



## technical bulletin

Municipal Technical Advisory Service  
Institute for Public Service, The University of Tennessee  
In cooperation with the Tennessee Municipal League

Pub

Knoxville, TN

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### HOW FAIR LABOR STANDARDS AMENDMENTS OF 1974 AFFECT MUNICIPALITIES

#### A Preliminary Interpretation

The Fair Labor Standards Amendments of 1974 extends minimum wage and overtime coverage to include most local government employees, effective May 1, 1974. Public safety (fire and police) employees remain exempt from the overtime pay provisions until Jan. 1, 1975. Although printed copies of the bill (P. L. 93-259) are not now available, MTAS has drawn from several authoritative sources for a brief, preliminary interpretation of ways the law will affect Tennessee cities.

#### MINIMUM WAGES

All municipal employees will be covered with the exception of elected officials, members of officials' personal staffs, an appointed official who serves in a policy-making position, an appointed official who serves as an advisor on the constitutional or legal powers of an elected official. The law defines "employee" to include part-time as well as full-time workers.

The following minimum wage rates are required for employees covered by the 1966 and 1974 amendments:

- 1) \$1.90 an hour beginning May 1, 1974, and ending Dec. 31, 1974.
- 2) \$2.00 an hour for year beginning Jan. 1, 1975.
- 3) \$2.20 an hour for year beginning Jan. 1, 1976.
- 4) \$2.30 an hour after Dec. 31, 1976.

Employees covered prior to 1966, mostly those in federally-funded programs such as the Neighborhood Youth Corps, must be paid \$2.00 an hour May 1, 1974, through Dec. 31, 1974; \$2.10 for year beginning Jan. 1, 1975; and \$2.30 an hour beginning Jan. 1, 1976.

#### OVERTIME PROVISIONS FOR REGULAR EMPLOYEES

All employees, except those in fire and police departments, must be paid time and a half the regular rate for work in excess of 40 hours in a workweek. Compensatory time may not be used in lieu of overtime compensation (except as noted later for public safety personnel). Compensatory time accrued prior to May 1, 1974, may be carried over, but time taken as compensatory time after that date will not be charged as hours of work.

The "regular rate" of pay does not include fringe benefits or gifts such as Christmas bonuses.

#### SPECIAL OVERTIME FOR PUBLIC SAFETY PERSONNEL

Employees in the police and fire departments must be paid time and a half for hours worked in excess of the following: (DOES NOT APPLY to departments with fewer than five employees)

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Year beginning Jan. 1, 1975 - 240 hours calculated over 28 consecutive work days, 60 hours in a 7-day work period or proportionate number of hours in a work period between 7 and 28 days

Year beginning Jan. 1, 1976 - 232 hours in a 28-day period, 58 hours in a 7-day period, or proportionate number of hours in a work period between 7 and 28 days

Year beginning Jan. 1, 1977, and thereafter - 216 hours in a 28-day period, 54 hours in a 7-day period, or proportionate number of hours in a work period between 7 and 28 days

Police officers and firefighters may continue to voluntarily "trade time" both within a tour of duty cycle, a work period of up to 28 days, and from one cycle or period to another within a calendar or fiscal year.

#### RECORDS TO KEEP

Each city must compile and preserve (for three years) records of its employees and the wages paid and hours worked. There are no official forms, but records should include:

Name, home address and birth date

Sex and occupation

Hour and day when workweek begins

Regular hourly pay rate for any week when overtime is worked

Hours worked each workday and total hours worked each workweek

Total daily or weekly straight time earnings

Total overtime pay for the workweek

Deductions or additions to wages

Total wages paid each pay period

Date of payment and pay period covered

MTAS suggests a daily time record be established which would be signed by the individual employee and by his supervisor at the end of each pay period. The enforcing division of the Department of Labor places responsibility on the employer for proving the number of hours an employee works and the compensation paid.

#### YOUTH AND FULLTIME STUDENTS

Provisions of the former Fair Labor Standards Act remain unchanged regarding part-time employment of full-time students at a sub-minimum wage. Full-time students, 14 years old or older and employed on a part-time basis during school time or full-time during vacations and holidays, must be paid not less than 85 per cent of the applicable minimum wage. The new amendment does provide a revised basis for calculating the number of hours students can work under certificates (issued after a finding that no substantial probability of job displacement exists).

