



# MEMO

## Department

To: Finance and Personnel  
From: Finance Director Van Rossum  
Date: 02/02/2026  
Re: Citywide Pay Practice Update for OBBBA Compliance

### Background information:

Recent federal legislation, the One Big Beautiful Bill Act (OBBBA), requires employers to identify, track, and report the exempt portion of true Fair Labor Standards Act (FLSA) overtime for all employees. This requirement applies citywide and must be reflected accurately in payroll records and annual W-2 reporting.

Over the past several months, staff has reviewed the City's existing pay practices, evaluated payroll system capabilities, consulted with payroll professionals, met with affected departments (including the Street Department), and consulted with the City's outside labor counsel from Von Briesen, Attorney Patrick Leigl, to ensure the proposed approach is legally compliant and defensible. This work identified inconsistencies in how overtime is treated across departments, particularly when overtime is paid on non-worked hours such as holidays, vacation, or sick leave.

Fire and Police operations already follow FLSA standards by calculating overtime only on hours actually worked. The proposal brings the remainder of the City into alignment with this same standard to ensure compliance, equity, consistency, and efficiency, while recognizing that the Street Department has unique operational overtime needs that require a tailored solution, with examples shown in the memo provided to this group of employees.

A key consideration is the City's obligation to accurately report OBBBA-exempt overtime on employees' W-2s. Manual tracking is technically possible, but it is inefficient, error-prone, and not scalable with roughly 150 employees who qualify for overtime. Reliance on manual processes increases the risk of W-2 reporting errors, amended filings, employee tax corrections, professional service costs, and potential audit or penalty exposure. The proposed approach allows the payroll system to accurately calculate and report the exempt

portion of true FLSA overtime, significantly reducing compliance risk. As part of this update, the city will also implement a blended overtime calculation consistent with FLSA. Under this method, the overtime premium is based on the employee's average regular rate of pay for the workweek, including applicable premiums earned during hours worked. The payroll system will separately identify the base overtime and the overtime premium portion, allowing for accurate OBBBA reporting while minimizing manual intervention.

### **Street Department – Overtime and Premium Changes**

The Street Department has unique operational demands related to emergency response, weather events, and unplanned overtime. To remain compliant while maintaining operational effectiveness, the following changes are proposed:

- Overtime will be calculated only on hours actually worked, consistent with FLSA standards.
- Double-time on holiday and Sunday classifications will be eliminated.
- Employees working weekends or City-assigned holidays will receive a flat premium of \$37.00 per hour in addition to their regular rate of pay.
- The \$37.00 premium was intentionally selected to keep employees whole to the greatest extent possible. It reflects the middle-grade, top-step rate, balancing equity across classifications and fiscal responsibility. It also acknowledges that the premium is consistent for all DPW staff coming in on unscheduled time
- Saturday premium pay is new, providing additional compensation where none previously existed and helping offset changes to overtime treatment.
- Premium pay will be tracked separately from overtime, allowing the payroll system to accurately identify and report the exempt portion of true FLSA overtime and reducing the risk of W-2 errors.

Staff has modeled multiple scenarios. On average, employees most impacted by the change are expected to be held whole through the premium structure, recognizing that individual outcomes may vary due to the unplanned nature of overtime events.

### **Remaining Non-Exempt Staff**

For remaining non-exempt, non-union employees outside of the Street Department, the proposed change is limited and straightforward. Overtime will be calculated only on hours actually worked, consistent with FLSA standards and existing Fire and Police practices. Non-worked hours such as holidays, vacation, and sick leave will no longer count toward the overtime threshold.

No changes are proposed to base pay rates, schedules, or existing premium structures for these employees outside of what was explained above. This update ensures consistency

across departments, supports accurate OBBA reporting, and allows the payroll system to correctly identify and track exempt overtime without manual intervention.

### **Timing Considerations**

Staff's original goal was to have the updated pay practices in place by January 1. Additional analysis, departmental discussions, and consultation with legal counsel were necessary to ensure the City selected the most compliant and sustainable approach, placing implementation slightly behind that target.

The longer implementation is delayed, the more payroll periods will require manual review and correction to ensure 2026 W-2 accuracy. Additional time can be taken if desired; however, if changes are not implemented before the City's peak seasonal staffing period, the volume of overtime transactions will increase significantly, resulting in exponentially more manual work, higher error risk, and greater administrative burden.

