

Human Resources Committee

October 7, 2014

The **Human Resources Committee** met Tuesday, October 7th, 2014, at 6:00 p.m. in the Conference Room at City Hall. Present were Chairperson Roxanna Brush and Committee Members Sheena Martin and Ken Gardner. Committee Member Mark Ahner was not present. Also present was Public Utilities Director Al Kelm, City Attorney Dan Rice, HR and Risk Management Programs Manager for MMIA John Cummings (via landline) and Committee Recorder HR/Payroll Officer Billie Burkhalter.

1. Review and Recommendation of Updated Policy:

- a. Compensatory Credits for Exempt & Non-Exempt Employees
 - Policy Version 1
 - Policy Version 2

HR Officer Burkhalter explained that she has remodeled the current “Overtime and Compensatory Time Non Bargaining Unit” policy by separating it into two policies: “Exempt vs. Non-Exempt Employee Status” and “Compensatory Credits for Exempt & Non-Exempt Employees –Not Covered by a Collective Bargaining Agreement”. For purpose of this section of the meeting she requested the Committee address the Policy Version 1 and Policy Version 2 of the “Compensatory Credits for Exempt & Non-Exempt Employees –Not Covered by a Collective Bargaining Agreement”.

HR Officer Burkhalter explained that, due to the complexity of this policy, she had requested John Cummings, the Human Resources Manager for MMIA, and City Attorney Dan Rice to weigh in on this discussion. HR Manager John Cummings spoke via landline to the Committee. HR Officer Burkhalter explained that she has proposed two different versions of this policy. The 1st version follows the original policy closely, as it offers a monetary value for accumulated compensatory time to exempt employees. The 2nd version does not allow monetary compensation for accumulated compensatory time for exempt employees and only allows these employees to use it for leave time. She explained that the reason for doing this is that Mr. Cummings submitted a letter to the City concerning issues with some of our personnel policies. This policy is one that he cited as a problem, as allowing exempt employees compensation for accumulated compensatory time could potentially endanger the status of those employees that fall under an exempt position.

HR Manager Cummings stated that after doing more research into this subject, he found that the information is mixed. The standard process for exempt employees is that they often do not receive compensatory time. He stated that in no other City or Town that he knows of, in a governmental setting, do exempt employees receive cash payment for compensatory time. He explained that with regard to the Department of Labor, Wage and Hour Laws, a concern is that the more an employer treats an exempt employee like a non-exempt employee, there exists the possibility that those employees exempt status might be at risk.

HR Manager Cummings stressed that it is very important to classify an employee correctly; there is criteria that needs to be met to be exempt. The idea of an exempt employee is that the position is paid at a higher level and there should be some flexibility to comings and goings during the workdays. An example of this is if it only takes 6 hours to get their work done, then they should be able to go home in 6 hours. If their work takes 10 hours, then they work the 10 hours. In theory, by the end of the year the hours should balance out. HR Manager Cummings explained that this concept is more difficult as a government employee, because of the high expectation of being at work 8 a.m. to 5 p.m. and being available to the public during those hours.

HR Manager Cummings stated he spoke with the Department of Labor, Wage and Hour and there is no provision that prohibits a governmental entity to pay compensatory time to an exempt employee. This policy would be a local government decision and not MMIA's decision.

Attorney Rice explained that he had the same results from his research, as he could not find another Montana State, City or Town that specifically is paying out for accumulated compensatory time. He did find that the policies were either offering the exempt employees to trade out the compensatory time hour for hour, or offering no option for compensatory time.

HR Manager John Cummings explained classifying an employee exempt can be somewhat of a gray area and the Federal guidelines can be difficult to follow. The City needs to clearly articulate why an employee's position is exempt or non-exempt. The City needs to be able to define by job description what exemption criteria these employees fall under.

Director Kelm asked Mr. Cummings if he knew of any other community that had a six year union contract. Mr. Cummings replied three years is common, but knew of no other City or Town that had that long of a contract.

Director Kelm explained that in the Engineering and Operations Department, there used to be 7 employees working and now there are only 5 employees. One of those positions focuses mainly on floodplain issues. The public and the Mayor expect them to be there eight hours a day. Right now the rapport with the public is very good and that is due to the extra time they put in. He explained the budget process starts in April and ends the first part of September, which consists of meetings and numerous preliminary, final, and revisions to the budget. Due to this lengthy process, he cannot take much time off during this time period. He questioned how he would be able to use his compensatory time when he is constantly maxed out on vacation and giving his hours back to the City?

Director Kelm explained that Department Heads work hard for the City and are doing the best job they can. They attend a lot of meetings, take phone calls after hours and on the weekends and work a lot of hours that are never accounted for. When former Public Works Director Bruce Larson retired, the City did not fill his position for

two years and, during this time, he was forced to work anywhere between 10 to 14 hours a day. This was not his fault that the position was not filled and he should be compensated for those extra hours. Director Kelm re-emphasized that the practice of cashing out compensatory time is not illegal.

