City of Elkins

Personnel Committee Meeting

October 7, 2024
1:00 PM
Phil Gainer Community Center
142 Robert E. Lee Ave. Ext.

AGENDA

1. **Call to order and roll call**
2. **Public comment**
3. **Minutes**
   a. Proposed minutes for the meeting of August 5, 2024
4. **Reports**
5. **New business**
   a. Dept. of Labor Final Rule regarding exempt employees
   b. General Fund Admin Officers pay structure
6. **Announcements**
7. **Adjournment**

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	October 7, 2024
Section:	Minutes
Category:	Action Item
Agenda Item Name:	Proposed minutes for the meeting of August 5, 2024
Recommended By:	City Clerk
Summary:	Minutes proposed for the meeting of August 5
Fiscal Impact:	n/a
Recommendation:	Consider for approval
Attachments:	1. Personnel Committee - 2024_08_05 - minutes_proposed

PERSONNEL COMMITTEE
REGULAR MEETING
MINUTES

401 Davis Avenue
City Hall, Council Chambers
August 5, 2024
1 p.m.

Present were members: R. Chenoweth, M. Hinchman, C. Thompson.

Also present were: Jerry Marco (mayor), Gerry Roberts (city attorney), Tracy Judy (treasurer), Steve Himes (fire chief), Melissa Washington (human resources), J. Deighan (communications), L. Roberts (executive secretary and recording secretary).

MINUTES

Chenoweth **MOVED APPROVAL OF THE MINUTES OF THE MEETING OF JULY 1, 2024.** The motion carried.

NEW BUSINESS

Chenoweth **MOVED RECOMMENDING COUNCIL APPROVAL OF THE UPDATED PERSONNEL POLICY AS PRESENTED.** The motion carried.

The meeting adjourned at 1:05 p.m.

Name & Title	Signature

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	October 7, 2024
Section:	New business
Category:	Action Item
Agenda Item Name:	Dept. of Labor Final Rule regarding exempt employees
Recommended By:	HR Director
Summary:	"Exempt" employees are those employees who receive an annual salary, as opposed to hourly wages, and are not eligible for ("exempt" from) overtime pay requirements. Employees classified as exempt must meet certain tests related to the nature of their work and must also make above a federally established minimum salary. The U.S. Department of Labor recently raised the minimum salary for employees to be considered exempt, effective January 1. See the attached memo from the HR Director, as well as a PDF explaining more about exempt and non-exempt classification rules and implications. The rule change puts 3 of the 5 administrative officers, the HR Director, and the Communications Specialist below the new threshold.
Fiscal Impact:	n/a
Recommendation:	Review and discuss presented information to determine whether recommendations are needed at this time
Attachments:	1. Memo_ Personnel Committee_DOL Exempt Rule _ 20241007 2. Understanding Overtime Exemptions Under the FLSA

City of Elkins, West Virginia

Memo

To: Personnel Committee

From: Melissa Washington, Human Resources

cc: Sutton Stokes, City Clerk

Date: 10/7/2024

Re: U.S. Department of Labor – Employee Status

On April 23, 2024, the U.S. Department of Labor (DOL) issued a final rule under the Fair Labor Standards Act (FLSA) that increases the salary thresholds for exempt employees. The rule is intended to make more Americans eligible for overtime pay, and to ensure that lower-paid salaried workers are not unfairly compensated.

Revisions included increase the standard salary level annual compensation threshold on the rules effective date on July 1, 2024, and on January 1, 2025. The final rule also provides for future updates of these levels every three years to reflect current earnings data. These scheduled increases are displayed below.

- **Before July 1, 2024:** $684 per week (equivalent to $35,568 per year)
- **July 1, 2024:** $844 per week (equivalent to $43,888 per year)
- **January 1, 2025:** $1,128 per week (equivalent to $58,656 per year)
- **July 1, 2027, and every 3 years thereafter:** to be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.

This is intended to be an overview of the rules that we have to be in compliance with. The proposed Administrative Officer's Compensation change would take care of the exemption issue for almost all employees. At a future meeting in November we will address proposed changes for any outliers. The EPRC has moved the exempt employees to non-exempt status so we would be in compliance with the DOL.

