



Summary of Proposed Policy Changes for PD's 12-hour Shifts

Background

Police Chief Jeff Bert has sought approval from the Administration to transition Patrol staff to 12-hour shifts to ensure that personnel can provide better coverage across shifts, minimize overtime and enhance hiring/recruitment efforts.

Fair Labor Standards Act (FLSA)

Generally, the FLSA requires that covered non-exempt employees be paid overtime pay at no less than time and one-half their regular rates of pay for all hours worked in excess of 40 in a workweek. However, Section 207(K) of the FLSA provides an exemption that allows for employees engaged in fire protection or law enforcement to be paid overtime on a "work period" basis.

This means that police personnel that will be working the proposed 12-hour shifts will be paid overtime in **excess of 80 hours in a two (2) week "work period"**.

City Policy Modifications

Based on the foregoing, the 12-hour shift proposal will require changes to existing city policies as detailed below (highlighted and bolded).

4.01 CATEGORIES OF EMPLOYMENT

EXISTING POLICY:

D. FULL-TIME EMPLOYEE

A full-time employee is defined as an employee who works a minimum of 40 hours a week or 2,080 hours annually in a full-time position; or an average of 53 hours a week or 3,014 annually in a full-time shift Firefighter position. Such employees are eligible for all City benefits. Full-time employees are further classified in one of the following categories:

1. **Exempt:** Certain employees, due to their position title and responsibilities, are exempt from the minimum wage and overtime provisions of the FLSA. Exempt employees primarily include those individuals occupying a bona fide executive, administrative, and/or professional position under the FLSA. All positions are evaluated to ensure accurate

classifications and may be re-evaluated as necessary to ensure the position is classified appropriately.

2. **Non-Exempt:** An employee covered by overtime provisions of the FLSA. Non-exempt employees include hourly employees (where pay is directly related to the number of hours worked) and some non-exempt salaried workers (clerical, first-line supervisory, and paraprofessional job categories). Non-exempt employees may receive overtime pay or be offered compensatory time at the rate of time and one-half in lieu of overtime pay. Time and one-half is used in calculating overtime and compensatory time in situations where the actual hours worked exceed standard work week hours.
3. **Shift Firefighter:** An employee who is trained in fire suppression, has the responsibility to fight fires, and is either actually engaged in fire suppression work and/or non-fire related emergency responses, and who works 48 hours on, with 96 hours off.

CHANGE TO:

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2. **Non-Exempt:** An employee covered by overtime provisions of the FLSA. Non-exempt employees include hourly employees (where pay is directly related to the number of hours worked) and some non-exempt salaried workers (clerical, first-line supervisory, and paraprofessional job categories). Non-exempt employees may receive overtime pay or be offered compensatory time at the rate of time and one-half in lieu of overtime pay. Time and one-half is used in calculating overtime and compensatory time in situations where the actual hours worked exceed standard work week hours.
3. **Shift Firefighter:** An employee who is trained in fire suppression, has the responsibility to fight fires, and is either actually engaged in fire suppression work and/or non-fire related emergency responses, and who works 48 hours on, with 96 hours off.
4. **NEW: Shift Police Officer:** An employee who is empowered by State or local ordinance to enforce laws designed to maintain peace and order, protect life and property, and to prevent and detect crimes; who have the power to arrest; and who have undergone training in law enforcement and who predominantly work 12-hour shifts.

4.02 WORK SCHEDULES

EXISTING POLICY

A. WORK SCHEDULES FOR SHIFT FIREFIGHTERS

Under the 207K exemption of the FLSA, City of Tomball shift firefighters observe a 14-day work cycle for the purposes of calculating overtime. For shift firefighters, the work cycle begins at 7:00 a.m. on Monday and concludes at 6:59 a.m. 14 days later. Fire Department personnel on a 48-hour shift are regularly scheduled to work an average of 53 hours per week, based on 48-hour shifts with 96 hours off between shifts. Days off and shifts may change to meet the business needs of the city. For Shift Fire Personnel, the workday of 24-hour employees is considered to be 12 hours of leave for accrual/usage purposes.

