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### **ARA 3.08.03 HOURS OF WORK, OVERTIME COMPENSATION, AND MANAGEMENT LEAVE: EXEMPT EMPLOYEES OF THE AUDITOR'S OFFICE**

#### **A. Performance Expectations for Full-Time Exempt Employees**

Full-time employees of the Auditor's Office who are classified as exempt from the overtime requirements set forth in the Fair Labor Standards Act (Act) are paid to work the amount of time required to fully perform their duties, which may require them to work more than 40 hours in a workweek. Successful performance as an exempt employee is based on the work product, not on the amount of time worked. Performance issues may arise if exempt employees do not meet desired performance objectives because they did not work the hours required to complete their jobs. Performance objectives can include availability to assist and support others during City business hours. Division managers, in consultation with the City Auditor, are responsible for setting and monitoring performance and accountability expectations.

#### **B. Overtime Compensation Not Authorized for Exempt Employees**

Overtime compensation (compensation for hours worked beyond 40 hours in a workweek) is not authorized for employees who are exempt under the Act. Acceptance of an exempt position with the Auditor's Office constitutes acknowledgement that job responsibilities may require more than 40 hours of work in a workweek.

***Emergency Exception:*** If authorized by the Mayor, City Council, or City Auditor, exempt employees may be eligible for compensation for additional hours worked if required in an emergency pursuant to [Auditor's Office Administrative Rule 3.04.11 - Inclement Weather](#) or as declared by the Mayor pursuant to Portland City Code Section 15.08.020. Additional hours worked because of a qualifying emergency may be compensated in the form of payment for the additional hours worked at the regular rate of pay, or as compensatory time off credited at the rate of one hour for each additional hour worked, at the discretion of the Auditor's Office, provided that compensatory time off can only be provided if authorized by the employee in writing or by the exclusive bargaining representative in a collective bargaining agreement or memorandum of agreement.

#### **C. Call Back Pay**

There is no "call-back" pay for exempt employees who are called to return to work in situations other than an emergency declared by the Mayor per Code Section 15.08.020.

## D. Exempt Employee Absences

The Auditor's Office appreciates the need for exempt employees to periodically have flexibility in their schedules. Division managers may approve requests for absences in accordance with this rule.

1. Division managers may permit exempt employees who must be absent from work to:
  - a. Use the appropriate form of accrued leave to cover the missed work time, in accordance with [Auditor's Office Administrative Rules 3.06.01 – 3.06.14](#);
  - b. Flex their schedules, in accordance with [Auditor's Office Administrative Rule 3.08.01 – Hours of Work and Schedules](#); or
  - c. Take a partial day absence, in accordance with this rule.
2. Partial Day Absences: Full-Time Exempt Employees.
  - a. If a full-time exempt employee must be absent from work for **three hours or less** on a **single day**, and the absence is requested and **approved in advance**, the absence will not be charged to accrued leave, unless:
    - i. The employee requests time off to work on an election, such as a campaign or ballot measure. If an exempt employee requests an absence of any length to work on an election, the absence must be charged to accrued leave.
      - A. If an employee who requests time off to work on an election has insufficient accrued leave to cover the requested absence, the employee's Division manager must consult the City Auditor.
      - B. This rule does not apply to Auditor's Office employees who are performing election-related work as part of their job duties, such as the Election Officer.
    - ii. The employee has not worked at least 75% of their standard hours during the workweek in which the short absence is requested. For example, if an employee uses vacation leave on Monday and Tuesday, and then asks to leave work early on Thursday, any time off from work on Thursday must be approved and covered through accrued leave or flex time.

- iii. The employee, on an ongoing basis, fails to work at least 75% of their scheduled work hours during a payroll period. Such an employee must cover short absences through accrued leave or flex time. A Division manager who questions whether an employee routinely works at least 75% of their scheduled work hours should consult Management Services.

NOTE: The reasoning underlying the partial day absence rule is that some exempt employees regularly work more than 40 hours per week, so it is appropriate to give them an occasional afternoon or morning off when the time off is needed and approved. However, exempt employees who have already taken significant time off during the workweek or who routinely works less than 75% of a standard workweek should not be entitled to this benefit, and should be required to use accrued leave or flex time to cover missed work time.

