

LABOR SERVICES DIVISION[875]

Adopted and Filed

Rulemaking related to employees of state and local governments

The Labor Services Division hereby rescinds Chapter 220, “Application of the Fair Labor Standards Act to Employees of State and Local Governments,” and adopts a new Chapter 220, “Employees of State and Local Governments,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 91D.1.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Executive Order 10.

Purpose and Summary

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 220 that requires certain wage practices for government employees and describes exemptions, including volunteers.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8271C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings.

A comment requested that Chapter 220 retain original subrule 220.27(4) in defining “regular rate” by a federal rule. However, the Division does not believe that “regular rate” is unduly confusing and the federal definition in 29 CFR 778.108 is not helpful.

A comment asked why the description of compensable hours in original 220.221(2) was deleted.

A change from the Notice has been made to reinstate the chapter’s original description of “compensable hours” in subrule 220.16(1).

Adoption of Rulemaking

This rulemaking was adopted by the Division on December 4, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any

individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 220 and adopt the following **new** chapter in lieu thereof:

CHAPTER 220
EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

875—220.1(91D) Definition.

“Public agency” means the state of Iowa or political subdivision of the state.

875—220.2(91D) Exclusion for elected officials and their appointees.

220.2(1) Elected officials are excluded from minimum wage. Also excluded under this provision are personal staff members and officials in policymaking positions who are selected or appointed by the elected public officials and certain advisers to such officials.

220.2(2) The statutory term “member of personal staff” generally includes only persons who are under the direct supervision of the selecting elected official and have regular contact with the official.

220.2(3) In order to qualify as personal staff members or officials in policymaking positions, the individuals in question must not be subject to the civil service laws of their employing agencies. The term “civil service laws” refers to a personnel system established by law that is designed to protect employees from arbitrary action, personal favoritism, and political coercion, and that uses a competitive or merit examination process for selection and placement. Continued tenure of employment of employees under civil service, except for cause, is provided. In addition, personal staff members must be appointed by, and serve solely at the pleasure or discretion of, the elected official.

220.2(4) The exclusion for “immediate adviser” to elected officials is limited to staff who serve as advisers on constitutional or legal matters, and who are not subject to the civil service rules of their employing agency.

SOURCE: 29 CFR 553.11.

875—220.3(91D) Exclusion for employees of legislative branches.

220.3(1) Individuals who are not subject to the civil service laws of their employing agencies and are employed by legislative branches or bodies of the state and its political subdivisions are excluded from minimum wage.

220.3(2) Employees of the state or local legislative libraries do not come within this statutory exclusion. Also, employees of school boards, other than elected officials and their appointees, do not come within this exclusion.

SOURCE: 29 CFR 553.12.

875—220.4(91D) Introduction. A public agency that is the state or a political subdivision of the state is authorized to provide compensatory time off in lieu of monetary overtime compensation.

SOURCE: 29 CFR 553.20.

875—220.5(91D) Compensatory time and compensatory time off. The terms “compensatory time” and “compensatory time off” mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee’s regular rate.

SOURCE: 29 CFR 553.21.

875—220.6(91D) Payments for unused compensatory time.

220.6(1) Payments for accrued compensatory time may be made at any time and shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

220.6(2) Upon termination of employment, an employee shall be paid for unused compensatory time at a rate of compensation not less than:

a. The average regular rate received by the employee during the last three years of the employee's employment, or

b. The final regular rate received by the employee, whichever is higher.

220.6(3) The phrase "last three years of employment" means the three-year period immediately prior to termination. Where an employee's last three years of employment are not continuous because of a break in service, the period of employment after the break in service will be treated as new employment. However, a break in service must have been intended to be permanent and any accrued compensatory time must have been cashed out at the time of initial separation. Where the final period of employment is less than three years, the average rate still must be calculated based on the rate(s) in effect during the period.

SOURCE: 29 CFR 553.27.

875—220.7(91D) Other compensatory time.

220.7(1) Compensatory time that is earned and accrued by an employee for employment in excess of a nonstatutory requirement is considered "other" compensatory time. The term "other" compensatory time off means hours during which an employee is not working and that are not counted as hours worked during the period when used.

220.7(2) The rate at which "other" compensatory time is earned is not required to be at a rate of one and one-half hours for each hour of employment. The rate at which "other" compensatory time is earned may be some lesser or greater multiple of the rate or the straight-time rate itself.

SOURCE: 29 CFR 553.28.

OTHER EXEMPTIONS

875—220.8(91D) Substitution.

220.8(1) Individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. Where one employee substitutes for another, each employee will be credited as if the employee had worked the normal work schedule for that shift.

220.8(2) An employee's decision to substitute will be considered to have been made at the employee's sole option when it has been made:

a. Without fear of reprisal or promise of reward by the employer, and

b. Exclusively for the employee's own convenience.

SOURCE: 29 CFR 553.31.

RECORDKEEPING

875—220.9(91D) Records to be kept of compensatory time. For each employee subject to the compensatory time and compensatory time off provisions of the federal Fair Labor Standards Act, 29 U.S.C. 207(o) as amended to January 1, 2007, a public agency shall maintain and preserve the following records:

220.9(1) The number of hours of compensatory time earned each work period, by each employee at the rate of one and one-half hour for each overtime hour worked;

220.9(2) The number of hours of compensatory time used each workweek, or other applicable work period, by each employee;

220.9(3) The number of hours of compensatory time compensated in cash, the total amount paid and the date of payment; and

220.9(4) Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time off.
SOURCE: 29 CFR 553.50.

VOLUNTEERS

875—220.10(91D) General. Individuals performing volunteer services for units of the state and local governments will not be regarded as “employees.”
SOURCE: 29 CFR 553.100.