TOOLKIT

Understanding Overtime Exemptions Under the FLSA

April 24, 2024

[Editor's note: Effective July 1, 2024, the Fair Labor Standard Act's (FLSA's) annual salary-level threshold for white-collar exemptions to overtime requirements **will increase - (https://www.shrm.org/topics-tools/employment-law-compliance/overtime-rule-raised-threshold)** *from $35,568 to $43,888. As of Jan. 1, 2025, the annual salary threshold will rise to $58,656.]*

Overview

The Fair Labor Standards Act (FLSA) is a federal law with broad coverage, affecting most private and public employees. The FLSA generally requires employers to pay all covered nonexempt employees the statutory minimum wage and **overtime pay - (https://www.dol.gov/whd/regs/compliance/whdfs23.htm)** of at least one and one-half times their regular rates of pay for hours worked in excess of 40 hours in a workweek.

There are some exceptions to the 40-hour-per-week standard for **employees of hospitals and nursing homes - (https://www.dol.gov/whd/regs/compliance/whdfs31.htm)** and for **police officers and firefighters - (https://www.dol.gov/whd/regs/compliance/whdfs8.htm)** employed by public agencies.

This toolkit provides an overview of the positions that may qualify for an exemption from overtime pay ui the FLSA white-collar and industry exemptions. *See* **What You Need to Know About White-Collar Over Exemptions Under the FLSA**.

Feedback

FLSA Coverage

Under the FLSA, the term "employ" means to "suffer or permit to work," however, some individuals may not fall within that definition. For example, trainees, interns, externs, apprentices and graduate assistants may not be considered employees within the meaning of the FLSA.

Individuals also may not be covered by the FLSA when they volunteer time to religious, charitable, civic, humanitarian or similar nonprofit organizations as a public service and do not expect or receive compensation. *See* **DOL FLSA Advisor: Volunteers - (https://webapps.dol.gov/elaws/whd/flsa/docs/volunteers.asp)**.

The FLSA also does not apply to work performed by **independent contractors**.

If an employment relationship exists, the FLSA applies when either the individual or enterprise coverage rules are met. An employee is covered by the FLSA on an individual basis if he or she is "engaged in commerce or the production of goods for commerce." 29 U.S.C. Section 206(a). The rules for enterprise coverage focus on the nature of the employer's business. *See* **DOL Fact Sheet #14: Coverage Under the Fair Labor Standards Act. - (https://www.dol.gov/whd/regs/compliance/whdfs14.htm)**

Unless an employer can establish that it is not covered by the FLSA or that an exemption from the FLSA applies, employees are presumed to be eligible for overtime. Employers and employees cannot agree tı waive coverage of the FLSA. Similarly, in most circumstances, collective bargaining agreements cannot waive coverage of the FLSA.

Overtime Exemptions Under the FLSA

The FLSA Section 13(a)(1) exemptions are often referred to as the white-collar exemptions. To be exempt from overtime, a position must meet the following three criteria:

1. A minimum salary threshold (some exceptions apply).
2. Payment on a salary basis as defined by the regulations (some exceptions apply).
3. A primary duty test that is specific to each exemption.

Minimum salary

The overtime rule raises the standard salary-threshold levels in two phases. Workers who do not earn **at least $43,888** ($844 a week) as of July 1, 2024, would have to be paid overtime, even if they're classified as a manager or professional. The salary-level threshold rises to **$58,656 a year** ($1,128 a week) as of Jan. 1, 2025. There are automatic increases to the salary threshold every three years.

Nondiscretionary bonuses and incentive payments (including commissions) paid on an annual or more frequent basis may be used to satisfy up to 10 percent of the standard salary level.

Salary basis

An exempt employee must be paid a predetermined and fixed salary that meets the minimum salary requirements in the regulations and that is not subject to reduction because of variations in the quality or quantity of work performed. *See* **Fact Sheet #17G: Salary Basis Requirement and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA) - (https://www.dol.gov/agencies/whd/fact-sheets/17g-overtime-salary)**

White-collar exemptions

In addition to the minimum salary and salary basis requirement, a position must meet certain duties tests specific to each exemption:

Executive exemption - (https://www.dol.gov/agencies/whd/fact-sheets/17b-overtime-executive)

- The primary duty must be managing the enterprise or managing a customarily recognized department or subdivision of the enterprise.
- The position must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent.
- The position must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative exemption - (https://www.dol.gov/agencies/whd/fact-sheets/17c-overtime-administrative)

- The primary duty must be the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers.

- The primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional exemption - (https://www.dol.gov/agencies/whd/fact-sheets/17d-overtime-professional)

Learned professional (examples include accountant, attorney, nurse and engineer):

- The primary duty must be the performance of work requiring advanced knowledge, defined as work that is predominantly intellectual in character and requires the consistent exercise of discretion and judgment.
- The advanced knowledge must be in a field of science or learning.
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Creative professional (examples include composer, singer and graphic designer):

- The primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual or physical work.

