6 s 5; 2018 c 211 art 14 s 8-12; 1Sp2019 c 8 art 4 s 3; 2021 c 22 art 10 s 3

From: [Corby, Mindy](#)
To: [Mandi Yoder](#)
Subject: RE: Research Question Submission
Date: Monday, November 13, 2023 4:01:45 PM
Attachments: [PERA PHRASE 2005 Article.doc](#)

Hi Mandi,

Thanks for reaching out! Below is lots of information for you to review with your city attorney. Your questions bring up quite a few scenarios that you will want to consider.

Even though most cities do not have paid, full-time firefighters, many of the departments designated “volunteer” are not – strictly speaking – volunteer. The Federal Fair Labor Standards Act (FLSA) allows volunteers who are paid “expenses, reasonable benefits or a minimal fee” to be exempt from the minimum wage laws. **If firefighters are paid a small flat fee per call in addition to their pension they are probably volunteers under the FLSA. Volunteers paid on an hourly basis are probably paid-on-call workers and must be paid the minimum wage and overtime for hours worked over 40 in a workweek.**

An employee may volunteer for the city in a different capacity from their paid employment without overtime accruing. However, if it is similar work, they may not volunteer and the hours must be paid. For example, a person employed as a Fire Marshall may not volunteer to be a firefighter.

These distinctions between paid-on-call and true volunteer are important when looking at compensation responsibilities for regular city employees who also volunteer or work on-call as a firefighter for the same city.

There are three primary issues:

- Overtime
- Double payment
- Double pension credit

OVERTIME

Non-exempt from the FLSA. (paid hourly)

When hours for one or both jobs exceed 40 hours per week city must pay overtime for hours worked over 40 in a workweek.

Overtime may be paid at 1 ½ times the regular rate for the actual work that is being performed during the overtime hours with the agreement of the employee.

(No overtime incurred for firefighter hours that push total hours over 40. Still pay overtime at 1 ½ times regular rate for regular city employment if those hours worked exceed 40 in a workweek.)

Otherwise, the city must determine a weighted average hourly rate earned for that workweek and pay the overtime hours at 1 ½ times that rate. See page 6 of this memo <https://www.lmc.org/wp-content/uploads/documents/FLSA-Police-and-Fire-Employees.pdf> for an example of a weighted average.

Exempt from the FLSA. (Salaried & meets certain duties)

No overtime accrued for hours worked over 40 in a regular job which is FLSA-classified as exempt.

An employee’s exempt or non-exempt status is determined by their “primary” duties. (29 CFR 541.700(2)). It is only logical that an employee may have only one primary status.

You may also pay the compensation set for the paid on call firefighter in addition to the employee’s salary. An employee properly classed as exempt may receive additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. (29 CFR 541.604) No overtime incurred for firefighter hours that push total hours over 40.

Likewise, no overtime due for hours worked over 40 in regular job which is FLSA-classified as exempt.

DOUBLE PAYMENT

A non-exempt employee, for reasons of public accountability, probably should not be paid their regular rate of pay and their firefighter fee for responding during work hours since it is difficult to explain; i.e., how can the employee be performing more than one job for the city at the same time?

The same public accountability/public purpose expenditure arguments can probably also be made for exempt employees. An exempt employee will, in effect, be paid double since their salary will not change and the volunteer fee or the paid-on-call amount will be additional compensation. While the FLSA allows additional compensation under 29 CFR 541.604, at the very least this situation may create an employee morale issue and a public perception of unfairness.

Some cities find that allowing double-payment to occur is a great benefit to the community due to the shortage of available paid-on-call or volunteer firefighters during “business hours” of 8 a.m. to 5 p.m. Ideally, the benefits to the city should be documented in some type of policy or council resolution to avoid problems with public accountability and public purpose expenditures.

PERA AND FIRE RELIEF PENSION CREDITS

Minnesota law was amended in 1989 to exclude volunteer fire fighter services from PERA's Coordinated and Police and Fire plans. Applying this exclusion can be confusing at times, so League staff worked with PERA to provide an overview on how PERA and relief association pensions governed by Minnesota Statutes Chapter 424A can work together. For additional reference an article from PERA’s February 2005 PERAphrase Newsletter is also attached to this email.

