TITLE VII PERSONNEL

CHAPTERS:

Chapter 7.06 Fair Labor Standards Act

Sections:

7.06.010 HISTORY. The Fair Labor Standards Act ("FLSA"), first enacted in 1938, established ~~a~~ minimum wage, overtime, record keeping requirements, and child labor standards. In 1963, the FLSA was amended to prohibit discrimination on the basis of sex with respect to compensation for performance of equal work.

Congress first applied the FLSA to state and local governments in 1966, when it extended the Act's coverage to certain groups of employees of public employers. In 1974, Congress further amended the FLSA to cover all state and local employees, by adding special provisions governing the computation of overtime for state and local enforcement activities. In 1985 Congress made major changes in several of the FLSA's provisions as they apply to state and local employers.

Many states have also enacted wage-hour laws, some of which differ substantially from the FLSA. Employers may also be subject to collective bargaining agreements that establish compensation requirements.

7.06.020 BASIC REQUIREMENTS. The FLSA establishes minimum wage, overtime, record keeping, child labor, and equal pay requirements. In addition to the minimum wage, the FLSA requires that all covered, non-exempt state and local employees receive premium overtime pay or compensatory ("comp") time off for all hours worked over 40 per seven-day work week. If cash overtime is paid, the employee must receive 1.5 times his or her "regular rate of pay" for

each overtime hour. Similarly, if comp time is used, the employer must provide the employee 1.5 hours off for every overtime hour worked.

The FLSA also requires employers to keep various records for all covered employees. DOL regulations require detailed record keeping (including covered employees who are exempt from the FLSA's minimum wage and/or overtime requirements). No particular form of records is required.

7.06.030 RELATIONSHIP BETWEEN FLSA AND STATE WAGE-HOUR LAWS. The FLSA does not excuse non-compliance with any federal, state, or local law that establishes a minimum wage higher than the FLSA's minimum wage, or sets lower limitations on the maximum number of non-overtime hours in a work week or work period. Thus, state and local governments must comply with any provisions of state or local laws which establish minimum wage or overtime standards that are more beneficial to employees than those of the FLSA. By the same token, provisions of state or local laws that are less beneficial to employees than the FLSA do not excuse non-compliance with the more beneficial provisions of the FLSA. If a state or local law is more favorable to employees than FLSA in some respects, but less favorable in others, the employer must comply with both the state law and FLSA, following the more employee-favorable provisions in each case.

7.06.040 MORE FAVORABLE BENEFITS. The FLSA does not prohibit an employer from agreeing to establish wage and hour policies that are more favorable to employees than required by the FLSA. Thus, the FLSA has no effect on provisions of collective bargaining agreements that require premium over time compensation for work in excess of a specified number of hours less than 40 per week, an overtime rate greater than 1.5, or any other provision that is more favorable to employees than is the FLSA. Employers who have agreed to employee-favorable terms should be aware that certain fringe benefit payments can be excluded from the computation of FLSA overtime and that certain premium payments required by contract or collective bargaining agreements may also be credited against FLSA overtime owed by the employer.

7.06.050 RELATIONSHIP BETWEEN THE FLSA AND COLLECTIVE BARGAINING AGREEMENTS. An employee cannot waive, by contract, collective bargaining agreement, or any other method, the right to receive minimum wage or overtime compensation required by the FLSA. Thus, provisions of collective bargaining agreements that establish overtime rates or methods for computing overtime pay which are less favorable to employees than the FLSA are null and void.

7.06.060 PAYMENT OF EXEMPT EMPLOYEES. It is not true that all employees who are paid salaries are exempt from FLSA overtime requirements. Exempt employees must be paid on a salary basis, but simply being paid on a salary basis is not enough to qualify an employee for an exemption. There are other tests to determine whether or not employees qualify for the Administrative, Professional, or Executive exemptions under the FLSA. These tests are quite specific, and address job duties and responsibilities, not just job titles. Before assuming that employees paid on salary are truly exempt, the requirements for exemption should be carefully re viewed.

It is also untrue that employees who are "exempt" from a union contract are also considered "exempt" under the FLSA, and thus not entitled to overtime. There is no correlation between union status and FLSA-exempt status. Again, the specific duties of the position must meet the qualifications for exemption under the FLSA. A common misconception is that someone classified as a "confidential" employee who is exempt from union membership is not entitled to overtime. In many cases, this is not true.

7.06.070 PAYMENT FOR WORKING HOLIDAYS. There is no requirement under the FLSA that employees be given premium pay for holidays, weekends, or evening work. Over time is only required for time actually worked in excess of 40 hours in a work week. In fact, sick leave, vacation leave, and holidays taken during a work week do not need to be counted as hours worked in determining if an employee has worked more than 40 hours in a week. Again, a collective bargaining agreement or personnel policy could obligate payment of overtime in these situations.

7.06.080 PAYMENT FOR EMPLOYEES WHO "VOLUNTEER" TO WORK AT HOME. It is a misconception that employees who "volunteer" to work overtime, or regularly take work home to complete, do not need to be paid for that work. A non-exempt employee who volunteers to work overtime must be paid for that time. If non-exempt employees are regularly working extra hours, they should be instructed not to, and steps should be taken to discipline those who continue to do so. Otherwise, the employer could be subject to substantial liability.

7.06.090 CALCULATION OF "REGULAR RATE OF PAY." Overtime is calculated at 1.5 times the "regular rate of pay", which includes all compensation for employment paid to, or on behalf of, the employee, with a few exceptions. Examples of pay that would have to be included in the regular rate of pay include: shift differentials, education incentives, longevity pay, hazardous duty pay, special assignment pay, bonuses that are based on accuracy, good attendance, incentive, quality of work, etc., retroactive pay increases, payments for EMT certification, and payments to canine officers. These payments must be added to the basic rate before overtime is calculated.

