Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 220
"Employees of State and Local Governments"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91D.1
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024 9:30 to 10 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Division of Labor Services no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

Proposed Chapter 220 requires certain wage practices for government employees and describes exemptions, including volunteers.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The rulemaking does not impose any meaningful additional costs. Employers subject to Iowa wage law will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

Employees and employers will benefit by having clarity on how wages are properly paid.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The rulemaking does not impose any meaningful additional costs.

- Qualitative description of impact:

The Department discerns no qualitative impact.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

The rulemaking has no anticipated fiscal impact.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The benefit of knowing appropriate wages in this unique context outweighs the cost of compliance.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Department has not identified any less costly methods or less intrusive methods.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were seriously considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

It would not be beneficial to disrupt established expectations for paying employees of state and local governments.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

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 policy-making 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 policy-making 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. 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 553.102.

875—220.13(91D) Same type of services defined. The duties and other factors contained in the definitions of the three-digit categories of occupations in the Dictionary of Occupational Titles will be followed in determining whether the volunteer activities constitute the same type of services as the employment activities. Equally important in the determination will be the consideration of all the facts and circumstances in a particular case.

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) 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(2) 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(3) 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; however, 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.