875—220.11(91D) Volunteer defined.

220.11(1) An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered, is considered to be a volunteer.

220.11(2) Individuals are considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer.

220.11(3) An individual is not to be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

SOURCE: 29 CFR 553.101.

875—220.12(91D) Employment by the same public agency. An individual may not perform hours of volunteer service for a public agency when the hours involve the same type of services that the individual is employed to perform for the same public agency.

SOURCE: 29 CFR 553.102.

875—220.13(91D) Same type of services defined. The duties and all the facts and circumstances in a particular case will be considered in determining whether the volunteer activities constitute the “same type of services” as the employment activities.

SOURCE: 29 CFR 553.103.

875—220.14(91D) Private individuals who volunteer services to public agencies. Individuals who are not employed in any capacity by state or local government agencies are considered volunteers and not employees of such public agencies if the individual’s hours of service are provided with no promise, expectation, or receipt of compensation for the services rendered.

SOURCE: 29 CFR 553.104.

875—220.15(91D) Payment of expenses, benefits, or fees.

220.15(1) Individuals would not lose their volunteer status because they are reimbursed for the approximate out-of-pocket expenses incurred incidental to providing volunteer services; for example, payment for the cost of meals and transportation expenses.

220.15(2) Individuals do not lose their status as volunteers because they are reimbursed for tuition, transportation and meal costs involved in their attending classes intended to teach them to perform efficiently the services they provide or will provide as volunteers. Likewise, the volunteer status of individuals is not lost if they are provided books, supplies, or other materials essential to their volunteer training or reimbursement for the cost thereof.

220.15(3) Individuals do not lose their volunteer status if they are provided reasonable benefits by a public agency for whom they perform volunteer services. Benefits would be considered reasonable, for example, when they involve inclusion of individual volunteers in group insurance plans (such as liability, health, life, disability, workers’ compensation) or pension plans or length of service awards, commonly or traditionally provided to volunteers of government agencies.

220.15(4) Individuals do not lose their volunteer status if they receive a nominal fee from a public agency. A nominal fee is not a substitute for compensation and shall not be tied to productivity. However, this does not preclude the payment of a nominal amount on a “per call” or similar basis to

volunteer firefighters. The following factors will be among those examined in determining whether a given amount is nominal:

- a. The distance traveled and the time and effort expended by the volunteer;
- b. Whether the volunteer has agreed to be available around the clock or only during certain specified time periods; and
- c. Whether the volunteer provides services as needed or throughout the year. An individual who volunteers to provide periodic services on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status.

220.15(5) Whether the furnishing of expenses, benefits, or fees would result in individuals losing their status as volunteers can only be determined by examining the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation.

SOURCE: 29 CFR 553.106.

FIRE PROTECTION AND LAW ENFORCEMENT
EMPLOYEES OF PUBLIC AGENCIES

875—220.16(91D) Compensable hours of work.

220.16(1) Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. The time includes all preshift and postshift activities that are an integral part of the employee's principal activity or that are closely related to the performance of the principal activity, such as attending roll call, writing up and completing tickets or reports, and washing and rerecking fire hoses.

220.16(2) Time spent away from the employer's premises under conditions that are so circumscribed that they restrict the employee from effectively using the time for personal pursuits also constitutes compensable hours of work.

220.16(3) Normal home-to-work travel is not compensable, even where the employee is expected to report to work at a location away from the location of the employer's premises.

220.16(4) A police officer, who has completed the tour of duty and who is given a patrol car to drive home and use on personal business, is not working during the travel time, even where the radio must be left on so that the officer can respond to emergency calls.

SOURCE: 29 CFR 553.221.

875—220.17(91D) Sleep time.

220.17(1) Sleep time cannot be excluded from the compensable hours of work where:

- a. The employee is on a tour of duty of less than 24 hours, and
- b. Where the employee is on a tour of duty of exactly 24 hours.

220.17(2) Sleep time can be excluded from compensable hours of work in the case of police officers or firefighters who are on a tour of duty of more than 24 hours, but only if there is an expressed or implied agreement between the employer and the employees to exclude the time. In the absence of such an agreement, the sleep time is compensable. In no event shall the time excluded as sleep time exceed 8 hours in a 24-hour period. If the sleep time is interrupted by a call to duty, the interruption must be counted as hours worked. If the sleep period is interrupted to such an extent that the employee cannot get a reasonable night's sleep (which, for enforcement purposes means at least five hours), the entire time must be counted as hours of work.

SOURCE: 29 CFR 553.222.

875—220.18(91D) Early relief. It is a common practice among employees engaged in fire protection activities to relieve employees on the previous shift prior to the scheduled starting time. This practice will not have the effect of increasing the number of compensable hours of work where it is voluntary on the part of the employees. If the practice is required by the employer, the time involved must be treated as compensable hours of work.

SOURCE: 29 CFR 553.225.

875—220.19(91D) Training time.

220.19(1) While time spent in attending training required by an employer is normally considered compensable hours of work, the following are situations where time spent by employees of governments in required training is considered to be noncompensable.

a. Attendance outside of regular working hours at specialized or follow-up training, which is required by law for certification of public and private sector employees within a particular governmental jurisdiction (e.g., certification of public and private emergency rescue workers), does not constitute compensable hours of work for public employees within that jurisdiction and subordinate jurisdictions.

b. Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government, does not constitute compensable hours of work.

220.19(2) Police officers or firefighters who are in attendance at a police or fire academy or other training facility are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use such time for personal pursuits.

SOURCE: 29 CFR 553.226.

These rules are intended to implement Iowa Code chapter 91D.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.