7.06.100 AVERAGING WORK WEEKS. It is illegal to require an employee to work 50 hours one week and 30 hours the next without having to pay any overtime, since the average is 40 hours a week. The FLSA requires that each workweek be treated separately. With few exceptions, hours cannot be averaged over two or more weeks to avoid an overtime obligation. In this example, the non-exempt employee would be entitled to 10 hours over time compensation in the first workweek.

Chapter 7.08 Americans with Disabilities Act

Sections:

7.08.010 HISTORY. On July 26, 1990, the President of the United States signed the Americans with Disabilities Act. This law prohibits discrimination - in employment, transportation, public services, public accommodations and telecommunications - against an estimated 43 million Americans with physical and mental disabilities. As of January 26, 1993, Title II prohibits discrimination on the basis of disability by "public entities."

7.08.020 OVERVIEW OF REQUIREMENTS. Local governments cannot deny individuals with disabilities the right to participate in, or in any way limit participation in, a service, program or activity simply because the person has a disability. Programs must be operated so that, when viewed in their entirety, they are readily accessible to, and usable by, individuals with disabilities. Reason able modifications must be made to policies, practices and procedures that deny access to individuals with disabilities, unless a fundamental alteration in the program would result. No special charges to individuals with disabilities should be made to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as making modifications required to provide program accessibility or providing qualified interpreters.

7.08.030 PROGRAM ACCESS. Local governments must ensure that individuals with disabilities are not excluded from services, programs, and activities because buildings are inaccessible. Removal of all physical barriers, such as stairs, in all existing buildings is not required, so long as programs are made accessible in some way to individuals who are unable to use an inaccessible existing facility. Services, programs and activities offered in a facility where the physical barriers are not removed can be provided through alternative methods, such as relocating a service to an accessible facility, providing an aide or personal assistant to enable the individual with a disability to obtain the service, or providing benefits or services in an individual's home or alternative accessible site.

7.08.040 STEPS TO COMPLIANCE. The Americans with Disabilities Act requires a municipality to do the following:

- Select a person to coordinate compliance;
- Create a grievance procedure;
- Access or evaluate services, policies, and practices for accessibility to persons with disabilities;
- Ensure that structural aspects of municipal owned facilities do not pre vent people with disabilities from participating in programs and receiving services; and
- Create documents to inform the public of rights protected by the Act.

7.08.050 ADDITIONAL INFORMATION SOURCES.

The U.S. Department of Justice has established National Regional Disability and Business Technical Disability and Business Technical Assistance Centers. Calling 1-800-949-4ADA from any state will reach the technical assistance center in your region.

In Washington, the Alliance of People with Disabilities, a nonprofit organization located in Seattle, promotes the social well-being of persons with disabilities and provides accessibility consulting. Contact information: 1120 E. Terrance Street, Suite 100, Seattle, WA 98122 or (206) 545-7055.

Chapter 7.10 Sexual Harassment

Sections:

7.10.010 SERIOUSNESS. Sexual harassment should be taken seriously. Doing so is a sound management practice, which can result in higher productivity and morale, fewer turnover problems and costs, and clearer performance standards.

Taking sexual harassment seriously is part of compliance with the law and can result in the reduction of illegal, discriminatory behavior and creation of a positive work environment where people are treated fairly and enjoy equal opportunity for hiring, training and promotion.

Taking sexual harassment seriously is a matter of organizational policy, which can make a real contribution to the overall effectiveness of your organization through improvements in productivity, communication, and ethics.

7.10.020 DEFINITIONS. Sexual harassment violates both Title VII of the 1964 Civil Rights Act and Chapter 49.60 of the Revised Code of Washington (Law Against Discrimination). These laws are enforced by the Equal Employment Opportunity Commission, which is a federal agency, and by the Washington State Human Rights Commission.

According to guidelines used by these agencies, sexual harassment can be either physical or verbal, but always has some relationship to the employment of the victim. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature are illegal. It is sexual harassment when:

- submitting to sexual advances is an open or implied condition of employment;
- the employee's response to sexual advances becomes the basis for employment decisions such as promotion, transfer, or termination; or

- the unwelcome conduct creates a hostile, intimidating, or offensive environment which interferes with an individual's job performance.

Case law has made it clear that employers will be held liable for the presence of sexual harassment in the workplace. In addition, under civil law, individuals can be sued on charges of sexual harassment. A municipality may be held liable for its handling of sexual harassment complaints.

7.10.030 PRACTICAL ADVICE FOR GOVERNMENT EMPLOYERS.

To comply with both state and federal law, local government employers should make it known to all employees that the agency has zero tolerance for sexual harassment in the workplace. Employers need to develop a formal but easily understood policy against sexual harassment with a sensible complaint procedure, and then they must effectively communicate this policy to all employees. Additionally, employers must exercise reasonable care to promptly correct any sexually harassing behavior.

- Develop a written anti-harassment policy and proactive workplace program and make sure that all employees have a copy of it. To make sure that all employees have received and understood the written policies, ask employees to sign a statement confirming their understanding of the policy, and keep a copy of the signed form in each employee's personnel file.
- Notify employees of their rights, including how to report incidents of harassment.
- Establish a clear complaint procedure that establishes a process for handling complaints, investigating and documenting charges, and correcting misconduct. Create an open atmosphere in which complaints can be raised without fear of retaliation.
- Educate and train managers and supervisors about their responsibilities under the anti-harassment policy.
- Educate and train all employees regarding responsible behavior in the workplace and appropriate procedures for reporting incidents of harassment.
- Investigate complaints promptly and thoroughly.
- Take prompt and effective remedial action.