### **Strategic Plan**

The proposed action supports the City's Strategic Plan goals related to good governance, operational excellence, fiscal responsibility, and organizational sustainability by promoting consistent employment practices, reducing compliance risk, and relying on efficient system-based controls rather than manual processes.

### **Budget**

The proposed changes can be implemented within existing payroll systems and departmental payroll budgets. Absent these changes, the City would incur additional administrative costs related to manual tracking, corrective payroll processing, amended W-2 filings, and potential professional services. The proposal mitigates those risks and avoids long-term pressure to add staffing solely to manage compliance.

### **Staff Recommended Action**

The Committee support the proposed citywide pay practice updates outlined in the Background section to ensure OBBBA compliance, consistent application of FLSA standards by forwarding it on to council for consideration.

**CONFIDENTIAL LEGAL MEMORANDUM**

ATTORNEY-CLIENT PRIVILEGED

**TO:** Elisa Hodge, Director of Human Resources  
William Van Rossum, Finance Director & Treasurer

**FROM:** von Briesen & Roper, s.c.  
By: Patrick Leigl

**DATE:** January 29, 2026

**RE:** Kaukauna Overtime and Payroll Practices for Non-Exempt Employees

After the One Big Beautiful Bill Act (OBBBA) was signed into law on July 4, 2025, employers were tasked with reviewing their payroll procedures to be compliant with the new law permitting overtime deductions. Employers will be required to report overtime wages separately on Form W-2. The OBBBA allows certain eligible employees to take a deduction for overtime wages earned pursuant to the Fair Labor Standards Act (FLSA). The provision does not apply to exempt employees as this employee classification does not qualify for FLSA overtime. It also does not apply to overtime gained by other means such as overtime earned by employer policy or by provisions of a collective bargaining agreement. Only those non-exempt employees with overtime wages paid under the FLSA will eligible for this tax deduction.

In light of this recent law, staff for the City of Kaukauna (City) initiated a review of its payroll practices to ensure compliance with the overtime reporting requirements. To my understanding, the City has permitted non-working hours to contribute towards the total hours *worked* within a workweek. However, only *qualified* overtime under the FLSA is eligible for the OBBA tax deduction. The term “qualified overtime compensation” means overtime compensation paid to an individual required under Section 7 of the FLSA, that is in excess of the regular rate at which the individual is employed. Moreover, non-exempt employees must be paid 1.5 times their regular rate for all hours worked in excess of 40 hours in one workweek. A workweek means the 7-day period the employer establishes to regularly track employee work hours - for example 12:01 AM Sunday - 11:59 PM Saturday.

The FLSA and Wis. Admin. Code § DWD 274.03 requires overtime pay only for hours actually worked in excess of 40 hours in a workweek for non-exempt employees. There is an important distinction between hours worked and non-work time. Paid time off such as vacation, sick leave, and holiday pay is not considered hours worked for purposes of calculating overtime eligibility. As a result, overtime is required only when an employee physically or actually works more than 40 hours in a workweek, regardless of whether paid leave is counted toward the employee’s straight-time compensation. Meaning, employees who are paid for more than 40 hours in a

workweek due to the inclusion of paid leave, but do not actually work more than 40 hours are not entitled to overtime pay.

For example, consider an employee who takes an 8-hour paid vacation day on Monday and then works 35 hours the rest of the week, totaling 43 hours. The actual hours physically worked is 35 with 8 hours of vacation. Because the physical hours worked did not go beyond 40, the employee would not be entitled for overtime pay, despite the total paycheck exceeding 43 hours.

As the City currently contributes employees' time off for sick, vacation, and holidays toward a 40-hour workweek for overtime purposes, neither federal or state law requires overtime compensation unless an employee actually works more than 40 hours in the workweek. While it is within an employer's discretion to continue this method as a benefit, it does pose risk. Wage and hour claims could ensue should employers fail to apply this method consistently for all non-exempt employees or fail to accurately document or track the total time. Additionally, under the new OBBBA reporting requirements, the City can only provide qualified overtime under the FLSA. As stated, qualified overtime means payment for the premium portion (0.5x regular rate) for non-exempt employees for hours *worked* over 40 in a workweek.

To maintain compliance with OBBBA reporting requirements and avoid risk, it is critical the City revisit its accounting methods to assure overtime is accurately tracked and applied consistently. It is also appropriate the City communicate with its staff that overtime eligibility is based solely on actual hours worked.

