



FAIR LABOR STANDARDS ACT

SPECIAL AUDIT

JULY 1, 2005 THROUGH JUNE 30, 2006

**CITY OF CHESAPEAKE, VIRGINIA
AUDIT SERVICES DEPARTMENT**

Audit Services Department
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June 22, 2007

The Honorable Dalton S. Edge and
Members of the City Council
City of Chesapeake
City Hall – 6th Floor
Chesapeake, Virginia 23329

Dear Mayor Edge and Members of the City Council,

We have completed a special audit of the City of Chesapeake's Fair Labor Standards Act (FLSA) practices for the period July 1, 2005 to June 30, 2006. The purpose of this audit was to evaluate the impact on the City of certain FLSA revisions. These revisions allowed certain employees who were previously considered exempt to become eligible for overtime payments. We reviewed departmental practices to ensure 1) these employees were designated as eligible for overtime, and 2) the impact of this additional overtime on the City's overtime costs. The audit was conducted in accordance with Governmental Auditing Standards and included such tests of records and other supporting documentation as we deemed necessary in the circumstances. A review was made of relevant internal control structures, compliance testing was performed, and sufficient competent evidential matter was gathered.

The United States Department of Labor (Department of Labor) issued new FLSA guidelines on the definition of exempt and non-exempt positions that became effective on August 5, 2004. Based upon the change in guidelines, the Human Resources Department (Human Resources) conducted a compliance audit in the early summer of 2004 on all exempt classified positions including First Responders. As a result of this compliance audit and a new legal interpretation of First Responders, Human Resources reclassified seventeen exempt positions to non-exempt positions eligible for overtime compensation.

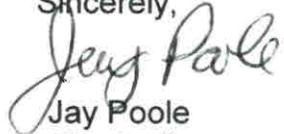
We looked at overtime costs for Fiscal Years 2004, 2005, and 2006 for the City, focusing on the reclassified jobs and their associated overtime costs. We also reviewed the highest overtime earners and departments for the periods under review and evaluated their criteria for determining who receives overtime.

We found that 9 of the 17 reclassified positions had incurred overtime costs during FY 2005 and FY 2006. Total overtime paid out of these positions was \$467,022 in FY 2005 and 1,052,883 in FY 2006. Individually, reclassified employees were paid as much as \$31,359 in FY 2005 and \$61,600 in FY 2006 for overtime. With the exception of \$840 in FY 2005 for two Human Services Team Leader positions, all of the overtime costs were incurred in the Fire and Police Departments.

This situation appears to be the result of staffing issues. For example, we noted that \$796,722 of the FY 2006 overtime was incurred in the Fire Department. In reviewing Fire Department staffing, we noted that the department had 33 vacancies between June 2004 and December 2005. In many cases, the overtime was necessary to adequately staff Fire Stations and vehicles. Also, as of January 2007, the Police had 54 vacant positions. We recommend that the City continue its efforts to reduce the number of vacancies in the Fire and Police Departments.

The Finance, Fire, Human Resources, and Information Technology staffs were helpful, cooperative, and professional throughout the audit and we appreciate their help on this assignment.

Sincerely,



Jay Poole
City Auditor
City of Chesapeake, Virginia

C: William Harrell, City Manager
Anne F. Odell, Deputy City Manager
Mary Bullock, Director of Human Resources

Managerial Summary

A. Introduction, Background, and Scope

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Major Observations and Conclusions

We looked at overtime costs for Fiscal Years 2004, 2005, and 2006 for the City, focusing on the reclassified jobs and their associated overtime costs. We also reviewed the highest overtime earners and departments for the periods under review and evaluated their criteria for determining who receives overtime.

We found that 9 of the 17 reclassified positions had incurred overtime costs during FY 2005 and FY 2006. Total overtime paid out of these positions was \$467,022 in FY 2005 and 1,052,883 in FY 2006. Individually, reclassified employees were paid as much as \$31,359 in FY 2005 and \$61,600 in FY 2006 for overtime. With the exception of \$840 in FY 2005 for two Human Services Team Leader positions, all of the overtime costs were incurred in the Fire and Police Departments.

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B. Changes to Non Exempt Positions

The Department of Labor issued new FLSA guidelines on the definition of exempt and non-exempt positions that became effective on August 5, 2004. Based upon the change in guidelines, the Human Resources Department (Human Resources) conducted a compliance audit in the early summer of 2004 on all exempt classified positions including First Responders.

As a result of this compliance audit and a new legal interpretation for First Responders, Human Resources reclassified seventeen exempt positions to non-exempt positions eligible for overtime compensation. On August 23, Human Resources notified all department and agency heads of positions that had changed status. Listed below are the positions affected by the change.

Finding - Almost all of the overtime incurred as a result of the changes in the FLSA occurred in public safety-related First Responder position. Vacancies in the public safety area appeared to be a contributing factor to the overtime.

Recommendation - The City should continue to attempt to reduce the number of vacancies in the Fire and Police Departments.

