

OVERTIME COMPLIANCE AUDIT

OCTOBER 2008

DURHAM



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CITY OF MEDICINE

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DURHAM



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Memorandum

To: Audit Services Oversight Committee
From: Sonal Patel, Director of Audit Services
Date: October, 2008
RE: Transmittal of Overtime Compliance Audit

Attached is a report titled Overtime Compliance Audit dated October 2008. The purpose of the audit is to ensure the City of Durham is in compliance with the Overtime and Compensatory Leave policy as it relates to overtime.

This report presents the observations, results, and recommendations. City management concurs with the recommendations made by the auditors. Management's response is included in the attached report.

The Audit Services Department appreciates the cooperation we received from all of the affected departments.

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BACKGROUND INFORMATION

The City of Durham has policies and procedures designed to standardize the awarding of overtime pay for hours worked by employees beyond their regularly scheduled hours to ensure that the City is in compliance with the Fair Labor Standards Act (FLSA). Policy *PER 403,R-5, Overtime and Compensatory Leave*, and *PER 410, R-5, Standby and Recall* detail this guidance.

A summary of the policies for exempt and non-exempt employees is as follows:

Exempt employees:

- Shall not be paid, except for emergencies or unanticipated special situations, for hours worked beyond their regularly scheduled hours unless prior approval is given by the Department Director and funds are available in the Department's budget.

Non-exempt employees:

- Shall receive overtime for any hours worked beyond forty hours in the workweek, or the work period established (*sworn police and firefighters*) by FLSA. The overtime pay will be calculated at one and one-half times the base rate of pay.
- Are entitled to compensatory leave hours equal to the number of holiday hours worked if required to work on a day observed by the City as a holiday; except, in the case of essential Solid Waste, Fleet, and Public Works employees. Essential Solid Waste, Fleet, and Public Works employees may receive time and one half pay for time worked on a holiday or day off although they did not physically work a 40 hour week.
- Must obtain the supervisor's approval prior to the work being performed.

BACKGROUND INFORMATION (CONTINUED)

We identified fifteen (15) departments with Overtime payments for Fiscal year ending June 30, 2008. The following table shows the overtime hours worked by department.

	Department Name	YTD Overtime Hours	YTD Overtime Payments (\$)
1	City Attorney	21.40	733.55
2	Durham Emergency Communication	2,829.75	73,054.19
3	Finance	63.90	1,340.87
4	Fire	6,912.75	158,391.07
5	General Services	2,885.75	70,008.69
6	Dept. of Housing and Community Development	1.0	28.53
7	Human Resources	4.5	81.00
8	Inspections	55.50	2,088.92
9	Parks and Recreations	3,152.75	59,596.17
10	Police	13,149.17	411,768.51
11	Public Works	984.75	27,026.47
12	Solid Waste	7,119.00	166,900.89
13	Fleet Maintenance	57.00	1,713.82
14	Neighborhood Improvement	617.00	14,352.64
15	Water Management	10,819.75	287,274.22
	Total	48,673.97	\$1,274,359.54

Purpose

The purpose of our audit is to ensure that the City of Durham is in compliance with policy PER 403, R-5 Overtime and Compensatory Leave and PER 410, R-5, Standby and Recall as it relates to overtime.

Results in Brief

In general, the City is in compliance with its existing policies and procedures. The individual departments/divisions have adequate processes in place to accumulate, calculate and authorize overtime pay.

Observations and discussions with City staff revealed the following instances of non-compliance:

- Two (2) departments made payment at the overtime rate for recall duty hours, in instances when the 40 hour physical work requirement was not met. This is in violation of policy PER 410, R-5, Standby and Recall.
- One (1) department did not exclude sick, vacation or other paid leave time taken when computing overtime hours. According to policy PER 403, R-5, the calculation of overtime hours is based on *actual* hours worked.

OBJECTIVE, SCOPE AND METHODOLOGY

Objective

Our audit focused on compliance with policy PER 403, R-5 *Overtime and Compensatory Leave* and PER 410, R-5, *Standby and Recall*. Two objectives were developed from these policies. The objectives were as follows:

- Determine if the City's policies and procedures are adequate to ensure overtime pay is properly awarded and computed.
- Determine if the individual departments/divisions comply with the established policies and procedures and have processes in place to ensure overtime pay is properly awarded.

Scope

The audit covered overtime payments made to employees during the fiscal year ending June 30, 2008. The scope of this audit did not include an assessment of the *appropriateness* of overtime worked.

Methodology

To accomplish our objectives, we performed the following:

- Obtained and reviewed policies pertaining to overtime which included:
 - PER 403, R-5 "*Overtime and Compensatory Leave*"
 - PER 410, R-5 "*Standby and Recall Duty*"
 - Fair Labor Standards Act
- Performed a detailed review of each of the City's policies related to earning, awarding, and recording overtime and compared these policies to the current provisions of the Fair Labor Standards Act,
- Obtained and reviewed a comprehensive report of departments/divisions and employees who had earned overtime during the period under audit and selected a sample of departments/divisions with substantial amounts of overtime to test for compliance,
- Interviewed appropriate personnel with respect to procedures used in recording, calculating and tracking overtime hours in departments/divisions,
- Interviewed Finance personnel responsible for processing the overtime payments,

OBJECTIVE, SCOPE AND METHODOLOGY (continued)

- Observed practices in sampled departments to assess timekeeping procedures being performed by City departments related to overtime payments, and
- Reviewed a sample of employees at the selected departments that received overtime pay and performed the following steps:
 - Traced overtime payments from MUNIS detail check history report to original timesheets;
 - Verified calculation of overtime hours for accuracy;
 - Verified that proper approvals were received;
 - Reviewed employee exemption status.

