

Chapter 7

Human Resources and Labor Relations

Cities need competent, enthusiastic and hardworking employees. Recruiting and hiring the best employees, treating them fairly, and training them to do the job is central to a city's success. Personnel costs are also the lion's share of a city's operating budget – typically, about 60% of a city budget, so recruiting, training and retaining good employees is time well spent.

It's tempting to think that in a small town or city, relations with employees can be kept informal, and that it's OK to be casual about hiring, work rules, or other job-related practices. But this is a big mistake. It only takes one disgruntled employee or one untrained supervisor to disrupt city hall and derail the ability of city officials to focus on making the city a great place to live.


It is difficult to keep up-to-date on important personnel issues, because laws and regulations keep changing, and small cities can rarely afford a professional personnel manager with expertise in human resources and labor relations. But having clear, consistent rules and personnel practices can prevent a lot of trouble. And it can provide an orderly way to resolve problems when they do arise, before they spin out of control.


Here are just a few of the components of a good system of human resources management. While most of these may be more common in larger cities, they also have applications for smaller municipalities.


- A recruitment process that tests for, hires and promotes applicants based on merit and the ability to perform the essential functions of the position;
- Personnel policies that outline work rules, employee benefits, policies on overtime, paid and unpaid leave, employee conduct, and discipline;
- A classification and compensation plan that includes job descriptions for all positions, identifying the method for setting salaries;
- An orientation program for new and newly promoted employees;
- A performance evaluation process;
- A training program for employees, especially supervisors, on key laws such as the Americans with Disabilities Act (ADA), the Family Medical Leave Act (FMLA), the Fair Labor Standards Act (FLSA) and on workers' compensation, discipline, or grievance procedures;
- A trained person to coordinate labor relations and negotiate with employees regarding wages, hours and working conditions; and
- A grievance process to address employee concerns and serious complaints.

For cities that may be lagging behind in some of these areas, there are many resources available to help improve their human resources systems.

Resources

Personnel & labor relations services webpage, AWC 

Personnel & human resources information, Personnel webpage, MRSC 


Annual Labor Relations Institute, AWC 

Property & Liability Insurance Providers

Key to Symbols

 – Legal citing

 – Internet resource

 – Print publication

 – Training/conference


 – Who to call


Know the law

RCW 49.60 – Washington law against discrimination

WAC 162-12-140 – Pre-employment Inquiries, Human Rights Commission

Resources

Hiring procedures, Personnel webpage, MRSC 

Examples of job descriptions, research tools, Sample documents webpage, MRSC 

Hiring the best people

There are few employers who can say that every employee working in their organization is the ideal person for the job. But with a little effort, the chances of attracting (and retaining) quality employees can be greatly increased.

Except for police and fire personnel (see the Civil Service section of this chapter, page 65) there are no specific legal requirements that a city must follow to recruit and select new employees. However, employees must be hired fairly. Many cities have established their own hiring policies, which usually include procedures for attracting enough qualified candidates to compete for job openings, screening those applicants, and selecting the most qualified individual for the available position. It is essential that this process not discriminate against protected classes of employees, either by intent or impact. Therefore, selection decisions must be based on job-related criteria that measure knowledge, skills, abilities and attributes that relate directly to successful job performance.

Under the Washington Law Against Discrimination (WLAD), employers may not refuse to hire someone, fire an employee, or discriminate against an employee in pay or other terms or conditions of employment, because of the person's race, creed, color, national origin, sex, marital status, age, disability, or sexual orientation or gender identity. Current law exempts employers with fewer than eight employees, but the legislature is considering making the law apply to all employers with at least one employee.

“As a small city you have the same responsibilities as the big cities but with a staff of one.”

Small City Roundups

Civil service for police and fire

Most police and fire employees are covered by state civil service law, which governs hiring and provides a process for hearing appeals to disciplinary actions. Cities with more than two full-time police officers (including the chief) or with any full-time firefighters are required to establish a three-member civil service commission.