CHANGE TO:

A. **NEW: WORK SCHEDULES FOR SHIFT FIREFIGHTERS AND POLICE OFFICERS**

Under the 207K exemption of the FLSA, City of Tomball shift firefighters observe a 14-day work cycle for the purposes of calculating overtime. For shift firefighters, the work cycle begins at 7:00 a.m. on Monday and concludes at 6:59 a.m. 14 days later. Fire Department personnel on a 48-hour shift are regularly scheduled to work an average of 53 hours per week, based on 48-hour shifts with 96 hours off between shifts. Days off and shifts may change to meet the business needs of the city. For Shift Fire Personnel, the workday of 24-hour employees is considered to be 12 hours of leave for accrual/usage purposes.

NEW: Pursuant to the 207K exemption of the FLSA, City of Tomball police officers observe a 14-day work cycle for the purposes of calculating overtime. The work cycle begins at 6:00 a.m. on Monday and concludes at 6:00 a.m. 14 days later. Police Department sworn personnel are regularly scheduled to work 12-hour rotating shifts. Days off and shifts may change based on operational assessment.

EXISTING POLICY:

F. WAIVER PROHIBITED

The requirement that overtime must be paid after 40 hours a week or 106 hours in a 14-day cycle for shift fire personnel may not be waived by agreement between any employee and the City.

CHANGE TO:

F. WAIVER PROHIBITED

The requirement that overtime must be paid after 40 hours a week, 106 hours in a 14-day cycle for shift fire personnel or **NEW: 80 hours in a 14-day cycle for sworn police personnel** may not be waived by agreement between any employee and the City.

4.04 OVERTIME PAY PROCEDURES

EXISTING POLICY:

A. DEFINITIONS

Overtime is defined as hours worked, by non-exempt employees during any FLSA defined workweek, which exceed 40 hours specified for such workweek or exceeds 106 hours in a 14-day cycle for non-exempt shift firefighters.

For the purpose of determining overtime, “hours worked” shall include hours recorded during which the employee is performing duties or functions of their job or authorized and adopted City holidays (including Floating Holidays).

Overtime will not be paid or compensatory time will not be accrued until the allowable number of hours has been surpassed for a given workweek regardless of the daily schedule of an eligible employee. All non-exempt employees who are directed to work after completing work beyond the normal 40-hour schedule or 106-hour schedule (shift-firefighters) will begin to accrue overtime hours to be compensated in one of two manners:

1. **Compensatory time:** accrued at an additional one- and one-half times (1.5 times) the overtime hours worked; or
2. **Overtime Pay:** paid at one and a half times (1.5 times) the employee’s hourly rate.

CHANGE TO:

A. DEFINITIONS

NEW: Based on existing departments’ work schedules, overtime is defined as hours worked, by non-exempt employees during any FLSA-defined workweek, as follows:

- **Hours worked in excess of 40 hours specified for a 40-hour work week.**
- **Hours worked in excess of 106 hours in a 14-day work cycle for non-exempt shift firefighters.**
- **Hours worked in excess of 80 hours in a 14-day work cycle for non-exempt sworn police personnel.**

For the purpose of determining overtime, “hours worked” shall include hours recorded during which the employee is performing duties or functions of their job or authorized and adopted City holidays (including Floating Holidays).

Overtime will not be paid or compensatory time will not be accrued until the allowable number of hours has been surpassed for a given workweek regardless of the daily schedule of an eligible employee. **NEW: All non-exempt employees who are directed to work after completing work beyond the normal 40-hour schedule, 106-hour schedule (shift-firefighters), and 80-hour schedule (sworn police) will begin to accrue overtime hours to be compensated in one of two manners:**

1. **Compensatory time:** accrued at an additional one- and one-half times (1.5 times) the overtime hours worked; or
2. **Overtime Pay:** paid at one and a half times (1.5 times) the employee's hourly rate.

EXISTING POLICY

C. OVERTIME AND LEAVE

If an employee works in excess of 40 hours during a regular workweek or 106 hours in a 14-day cycle for shift firefighters, the employee will be paid overtime pay or will be provided compensatory time.

1. OVERTIME AND VACATION TIME

If an employee exceeds 40 hours during a regular workweek or 106 hours in a 14-day cycle for shift firefighters and has recorded hours for Vacation, the employee can choose between having the excess hours returned to the employee's Vacation leave bank (also called "time flexing") or being paid at their regular rate of pay for those hours.

