



**PARTIAL DAY LEAVE
FOR EXEMPT EMPLOYEES:**
Clarification would improve policy

A REPORT FROM THE CITY AUDITOR
May 2006



Office of the City Auditor
Portland, Oregon



CITY OF
PORTLAND, OREGON

OFFICE OF THE CITY AUDITOR
Audit Services Division

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May 9, 2006

TO: Mayor Tom Potter
Commissioner Sam Adams
Commissioner Randy Leonard
Commissioner Dan Saltzman
Commissioner Erik Sten
Yvonne Deckard, Director, Bureau of Human Resources

SUBJECT: Audit of Partial Day Leave for Exempt Employees, Report #327

Attached is Report #327 containing the results of our audit of partial day leave for exempt employees. Written responses from the Mayor and the Director of the Bureau of Human Resources are included at the back of the report. They are in agreement with the audit recommendations, and have indicated full support for implementing them.

As a follow-up to these recommendations, we ask the Human Resources Director to prepare a status report in one year detailing steps taken to address the recommendations contained in our report. The status report should be sent to me, and coordinated with the Commissioner in Charge.

We appreciate the cooperation and assistance we received from personnel in the Bureau of Human Resources, and also the City Attorney's Office, in conducting this audit.


GARY BLACKMER
City Auditor

Audit Team: Drummond Kahn
Amoy Williamson
John Hutzler

Attachment

PARTIAL DAY LEAVE FOR EXEMPT EMPLOYEES:

Clarification would improve policy

Introduction and Background

At the request of the City Auditor, the Audit Services Division undertook a review of the City's policy regarding charging leave for absences of less than one day by non-represented Fair Labor Standards Act (FLSA) exempt employees and its application throughout the City's bureaus and offices. This audit was conducted as an element of the Compliance Audit category included in our annual Audit Schedule.

The City of Portland has over 1,100 salaried non-represented, FLSA exempt employees. Exempt employees are management, professional and administrative employees, such as managers, attorneys and auditors. While most other City employees (like police officers, firefighters, water meter readers and parking enforcement officers) are paid by the hour and are eligible for overtime, the non-represented, FLSA exempt employees are paid a salary to work the amount of time required to fully perform their duties – which may require a workweek in excess of 40 hours.

Most City employees receive overtime pay or compensatory time off for all hours worked over 40 in a workweek. When such employees take an hour off, the time is charged to their accumulated leave or compensatory time. But if an exempt employee works more than 40 hours in a week, the exempt employee is on salary and not eligible for overtime. As a result, the City has a different policy for exempt employees regarding use of leave for absences of less than one day (also known as partial day absences).

As we began the audit, we were told that exempt employees in some City bureaus who were absent for two or three hours during a work

day were asked to use vacation and/or sick leave. In other bureaus, exempt employees absent for three or more hours were not asked to use their leave. Some managers understood that half-day absences should be charged to leave, while others thought that half-day absences by exempt employees should never be charged to leave. We undertook this audit to review current City policies and practices surrounding partial-day absences.

Audit scope, objectives and methodology

The objectives of this audit were to determine whether:

- City-wide rules regarding FLSA exempt employee absences of less than one day are consistent with federal and state regulations
- Bureau work rules regarding absences of less than one day are consistent with City-wide rules
- City rules are followed

We reviewed the FLSA and associated federal regulations and compared them to Oregon statutes and to administrative rules of the Oregon Department of Labor and Industries. We evaluated City Human Resources Administrative Rule 8.03 for consistency with federal and state laws and regulations. We also reviewed Bureau-specific work rules identified by Human Resources regarding exempt employee absences of less than one day.

We interviewed the Director and Chief Bureau Operations Manager of Human Resources (HR) and two Deputy City Attorneys to obtain their opinions whether the City's policy is consistent with federal and state laws. The Director of the Bureau of Human Resources is responsible for initial approval and dissemination of rules once adopted. Final approval of rules resides with City Council or the Chief Administrative Officer. The Director of Human Resources also maintains authority for the interpretation and application of rules.

We conducted a survey of bureau managers and supervisors and collected responses from over ninety managers with payroll supervisory authority over non-represented exempt employees.

We interviewed managers, supervisors and staff in several bureaus, the Bureau of Human Resources, and the City Attorney's Office regarding their policies and practices on exempt employee absences of less than one day.

We examined payroll records in an effort to verify whether payroll deductions reported by survey respondents or in interviews actually occurred.

We conducted our work in accordance with generally accepted government auditing standards.

Audit results

We believe the City Administrative Rule 8.03, regarding absences of less than one day for non-represented FLSA exempt employees, is consistent with the latitude granted to public employers by federal and state regulations. However, we found the rule unclear, and managers reported practices regarding partial day absences that are inconsistent.