Director Kelm pointed out that compensatory time is placed on every timesheet with a description of the work done. The Mayor reviews and signs these timesheets and can either question the time or deny it. He further stated that no other City has a six year union contract, so compensating for compensatory time may not be the standard practice, but neither is a six year contract.

HR Manager Cummings referred back to his letter to the City concerning jeopardizing the employee's exempt status. It becomes potentially a slippery slope when the City takes it to another level and is requiring certain hours to be worked, mandating certain schedules. The more the City or Town requires, can over time begin to jeopardize the exempt status of these employees.

City Attorney Rice explained that he would need to look further into the Department of Labor and the definitions of what makes an employee exempt or non-exempt. He would guess that the majority of exempt employees fall under the "Administrator" definition, with his position falling into "Professional" and the Mayor's position being "Executive". HR Manager Cummings pointed out that with an accurate job description, a Wage and Hour consultant can be contacted to help make the determination if an employee is exempt or not.

Attorney Rice felt the language in the current policy was very deliberate and precise when it references premium pay for exempt employees, and requested the minutes from when that policy was adopted.

Attorney Rice stated another factor to look at was if the City is requiring an exempt employee to be at work from 8 a.m. to 5 p.m. and is micromanaging an employee's time, then they are really treating them like a non-exempt employee. Director Kelm pointed out that his hours are from 7 a.m. to 4 p.m. and all of his time is accounted for. If he leaves for an hour or a day he has to turn in a leave slip to the Mayor for approval.

HR Officer Burkhalter requested the Committee to table the proposed "Exempt vs. Non-Exempt Employee Status" policy under the proposed Section 3: Employment Information, as she believes this policy needs further clarification.

*** Committee Member Martin moved to table both Version 1 and Version 2; Compensatory Credits for Exempt & Non-Exempt Employees –Not Covered by a Collective Bargaining Agreement" and "Exempt vs. Non-Exempt Employee Status" policies for further clarification. The motion was seconded by Committee Member Gardner and passed unanimously 3-0.*

2. Review and Recommendation of New Policy

a. Section 3: Employment Information

HR Officer Burkhalter explained that she updated and remodeled the entire Personnel Policy Section 2: Pay and Classification, Section 5: Separation, and the following policies from Section 3: Workplace Standards; "Employee Record Keeping", "Performance Evaluation" and "Probation" and redefined them to "Section 3: Employment Information".

HR Officer Burkhalter compared the old policy and the new policy, explaining the updates and/or changes. The following are the requested additions and/or clarifications:

- Payroll Processing Guidelines Policy: Chairperson Brush requested HR Officer Burkhalter to keep working on a different payroll calendar system for administrative/salary employees.
- Basic Employee Classification and Eligibility for Benefits Policy: HR Officer Burkhalter requested under the Section Policy A: "#8". Transitional Employee that "Early Return to Work" be added to the end of the sentence.
- Employee Personnel Records Policy: HR Burkhalter requested that under Section Procedure "B". Records added or removed from file/retention: that the following language be added "(ii) At the discretion of the Director, a negative document may designate a target date for removal, so long as no further incidents have occurred prior to the target date. Upon reaching the target date, the Director must review the document and he or she may remove it from the personnel file. If the situation referred to in the document is still relevant, the Director may decide not to remove the negative document and may then assign another removal date in a separate writing, to be attached to the negative document in the personnel file." After further discussion, Chairperson Brush requested that language be added that states, at the employee's request.
- Employee Separation Policy: Chairperson Brush requested that Section Procedure No. "G" be removed from the policy until further clarification regarding exempt and non-exempt employees has been established.

*** Chairperson Brush moved to accept the above listed amendments to the proposed Section 3: Employment Information. The motion was seconded by Committee Member Martin and passed unanimously 3-0.*

*** Chairperson Brush moved to recommend to the City Council to adopt the proposed Section 3: Employment Information, with the exception of the "Exempt vs. Non-Exempt Employee Status" policy. The motion seconded by Committee Member Martin and passed unanimously 3-0.*

3. Review and Recommendation of New Policy

a. Section 4: Employee Benefits

HR Officer Burkhalter presented Section 4: Employee Benefits, to the Committee and explained that this does not replace any section in the current policy manual, as it has not been addressed before.

The Committee did not have any revisions to the proposed Section 4: Employee Benefits.

*** Committee Member Gardner moved to recommend to the City Council to adopt the proposed Section 4: Employee Benefits as presented. The motion was seconded by Chairperson Brush and passed unanimously, 3-0.*

4. Committee Member Comments


Committee Member Gardner thanked HR Officer Burkhalter for her hard work on updating the Personnel Policy manual.

5. Adjournment

*** Committee Member Martin moved to adjourn the meeting. The motion was seconded by Committee Member Gardner and passed.*

The meeting was adjourned at 8:00 p.m.

Respectfully submitted,


Billie D. Burkhalter, Recorder


Chairperson Roxanna Brush