# MEMO

(updated 1/27/26)



## Street Department Overtime and Premium Changes

With the passage of the recent federal legislation, The One Big Beautiful Bill Act, we were required to reassess our pay practices to ensure full compliance with tax law—specifically, how wages are both earned and reported. The new law mandates that all premium overtime wages be reported in on the employees' W-2. To meet this requirement, we must update the pay codes and calculation rules within our payroll system.

These changes are scheduled to take effect on February 5<sup>th</sup>, 2026. Please be aware that any premium adjustments are subject to Council discretion and will be presented to the Council for approval. Once the changes are implemented, no retroactive garnishments or payments will be applied.

The following changes are listed below:

1. The existing premium for working a company-assigned holiday will no longer be classified as "Double Time." Going forward, employees who work a company-assigned holiday will receive a premium of \$37.00 per hour in addition to their regular hourly rate. These earnings will be recorded separately. The \$37.00 per hour premium will appear on the paystub as "ST HolWork," while the employee's regular hourly compensation will be reflected under Regular or Overtime, with overtime applied only when the employee has exceeded 40 hours worked at the time the worked holiday hours are performed.
2. The existing premium for working on Sunday will no longer be classified as "Double Time." Going forward, employees who work on Sunday will receive a premium of \$37.00 per hour in addition to their regular hourly rate. These earnings will be recorded separately. The \$37.00 per hour premium will appear on the paystub as "ST Weekend," while the employee's regular hourly compensation will be reflected under Regular or Overtime, with overtime applied only when the employee has exceeded 40 hours worked at the time the Sunday hours are performed.
3. There is no existing premium for working Saturday. Going forward, employees who work on Saturday will receive a premium of \$37.00 per hour in addition to their regular hourly rate. These earnings will be recorded separately. The \$37.00 per hour premium will appear on the paystub as "ST Weekend," while the employee's regular hourly compensation will be reflected under Regular or Overtime, with overtime applied only when the employee has exceeded 40 hours worked at the time the Saturday hours are performed.

*Continued on the next page...*

Additional Note: The Saturday and Sunday premium payments are combined under a single earning code. All weekend \$37.00 per hour premium earnings—whether worked on Saturday or Sunday—will appear on the paystub under the one earning code “ST Weekend.”

4. Non-worked hours shall be excluded from the calculation of weekly overtime. This methodology is consistent with the overtime provisions established under the Fair Labor Standards Act (FLSA) and reflects the federal requirement that only hours actually worked are counted toward the 40-hour overtime threshold.
5. Premium earnings received within a workweek will be incorporated into the calculation of the overtime premium rate. This means that additional earnings—such as Weekend, Shift Differential, Crew Lead, Sub-Foreman, Holiday Worked, and similar premiums—will be blended into the overtime premium calculation. The overtime premium represents the “half” portion of “time and a half” and will appear on the paystub under the earning code “OTPrem.” The “time” portion of “time and a half” will be reflected under the Overtime earning code, which now represents payment at 1.0× rather than the previous 1.5× structure.
6. Under the One Big Beautiful Bill Act (OBBBA), the “half” portion of “time and a half” may be deducted from wages that are subject to federal income tax. As a result, the Overtime Premium (“OTPrem”) is exempt from federal taxation when employees file their annual tax return. This exemption will be reflected on the employee’s Form W-2 and does not affect federal tax withholdings on individual paychecks.

These changes are detailed in the following pages. Examples are also included.



*\*Please note that the premium earning codes on the paystub are subject to change.*

*\*\*Please note that the premium changes are at the discretion of the Council. This will be submitted to Council for approval.*

**1. Hours worked on a company assigned holiday will be compensated with a premium of \$37.00 per hour in addition to the employee's regular rate of pay.** Accordingly, any time worked on a company assigned holiday will receive this additional premium per hour worked on top of the standard hourly rate.

