

O-08-83

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE NON-UNIFORMED EMPLOYEES' POLICY AND PROCEDURE MANUAL; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, Ordinance No. 7690 adopted by the City Council on February 28, 2005, codified by reference as §2-151 of the North Little Rock Municipal Code, established policies and procedures for non-uniformed employees ("Personnel Manual"); and

WHEREAS, there is a need to revise several of the policies and procedures in the Personnel Manual.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Personnel Manual adopted pursuant to Ordinance No. 7690 (codified by reference as §2-151 of the North Little Rock Municipal Code) is hereby amended as follows:

Policy No. 4-003, Compensation for Emergency and Other Special Work Requirements, is hereby revised as shown in Exhibit "A" attached hereto.

Policy No. 4-004, Overtime Compensation, is hereby revised as shown in Exhibit "B" attached hereto.

Policy No. 7-008, Military Leave, is hereby revised as shown in Exhibit "C" attached hereto.

Editor's Note: Revised text in exhibits attached hereto is noted as follows: Deleted text by strikethrough; added text by underline.

SECTION 2: That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 3: That the provisions of this Ordinance are hereby declared to be severable and if any section, phrase, or provision shall be declared or held invalid, such invalidity shall not affect the remainder of the sections, phrases or provisions.

SECTION 4: That the City Council has determined that the interests of the City and City employees can best be served by the adoption of this ordinance, THEREFORE,

an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Patrick H. Hays

SPONSOR:

Mayor Patrick H. Hays

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

C. Jason Carter, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b

EXHIBIT "A"

SECTION 4. COMPENSATION/CLASSIFICATION POLICIES & PROCEDURES
4-003: UNSCHEDULED WORK
Effective: 2/28/05
Revised : 11/ /07:

COMPENSATION FOR EMERGENCY AND OTHER SPECIAL WORK REQUIREMENTS

Call-Outs - Less than Full Shift

An off-duty non-exempt employee who is called to work for an unscheduled period of time which is less than a full shift shall receive, at the regular rate of pay, a minimum of 3 hours of pay, or the hours actually worked, whichever is greater. This provision does not apply to those employees who remain at work beyond normal working hours.

Call-Outs - Full Shift

A non-exempt employee who is called to work for an entire unscheduled shift (full shift) in non-emergency situations will be compensated for the actual hours worked at the regular rate of pay. Such hours will be included in the total number of actual hours worked in the 7-day day, 40-hour work week period. If total hours worked in the work week period exceed 40, the employee will receive overtime pay as usual.

Periods of Emergency and other Special, Non-Routine Work Requirements

~~A non-exempt employee who is called to work for an unscheduled period during an emergency~~
Upon recommendation of the department head and approval of the Mayor, a non-exempt employee who is called to work, or required to remain at work, during an emergency or other special, non-routine work requirement (as defined below), and who works in excess of eight hours in any one 24-hour period, may will receive in wages one and one-half times their regular rate of pay for those hours actually worked upon recommendation of the Department Head and prior approval of the Mayor. in excess of 8 hours. In departments providing overtime compensation in the form of compensatory time off, the employee will be compensated at the rate of one and one-half the number of hours worked in excess of 8 hours in any one 24-hour period.

An emergency or special work requirement for purposes of the above call-out policy is defined as follows:

~~Extraordinary~~ includes, but is not limited to, storm damage, ice, snow, flood, fire, explosion, riot, major hydro-outages, major power outages and any other abnormal- special circumstance to warrant application of this policy that is determined recommended by the department head and approved by the Mayor to be an emergency.

EXHIBIT "B"

4-004: OVERTIME COMPENSATION
Effective: 2/28/05
Revised: 11/ /07:

OVERTIME COMPENSATION

Overtime Defined

Overtime is defined as the number of hours actually worked by non-exempt employees in excess of forty (40) hours within the established 7-day, 40-hour work week.

Work Week Defined

The work week is defined as the 40 ~~forty (40)~~ hours within the ~~seven (7) day~~ 7-day work period that begins at 12:01 a.m. Saturday and ends at 12:00 p.m. Friday.

Fair Labor Standards Act (FLSA) Classifications

For purposes of determining eligibility for overtime compensation pursuant to the federal Fair Labor Standards Act (FLSA), positions are classified as Non-covered, Non-Exempt or Exempt. Questions about individual FLSA classifications should be directed to the department head.