Teachers, doctors and artists - (https://www.dol.gov/whd/overtime/fs17d_professional.pdf) may also qualify for the professional employee exemption. The salary basis requirements do not apply to teachers, licensed/certified practitioners of law and medicine, medical interns and residents.

Computer-related occupation exemption - (https://www.dol.gov/agencies/whd/fact-sheets/17e-overtime-computer)

- The primary duty must consist of higher-level system-analyst techniques and procedures, higher-level design or testing of systems, higher-level design or testing for operating systems, or some combination of the three. This exemption is meant for positions such as network analyst, developer and software engineer; it is specifically not meant for lower-level computer support roles.
- The position must be compensated on a salary basis of not less than the minimum salary requirement *or* at least $27.63 per hour.

Highly compensated employee exemption - (https://www.dol.gov/agencies/whd/fact-sheets/17h-overtime-highly-compensated)

- The position must be paid a total annual compensation of at least $132,964 (effective July 1, 2024) and then $151,164 (effective Jan. 1, 2025), paid on a salary basis.
- The position customarily and regularly performs any one or more of the exempt duties of an executive, administrative or professional employee.

Outside sales exemption - (https://www.dol.gov/agencies/whd/fact-sheets/17f-overtime-outside-sales)

- The salesperson is customarily and regularly engaged away from the employer's place or places of business and performing the primary duty of making sales or obtaining orders for contracts for services or for the use of facilities for which consideration is paid by a client or customers.
- The minimum salary and salary basis requirements do not apply to exempt outside sales employees.

Combination exemption - (http://www.ecfr.gov/cgi-bin/text-idx?SID=945a687d0e120673394b4eb77b76d7d9&mc=true&node=se29.3.541_1708&rgn=div8) . When an employee performs a combination of exempt duties that fall under the executive, administrative, professional, outside sales and computer employee exemptions, he or she may qualify under a combination exemption.

When an employee performs a combination of duties that fall under both exempt and nonexempt work, the employee's **primary duty - (https://webapps.dol.gov/elaws/whd/flsa/overtime/glossary.htm?wd=primary_duty)** will determine whether an overtime exemption applies. The employee's primary duty must be the performance of exempt work in order for the minimum wage and overtime white-collar exemptions to apply. *See* DOL Opinion Letter **FLSA 2005-14 - (https://www.dol.gov/whd/opinion/FLSA/2005/2005_03_17_14_FLSA_nonexempt.pdf)** .

Industry exemptions

The FLSA also provides overtime exemptions that apply by industry. Summaries of the more commonly used industry exemptions include the following:

Agricultural activities or operations. - (https://www.dol.gov/agencies/whd/fact-sheets/12-flsa-agriculture) The FLSA exempts from minimum wage and overtime pay requirements certain employees who are employed in agriculture or in certain related activities or in certain operations with respect to agricultural or horticultural commodities.

- (https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs20.pdf)

Commissioned sales employees. The FLSA exempts certain commissioned sales employees (often referred to as the - (https://www.dol.gov/agencies/whd/fact-sheets/20-flsa-commissions-retail) "7(i)" exemption - (https://www.govinfo.gov/content/pkg/CFR-2011-title29-vol3/xml/CFR-2011-title29-vol3-part779.xml#seqnum779.410)) from the FLSA's overtime requirements when all three of the following conditions are met:

- The employee must be employed by a retail or service establishment.
- The employee's regular rate of pay must exceed one and one-half times the applicable minimum wage under Section 6 of the FLSA.
- More than half of the employee's total earnings in a representative period must consist of commissions on goods or services.

- (https://www.dol.gov/agencies/whd/fact-sheets/19-flsa-motor-carrier)

Motor carrier employees. The FLSA exempts certain employees covered by the Motor Carrier Act of 1935. This exemption applies to employees who are: - (https://www.dol.gov/agencies/whd/fact-sheets/19-flsa-motor-carrier)

- Employed by a motor carrier or motor private carrier, as defined in 49 U.S.C. Section 13102.
- Drivers, driver's helpers, loaders or mechanics whose duties affect the safety of operation of motor vehicles in transportation on public highways in interstate or foreign commerce.
- Not covered by the small vehicle exception.

Positions Not Eligible for Exemption

There are certain types of positions that the DOL considers to be outside the scope of any exemption and, therefore, eligible for overtime.