Specifically, we found that:

- The City-wide rule appears to be consistent with the latitude granted to public employers by state and federal regulations
- Few bureaus have adopted specific work rules for partial day absences
- Rules are not clearly written and are consequently not well understood by managers

FLSA and exempt employees

The Fair Labor Standards Act (FLSA) and the implementing regulations of the U.S. Department of Labor require that most employees in the U.S. be paid at least the federal minimum wage for all hours worked and overtime at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, the FLSA provides an exemption from both the minimum wage and overtime pay for certain “exempt” employees. To qualify as “exempt”, employees generally must meet certain tests regarding their job duties and must be paid on a salary basis.

Being paid on a salary basis means an employee regularly receives a predetermined amount of compensation each pay period. Other than permitted exceptions, 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. Absences of less than one day are not an exception to this requirement.

An employer may require exempt employees to use accrued vacation or sick leave when they are absent for less than a day as long as the exempt employee’s salary is not “subject to deduction”. As long as the employee receives the appropriate payment in salary, deductions from leave banks do not disqualify the employee from exemption.

The federal regulations create a special exception to the salary basis test for public sector employees, like those who work for the City of Portland. According to the Bureau of Human Resources, the exception (29 CFR 541.710) states in essence that a public sector exempt employee can be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work day in the following situations:

- The employee did not request permission for accrued leave, or the request was denied (by the manager)
- The employee has exhausted all his/her accrued leave
- The employee requests to use leave without pay for the time taken instead of using accrued leave

Figure 1 Comparisons of City of Portland exempt and covered employee leave policies

Employee	Works extra hours	Leaves one hour early	Takes a day off
FLSA-covered	Paid overtime or comp. time	Uses one hour of leave or comp. time	Uses one day of leave or comp. time
FLSA-exempt	No compensation*	No leave deduction	Uses one day of leave

Source: Audit Services Division analysis

* except for emergency situations

City of Portland Rules

As shown in Figure 1, non-exempt City employees are paid based on the hours they work. Overtime is paid, and short absences are deducted from their leave balances. These employees are “hourly”, and are paid or charged leave for each hour. Exempt City employees, however, are “salaried” and are paid for working a “professional week”, which can take more than 40 hours. As a result, City policies permit exempt employees to be absent for less than a full day without charging leave. The assumption is that exempt employees work as long as it takes to get their job done.

In March 2002, the Portland City Council adopted an Ordinance to implement Citywide Human Resources Administrative Rules and amend City Code to reflect necessary changes. As a result of this ordinance, Administrative Rule 8.03 Hours of Work, Overtime Compensation and Management Leave: FLSA Exempt Employees, was made part of the overall City Administrative Rules.

The section of Rule 8.03 governing absences of less than one day provides:

Absences of less than one day, except as noted below, should not be charged to accumulated time off such as vacation or sick leave or taken as leave without pay for non-represented FLSA exempt employees. Absences must still be pre-approved according to bureau work rules and expectations.

Under the following circumstances, absences of less than one day may be charged to accumulated time off:

1. Where the employee is generally unavailable to work their regularly scheduled work hours due to, but not limited to, working a reduced hour schedule or a predetermined intermittent leave schedule, (“generally unavailable” means the employee is unable to work at least 75% of their scheduled work hours)
2. Where the employee leaves work four or more hours early prior to the start of a vacation period.

....

Bureaus and individual managers are responsible for setting and monitoring accountability expectations.

Administrative Rule 8.03 also provides that FLSA exempt employees are not eligible for compensatory time except in emergencies and expressly prohibits improper salary deductions.

Although the City Attorney’s office states that City Administrative Rule 8.03, as it relates to absences of less than one day, is consistent with federal and state laws and regulations, we found the rule to be unclear and ambiguous, which could lead to differing opinions, interpretations and practices by managers and employees.

Responses to our survey show that managers do not interpret the Rule in the same way or they assume because of the vagueness of the Rule that all decisions are completely within their discretion. In meetings with management and the City Attorney’s office, we identified the shortcomings of this rule, and the Bureau of Human Resources is planning to rewrite the rule to address these deficiencies.

We found that few bureaus have adopted specific work rules for partial day absences as it relates to non-represented exempt employees. We identified three bureaus that had adopted such management work rules, but we were unable to determine if the rules had been reviewed and approved by the Bureau of Human Resources, as required by HR Rules.

The City rule is not always followed

In our analysis of survey responses from over 90 City managers who supervise exempt employees, we found a wide variety of practices regarding the use of leave for exempt employee absences of less than one day. City Administrative and Bureau rules provide managers with some discretion to grant or deny partial day absences and to allow absences of more than two hours to be charged to accumulated leave. However, some of the practices reported by survey respondents, including deducting from pay and charging leave for absences of less than two hours, may be inconsistent with Administrative Rule 8.03.