- Non-Covered. Positions not covered by the FLSA. They include elected officials and appointed employees on elected officials' personal staffs, policy-making appointees, legal advisors, legislative employees, bona fide volunteers, independent contractors, prisoners, and certain trainees.
- Nonexempt. Positions for which compensation is based on an hourly basis are covered by the provisions of the FLSA. Employees in non-exempt positions are eligible to receive overtime compensation at the rate of one and one-half times all hours actually worked in excess of 40 in the established work week. Compensation for overtime hours may be provided either in wages at an hourly rate of 1-1/2 times the employee's regular hourly rate of pay, or by compensatory time off at a rate of 1-1/2 hours times the number of hours over 40 in the established work week described in Policy No. 4-002, Hours of Work, located in Section 4 on page 42 of this policy manual.
- Exempt. Positions may be classified as exempt from the overtime requirements of the FLSA if the compensation is paid on a salary basis of not less than \$23,660 per year and the duties performed in the position meet the minimum tests related to the primary job duties for bona-fide executive, professional, or administrative positions as defined by the Fair Labor Standards Act. These are positions covered by the FLSA, but exempted from the overtime provisions. A job title alone is insufficient to establish the exempt status of an employee. The status must be determined on the basis of whether the employee's salary and duties meet the current requirements of the FLSA regulations. Employees in positions classified as exempt must customarily and regularly perform exempt duties. Certain seasonal recreational employees can also be considered exempt, depending on the position and location. Exempt positions are classified by the Personnel Department to comply with FLSA definitions.

Circumstances in Which the City May Make Deductions from Exempt Employee's Pay

Exempt employees' salaries cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to exceptions listed below, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any work week in which they perform no work. The City is not required to pay exempt employees' full salary in the initial or terminal week of employment, or for weeks in which they take unpaid leave under the Family and Medical Leave Act.

The City's pay and paid leave benefits system was established by ordinance, policy and practice pursuant to principles of public accountability. Absences of less than one work day for personal reasons or because of illness or injury will be considered leave without pay that may be deducted from exempt employees' salaries if accrued paid leave is unavailable or not used by an employee because:-

- permission for its use has not been sought or has been sought and denied;
- accrued leave has been exhausted; or
- the employee chooses to use leave without pay.

If accrued paid leave has been exhausted, deductions from pay are permissible for absences of one or more full days

- to offset amounts employees receive as jury or witness fees;
- to offset amounts employees receive as military pay;
- for penalties imposed in good faith for infractions of safety rules of major significance; or
- for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions.

Any other wage deduction from the salaries of exempt employees is improper and prohibited.

Complaint Procedure

Exempt employees who have reason to believe they have been mistakenly classified as exempt, or who have experienced salary deductions that they feel may be improper, may file a complaint and request for a review with their department head. The request for review should provide an explanation of why they feel they have been misclassified or have had an improper wage deduction from their salary. The department head will forward such complaints or requests to the Personnel Director for review. The Personnel Department will promptly investigate the matter. If it is found that there has been an incorrect classification, the position will be properly reclassified. If there has been an improper wage deduction, the employee will be refunded the amount of such deduction and appropriate steps will be taken to ensure that future violations do not occur. No retaliation shall be taken against any employee for making such an inquiry.

Method of Overtime Compensation

Non-exempt employees shall be compensated for all hours actually worked in excess of 40 within the 7-day work week either in compensatory time off (CTO) at 1-1/2 times the number of hours actually worked in excess of 40, or in wages at 1-1/2 times the regular rate of pay.

Payment of Overtime Wages

Payment of overtime compensation to non-exempt employees is made on the regular payday following the receipt by the Finance Department of the bi-weekly time sheets with the overtime hours reported.

Compensatory Time Off

Only non-exempt employees are eligible for compensatory time off at 1-1/2 times the number of overtime hours. Compensatory time off may be accrued to a maximum accumulation of 240 hours. After accumulation of the maximum number of hours of compensatory time off, such employees shall thereafter be compensated for overtime in wages at 1-1/2 times the regular rate of pay until such time as the accumulated compensatory time off is reduced below the maximum accumulation allowable.

Use of Accrued Compensatory Time Off

Non-exempt employees shall be permitted to use accumulated compensatory time off within a reasonable period after it is requested if to do so would not unduly disrupt operations of the department. Such compensatory time off shall not be counted as hours worked within the work period in which it is taken.

Final Payment for Accrued Compensatory Time Off

Upon separation from employment, payment for accumulated compensatory time off shall be calculated at 1-1/2 times the average regular rate of pay for the final ~~three (3)~~ 3 years of employment, or the final regular rate received by the non-exempt employee, whichever is higher.