- b. In general, partial day absences are appropriate for occasional appointments that cannot be scheduled outside of the workday, such as school meetings, meetings with contractors, and medical appointments.
  - i. If an employee requests a partial day absence for a medical appointment and then is out for the remainder of the day due to illness, the employee must use sick leave or flex time to cover all of the missed work time.
  - ii. Partial day absences are intended for short absences on a **single day** and are not appropriate for regular or reoccurring absences. An employee who requests regular or reoccurring absences may use accrued leave or flex time to cover the missed work hours or may request a schedule adjustment in accordance with Section E of this rule.
  - iii. If an employee requests a short absence for a more discretionary vacation-type or leisure activity (e.g., leaving early to play golf, go for a hike, etc.), or to start a vacation early or return late, the missed work time must be approved and covered through accrued leave or flex time.

### 3. Partial Day Absences: Part-Time Exempt Employees.

- a. Part-time exempt employees requesting to work fewer hours than scheduled may, with Division manager approval, flex their schedules or use accrued leave to make up the missed work time.

- b. If a part-time exempt employee is unable to flex their schedule and has insufficient accrued leave to cover the absence, the employee's Division manager must consult the City Auditor.
4. If an exempt employee needs time off but cannot flex their schedule and does not have sufficient accrued leave to cover the absence, the employee's Division manager must consult the City Auditor. A salary deduction is generally not permitted. However, certain exceptions apply, such as when an employee is absent from work for one or more *full* days for personal reasons other than sickness or disability.
- a. Disciplinary action may be pursued against a full-time exempt employee who works fewer than 40 hours without authorization.
  - b. An exempt employee who believes their salary has been improperly reduced should report the matter to the City Auditor or Management Services as soon as possible. If corrections are in order, Management Services will work with appropriate personnel to ensure steps are taken to reimburse any improper deductions and demonstrate the Auditor's Office's good faith commitment to comply with this rule in the future.

## **E. Schedule Adjustments**

If an exempt employee becomes unable to work their full, standard schedule for an extended period, their Division manager shall work with Management Services to determine whether the employee's hours and salary can be adjusted to more accurately reflect the employee's availability for work.

1. More information about intermittent / reduced schedule leave for medical reasons is set forth in [Auditor's Office Administrative Rule 3.06.05 – Family Medical Leave](#).
2. If an employee has a short-term (less than 30 days) need for a schedule adjustment, the employee's hours and salary do not need to be changed, but the employee must use accrued time off or unpaid leave to account for the hours the employee does not work.

## **F. Management Leave**

The City Auditor, on the recommendation of Division managers, may grant exempt employees up to 80 hours of additional paid leave, known as management leave, per calendar year.

1. Exempt employees are not **entitled** to management leave: management leave is a “bonus” that may be given to recognize exceptional individual efforts, performance, and achievements, including but not limited to work beyond the standard workweek.
2. The City Auditor has full discretion to grant or deny management leave and determine the amount of leave awarded, if any.
3. The granting of management leave does not constitute guaranteed time off. Employees who are awarded management leave must work with their Division manager to schedule the use of the leave at the mutual convenience of the employee and the Division.
4. Management leave cannot be carried over to the following calendar year nor will it be paid out in cash if it is not used.
5. Employees transferring between the Auditor’s Office and City bureaus during the calendar year in which management leave is awarded may carry their management leave balances with them.
6. The attached AUDITOR’S OFFICE CRITERIA FOR MANAGEMENT LEAVE ELIGIBILITY provides additional information about when management leave should be awarded. The City Auditor will develop and implement a system for determining the amount of leave awarded that complies with legal requirements for pay equity.

#### **G. Exempt Employees Covered by a Collective Bargaining Agreement**

Rules regarding the hours of work and overtime for represented exempt employees will be administered according to the collective bargaining agreement.

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#### **Auditor’s Office Administrative Rule Information and History**

Questions about this administrative rule may be directed to the [Auditor’s Office’s Management Services Division](#).

Adopted by the City Auditor December 11, 2017.

Adapted from City of Portland Human Resources Administrative Rule 9.01 Employee Training and Development.

Adopted by Council March 6, 2002, Ordinance No. 176302.

Last revised January 15, 2019.

Last revised by the City Auditor April 5, 2019.