*\*The example below uses \$34.47 per hour as the regular rate of pay*

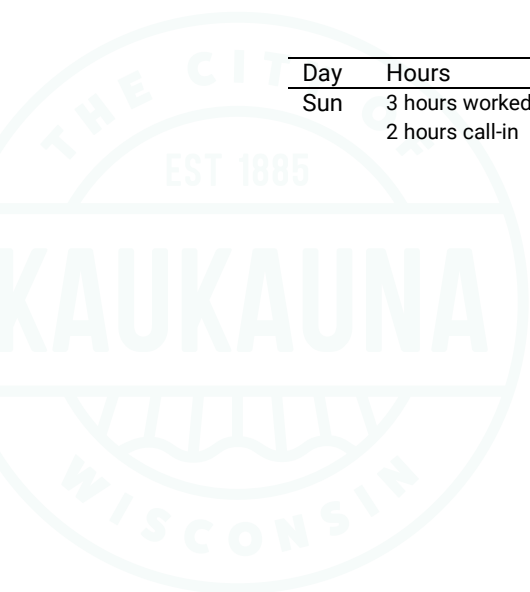
| Now: |                               | Future: |          |
|------|-------------------------------|---------|----------|
| Day  | Hours                         | Type    | Amount   |
| Mon  | 8.5 hours of standard Holiday | Holiday | \$293.00 |
|      |                               | Double  | \$137.88 |
|      | 2 hours worked on Holiday     | Call-In | \$68.94  |
|      |                               |         |          |
|      | 2 Hours call-in               |         |          |
|      |                               | Total   | \$499.82 |
|      |                               |         |          |
|      |                               | Total   | \$504.88 |

**2 & 3. Hours worked on Saturdays and Sundays will be compensated with a premium payment of \$37.00 per hour in addition to the employee's regular hourly rate.** Accordingly, any time worked on either weekend day will receive this additional premium per hour worked on top of the standard rate of pay.

*\*The examples below uses \$34.47 per hour as the regular rate of pay*

| Now: |                 | Future: |          |
|------|-----------------|---------|----------|
| Day  | Hours           | Type    | Amount   |
| Sat  | 3 hours worked  | Regular | \$103.41 |
|      |                 | Call-In | \$68.94  |
|      | 2 hours call-in |         |          |
|      |                 | Total   | \$172.35 |
|      |                 |         |          |
|      |                 | Total   | \$283.35 |

| Now: |                 | Future: |          |
|------|-----------------|---------|----------|
| Day  | Hours           | Type    | Amount   |
| Sun  | 3 hours worked  | Double  | \$206.82 |
|      |                 | Call-In | \$68.94  |
|      | 2 hours call-in |         |          |
|      |                 | Total   | \$275.76 |
|      |                 |         |          |
|      |                 | Total   | \$283.35 |





**4. Non-worked hours do not count toward the calculation of overtime.** This is in accordance with the Fair Labor Standards Act (FLSA), which requires overtime to be paid at 1.5 times an employee's regular rate of pay for all hours worked in excess of 40 within a workweek. Examples of non-worked hours include vacation, sick, holidays, and similar paid time off.

*\*Example below has a Call-In on Saturday for 1.5 worked hours and Vacation of 8.5 non-worked hours in the week*

*\*Example below uses \$34.47 per hour as the regular rate of pay*

| Now: |                |                             |                              | Future:                     |                              |
|------|----------------|-----------------------------|------------------------------|-----------------------------|------------------------------|
| Day  | Hours          | Paid at Regular rate of pay | Paid at Overtime rate of pay | Paid at Regular rate of pay | Paid at Overtime rate of pay |
| Thu  | 8.5            | 8.5                         |                              | 8.5                         |                              |
| Fri  | 6              | 6                           |                              | 6                           |                              |
| Sat  | 1.5 (call-in)  | 1.5                         |                              | 1.5                         |                              |
| Sun  |                |                             |                              |                             |                              |
| Mon  | 8.5 (vacation) | 8.5                         |                              | 8.5                         |                              |
| Tue  | 8.5            | 8.5                         |                              | 8.5                         |                              |
| Wed  | 8.5            | 7                           | 1.5                          | 8.5                         |                              |
|      |                | Type                        | Amount                       | Type                        | Amount                       |
|      |                | Regular                     | \$1,085.82                   | Regular                     | \$1,137.53                   |
|      |                | Overtime                    | \$77.56                      | Overtime                    | \$0.00                       |
|      |                | Vacation                    | \$293.00                     | Vacation                    | \$293.00                     |
|      |                | Worked Weekend              | \$0.00                       | Worked Weekend              | \$55.50                      |
|      |                | Call-In                     | \$68.94                      | Call-In                     | \$68.94                      |
|      |                | Total                       | \$1,525.32                   | Total                       | \$1,554.97                   |

**5. Blended Rate of Pay will be factored into the Overtime Premium rate.** This factors in all dollars from the work week into the Overtime Premium rate. In other words, this takes the blended rate of pay from the work week and increases the Overtime Premium rate (the overtime premium is the half in "time and a half").