Circumstances in Which the City May Make Deductions from Exempt Employee's Pay

Exempt employees' salaries cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to exceptions listed below, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any work week in which they perform no work. The City is not required to pay exempt employees' full salary in the initial or terminal week of employment, or for weeks in which they take unpaid leave under the Family and Medical Leave Act.

The City's pay and paid leave benefits system was established by ordinance, policy and practice pursuant to principles of public accountability. Absences of less than one work day for personal reasons or because of illness or injury will be considered leave without pay that may be deducted from exempt employees' salaries if accrued paid leave is unavailable or not used by an employee because:-

- permission for its use has not been sought or has been sought and denied;
- accrued leave has been exhausted; or
- the employee chooses to use leave without pay.

If accrued paid leave has been exhausted, deductions from pay are permissible for absences of one or more full days

- to offset amounts employees receive as jury or witness fees;
- to offset amounts employees receive as military pay;

- for penalties imposed in good faith for infractions of safety rules of major significance; or
- for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions.

Any other wage deduction from the salaries of exempt employees is improper and prohibited.

Complaint Procedure

Exempt employees who have reason to believe they have been mistakenly classified as exempt, or who have experienced salary deductions that they feel may be improper, may file a complaint and request for a review with their department head. The request for review should provide an explanation of why they feel they have been misclassified or have had an improper wage deduction from their salary. The department head will forward such complaints or requests to the Personnel Director for review. The Personnel Department will promptly investigate the matter. If it is found that there has been an incorrect classification, the position will be properly reclassified. If there has been an improper wage deduction, the employee will be refunded the amount of such deduction and appropriate steps will be taken to ensure that future violations do not occur. No retaliation shall be taken against any employee for making such an inquiry.

Method of Overtime Compensation

Non-exempt employees shall be compensated for all hours actually worked in excess of 40 within the 7-day work week either in compensatory time off (CTO) at 1-1/2 times the number of hours actually worked in excess of 40, or in wages at 1-1/2 times the regular rate of pay.

Payment of Overtime Wages

Payment of overtime compensation to non-exempt employees is made on the regular payday following the receipt by the Finance Department of the bi-weekly time sheets with the overtime hours reported.

Compensatory Time Off

Only non-exempt employees are eligible for compensatory time off at 1-1/2 times the number of overtime hours. Compensatory time off may be accrued to a maximum accumulation of 240 hours. After accumulation of the maximum number of hours of compensatory time off, such employees shall thereafter be compensated for overtime in wages at 1-1/2 times the regular rate of pay until such time as the accumulated compensatory time off is reduced below the maximum accumulation allowable.

Use of Accrued Compensatory Time Off

Non-exempt employees shall be permitted to use accumulated compensatory time off within a reasonable period after it is requested if to do so would not unduly disrupt operations of the department. Such compensatory time off shall not be counted as hours worked within the work period in which it is taken.

Final Payment for Accrued Compensatory Time Off

Upon separation from employment, payment for accumulated compensatory time off shall be calculated at 1-1/2 times the average regular rate of pay for the final ~~three~~ (3) 3 years of employment, or the final regular rate received by the non-exempt employee, whichever is higher.

Absences Within the Work Week

Any hours not actually worked, including those charged to Sick Leave, Annual Leave, Personal Leave, Emergency Leave, Compensatory Time Off, or other leave taken within the 7-day work week, shall not be counted as hours worked during that work period.

Exceptions

- Holidays shall be included in the number of hours actually worked within the work week in which the holiday occurs except for Public Safety Dispatchers who are under a separate policy.
- Subject to prior approval of the Mayor Pursuant to Policy No. 4-003, a non-exempt employee who is called to work or required to remain at work during an emergency or other special, non-routine work requirement and who works in excess of 8 hours in a work day any one 24-hour period at the direction of the department head or his authorized designate due to an abnormal emergency, may have hours of vacation and personal leave used during the 7-day work week in which an emergency occurs counted as hours worked during that work week. will receive 1-1/2 times their regular rate of pay for those hours actually worked in excess of 8 hours in the 24-hour period. In departments providing overtime compensation in the form of compensatory time off, the employee will be compensated in compensatory time off hours at the rate of 1-1/2 times the number of hours worked in excess of 8 hours in any one 24-hour period.
- Authorization ~~to do so~~ for such overtime shall ~~only~~ be upon ~~written approval~~ recommendation of the department head and approval of the Mayor or his designee and is to be limited ~~applicable only to abnormal emergency situations defined in Policy No. 4-003.~~ Copies of ~~such written approvals~~ department head recommendations must be attached to the time sheets for the period in question when submitted to the Finance Department for payment or accrual of compensatory time off.