## AUDITOR'S OFFICE CRITERIA FOR MANAGEMENT LEAVE ELIGIBILITY

Employees who qualify as exempt under the Fair Labor Standards Act are not entitled to overtime compensation when they work more than 40 hours in a workweek. However, the Auditor's Office provides management leave as a benefit that can be earned by exempt employees. Exempt employees are not **entitled** to management leave: management leave is a "bonus" that may be given to recognize exceptional individual efforts, performance, and achievements, including but not limited to those requiring work beyond the standard workweek.

The City Auditor has the discretion to grant an employee up to 80 hours of management leave per year. Division managers are responsible for submitting recommendations for management leave to the City Auditor. They should base their recommendations on the following criteria:

- Exceptional commitment to accomplishing tasks critical to the Auditor's Office's mission or compliance with the Portland City Code, such as working substantially longer hours to meet a deadline;
- Increased workload that causes or requires hours beyond the standard workweek, such as during a temporary staffing shortage or to respond to a management-approved request; or
- Commendable daily performance enhanced by creative problem-solving, innovation, or leadership achievements that are deserving of recognition.

The City Auditor will consider, on a case-by-case basis, recommendations for management leave that may not fit neatly into the criteria above. Such cases still should meet the spirit of the policy and must comply with legal requirements for pay equity.

Management leave should not reward:

- An expectation that all exempt employees are entitled to management leave;
- Employees simply meeting job requirements that already are compensated by salary and benefits;
- Inefficient use of time during the standard workweek that causes extra hours to meet deadlines;

- Ineffective deployment of resources that cause extra hours, such as failing to delegate tasks or prioritize work appropriately with a manager’s input; or
- Volunteer activities that cause extra hours that are related but not critical to the employee’s core function, such as service on professional committees or travel associated with events that have limited value to achieving the Auditor’s Office’s goals. These activities should be considered on individual performance evaluations or through schedule adjustments.

Examples are provided in the table below.

Criteria	Examples	Eligible for management leave?
Exceptional commitment to accomplishing tasks critical to the Auditor’s Office’s mission or compliance with the Portland City Code, such as working substantially longer hours to meet a deadline.	The budget process requires staff to complete the Auditor’s Office’s submission by February 1. Staff work weekends in January to apply budget guidance to office needs and complete requested budget by the deadline.	<b>Yes.</b> The extra hours required to accomplish critical tasks by the deadline exceed the expectation that exempt employees sometimes work more than 40 in a workweek.
	To meet a deadline for publishing an annual report, an employee stays a few hours late one evening to finish it.	<b>No.</b> These extra hours fall within the expectation that exempt employees sometimes work more than 40 in a workweek.
Increased workload that causes or requires hours beyond the standard workweek, such as during a temporary staffing shortage or to respond to a management-approved request.	An employee retires just as several complaints are filed that need to be screened and possibly investigated. The Division manager asks the remaining investigators to assume the retiring employee’s cases, as well as the influx of new ones, causing them to work extra hours until a replacement employee can be recruited and hired.	<b>Yes.</b> The employees are helping their Division manager meet a core responsibility in difficult circumstances, at the cost of a predictable, off-hours schedule for them.

Criteria	Examples	Eligible for management leave?
	A Division manager asks an employee to complete two new tasks, but the employee is already busy with other things and has worked a couple of extra hours to move them along. The Division manager adjusts the employee's workload to create capacity for the new tasks.	<b>No.</b> The extra hours already put in would be expected of an exempt employee. The manager adjusted the workload to reduce the need for even more hours.
Commendable daily performance enhanced by creative problem-solving, innovation, or leadership achievements that are deserving of recognition.	An employee who regularly exceeds expectations in meeting daily tasks also takes the initiative to implement a difficult new procedure that helps the office achieve an important goal. The office benefits because the employee's initiative provides a model for others to follow, which makes them more efficient.	<b>Yes.</b> A productive employee takes on added duties and accomplishes a goal that serves the mission of the office.
	An employee serves on a professional committee. The Division manager adjusts the employee's workload to accommodate the extra work the committee assignment entails.	<b>No.</b> The employee benefits professionally from the committee and bears no extra burden for the service on the committee, and the benefit to the Auditor's Office is marginal. The employee's salary and benefits are sufficient reward.