Appointments to the commission are usually made by the mayor or city manager.

The commission must establish rules for the operation of the city's civil service system that are consistent with state law, administer tests to determine the relative qualifications of candidates, and hear appeals or complaints.

Volunteer firefighters and reserve officers

The Board for Volunteer Firefighters and Reserve Officers (Board) provides worker's compensation benefits and a small retirement pension for volunteer firefighters and reserve police officers in Washington. All volunteer firefighters must be covered for worker's comp, and coverage for reserve police officers is optional. Cities must report volunteers to the Board, remit the appropriate fees, and form a local board of trustees, with the responsibility to approve retirement forms, remittance forms, and claims for payment, and to administer claims due to injuries.



Long Beach City Hall


Know the law


RCW 41.08 – Civil service for fire


RCW 41.12 – Civil service for police

Resources

Board for Volunteer Fire Fighters & Reserve Officers, (877)753-7318

Civil service information, including sample civil service rules, Personnel webpage, MRSC 


Veterans' preference in hiring, Personnel webpage, MRSC 


Model Civil Service Rules for Washington State Local Governments, Foster Pepper PLLC, MRSC library loan 



Know the law


RCW 41.56 – Public Employees
Collective Bargaining Act
(PECBA)

Resources

Annual Labor Relations Institute,
AWC 

*Basics of Collective Bargaining:
Negotiating with Unions in the
Public Sector*, AWC 

Public Employment Relations
Commission (PERC), (360) 570-
7300  

Consumer Price Index (CPI)
Data – U.S. Dept. of Labor,
Bureau of Labor Statistics, (415)
625-2270  

Labor relations

It's not surprising that most small city councils and staff struggle with labor relations issues. The state law, the Public Employees Collective Bargaining Act (RCW 41.56), is complex and technical for those unfamiliar with it. It also differs significantly in some key areas from labor law that applies to private sector jobs. And unlike private sector employers, most cities have a large percentage of their personnel covered by union contracts.

Almost all public employees in Washington have a legal right to form unions or associations and collectively bargain with their employers. A city cannot change wages, hours or working conditions for union members without bargaining these issues with them. Collective bargaining is the mutual obligation of employees and their employers to meet at reasonable times and to bargain in good faith. However, this obligation does not compel either party to agree to a proposal.

It is an unfair labor practice for an employer to interfere with, restrain or coerce public employees in the exercise of their right to unionize. A state agency, the Public Employment Relations Commission (PERC), regulates the relationships between public employers and their employees concerning issues like union representation and unfair labor practices. City officials with questions about union issues should contact PERC for guidance.

All paid fire departments, and all police departments in cities over 2,500 in population, have access to interest arbitration. This means that when an impasse in bargaining occurs, the issues in dispute are turned over to an outside arbitrator to make the decisions on wages, benefits and other contract language. This can create a unique dynamic in police and fire negotiations. The arbitrator has the power to set the terms of the contract – obligating the city to provide wages or benefits to police or fire employees that other employees don't get – and that perhaps the city can't afford.

Because of the complexity of labor negotiations, and the impact of wages and benefits on city budgets, some cities hire professional consultants to bargain on behalf of management. For smaller cities with limited resources, this may not be affordable.

Employee salaries and benefits


In order to attract, retain, and motivate qualified employees, cities try to establish and maintain compensation and benefit levels that are competitive within their labor markets and that are internally fair.


It's hard to decide how much to pay employees, and it's made harder when cities just can't afford to pay the wages they would like to.



AWC produces an annual salary survey that allows city officials to see what comparably-sized cities pay their employees, what benefits they provide, and how much the employer and the employee each pay for those benefits.



Most cities offer a variety of benefits – vacation, sick leave, pensions, insurance benefits (health, dental, vision, disability, life insurance, etc.). Benefits are important to employees and can be costly for the employer. Therefore, the total cost of compensation (including both salary and benefits) should be carefully reviewed.