~~An abnormal emergency for purposes of the above policy is defined as follows:~~

- ~~• Extraordinary storm damage, ice, snow, flood, fire, explosion, riot, major power outages; major hydro outages; or~~
- ~~• Any other abnormal circumstance determined by the Mayor.~~

Unauthorized Work Hours

Employees shall not begin work before starting time, or fail to take a meal period, or remain at work beyond normal working hours, or report for work when not scheduled to work unless specific authorization has been made by the Department head or supervisor prior to the work.

Responsibility to Control Overtime

To contain costs, department heads are responsible for monitoring and controlling the working hours of non-exempt employees to avoid unnecessary accrual of compensatory time off or payment of overtime wages.

In order to accomplish this, an employee may be directed to take off from work within the work week an amount of time that is equivalent to any extra hours worked in any one or more days

during that same work week, so the total number of hours actually worked in that week does not exceed 40.

Seasonal Exemptions from Overtime Compensation

Certain seasonal recreational employees are exempt from eligibility for overtime pay pursuant to the Fair Labor Standards Act. However, upon recommendation of the department head and approval of the Mayor, such employees may be granted overtime compensation.

EXHIBIT “C”

SECTION 7. LEAVES & TIME OFF BENEFITS POLICIES & PROCEDURES

7-008: MILITARY LEAVE

Effective: 2/28/05

Revised: 11/ /07

MILITARY LEAVE

Provisions

The following policy conforms to Arkansas Statutes 21-4-102, 12-62-413, and the United States Employment and Re-employment Rights Act (USERRA), neither of which has been included in its entirety. For complete information on specific details it will be necessary to consult the Arkansas Code or USERRA provisions. If there is any conflict between this policy and either law, the law will prevail. If there is a conflict between Arkansas Statutes and USERRA's provisions, USERRA will prevail.

Annual Training and Duties Performed in an Official Duty Status

Any employee who is a reservist or member of the National Guard, who desires or is ordered to participate in the military training programs made available by the National Guard or any of the reserve branches of the armed forces, shall be entitled to a paid leave of absence for a period of fifteen (15) days plus necessary travel time for annual training requirements or other duties performed in an official duty status in any one (1) calendar year. Necessary travel time is calculated based on the authorized mode of travel listed on the employee's orders and the Official Table of Distances published by the federal government.

To the extent this leave is not used in a calendar year, it will accumulate for use in the succeeding calendar year until it totals fifteen (15) days at the beginning of the calendar year. The employee shall be entitled to his regular salary during the time he is away from his duties during such leave of absence. Such leave of absence shall be in addition to the regular vacation time allowed to the employee.

Whenever any employee of the City is granted military leave for a period of fifteen (15) days per calendar year, the unused military leave will accumulate for use in succeeding calendar years until it totals fifteen (15) days at the beginning of the calendar year, for a maximum number of military leave days available in any one (1) calendar year to be thirty (30) days.

An employee who is scheduled to attend drill during scheduled work days may elect to count this time towards meeting the allotment mentioned above. After an employee has exhausted his allotted military paid leave days in a calendar year, his participation in annual training programs or assignments shall be considered as leave without pay for the remainder of that calendar year, unless the employee opts to use available paid annual or personal leave.

Employees called to duty in emergency situations by the Governor or by the President shall be granted leave with pay not to exceed thirty (30) working days, after which leave without pay will be granted. This leave shall be granted in addition to all other leave the employee shall be entitled to. "Emergency situations" as defined by Arkansas Statutes § 21-4-212(e), are "any case

of invasion, disaster, insurrection, riot, breach of peace, or imminent danger thereof, threats to the public health or security, or threats to the maintenance of law and order.”

During a military leave of absence, the employee shall be entitled to preserve all seniority rights, efficiency or performance ratings, promotional status, retirement privileges, life and disability insurance benefits, and any other rights, privileges, and benefits to which the employee has become entitled.

The period of military service shall, for purposes of computations to determine whether such person may be entitled to retirement benefits, be deemed continuous service, and the employee shall not be required to make contributions to any retirement fund. The City shall continue to contribute its portion of any life or disability insurance premiums during the leave of absence on behalf of the employee, if requested, so that continuous coverage may be maintained.

An employee who is drafted or called to active duty in the armed forces of the United States or who volunteers for military service shall be placed on extended military leave without pay.