Blue-collar workers

Manual laborers or other blue-collar workers "who perform work involving repetitive operations with their hands, physical skill and energy" are entitled to overtime. Examples of **such blue-collar workers - (https://www.dol.gov/whd/overtime/fs17i_blue_collar.htm)** include "non-management production-line employees and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operation engineers, longshoremen, and construction workers."

First responders

The white-collar exemptions also do not apply to certain **first responders - (https://www.dol.gov/whd/overtime/fs17j_first_responders.htm)**, such as police officers, fire fighters, paramedics, emergency medical technicians, ambulance personnel and rescue workers, "regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work."

Other workers

Inside sales employees are entitled to overtime under the FLSA regulations. The DOL expressly states in the preamble to the regulations that it "does not have statutory authority to exempt inside sales employees from the FLSA minimum wage and overtime requirements under the outside sales exemption."
Generally, paralegals and legal assistants are entitled to overtime. For a discussion of a particular paralegal position the DOL concluded was entitled to overtime, *see* **DOL Opinion Letter FLSA 2005-54 - (https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2005_12_16_54_FLSA.pdf)**.
Many executive and administrative assistants are entitled to overtime. For a discussion of several administrative assistant positions in state employment in which the DOL concluded some were and some were not entitled to overtime, *see* **DOL Opinion Letter FLSA 2006-23NA - (https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2006_10_26_23NA_FLSA.pdf)**.

For additional guidance *see* **DOL Wage and Hour Division Final Rulings and Opinion Letters - (https://www.dol.gov/whd/opinion/guidance.htm)**.

State Overtime Laws

A few states, such as California and New York, have overtime exemption criteria that conflict with the FLSA. Multistate employers should check applicable state laws to ensure compliance with both federal and state law. *See* **Multistate Law Comparison Tool - (https://www.shrm.org/topics-tools/tools/interactive-tools)**.

Additional Resources

FLSA Overtime Rule Resources

FLSA Exemption Flow Chart

FLSA Exempt/Nonexempt Questionnaire

Are there exceptions to the minimum salary requirements for white-collar exemptions under the FLSA regulations?

When can deductions be made from exempt employees' salary?

May an employer require an exempt employee to record hours and work a specified schedule?

What is meant by the terms "exempt," "non-exempt," "salaried" and "hourly"?

Can I pay exempt employees extra without jeopardizing their exempt status?

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	October 7, 2024
Section:	New business
Category:	Action Item
Agenda Item Name:	General Fund Admin Officers pay structure
Recommended By:	Admin Officers
Summary:	The city's five Administrative Officers (Clerk, Treasurer, Fire Chief, Police Chief, Operations Manager) are appointed by and negotiate salaries directly with Council. Two of these officers are appointed to two-year terms and have negotiated salary adjustments biannually as a result. The other three have no natural renegotiation point and have seen salary increases lag as a result. The process of negotiating new salaries is inconsistent and time consuming. Over recent years, the average annual salary increase for the five Administrative Officers has been just under 4 percent. The attached memo proposes a new recurring cost-of-living adjustment of 6 percent every two years, or just under 3 percent annually. This would improve consistency and fairness while also saving money for the city. Starting this new framework Jan. 1 would also address the new Department of Labor threshold for exempt employees. See the attached memo for a more detailed explanation.
Fiscal Impact:	The Jan. 1 increase would cost the city just under $20,000 in salary and benefits. The Treasurer will distribute more detailed information at this meeting.
Recommendation:	Consider for recommendation to council
Attachments:	1. Memo - AO compensation adj framework - 2024_10_03

Memo

To: Personnel Committee

From: Admin Team

cc: Melissa Washington, HR Director

Date: October 3, 2024

Re: Framework for Administrative Officer compensation adjustments

---

The current approach to salary adjustments for the city's Administrative Officers is inconsistent, time-consuming, and unfair. This memo proposes a new approach that is fairer and more predictable, while also decreasing long-term costs to the city.

Issues With the Current System

One issue with the current system arises from the fact that two Administrative Officers (AOs) are appointed to terms (i.e., City Clerk and City Treasurer), while the rest are not (i.e., Fire Chief, Operations Manager, and Police Chief).

Salaries of officials appointed to terms can only be adjusted at the time of reappointment (i.e., not during a term of office). This reappointment process gives the Clerk and Treasurer a natural point in time to renegotiate salaries. The other three AOs, having no scheduled "reappointment" process, also have no similar point in time for their own renegotiations. (Salaries of AOs are negotiated and recommended by the Personnel Committee, as per the Charter.)

