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Guide to Compliance with the Fair Labor Standards Act for Tennessee Municipalities: Update No. 2

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GUIDE TO COMPLIANCE WITH THE
FAIR LABOR STANDARDS ACT FOR TENNESSEE MUNICIPALITIES:
UPDATE NO. 2

by Richard M. Ellis

Introduction

The following is the second update to the Fair Labor Standards Act (FLSA). The information presented below represents changes and updates regarding compliance with the FLSA in Tennessee cities. Much of this information is an addition to or a clarification of the material presented in the Guide to Compliance with the Fair Labor Standards Act published by MTAS last year.

Trading Time

There has been confusion voiced by some cities regarding two employees in any occupation in the city's services who may agree, solely at their option and with the city's approval, to substitute for one another during scheduled work hours in performance of work in the same capacity. Many cities have felt that only public safety personnel could trade shifts. That is not the case. Any employees in the city's services can trade shifts under the guidelines presented in this update.

Another concern voiced by a few cities relates to who would receive credit when a substitution takes place. In other words, who gets credit for the hours worked? Section 553.32(a) of the regulations states that the employee scheduled to work receives credit as if he or she had worked, while the substituting employee receives no credit or compensation from the city.
Volunteers

We continue to get questions on the status of volunteers. Under the regulations, a person who serves for a public agency without promise, expectation, or receipt of compensation for the services rendered, is a volunteer. This doesn’t mean that a city cannot pay volunteers for expenses, reasonable benefits, or a nominal fee without losing their status as volunteers. Almost all out-of-pocket expenses are permissible, such as uniform or cleaning allowances, meals, and transportation. Volunteers may also receive reimbursement for the cost of attending training classes, and for books, supplies, and other materials essential to volunteer training. According to the regulations, whether the furnishing of benefits, expenses, or fees will result in people losing their volunteer status depends on an examination of the total payments in a particular situation. The regulations do not specify an amount constituting a "nominal fee." They do state that the fee is not to be a substitute for compensation and must not be tied to productivity.

A person is not a volunteer if the same public agency employs that person to perform the same type of service. For example, a paid firefighter cannot volunteer as a firefighter for the same city. This does not preclude the firefighter from being a volunteer for another fire department. On the other hand, a police officer or a street employee could serve as a volunteer firefighter and it would not be considered dual employment.

Training

One of the major changes made in the last set of FLSA regulations is that training time is not always compensable. The State of Tennessee requires city police officers to be certified by attending the Police Academy in Donelson, and to retain the certification through coursework which is often conducted after normal working periods. This training time is not compensable for purposes of compliance with the FLSA. This is the case even if the city pays for all or part of the training program.

Training time during regular working hours is compensable, but only when the employee is in class or at a training session. If an employee is free to use some time during the training session for personal use, the time is not compensable.
Fluctuating Rate of Pay (Half-Time) and Compensatory Time

Cities are utilizing the fluctuating rate of pay, or half-time method, of computing overtime. It must be pointed out that if the city is utilizing this method to pay its employees, it cannot utilize compensatory time to pay for the hours worked in excess of the standard work period. It has been noted that some cities have been giving their employees compensatory time for hours worked in excess of their standard work period. This is not permitted under FLSA regulations.

If you are not in compliance now, you cannot use the excuse that you didn't know or didn't understand. Ignorance of the law is not a defense. If you have questions regarding any matter relating to compliance with FLSA, contact your MTAS Management Consultant or Rich Ellis in Knoxville at (615) 974-5301.
The Municipal Technical Advisory Service (MTAS), one of four operating units of The University of Tennessee's Institute for Public Service, works closely with the Tennessee Municipal League. MTAS was created in 1949 by the General Assembly at the request of Tennessee cities.

The mission of MTAS is to assist Tennessee city officials in responding effectively to changing municipal needs. MTAS consultants work daily with city officials in an effort to provide practical assistance where and when it is most needed.