The right of reemployment shall conform to all federal and state government rules and regulations.

~~An employee who enlists or reenlists for a second consecutive tour of military duty shall be deemed to have forfeited his reemployment rights.~~

Notification Requirements

The employee shall be required to furnish the department head with copies of military orders or other appropriate verifying documentation as soon as possible after the employee receives it.

Record keeping Requirements

Copies of all military orders shall be forwarded to the Personnel Department for inclusion in the employee's official personnel file.

A copy of the orders or other qualifying documentation must also accompany the bi-weekly time sheets to the Finance Department, with the days the employee is absent from work so noted in the section provided, or in the "Comments" section regarding each employee.

Reinstatement Following Active Duty

Re-employment rights and benefits and other employment benefits are conditioned on

- The employee or an appropriate officer of the uniformed service in which service is performed providing advance written or verbal notice of such service to the department head, unless such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this policy shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review;
- The cumulative length of the absence and of all previous absences from a position of employment with the City by reason of service in the uniformed services does not exceed five (5) years, except for reasons described in USERRA as described below:

- The employee's release from service under honorable or general conditions; and
- The employee reporting to the department head or submitting an application for reemployment to the department head within the period of time set out ~~above~~ below.

Five-year limit. USERRA sets a 5-year cumulative limit on the amount of military leave employees can perform and retain reemployment rights with their employer. There are some important exceptions to the 5-year limit. If the employee is unable to obtain release or if service is required to complete an initial period of obligated service, that time of service is exempt (examples: An initial enlistment may last more than 5 years, such as for nuclear power training. In this case, an employee retains reinstatement rights with the employer. If an employee was hospitalized for or is convalescing from an illness or injury incurred in, or aggravated during military service, the limit may be extended up to an additional 2 years.) Drills (inactive duty training), annual training, involuntary active duty extensions (including training certified as necessary by your service), and recalls due to a war or national emergency are not counted in the 5-year cumulative total.

Employees who have been on active duty military leave of absence in a uniformed service shall be re-employed in the position vacated or an equivalent position at no loss of seniority or any of the other benefits and privileges of employment. ~~Such reinstatement is conditioned on the employee making application within ninety (90) days after the effective date of unconditional release from military service active duty or, if hospitalized, not more than one (1) year after discharge from hospitalization.~~

Reinstatement is based on the duration of the uniformed service. For periods of military service up to 30 days, the employee must report back to work at the next regularly scheduled shift on the day following release from the military, safe travel home, and eight hours of rest. Following a period of service of 31-180 days, the employee must apply for reemployment within 14 days following release. Following a period of service of 181 days or more, the employee must apply for reemployment within 90 days after release. In applying for reemployment the employee should identify himself or herself, state that he/she left the City's employment to perform military service, that he/she has completed the service and wants to be reinstated. Failure to return to work or apply for reemployment within the specified time limits through the employee's own fault does not necessarily forfeit the employee's reemployment rights, but makes the employee subject to the City's rules concerning unauthorized absences from work.

Reservists ordered to initial active duty for not less than twelve (12) weeks have thirty-one (31) days from the date of release after satisfactory service to apply for reemployment.

No application for reemployment is required by law for reservists or members of the National Guard who perform weekend, annual, or special duty training.

An employee may not be re-employed if the City's circumstances have changed so as to make such reemployment impossible or unreasonable or such reemployment would impose an undue hardship on the City, or the department from which the person leaves.

Definitions

The term "uniformed services" means the Armed Forces (Army, Navy, Marines, Coast Guard), the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

"Active service" or "active duty" includes any period while on military service during which a person is absent from duty on account of sickness, wounds, authorized leave or other lawful cause.

"Period of active military service" is the time between the date of induction into active duty and shall terminate with death, or a date thirty (30) days immediately next succeeding the date of release or discharge from active military service, or upon return from active military service, whichever shall occur first.

"Service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes: active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard, and any period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the employee for the purpose of performing funeral honors duty.

"Benefit", "benefit of employment", or "rights and benefits" means any advantage, profit, privilege, gain, status, account or interest (other than wages or salary for work performed) that accrues by reason of an employment contract or an employer policy, plan or practice and includes rights and benefits under a pension plan, a health plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, and vacations.

"Seniority" means longevity in employment, together with any benefits of employment that accrue with, or are determined by, longevity in employment.

Discrimination against persons who serve in the uniformed services and acts of reprisal for such service is prohibited. Complaints of such discrimination are taken seriously and will be investigated and appropriate action taken.