Response - In response to our conversation regarding the FLSA Audit, my office has taken steps to work with the departments to fill their vacancies and potentially offset some of the overtime costs being incurred in the City. We will continue to assist these departments by developing innovative approaches for recruitment and retention.

Additionally, I concur with your recommendation to modify the TeleStaff programming in the Fire Department to deliver a more equitable distribution of overtime hours and to seek call back responses from non-ranked staff members to further address some of the rising costs of overtime.

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Scope and Methodology

To conduct this audit, we obtained a listing from Human Resources of staff who were newly eligible for overtime under the revised FLSA guidelines. We also obtained data from Information Technology on all overtime incurred in the City during Fiscal Years 2004, 2005, and 2006, segregated by both department and position. While we did review the actual data for reasonableness, we did not perform control tests on the source data, since those tests were normally performed by the City's external auditors as part of their audit.

Because a substantial portion of the overtime was incurred within the Fire Department, we attempted to obtain an understanding of how their employees were assigned to work overtime. To accomplish this, we interviewed departmental responsible for processing overtime payments as well as employees responsible for maintaining the Department's Telestaff system, which was used to track staff capabilities and also for scheduling purposes. We also evaluated the criteria used by the system to designate employees for overtime.

B. Changes to Non Exempt Positions

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As a result of this compliance audit and a new legal interpretation for First Responders, Human Resources reclassified seventeen exempt positions to non-exempt positions eligible for overtime compensation. On August 23, 2004, Human Resources notified all department and agency heads of positions that had changed status. Listed below are the positions affected by the change.

<u>Position #</u>	<u>Description</u>	<u>Assigned Departments</u>
0190	Executive Assistant	City Manager's Office, City Attorney's Office
0858	Public Comm. Specialist	Professional (Dept. not assigned)
0885	Admin. Assistant II*	City Manager's Office, Public Works - Engineering, Human Services - Social Services, Public Library, Intergov Affairs – Grant Fund, Commonwealth Attorney's Ofc
1140	Office Manager	PW – Chesa. Expwy Operation, HS – Social Services, Sheriff
1145	Office Manager (Detention)	Juvenile Detention Home
1700	Business System Analyst	CSB – Substance Abuse Srvcs., Gen. Services. - Purchasing
7120	Police Sergeant	Police
7121	First Sergeant	Police, Police – Public Safety Training
7130	Police Lieutenant	Police, Police – E911 Operation
7180	Detective Sergeant	Police
7190	Detective Lieutenant	Police
7324	EMS Officer	Fire - EMS
7330	Fire Lieutenant	Fire
7340	Fire Captain	Fire
7590	Team Leader	Juvenile Detention Home
7760	Deputy Sergeant	Sheriff
7770	Deputy Lieutenant	Sheriff
8000	Reimbursement Supervisor	Community Services Board

* Depending on duties, some employees in this class will be designated as exempt.

Finding - Almost all of the overtime incurred as a result of the changes in FLSA occurred in public safety-related First Responder positions. Vacancies in the public safety area appeared to be a contributing factor to the overtime.

Under Section 13(a)(1) of the new FLSA guidelines, First Responders were not exempted from federal overtime pay rules requiring time and one-half the regular rate of pay for all hours worked over 40 in a work week. As was previously noted, as part of the City's compliance study, seventeen exempt positions were identified as requiring job status change (i.e. they became non-exempt positions eligible for overtime compensation). A majority of the seventeen positions affected by job status changes were assigned to First Responders at management levels in the Fire and Police Departments. Previously, the Fire Department's Lieutenants that worked overtime were paid straight time and Captains did not work overtime. After the reclassifications, both Lieutenants and Captains were eligible for overtime.

We noted that 9 of the 17 reclassified positions had incurred overtime costs during FY 2005 and FY 2006. Total overtime paid out of these positions was \$467,022 in FY 2005 and \$1,052,883 in FY 2006. Individually, reclassified employees were paid as much as \$31,359 in FY 2005 and \$61,600 in FY 2006 for overtime. With the exception of \$840 in FY 2005 for two Human Services Team Leader positions, all of the overtime costs were incurred in the Fire and Police Departments.

Exhibit #1
Overtime incurred in Newly Reclassified Positions

Position	Overtime FY 2005	Overtime FY 2006	% Change FY 05 to 06
Fire Lieutenant	\$291,340	\$593,730	103.79%
Fire Captain	\$94,968	\$176,629	85.99%
Police Sergeant	\$24,057	\$103,553	330.45%
First Sergeant	\$9,155	\$53,563	485.09%
Police Lieutenant	\$24,658	\$50,776	105.92%
Detective Sergeant	\$11,817	\$36,983	212.96%
Emergency Svs Medical Officer	\$8,850	\$26,363	197.88%
Detective Lieutenant	\$1,336	\$11,286	744.81%
Team Leader	\$840	\$0	(100.00%)
Total	\$467,022	\$1,052,883	125.45%

We looked at the top 10 newly reclassified earners of overtime within the City. Nine of the top ten earners came from the Fire Department. The Fire Department's top two overtime earners nearly doubled their regular earnings in FY 2006, and their respective overtime earnings of \$61,600 and \$56,681 respectively, nearly doubling the \$33,467 entry level salary for a Firefighter/EMT position.