Resources


*Washington City and County
Salary & Benefit Survey, AWC*


*Police/Fire Compensation Survey,
AWC* 

*AWC Employee Benefit Trust,
1-800-562-8981*  

*State Dept. of Retirement
Systems (pensions), 1-800-547-
6657*  

Resources

Examples of city personnel policies, Personnel webpage, MRSC 

Personnel Policies for Small Cities, AWC, 2001 


Sample Small Town Personnel Resolution, AWC 


Know the law


DOL Fair Labor Standards Act

RCW 49.46 – WA State Minimum Wage Act

Resources

Washington Public Employer Overtime Guide, AWC 

FLSA information, Legal webpage, MRSC 

FLSA compliance assistance, U.S. Dept. of Labor 

Personnel policies

Personnel policies and procedures constitute the basic “rules of the game” for employer-employee relations. They help to ensure that employees are treated in an equitable and consistent manner and in compliance with legal requirements. Personnel policies and procedures should be regularly reviewed and updated to reflect new legislation and organizational changes.

Current, clearly-written personnel policies help avoid lawsuits, promote consistency, and contribute to employee morale. Failure to follow its own personnel policies is one of the most potentially expensive liability exposures a city can have.

The Fair Labor Standards Act (FLSA) and Washington State overtime law

The laws governing overtime pay are very complicated, and even veteran human resources professionals and payroll staff have a hard time sorting through the various federal and state rules and regulations. Complex, often contradictory court decisions add to the confusion, exposing cities to tremendous liability for back overtime.

Generally, the FLSA requires that overtime pay must be paid at a rate of not less than one and one-half times an employee’s regular rate of pay for each hour worked in excess of 40 hours in a week, although there are exceptions. Some employees are exempt from the overtime provisions of the law, in some cases compensatory time may be granted instead of overtime pay, and there are different rules for when overtime is required for police and fire employees.

While many of the provisions of the state overtime law and the FLSA are identical, there are some differences. When there is a difference, the city must comply with the law that is most beneficial to the employee.

In addition to overtime, state and federal laws set the minimum wage that employees must be paid. Although the federal minimum wage is \$7.25, the minimum wage in Washington is significantly higher – \$8.55 effective January 1, 2009. The state minimum wage is indexed to increase every January based on the increase in the Consumer Price Index (CPI).

It’s very important to keep up-to-date on this ever-changing area of law.

De-Bunking Common Overtime Myths, *Personnel News*, AWC

The following are some common myths about overtime requirements. City officials should familiarize themselves with these potential “traps” to avoid costly mistakes.

Myth: Employees who are paid salaries are exempt from FLSA overtime requirements.

Fact: Exempt employees must be paid on a salary basis, but simply being paid a salary is not enough to qualify an employee for the exemption. Employees must satisfy newly-revised tests to qualify for an administrative, professional, or executive exemption under the FLSA. These tests are very specific, and address job duties and responsibilities, not just job titles. Before assuming that an employee paid on salary is truly exempt, the city should carefully review the requirements for exemption. See the Fair Pay website at www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm for detailed information about the exemptions.

Myth: Employees who are "exempt" from a union contract are also considered "exempt" under the FLSA, and thus not entitled to overtime.

Fact: There is no correlation between union status and FLSA-exempt status. Again, the specific duties of the position must meet the qualifications for exemption under the FLSA. A common misconception is that someone classified as a "confidential" employee who is exempt from union membership is not entitled to overtime. In many cases, this is not true.

Myth: The FLSA requires overtime at time-and-one-half after 8 hours in a day.

Fact: In most cases, the FLSA requires that overtime be paid only after 40 hours in a workweek (although higher hourly thresholds for police and fire employees are allowed). Some jurisdictions, however, provide overtime on a more generous basis than the FLSA requires, through collective bargaining agreements or employee policies.

Myth: Employees must be paid time-and-a-half for working holidays.