#### SEASONAL EXEMPTION

Young workers applying for summer municipal jobs, such as summer recreation or playground supervisors, will be subject to the same minimum wage as adult workers. However, the number of hours they may work, before overtime must be paid, changes from year to year. During calendar year 1974, employees doing seasonal work may be on the job for up to 10 workweeks, based on the standard work day not to exceed 48 hours per workweek, before overtime would be payable. Effective Jan. 1, 1975, the number of workweeks drops to 7 and to 5 for calendar 1976. In 1977, this exemption is repealed.

## NONDISCRIMINATION ON ACCOUNT OF AGE

The Age Discrimination Act of 1967 is amended to include local government employees, other than elected officials and certain aides. ADEA prohibits discrimination, on the basis of age, in matters of hiring, job retention, compensation, and other terms, conditions and privileges of employment. Protection is limited to persons between the ages of 40 and 65.

## VOLUNTEER WORKERS

Volunteers generally aren't considered employees unless they receive compensation. However, the special nature of volunteer firemen's services, and the custom of paying them on a per-call basis, may create problems which must be solved by an interpretation from the U.S. Secretary of Labor.

## PENALTIES AND SUITS

Employers not complying with the law are liable to a \$10,000 fine or imprisonment for not more than six months or both.

Employers are liable, to employees affected, in the amount of the employee's unpaid wages and/or unpaid overtime compensation and in an additional amount as liquidated damages. Suit may be filed in any court of competent jurisdiction by any one or more employees.

## IF YOU HAVE QUESTIONS

Interpretation of the law is the responsibility of the U. S. Department of Labor, Wage and Hour Division. If you have a question, contact the area office nearest you:

Knoxville - P.O. Box 631, Knoxville 37901, Phone 615/637-9300, Ext. 4246  
Nashville - 1720 West End Building, Room 610, Nashville 37203, Phone 615/749-5452  
Memphis - 486 Federal Office Building, 167 North Main Street, Memphis 38103,  
Phone 901/534-3418

YOU SHOULD TOUCH BASE AT ONCE WITH YOUR AREA OFFICE. A great many existing FLSA rules and regulations will affect cities. Passage of these latest amendments undoubtedly will result in more regulations. Make sure you're in a position to receive further information when it's available.

## RELATED PUBLICATIONS

- 1) Fair Labor Standards Act, 29 U.S. Code, Chapter 8.
- 2) Code of Federal Administrative Regulations, Volume 29
- 3) Wages and Hours Administration Publications Nos. 1261, 1262, and 1262-a.

The Age Discrimination Act of 1967 is amended to include local government employees, other than elected officials and certain others. ADAA prohibits discrimination on the basis of age, in matters of hiring, job assignment, compensation, and other terms, conditions and privileges of employment. Enforcement is placed in Federal to persons between the ages of 40 and 67.

**VOLUNTEER WORKERS**

Volunteers generally aren't considered employees unless they receive compensation. However, the special nature of volunteer workers' services, and the custom of paying them on a per-call basis, may create problems which must be solved by an investigation from the U.S. Secretary of Labor.

**PAYMENT AND SUITS**

Employees not complying with the law are liable to a \$10,000 fine or imprisonment for not more than six months or both.

Employees are liable, in addition to employees affected, in the amount of the employee's unpaid wages under unpaid overtime compensation and in an additional amount as liquidated damages. This may be filed in any court of competent jurisdiction by any one or more employees.

**IF YOU HAVE QUESTIONS**

Interpretation of the law is the responsibility of the U. S. Department of Labor, Wage and Hour Division. If you have a question, contact the Area Office nearest you:

Knoxville - P.O. Box 811, Knoxville 37901, Phone 615/521-9100, Ext. 4244  
Nashville - 1101 West End Building, Room 610, Nashville 37203, Phone 615/740-2421  
Memphis - 686 Federal Office Building, 167 North Main Street, Memphis 38107, Phone 901/524-3416

YOU SHOULD FORMER BACK AT WORK WITH YOUR AREA OFFICE. A great many existing laws and regulations will affect this. Passage of these laws and amendments undoubtedly will result in more regulations. Make sure you're in a position to receive further information when it's available.

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The University of Tennessee  
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