*\*The example below factors in a 1.5 hour Call-In (on Saturday) into the overtime premium rate and uses \$34.47 per hour as the regular rate of pay.*

| Now:           |       |            | Future:    |
|----------------|-------|------------|------------|
| Type           | Hours | Amount     | Amount     |
| Regular        | 40    | \$1,378.80 | \$1,378.80 |
| Overtime       | 1.5   | \$77.56    | \$79.82    |
| Call In        | 2     | \$68.94    | \$68.94    |
| Worked Weekend |       |            | \$55.50    |
| Total          |       | \$1,525.30 | \$1,583.06 |

*Continued on the next page...*

How is this specific Overtime Premium rate calculated?

| Step | Description                                              | Calculation                                        | Result           |
|------|----------------------------------------------------------|----------------------------------------------------|------------------|
| 1    | Calculate straight-time earning for all hours worked     | 41.5 worked hours * \$34.47                        | \$1,430.51       |
| 2    | Add all weekly dollar-based premiums                     | \$1,430.51 + \$68.94 (call-in) + \$55.50 (weekend) | \$1,554.95       |
| 3    | Determinate average (regular) rate for overtime purposes | \$1,554.95 / 41.5 worked hours                     | \$37.47 per hour |
| 4    | Calculate overtime premium (1/2 of average rate)         | \$37.47 * 0.5                                      | \$18.74 per hour |
| 5    | Determine full overtime rate                             | \$34.47 + \$18.74                                  | \$53.21 per hour |
| 6    | Apply overtime rate to overtime hours worked             | \$53.21 * 1.5 hours                                | <b>\$79.82</b>   |

On your paystub, it will separate the 1.0x and the 0.5x and will look like the below:

Future:

| Type   | Hours | Rate    | Amount  | Notes:                                         |
|--------|-------|---------|---------|------------------------------------------------|
| OT     | 1.5   | \$34.47 | \$51.71 | <i>This is the 1.0x in the time and a half</i> |
| OTPrem | 1.5   | \$18.74 | \$28.11 | <i>This is the 0.5x in the time and a half</i> |

**6. The Overtime Premium ("OTPrem") is exempt from Federal Tax when you file your tax return.**

The One Big Beautiful Bill Act (OBBBA) allows you to deduct the half in the "time and a half" from your wages that are subject to federal tax. This will appear on your W-2.

Please note that this does not change the amount of Federal Tax being withheld from your paycheck. This does reduce your wages subject to Federal Tax when you file your annual tax return.

The below is a proposed draft of the 2026 Form W-2 introducing code TT for Box 12 to report the exempted overtime wages.

TREASURY/IRS AND OMB USE ONLY DRAFT

|                                          |  |                                                                                                                               |  |                                 |  |
|------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------|--|
| a Employee's social security number      |  | OMB No. 1545-0029                                                                                                             |  |                                 |  |
| b Employer identification number (EIN)   |  | 1 Wages, tips, other compensation                                                                                             |  | 2 Federal income tax withheld   |  |
| c Employer's name, address, and ZIP code |  | 3 Social security wages                                                                                                       |  | 4 Social security tax withheld  |  |
|                                          |  | 5 Medicare wages and tips                                                                                                     |  | 6 Medicare tax withheld         |  |
|                                          |  | 7 Social security tips                                                                                                        |  | 8 Allocated tips                |  |
| d Control number                         |  | 9                                                                                                                             |  | 10 Dependent care benefits      |  |
| e Employee's first name and initial      |  | 11 Nonqualified plans                                                                                                         |  | 12a See instructions for box 12 |  |
| Last name                                |  | 13 Statutory employee <input type="checkbox"/> Retiree <input type="checkbox"/> Third-party sick pay <input type="checkbox"/> |  | TT   2563.90                    |  |
| f Employee's address and ZIP code        |  | 14a Other                                                                                                                     |  | 12b                             |  |
|                                          |  | 14b Treasury typed occupation code                                                                                            |  | 12c                             |  |
| 15 State Employer's state ID number      |  | 16 State wages, tips, etc.                                                                                                    |  | 17 State income tax             |  |
|                                          |  | 18 Local wages, tips, etc.                                                                                                    |  | 19 Local income tax             |  |
|                                          |  |                                                                                                                               |  | 20 Locality name                |  |

Form **W-2** Wage and Tax Statement  
Copy C—For EMPLOYEE'S RECORDS  
(See Notice to Employee on the back of Copy B.)

2026

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