While this is designed simply as an overview, it is always recommended to contact PERA’s employer line directly to discuss your city’s own unique situation.

Many cities recruit full-time employees for their volunteer or paid-on-call firefighter positions, which can bring into play the question of how the city will navigate through contributions towards PERA

and a fire relief pension. Today, the legality of so called “double-dipping” on pension credits is very unclear, and this memo does not take a position on what approach is legally correct. Some cities find comfort in a conservative approach requiring contributions to be placed into either PERA or a fire relief pension, but not both. For cities wishing to follow this conservative approach, PERA has offered the following guidance to avoid “double dipping” on pension credits.

Full-time Non-Firefighters (for example a Public Works Employee) who also serves for the same employer as a volunteer Firefighter or Paid-On-Call Firefighter

In either situation A or B as outlined below, cities will want to review their Fire Relief Association bylaws for guidance on contributions. Some organizations may find they wish to consider amending their Fire Relief by-laws to avoid pension contribution double dipping issues.

(A) Some cities with full-time employees also serving as paid-on-call firefighters may require such employees to use vacation, compensatory time, or personal leave while responding to fire calls. In these situations, for PERA reporting purposes, any paid-on-call pay or volunteer stipend should not be reported as wages for PERA.

The vacation or other approved paid leave would be counted as hours worked for PERA reporting purposes. Since the paid-on-call or volunteer firefighting service is separate from the employer’s regular service, then according to PERA, the employee can receive PERA credit and relief credit for those vacation or personal leave hours spent responding to the fire calls. But as described above, it would not be appropriate for the city to report to PERA any firefighter wages paid to the employee in this situation.

(B) In other cities, as a matter of policy, the city does not require a full time employee (for example, a public works employee), to take a paid leave for the firefighting absence. Again, in this arrangement cities need to track hours carefully in order to exclude any paid-on-call pay or volunteer stipends as wages reported to PERA. If this is done, there is no double-dipping issue according to PERA.

Full-time Firefighters who also serve for the same city as volunteer Firefighters or Paid-On-Call Firefighters. (Not sure if this is your scenario but thought I would include this information)

If a city has a combined full-time and paid-on-call fire department, and classifies its full-time firefighters as paid-on-call for after-hours fire calls, those firefighters may receive relief credit (only) for the after-hours calls. PERA requests the city or relief association document with their office to clearly distinguish when a firefighter is working as a paid on call firefighter. For example, documentation could clarify that the paid-on-call activities occurring after 5:00 p.m. be classified as non-city work for PERA purposes.

Thus, it is possible that a full-time firefighter (exempt or non-exempt) who is also a member of a city’s combined fire department, could earn relief credits to be paid for after-hours firefighting and not risk double dipping, provided any after-hours compensation is not reported to PERA. If after-hours fire calls or training are performed as part of the full-time firefighter position, the overtime pay the individual earns would be reported to PERA. In this situation, no credits would be earned in

a relief association since there is no volunteer work or hours.

In the event a city has an exempt full-time fire chief who receives no additional compensation for after-hours fire calls, that full-time employee cannot be allowed to reduce his/her regularly scheduled hours as compensation for the after-hours calls. To do so would result in a portion of the salary reported to PERA to become volunteer wages and thereby creating service credit in two plans for the same service.

If you have questions about your city employees serving as both professional and volunteer fire fighters, call PERA's employer phone line (651-296-3636 or 1-888-892-7372) and select option '3' or '4.'

Again, I'm hoping this information gives you some talking points to discuss with your city attorney. Of course, feel free to reach out if you have more questions.

Have a wonderful day!

MIndy

Mindy Corby | Human Resources Representative

League of Minnesota Cities

Tel: (651) 281-1217 mcorsby@lmc.org | www.lmc.org

145 University Ave. West | St. Paul, MN 55103





MEMORANDUM

Date: September 19, 2023
To: Mayor and City Council
From: Mandi Yoder, Human Resources Director
RE: Non-Exempt Employees, Paid on Call Firefighters, and Fair Labor Standards Act

SUMMARY

The mayor and city council will hear input from department heads related full-time, non-exempt staff serving a dual role as a firefighter, and the Fair Labor Standards Act (FLSA) and MN Wage Theft Law.