As a result, the Clerk and Treasurer have historically seen more consistent salary adjustments—i.e., every two years. The other three AOs have often gone much longer between adjustments. A previous Operations Manager waited six years for his second raise and four years for his third. A previous Fire Chief waited three years for his first raise and five years for his second. And a past Police Chief waited four years for his first increase after his initial appointment.

Another source of inconsistency is a lack of clarity concerning whether Admin Officer compensation adjustments are intended to compensate for increased cost of living, to recognize expanded duties, to reward excellent performance or training/certification attainment, or some combination of all of these. Given this lack of clarity, AOs come to the negotiating table with widely differing proposals, documentation, and hopes/expectations. The process of considering these proposals then proceeds "from scratch," with no clear framework and no understanding of common assumptions. The result is stressful and time consuming for both the AOs and the Personnel Committee and is at high risk of resulting in misunderstandings, miscommunication, and damaged morale.

Historical AO Compensation Adjustments

In addition to the inconsistency of the *schedule* of AO compensation adjustments, the actual relative *amounts* have also varied considerably.

- The current Treasurer, originally appointed in 2015, has seen an average increase of 7.04 percent at each biannual reappointment since, or around 4.5 percent annually.
- The previous Clerk, originally appointed in 2016, saw an average increase of 8.4 percent at each biannual reappointment, or around 5.5 percent annually.
- From 2009 through 2020, a past Operations Manager compensation increases averaged to around 3 percent annually (and again, he waited six years for his second raise and four years for his third).
- From 2012 to 2020, a past Fire Chief's compensation increases averaged to around 5 percent annually (but again, he waited three years for his first raise and five years for his second).
- The current Police Chief has received only one compensation adjustment since initial appointment in 2019, in an amount that averages to around 1.4 percent annually.

Across the five administrative officers, the average of the annual increases shown above is just under 4 percent.

Proposal

After careful consideration, the AOs propose to replace the above approach with a more straightforward and consistent framework.

In short, each AO would receive a 6-percent increase every two years (slightly less than 3 percent annually), understood simply as a cost-of-living increase.

This increase would occur on January 1st of odd-numbered years, starting in 2025, for all AOs except the Treasurer, whose reappointment schedule would require that it be effective for her on October 1st of odd-numbered years.

Separately from this framework, if any AO felt that his or her salary warranted restructuring based on significantly expanded duties or for exceptional performance, he or she would be free to make that case to the Personnel Committee separately as they see fit. Otherwise, they would simply see their salaries increased by 6 percent every two years.

Although this is a not insignificant amount of increase, it should be considered in the context of the above-described history of AO compensation adjustments. Overall, compared to that pattern and considered across all five AOs, this proposal would result in reduced costs over time compared to past adjustment patterns.

This proposed framework would also be fairer and more predictable. Finally, it will avoid the morale issues and compensation stagnation that the current "system" risks.

Keep in mind that, even after adopting a formal framework of automatic increases such as this one, council would always have the option to amend the policy in the future.

Some Notes:

- The reason for the two-year increase period is because two AOs are appointed to terms, and salaries of employees appointed to terms cannot be changed during a term.
- Proposal is for the first 6-percent increase to be effective January 1, 2025, for everyone except the Treasurer, whose increase would be effective October 1, 2025. The increase would recur biannually thereafter.
- Coincidentally, a new rule from the U.S. Department of Labor requires that all "exempt" (salaried) employees must be paid at least $58,656 as of Jan. 1, 2025. The above proposal would have the additional benefit of moving all AOs above this threshold right on time, except for the Fire Chief. His current salary is so low that a 6 percent increase would not raise him above the Jan. 1 DOL minimum for exempt employees. Therefore, it is proposed that the fire chief be raised to at least $59,000 as of January 1, a 7.3 percent increase. However, given that the Police Chief would be raised to $61,480 and in light of the similarity of the roles, it would seem advisable to raise the Fire Chief to a matching salary (i.e., $61,480). The Fire Chief's biannual increase would revert to 6 percent after this initial increase.

Proposed Council Action:

To implement the above framework, it is proposed that Council approve a resolution as follows:

- Increase the compensation of the Clerk, Operations Manager, and Police Chief by 6 percent, effective Jan. 1, 2025.
- Increase the compensation of the Treasurer 6 percent, effective Oct. 1, 2025.
- Increase the compensation of the Fire Chief to $61,480, effective Jan. 1, 2025.
- Order that all five AOs will receive at least 6-percent compensation increases biannually thereafter.

##