Fact: There is no requirement under the FLSA that employees be given premium pay for holidays, weekends, or evening work. Overtime is only required for time actually worked in excess of 40 hours in a workweek. In fact, sick leave, vacation leave, and holidays taken during a workweek do not need to be counted as hours worked in determining if an employee has worked more than 40 hours in a week. Again, a collective bargaining agreement or personnel policy could obligate a city to pay overtime in these situations.

Myth: Employees who "volunteer" to work overtime, or regularly take work home to complete, do not need to be paid for that work.

Fact: A non-exempt employee who volunteers to work overtime must be paid for that time. If a supervisor knows that an employee is working extra hours for the benefit of the city, those hours are compensable hours of work and the employee is entitled to be paid for them. If non-exempt employees regularly work extra hours, a supervisor should instruct them not to and take steps to discipline those who continue to do so, or the city could be subject to substantial back overtime liability.

Myth: The overtime rate that employees must be paid after 40 hours in a work week is one-and-a-half times their base pay only.

Fact: Overtime is calculated at one-and-a-half times the "regular rate of pay," which includes all direct compensation for employment paid to, or on behalf of, the employee, with a few exceptions. Examples of pay that would have to be included in the regular rate of pay include: shift differentials, education incentives, longevity pay, hazardous duty pay, special assignment pay, bonuses that are based on accuracy, good attendance, incentive, quality of work, retroactive pay increases, payments for EMT certification, and payments to canine officers. These payments must be added to the basic rate before overtime is calculated.

Myth: It's okay to require an employee to work 50 hours one week and 30 hours the next without having to pay any overtime, since the average is 40 hours in each week.

Fact: The FLSA requires that each workweek be treated separately. With few exceptions, hours cannot be averaged over two or more weeks to avoid an overtime obligation. In this example, the non-exempt employee would be entitled to 10 hours of overtime compensation in the first workweek. However, by defining the workweek in certain ways, a city can provide a flexible scheduling option for non-exempt employers.

Myth: If a collective bargaining agreement specifies that overtime is paid straight time, and the union agrees to it, then it's okay not to pay the overtime rate.

Fact: A union cannot waive its right to overtime under the FLSA. In fact, a union and a public agency cannot agree to any benefits that are less generous than the FLSA. If the collective bargaining agreement does not comply with the FLSA on certain provisions, those provisions are invalid and the FLSA takes precedence. (However, unions and employers can agree to provisions that are more generous than those provided in the FLSA.)

Myth: State law provides that compensatory (comp) time can be accrued on an hour-for-hour basis, so it's okay to give non-exempt employees straight-time comp time instead of paying time-and-a-half overtime.

Fact: When the provisions of state law and the FLSA do not agree, employers are required to comply with the provisions that are more advantageous to the employee. Comp time is an option that public employers can use to satisfy their overtime obligations – but it must be provided at the time-and-a-half rate (and there are other restrictions as well).

Laws that protect employees from discrimination and unfair practices

A wide range of federal and state laws and regulations govern employment decisions and protect employees from discrimination and other unfair practices. These laws have become increasingly complex, and there are more and more inconsistencies between state and federal regulations. Because city officials generally need more information on this issue than this brief chapter can provide, they should take advantage of the resources listed, and attend training when it is offered.

Know the law




RCW 49.60 – Washington Law
Against Discrimination



Federal Equal Employment
Opportunity Laws, U.S. Equal
Opportunity Commission



The Americans with Disabilities
Act (ADA), U.S. Equal
Opportunity Commission



Federal Family & Medical Leave
Act, U.S. Dept. of Labor

Resources

ADA Guide for Small Towns, U.S.
Dept. of Justice, March 2000,
1-800-514-0301   

Required Workplace Posters, WA
Dept. of Labor and Industries
1-800-547-8367  

State Dept. of Labor
and Industries (workers'
compensation, state family leave)
1-800-547-8367  

U.S. Dept. of Labor (FLSA,
FMLA, OSHA), 1-866-4-USA-
DOL  

WA State Human Rights
Commission, 1-800-233-3247