BACKGROUND

A recent full-time, non-exempt position brought about the review of past practices which prohibited non-exempt, full-time employees from serving as a paid-per-call firefighter.

Mandi Yoder, Human Resources Director and Joe Kohlgraf, Public Works Director have researched and discussed the possibility at length.

Some cities that have responded to information requests stated they are in short supply of firefighters and therefore pay overtime. Many cities did not respond. League of MN Cities stated all labor laws must be followed.

Therefore, if a non-exempt full-time employee is permitted to work in a dual position, such as the fire department, overtime pay must be calculated according to the full-time position's pay grade and step, as is extensively explained in both Federal and State law.

At this time Joe Kohlgraf and Brett Anderson, Fire Chief, agree that budgetarily it would not be feasible to permit a dual role for an employee in the City's budget or the Fire Department's budget which would also impact township budgets via their service agreement invoices.

OPTIONS IMPACTS

1. Continue with the past practice of not allowing full-time, non-exempt positions the ability to serve in a dual role as a firefighter unless the department is able to budget for and pay the overtime.

RECOMMENDATIONS

For the City Council to consider arriving at a consensus to continue with the precedent of excluding full-time, regular, non-exempt employees from a dual role as a firefighter unless the department can budget for and pay the overtime.

*Attachments: A guide to MN's Overtime Laws
Wage theft in MN: Employer Information*



MEMORANDUM

Date: December 4, 2023
To: Mayor and City Council
From: Mandi Yoder, Human Resources Director
RE: Non-Exempt, Dual Role Positions in Employment

SUMMARY

The City Council will review a previous decision made at the October 17, 2023 council meeting to exclude non-exempt employees from a dual role as a firefighter unless the department can budget for and pay the overtime.

BACKGROUND

With a vacant public works position, a firefighter expressed interest to Joe Kohlgraf, who requested Mandi Yoder research the potential of having a non-exempt dual role employee in the street department. After researching options, it was reported to the City Council that a dual role position was permitted by statute and that the employee must be paid overtime according to Minnesota Fair Labor Standards, Federal Labor Standards, and the Minnesota Wage Theft Law.

In October the Council decided to exclude non-exempt employees from holding dual-role positions unless the budget could support it.

After the decision was made by Council to exclude non-exempt employees from a dual role position, Jeremy Schultz, firefighter, approached the council and staff with his interpretation of the Fair Labor Standards Act exemption for firefighters, found within the text.

Council subsequently scheduled a work session to review all of the information again so that the Mayor and Councilmembers may make the best decision for the City of Mora.

An important factor that must be noted for public record is the pension credit received by dual-role employees may not be extended to both the Fire Relief Association pension and Public Employees Retirement Association pension (PERA) for the same hour worked per MN Statute “§424A.01: Subd. 4a. Prohibition on receipt of concurrent service credit. No firefighter may be credited with service credit in a volunteer firefighters relief association for the same hours of service for which coverage is already provided in a fund operated pursuant to chapter 353.”

Current practice by the fire department does not track hours worked for service credits to the relief association pension, instead it credits firefighters for a full year of service; by doing so, the fire department is preventing the City from excluding PERA pay from hours suffered

Memorandum

during the scheduled workdays of Monday – Friday 8:00 am – 4:30 pm, (as is the case for one exempt employee currently serving a dual role which was noted on the offer letter of employment for the position currently held), putting the City at risk for repercussions with the Office of the State Auditor.

A simple solution to this could be for dual-role exempt employees to be permitted to respond to fire calls outside of the scheduled workday only.

RECOMMENDATIONS

If the Mayor and Councilmembers wish to amend the decision made on October 17, 2023, bring this item to the council meeting to be added to the agenda.

If the Mayor and Councilmembers wish to maintain the decision made on October 17, 2023, nothing more is needed.

*Attachments: Email from City Attorney Leah Koch of Campbell Knutson
Email from Mindy Corby, League of MN Cities
LMC Information Memo: FLSA Police and Fire Employees, Section V.
September 19, 2023 Council Packet Items
October 17, 2023 Council Packet Items*