Some managers find policy unclear

Almost all respondents indicated they are aware of the Administrative Rule regarding FLSA exempt employees. Twenty-two respondents (24 percent) reported that they find the policy not very, or not at all, clear. Although most managers consider the partial day absence rules to be very clear or adequate, a significant proportion of their responses revealed management practices that may be inconsistent with the Administrative Rule 8.03.

Practices vary significantly

Because the latitude granted to managers is broad, we found that reported practices regarding reduction of employees' pay vary significantly. Eleven of the 88 managers (13 percent) who responded to the question reported that there are occasions when an exempt employee's bi-weekly salary is reduced as a result of taking a partial day absence. Seven managers said that this occurs when the exempt employee no longer has any accumulated leave (vacation and/or sick leave) to be charged. Three managers said that this occurs when an exempt employee takes four or more hours off before the beginning of a vacation. Most managers said that there were no occasions when a non-represented exempt employee's salary is reduced as a result of taking a partial day absence.

Bureau leave charges vary

Thirty-seven (41 percent) of the managers responded that absences of less than one day are never charged to accumulated leave. Three

managers (three percent) reported that all partial day absences are charged to accumulated leave. Seventeen managers (19 percent) said that partial day absences are charged to leave when the employee feels that it is appropriate. One manager indicated that exempt employees are charged a full day of vacation or sick leave when partial day absences over several days add up to eight hours. Rule 8.03 details specific circumstances in which absences of less than one day may be charged to accumulated leave. These survey responses suggest that absences of less than one day that may not fall within those exceptions could have been charged to accumulated leave.

Based on the latitude afforded public agencies, City policy regarding exempt employee absences of less than one day is consistent with Federal regulations. Bureau-specific rules we received also appear to be consistent with the City's Administrative Rule. However, our survey indicated City managers interpret and apply these rules differently.

Recommendations

We recommend that the Bureau of Human Resources:

1. Revise Administrative Rule 8.03 to provide clarity of its requirements
2. Supplement Administrative Rule 8.03 with guidelines providing examples which apply the Rule to different scenarios and/or including a section for Frequently Asked Questions (FAQ) on its website
3. Provide training to bureaus on the application of Administrative Rule 8.03
4. Make Bureau-specific Personnel rules available through the Human Resources library on its website

RESPONSES TO THE AUDIT



Office of Mayor Tom Potter
City of Portland

May 3, 2006

Gary Blackmer
City Auditor
1221 SW 4th Avenue, Room 140
Portland, Oregon 97204

Dear Gary:

Thank you for your review of the City's policy regarding absences of less than one day taken by non-represented FLSA exempt employees. I am in full support of the findings and recommendations of this audit and agree that further clarification could improve existing policies already in place throughout all City bureaus and offices.

I appreciate the work being done by the Bureau of Human Resources (BHR) and Office of the City Attorney to clarify the rules. I think it is essential all non-represented FLSA exempt employees are aware of the existing partial day absence policies in place in their bureaus and that City managers continue to have the latitude to define a bureau-specific policy in line with state and federal regulations.

I look forward to the successful implementation of your recommendations. This audit is a reminder there is still work to be done to ensure all City administrative rules are clearly articulated and understood by City employees.

Sincerely,

Tom Potter
Mayor



CITY OF PORTLAND

OFFICE OF MANAGEMENT AND FINANCE

Tom Potter, Mayor
Timothy Grewe, Chief Administrative Officer

Bureau of Human Resources
Yvonne L. Deckard, Director
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Portland, Oregon 97204
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May 4, 2006

Gary Blackmer
City Auditor
1221 SW Fourth Avenue, Room 140
Portland, Oregon 97204

Dear Gary:

BHR has received and reviewed your draft report on Partial Day Absences for Exempt Employees. We agree with the report's findings and recommendations. BHR is beginning work to implement the recommendations, including a clarification of the Partial-Day absence policy.

Sincerely,

Yvonne L. Deckard
Director

Cc: A. Kanwit
D. Kahn

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*Partial Day Leave for Exempt Employees: Clarification
would improve policy*

Report #327, May 2006

Audit Team: Amoy Williamson
John Hutzler

This report is intended to promote the best possible management of public resources. This and other audit reports produced by the Audit Services Division are available on the web at: www.portlandonline.com/auditor/auditservices. Printed copies can be obtained by contacting the Audit Services Division.

Gary Blackmer, City Auditor
Drummond Kahn, Director of Audit Services

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(#320, November 2005)*

*Office of Government Relations: Expense documentation
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2005)*