Exhibit #2
Top Ten Individual Overtime Earnings in Newly Reclassified Positions

Position	Reg. Salary FY 2006	Overtime FY 2005	Overtime FY 2006	% Change 05 to 06
Fire Lieutenant #1	\$66,344	\$27,203	\$61,600	126.44%
Fire Lieutenant #2	\$53,265	\$31,359	\$56,681	80.75%
Fire Captain #1	\$77,784	\$1,923	\$36,028	1773.44%
Fire Lieutenant #3	\$71,484	\$19,359	\$35,125	83.47%
Fire Lieutenant #4	\$69,661	\$27,165	\$33,616	23.75%
Fire Lieutenant #5	\$63,814	\$22,724	\$30,910	36.02%
Fire Lieutenant #6	\$54,292	\$9,879	\$29,521	198.81%
Fire Lieutenant #7	\$61,469	\$3,905	\$25,821	561.24%
Police Lieutenant #1	\$70,195	\$16,355	\$24,910	52.31%
Fire Lieutenant #8	\$66,344	\$7,668	\$24,765	222.94%

This situation appears to be the result on of staffing issues. We noted that \$796,722 of the FY 2006 overtime was incurred in the Fire Department. The Department had 33 vacancies in all of its positions between June 2004 and December 2005. While, in many cases, the overtime was necessary to adequately staff Fire Stations and vehicles, we noted that the salary cost of the overtime requester was not considered by the Department's TeleStaff system in assigning overtime hours. Also, as of January 2007, the Police had 54 vacant positions. As the following Exhibit indicates, the Fire and Police Departments have been among the highest departments in overtime costs incurred during the past several years.

Exhibit #3
Top Five City Departments for Overtime Incurred – FY 2004 to FY 2006

Dept. Function	Name	FY 2004 Overtime	FY 2005 Overtime	FY 2006 Overtime
32-100	Fire	\$886,707		
42-300	Solid Waste Collection	\$611,632		
31-100	Police	\$537,784		
91-903	Environ Emergency – Isabella	\$260,401		
60-020	Maintenance/Operation – Sewer	\$250,991		
	Top Five OT Total	\$2,547,515		
32-100	Fire		\$1,885,525	
31-100	Police		\$672,430	
42-300	Solid Waste Collection		\$562,865	
60-020	Maintenance/Operation – Sewer		\$278,023	
41-110	Engineering		\$155,473	
	Top Five OT Total		\$3,554,316	
32-100	Fire			\$2,589,233
31-100	Police			\$1,536,310
42-300	Solid Waste Collection			\$462,703
32-300	E-911 Operation			\$211,149
41-110	Engineering			\$151,275
	Top Five OT Total			\$4,950,670
	Total OT – All City Depts.	\$3,641,015	\$4,677,595	\$5,854,193

As a result of this situation, the Fire and Police Departments were being forced to utilize higher paid supervisory personnel to provide adequate staffing coverage, often using them for lower level tasks. The use of the higher paid Lieutenants and Captains to provide this coverage tended to increase its overall cost to the City.

Recommendation - The City should continue to attempt to reduce the number of vacancies in the Fire and Police Departments.

The City has already begun to take steps to reduce the number of vacancies in the Fire and Police Departments. As of February 2007, training academies had begun in both departments (the Fire Department had 50 trainees), and both were hopeful that most of their vacancies could be filled when the training academies were completed. Eliminating all of the vacancies that exist throughout both departments should reduce the need to have higher paid supervisors work overtime to provide coverage for lower level tasks.

In addition, the Fire Department may wish to examine the feasibility of adding salary cost criteria to the assignment of overtime within the Telestaff system. The use of such criteria may help to better control overtime costs incurred by the Department by providing a more optimal mix of higher paid and lower paid staff. If the Department determines that changes to the Telestaff program are prohibitively expensive, it should explore other means of achieving the same objective.

Response: In response to our conversation regarding the FLSA Audit, my office has taken steps to work with the departments to fill their vacancies and potentially offset some of the overtime costs being incurred in the City. We will continue to assist these departments by developing innovative approaches for recruitment and retention.

Additionally, I concur with your recommendation to modify the TeleStaff programming in the Fire Department to deliver a more equitable distribution of overtime hours and to seek call back responses from non-ranked staff members to further address some of the rising costs of overtime.

APPENDIX A

RESPONSE FROM HUMAN RESOURCES DEPARTMENT OFFICIALS

Department of Human Resources
Post Office Box 15225
Chesapeake, Virginia 23328-5225
(757) 382-6492
Fax (757) 382-8556

M E M O R A N D U M

TO: Jay Poole, City Auditor
FROM: Mary J. Bullock, Director of Human Resources
RE: **FLSA Audit**
DATE: June 22, 2007

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