CHANGE TO:

C. OVERTIME AND LEAVE

If an employee works in excess of 40 hours during a regular workweek, 106 hours in a 14-day cycle for shift firefighters or **NEW: 80 hours in a 14-day cycle for sworn police officers**, the employee will be paid overtime pay or will be provided compensatory time.

1. OVERTIME AND VACATION TIME

If an employee exceeds 40 hours during a regular workweek, 106 hours in a 14-day cycle for shift firefighters or **NEW: 80 hours in a 14-day cycle for sworn police officers** and has recorded hours for Vacation, the employee can choose between having the excess hours returned to the employee's Vacation leave bank (also called "time flexing") or being paid at their regular rate of pay for those hours.

4.09 PROBATIONARY PERIOD

EXISTING POLICY:

D. POSITION CHANGES (INTERNAL MOVES)

Probationary periods will apply to all full-time employees that have a change in jobs (through reclassification, promotion, demotion, or reorganization) and are subject to a 6-month probationary period.

At the end of 6 months in the new position, the incumbent will receive a 6-month review to be documented as an update of record for the employee's personnel file and in the performance evaluation system. The 6-month review is not subject to an increase in pay but is to determine if an employee can continue in the position. If the employee is not performing satisfactorily, they are subject to disciplinary action.

An employee who changes positions (through reclassification, reorganization, demotion, or promotion) may not transfer or change jobs within the first 6 months of the action without the consent of their Director.

CHANGE TO:

D. POSITION CHANGES (INTERNAL MOVES)

Probationary periods will apply to all full-time employees that have a change in jobs (through reclassification, promotion, demotion, or reorganization) and are subject to a 6-month probationary period. **NEW: Any position change that results in an adjustment of wages will become effective the Monday of the first full pay period following the position change.**

At the end of 6 months in the new position, the incumbent will receive a 6-month review to be documented as an update of record for the employee's personnel file and in the performance evaluation system. The 6-month review is not subject to an increase in pay but is to determine if an employee can continue in the position. If the employee is not performing satisfactorily, they are subject to disciplinary action.

An employee who changes positions (through reclassification, reorganization, demotion, or promotion) may not transfer or change jobs within the first 6 months of the action without the consent of their Director.

7.06 HOLIDAY LEAVE

EXISTING POLICY:

B. SHIFT FIREFIGHTERS

This section applies to all non-exempt full-time shift Firefighters. The City of Tomball shall maintain compliance with all provisions of the Fair Labor Standards Act as applied to the allocation and use of holidays in the Fire Department.

All full-time shift Firefighters will be paid for 12 hours at the employee's regular rate of pay for every City holiday, whether or not the Firefighter works on the holiday. All full-time shift Firefighters who work a shift that begins on a City holiday will be paid a rate of one and one-half times their regular hourly rate.

The City has designated the floating holiday as the September 11th Memorial holiday for firefighters only if the firefighter chooses to use the floating holiday for that purpose on this day, and its use does not unduly disrupt the department's operation. For all other employees, the floating holiday is unchanged.

While firefighters have the same number of holidays as all other City employees, in accordance with H.B. 2113, the Texas legislature has amended Section 142.0013 (c) of the Local Government Code mandating that one of the City's holidays be designated as September 11th Memorial Holiday for all firefighters. All City employees have the same number of holidays on the same days; however, this amendment mandates that the City refers to one of those holidays by a different name for a particular category of employees.

C. POLICE PERSONNEL

All full-time police personnel who work a shift that begins on a City holiday will be paid a rate of one and one-half times their regular hourly rate for that day of work.

CHANGE TO:

B. SHIFT FIREFIGHTERS

This section applies to all non-exempt full-time shift Firefighters. The City of Tomball shall maintain compliance with all provisions of the Fair Labor Standards Act as applied to the allocation and use of holidays in the Fire Department.

All full-time shift Firefighters will be paid for 12 hours at the employee's regular rate of pay for every City holiday, whether or not the Firefighter works on the holiday. **NEW: A firefighter that works any shift that begins on a City holiday, that shift (not day) will be paid at a rate of one and one-half times their regular hourly rate.**

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C. POLICE PERSONNEL

NEW: All full-time police personnel, including sworn 12-hour shift personnel, who works any shift that begins on a City holiday, that shift (not day) will be paid at a rate of one and one-half times their regular hourly rate.