After examination of the City's policies and procedures providing guidance on awarding overtime pay for hours worked by employees beyond their regularly scheduled hours, we found the City's policies to be in compliance with the Fair Labor Standards Act.

Audit Staff selected a sample of one hundred and nine employees (109) at nine (9) departments and reviewed overtime pay calculation for these employees during four (4) pay periods. After performing the fieldwork to determine compliance with the existing policies and procedures we noted that, generally, the departments/divisions are in compliance. However, we found a few instances of non-compliance with City policy. Following is a summary of the results:

- Public Works/Street Maintenance division, Water Management/Distribution and Collection Systems division and Water Management/Meter Maintenance division, consistently made payment at the overtime rate for recall duty hours, in instances when the 40 hour physical work requirement was not met. The eligibility requirements for payment of overtime for recall duty is defined in PER-410 R-5, III B(2)(c) of the Standby and Recall policy. It states that *"If the time physically worked pushes the employee's hours beyond 40 hours in the work week or beyond the work period limit for police and fire fighting employees, the employee must be compensated at the time and one-half rate for those overtime hours"*. Interviews with the timekeepers in these divisions revealed that they were unaware of their misinterpretation of the policy, and they were trained to pay overtime for all recall duty hours worked in this manner. This practice causes ineligible overtime payments to be made for work that should be compensated at regular time.

The only exception when an employee can get compensated at the time and one-half rate for overtime hours regardless of actual hours worked is referenced in PER – 403 R-5 III B(3). Essential Solid Waste, Fleet, and Public Works employees may receive time and one half pay for time worked on a holiday or day off although they did not physically work a 40 hour week. Therefore, if recall duty hours were paid at time and one half during a holiday regardless of actual hours worked, it would be in compliance with policy. This would not apply to the Water Management department. The Water Management Distribution and Collection System and Meter Maintenance divisions were previously part of the Public Works department and according to policy the exception would have applied. After the reorganization these divisions are part of the Water Management department and the exception no longer applies to them.

The Human Resources department notified the Water Management department director and management team by e-mail on August 21, 2007 regarding the non-compliance with regard to policy PER-410 R-5, III B(2)(C). Audit testing revealed that no action has been taken by the department to become compliant.

- Per Policy PER 403, R-5, the calculation of overtime hours is based on *actual* hours worked. Audit evidence revealed that the Impact Team division of the Neighborhood Improvement Services department did not exclude sick, vacation or other paid leave time taken when computing overtime hours.
- The City's policy is unclear regarding hours worked by off duty police officers in the grant funded or special assignment program. Currently, all hours worked in this program are being paid at the overtime rate regardless of the total hours worked by the employee. There is a Memorandum of Understanding (MOU) which serves as an agreement between the Chief of Police, Human Resources Director and City Manager regarding overtime and compensatory time for sworn personnel. The memorandum states that overtime hours worked as part of grant-funded programs and/or special assignment programs approved by the City Manager or City Council are paid separately each pay period. This memorandum is not referenced in the City's policy as an exception to overtime calculations.

Recommendation 1

The Public Works department and the Water Management department should comply with the Standby and Recall Policy PER 410, R-5 and only award the overtime rate of pay for recall duty in instances when the 40 hours physical work requirement is met.

Recommendation 2

The Neighborhood Improvement Services department should ensure that overtime hours are calculated in accordance with Policy PER 403, R-5.

Recommendation 3

The Human Resources department should monitor compliance with Policy PER 403, R-5 and Policy PER 410, R-5. In instances of non-compliance, the department with the assistance of the City Manager should establish controls and enforce compliance with policy.

Recommendation 4

All Memorandums of Understanding and other special exceptions to the policy should be referenced in the policy.

Recommendation 5

The Human Resources department should examine policy PER 403, R-5 III B (3) and determine whether Water Management Distribution and Collection System and Meter Maintenance divisions should be included in the policy and revise the policy if needed.

MANAGEMENT'S RESPONSE

Memo to: Sonal Patel, Interim Director of Audit Services
From: Alethea C. Bell, Director of Human Resources
Date: October 3, 2008
Subject: Management's Response – *Overtime* (October 2008)

The following is the management's response to the *Overtime Audit dated October 2008*.

Recommendation 1

The Public Works department and the Water Management department should comply with the Standby and Recall Policy PER 410, R-5 and only award the overtime rate of pay for recall duty in instances when the 40 hours physical work requirement is met.

Management's Response:

We concur. Management is in full agreement with the recommendation. Notification to the Deputy City manager will be given so that direction can be given to insure compliance by November 1, 2008.

Recommendation 2

The Neighborhood Improvement Services department should ensure that overtime hours are calculated in accordance with Policy PER 403, R-5.

Management's Response:

We concur and will notify the Deputy City Manager so direction can be given to insure compliance by November 1, 2008.

Recommendation 3

The Human Resources department should monitor compliance with Policy PER 403, R-5 and Policy PER 410, R-5. In instances of non-compliance, the department with the assistance of the City manager should establish controls and enforce compliance with policy.

Management's Response:

We concur. We will propose a mechanism to the City Manager so that in instances of noncompliance departments are notified and monitored for compliance.

Recommendation 4

All Memorandums of Understanding and other special exceptions to the policy should be referenced in the policy.

Management's Response:

We concur and will reference the Police MOU in the policy and any other exceptions that have been noted.

Recommendation 5

The Human Resources department should examine policy PER 403, R-5 III B (3) and determine whether Water Management Distribution and Collection System and Meter Maintenance divisions should be included in the policy and revise the policy if needed.

Management's Response:

We concur.

Water Management will need to provide the necessary justification for inclusion of these divisions as an exception if needed. We will notify the Deputy City Manager to request this information. We will then be able to examine and if necessary revise the policy.