Laying the foundation
Human Resources Bingo
The big 4 of employment compliance
(and lots of other ‘smaller’ ones)

- Title VII
- FLSA
- FMLA
- ADA
Prohibits discrimination in virtually every employment circumstance on the basis of race, color, religion, gender, pregnancy, or national origin.

Title VII

Equal Employment Opportunity
2023 - CROWN Act - Revises the Minnesota Human Rights Act (MHRA), by expanding the definition of “race” to be “inclusive of traits associated with race, including but not limited to hair texture and hair styles such as braids, locs, and twists.”
Promotion

Performance Measurements

Terms, condition, or privilege of employment

Hiring

Discipline & Discharge

Wages & Benefits
Is there a law requiring cities to post all job openings?

https://www.lmc.org/careers/
Beginning January 1, 2024, employers in Minnesota can no longer ask a job applicant about their current or past pay.

See this link for a model employment application: https://www.lmc.org/resources/hr-reference-manual-chapter-2-hiring/
Flexibility

Work fitting with a person’s life purpose

2021

Flexibility

48 million people quit their jobs in 2021
Digital First Thinking

Workplace culture

Meaningful work

THE GENERATION Z
IN THE WORKPLACE
Featured Case Studies

See how other cities are attracting and retaining talent, improving workplace culture, and investing in staff development.

What makes your city a great place to work?

Submit your city career advantage to hrbenefits@lmc.org to be featured.
Basic principle: If a non-exempt employee engages in hours worked beyond the overtime threshold, the employee is entitled to overtime compensation at one and one-half times the regular rate of pay or compensatory time off at the time and one-half rate.
FLSA

Overtime Pay

Minimum Wage

Child Labor

Recordkeeping
Effective Jan. 1, 2024, Minnesota’s minimum wage increased to $10.85 per hour for large employers (up from $10.59 per hour), and to at least $8.85 per hour for small employers (up from $8.63 per hour). Both of these rates will be adjusted for inflation at a rate to be determined by the commissioner of the Department of Labor and Industry by and announced by Aug. 31 annually.
See: LMC’s Local Government Pay Equity Act Memo

Comparable pay for comparable work
These are not covered under the FLSA

- Elected officials
- Prisoners
- Independent Contractors
- Bona fide Volunteers
Unpaid overtime
Misclassification of employees
Not treating short breaks as compensable
Wage and overtime obligations

Workers’ Compensation

Potential for wrongful termination suit

Additional taxes with penalties and interest

Unemployment Insurance

See LMC memo: Employee or Independent Contractor: Legal Implications and Ramifications
To be or not to be…
Exempt or Non-Exempt?

and review the U.S. Department of Labor, Wage and Hour Division’s
Fact Sheet #17A- FLSA Exemptions
(https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime)
Exempt Employees

Salary Basis Test

Duties Test
**$684 per week**

January 1, 2020**

**On August 30, 2023, the Department of Labor (Department) announced issuance of a Notice of Proposed Rulemaking (NPRM), Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employee proposed for $1059 per week**

- Must receive a predetermined amount of pay each pay period
- **CANNOT** be paid by the hour
- **CANNOT** be subject to variations in pay based on quality or quantity of work
- Must receive full salary for any week in which work is performed
Whether the duties of a particular job qualify as exempt depend on what they are.

Review the duties, **NOT** the job title.
Two Duties Tests for Administrative Employees

Employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers.

The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.
Hours Worked

Employers must pay non-exempt employees for all of time spent working.

- Caring for tools
- On-call time if liberty is restricted
- Breaks 20 minutes or less
- Work-related or required training
- Travel time beyond normal home to work

Not only work that is assigned but also “Suffered or Permitted” by the Employer.

www.dol.gov and review the U.S. Department of Labor, Wage and Hour Division’s, Fact Sheet #22-Hours Worked.
**Bona fide meal periods** (typically lasting at least 30 minutes), serve a different purpose than coffee or snack breaks and, thus, are not work time and are not compensable.

DOL takes the position if the employee works during part of the meal period, the entire period becomes compensable.
Breaks shorter than 20 minutes are paid
(29 C.F.R. § 785.18)

Rest Breaks

Minn. Stat.
177.253
Remember time spent working includes time that is “suffered or permitted”

If a non-exempt employee uses their smart phone outside of regular work hours and as a result works more than 40 hours in a workweek that work may very well have to be at overtime.
What are the maximum hours an employee can work?
Hours Worked does not include:

- Vacation
- Sick leave
- Holidays
- Jury Duty
- Other paid time off
- Unpaid time off, authorized or unauthorized

[www.dol.gov](http://www.dol.gov) and review the U.S. Department of Labor, Wage and Hour Division’s, Fact Sheet #23- Overtime Pay Requirements
The FLSA requires cities to pay non-exempt employees time and one half of their regular rate for additional work over 40 hours in a workweek.
From Regular Rate of Pay

- Uniform Allowance § 778.217
- Tuition, Automobile and other expense reimbursements § 778.217
- Call Back pay § 778.221
Comp Time
Up to 12 weeks of unpaid FMLA

Parenting and bonding leave

Providing care for a spouse, son, daughter or parent with a serious health condition

Employee unable to work due to a serious health condition

Qualifying Exigency

Family Medical Leave Act

Workers Compensation
Worked for the city at least 12 months

Have worked at least 1,250 hours during the 12 months preceding the leave

Be employed at a worksite with 50 or more employees within 75 miles of that worksite (elected officials are not counted; paid on-call firefighters are generally included).
What “magic words” does an employee need to say to request FMLA?
Practical Considerations

- Policies, union contracts, and civil service rules
- Past practice
- Use of paid leave
- Benefits during leave
- Recruitment, retention, and morale
Minnesota Law: WESA
- Sick and safety leave **ESST as of 2024
- Nursing mothers
- Pregnancy and Parental Leave**
- Pregnancy Accommodation
- Wage disclosure

http://lmc.org/media/document/1/personnelpolicytemplate.docx
Parental Leave

As of July 1, 2014:

12 weeks

Spouses at same employer – both receive 12 weeks

Can take intermittent leave without permission
No doctor’s note for these accommodations:
✓ More frequent restroom breaks or food and water breaks;
✓ Seating arrangements;
✓ Limit on lifting of no more than 20 pounds

Pregnancy Accommodation (May 12, 2014)
New in 2024 - Earned Sick and Safe Time

Both:

- Prohibit employment discrimination against a “qualified individual”
- Employees must be treated the same as other similarly-situated employees

**Americans with Disabilities Act (ADA)**

- 15+ employees

**Minnesota Human Rights Act (MHRA)**

- MHRA: All employers – accommodation only if 15+
Reasonable Accommodation

- Modified work schedules
- Removal of non-essential functions / light duty
- Reassignment to vacant position (*optional/not required*)
- Medical leave of absence – *always consider!*
  Beyond 12 weeks of FMLA; intermittent leave

*No duty to provide accommodation if poses undue hardship*
Interactive Process

- Discuss reasonable accommodations
- Not a formal process
- Include immediate supervisor & others
- Gather information
- Ask employee for solutions
- Contact advocacy groups
Interactive Process

Let’s try this!
Employees are **58% more likely** to remain with an organization after three years if they went through structured onboarding, according to a Wynhurst Group study.
Share your **best** and **worst** onboarding stories
Send out a team video
Assign an onboarding buddy
Create a first day checklist
Compile FAQs
Set Expectations
Check in Regularly

Compliance, Clarification, Culture, Connection, and Check back
Supervisors set the standard

Respect means having regard for the feelings, rights or traditions of others.
Performance Evaluations
Review current job description

Gather information
during the year

Provide a balanced overview

Set performance goals
Tips for Writing the Review

- Gather feedback from others
- Engage the employee
- Use observations, not judgments
- Do a final check
- Focus on the future
Discussing the Review

1) Prepare in Advance
2) Review the Content
3) Engage the Employee
4) End on a Positive Note
5) Follow up
What experience, project, or action are you most proud of since the last review?
Which of our organizational values did you live best in the last few months?
How has your supervisor helped you achieve your goals during the past few months?
What do you enjoy most about the work you do?
What organizational/personal goals did you accomplish? Which goals fell short?
What skill or knowledge do people on your team or at the organization rely on you to provide?
What project/goal(s) would you like to focus on in the next six months/year?
How were you able to contribute to the city’s current goal of [creating a more inclusive culture, launching a new service, etc.]?
What would colleagues or citizens say about their recent interactions with you?
What to do when an employee is struggling in their job
The Big 3

- Appearance Issues
- Legal Issues
- Union Issues
Different work schedules or job duties

Exempt vs. Non-exempt

Higher standard

Part-time vs. Full-time

Business reason = Best defense

KEEP CALM AND BE CONSISTENT
Appearance Issues

Personnel Policies

- **Always** double-check
- **Read** related policies
- Is it a **union-covered issue**?
- What is **actual practice**?
Documentation
When do I start?
Enough vs. too much
Just the facts, ma’am
The good, the bad, and the ugly
Long enough vs. too long
The “overnight rule”
Appearance Issues

- Fair warning/clear expectations
- Ethics – “Mom in the room”
- Empathy
- Security
- In person/In private
- Opportunity to explain
Legal Issues

- Protected status (age, race, veteran, disability, gender, sexual orientation, familial)

- Whistleblower protections

- Key is to show equal treatment or business case

- Follow required veterans’ procedures
Legal Issues

Wage & Hour Laws

- Suspensions of exempt employees
- Compensatory time payout
- Vacation &/or sick leave payout
- No withholdings from final paycheck
- Timeframes for final paycheck
- Required letter -- truthful reason
Legal Issues

Benefits Laws

- Continuation (COBRA) notices
- Retiree – Pooled with actives until age 65
- Police/Fire – city-paid health
- Unemployment benefits
- Workers Compensation
- FMLA – given 12 weeks?
Employee must be given the choice to open the meeting.
Union Issues

❖ Prevails unless illegal

❖ Disagreement over interpretation — look to past practice, negotiations, other agreements, “usual meaning” of terms, rest of the contract

❖ Some rights can’t be waived or negotiated
Union Issues

Rights of Representation

✓ Disciplinary meetings & those that could lead to discipline
✓ Employee requests union rep.
✓ Unless interferes (e.g. disrupts meetings, can’t schedule in reasonable timeframe) with management rights
- **Union** has right to access data needed to represent employee
- Signed release still good idea
- More sensitive data = more careful (e.g., medical data)
- Consider “Tennessen Advisory”
- Appearance is important!
- Legal issues need to be double-checked
- Unions have rights
CALL US 651-281-1200

When members are STUMPED with questions,
We are here to help!

Email: HRBENEFITS@lmc.org
Year 2: Human Resource Issues for Municipalities
Part 1
May 8, 2024, 7:30 AM – 10:00 AM

Scan code to check out of your session
Read directions below
DO NOT USE YOUR CAMERA APP

Scan the QR code to check in on your phone
A confirmation email will be sent when you successfully check in.
Scan through the Whova app
From the home page, tap "QR Check-in" under Additional resources.
Year 2: Human Resource Issues for Municipalities
Part 2
May 8, 2024, 10:15 AM – 12:00 PM

Scan code to check out of your session
Read directions below
DO NOT USE YOUR CAMERA APP

Scan the QR code to check in on your phone
A confirmation email will be sent when you successfully check in.
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