



**Office of Human Resources**

201 W. Colfax Ave., Dept. 412

Denver, CO 80202

p: 720.913.5751

f: 720.913.5720

[www.denvergov.org/humanresources](http://www.denvergov.org/humanresources)

**Career Service Board Meeting #2241**  
**Minutes**  
**Thursday, June 5, 2014**  
**5:00 P.M.**  
**Webb Municipal Building**  
**201 W. Colfax, Fourth Floor, Room 4.G.2**

**Patti Klinge**  
**Colleen M. Rea (Chair)**  
**Derrick Fuller**  
**Gina Casias**

- I. Opening:** *Meeting called to order at 5:06 pm.*
- 1. Approval of the Agenda for the June 5, 2014 Board Meeting.**  
*The Board unanimously approved the Agenda for the June 5, 2014.*
  - 2. Approval of the Minutes for the May 15, 2014 Board Meeting.**  
*The Board unanimously approved the May 15, 2014 meeting minutes.*
- II. Board Comments:** *Board Chair Colleen M. Rea stated for the record board member Bob Nogueira has resigned from the board effective immediately.*
- III. Public Comments:** *None.*
- IV. Public Hearings:**
- 1. Public Hearing Notice No. 485 – Proposed revision of the Career Service Rule 9-73 regarding exempt emergency pay.**  
*Pete Garritt with the Office of Human Resources (OHR) presented the proposed revision to the board. Mr. Garritt informed the board of background on the current payment of overtime for exempt employees found in rules 9-93 a, b, c & d. Exempt employees seeking overtime pay must be on a list approved by OHR and the board. Rule 93-3 c allows agencies to request exempt employees to be eligible for overtime when performing duties in connection with an emergency that are different from their normal duties. OHR was approached by Beth Machann, City Controller, Department of Finance and Scott Field, Director of the Office of Emergency Management (OEM) requesting to revise the rule to address a very limited circumstance such as when the Mayor declares a citywide emergency. The last citywide emergency declaration by the Mayor was the 2006-2007 blizzard. The requested rule change is in light of the 2013 September floods and the City wanting to be prepared in the event something like that happens again.*  
  
*Board Member Patti Klinge inquired if employees will be working in a capacity other than their normal jobs. Mr. Garritt responded yes, the intent of this rule change is to say if you have an exempt employee who is working in connection with recovery or addressing a citywide emergency, currently they are not subject to that restriction.*

Mr. Garritt receive comments from a couple of Public Works employees who signed up to speak and from DIA asking to consider loosening up the requirement for covering exempt employees when an emergency situation arises that is not a citywide emergency. Mr. Garritt responded to all inquiries that OHR has developed a rules change committee to look at pay for performance. One goal of the committee is to review the philosophy behind paying overtime to exempt employees and whether we want to change the rule and if so, how to change the rule. The rule change is limited to a small set of facts where the Mayor declares a citywide emergency and exempt employees are being called out to respond to it. The change is exempt employees would be allowed to receive compensation for time worked paid leave in excess of 40 hours in a work week when that time is spent engaged in response and recovery activities after a Mayor declared emergency. Mr. Garritt stated Beth Machann, City Controller, Department of Finance and Scott Field, Director of the Office of Emergency Management were available for any questions.

Board Chair Colleen Rea asked if the overtime pay is straight time or time and a half. Mr. Garritt responded currently overtime is paid to exempt employees at straight time according to rule 9-93.

Board member Gina Casias asked about the language inserted and how does that change the pay for exempt employees from the original way it was written? And further, what are we considering response and recovery activities? Ms. Casias is concerned this could be a prolonged effort and the budget impact must be taken into consideration.

Mr. Garritt responded the way it is written right now exempt employees only get overtime if they are covered by one of the exemptions to our general rule that says exempt employees are not eligible for overtime pay. It says when these employees are engaged in response or recovery activities after a declared citywide emergency they are going to be eligible for overtime regardless of whether they are covered by that rule.

Scott Field, Director of OEM informed the board of ordinances being updated on what the Mayor's authorities are during a disaster that also need to be addressed in CSA rules. This came about because of last September's flooding in Boulder where employees had to be activated for days or weeks at a time for extended hours and the potential issue of not having the ability to pay them. One consideration, under FEMA rules if there is a presidential disaster declaration which, we did have during the September flooding, FEMA rules will pay overtime for exempt employees, if the City has a policy in place stating such in the absence of a declared disaster. FEMA will only reimburse the City if the City has a policy in place under the Mayor's declaration. The Mayor's declaration disaster emergencies standard is only good for seven days and then it could be renewed indefinitely after the initial seven days. The duration of that declaration will expire at one point. However, recovery can theoretically go on, as Boulder is still recovering from the September floods. The work performed is mainly working during the actual time of the disaster. Another example, is the Democratic National Convention in 2008, not a declared disaster, but the City had people in the emergency operations center who worked 90 hours a week who got paid 50 hours at time and a half while some employees sitting right next to them doing basically the same thing did not get paid and just got a hardy thank you and a pat on the back. This was not as declared disaster so this rule would not impact those employees, that was the genesis of all this.

Board Member Casias asked if it is our intent to pay the overtime during the seven day period strictly during the declaration? Mr. Field stated he is hoping to some extent that decision would be made at the discretion of the department heads to state this person is responding to this disaster. Mr. Fields does not believe it would extend beyond the seven day disaster declaration or as long as the declaration lasts. Board Member Klinge clarified within that period of time a manager might decide that that person does not need to work and therefore would not get paid overtime. Mr. Field agreed and stated the department head would have to certify their employee was responding to the disaster and not working for some other reason. Mr. Garritt added the way the rule is written now basically states "spent in response of recovery activities after declared emergencies." So it could go on during the period of emergency or after depending on whether it

*is related to recovery. Mr. Field added looking at the example in Boulder, he did not know how long they renewed their declaration, but they were working a lot of overtime for months after. In a disaster of that level, Mr. Field is hoping to recoup some of those costs from the federal government, but again that requires a rule in place on our end.*

*Patti Klinge feels the rule is contradictory. The rule states after declaring an emergency and it does not say it has to be under a declared emergency.*

*Board Chair Colleen Rea also feels the rule is unclear. The rule does not say that someone has to be approved to do that overtime work. Additionally Ms. Rea asked how a determination is made for an exempt employee hourly rate when exempt employees do not typically have an hourly rate. Mr. Garritt responded if the employee is full time, the hourly rate would be the annual rate divided by 28 based off a 40 hour work week. Ms. Rea's concern is how long it lingers on and the clarity or lack of clarity that the employee has been provided that it is a declared emergency and whether the employee has been approved in advance. She feels the rule seems to be open ended and subject to some interpretation that could be problematic. Mr. Field added the recovery phase is going to go on longer than seven days. The declaration itself is generally for the response phase. It may not be an emergency while you are in the recovery phase.*

*Ms. Rea would like to see the language pertaining to "shall" be clarified. Again, she is concerned because the employees are exempt and how does one know they are working overtime unless they are tracking all their time for the time frame they will be working on the emergency at hand and feels there is a process issue that needs to be woven into make this clearer so we are not subject to the concern of it dragging on. Beth Machann confirmed the city already has a process within its timekeeping for this scenario. For example, DIA employees required to do snow removal are asked to track their hours even if they are exempt the entire period in an effort for the City to know when the employees hit their max. Any employee who will be working on emergency situations like this will be tracking all their time worked on emergency efforts and tracking all time worked on their normal duties the entire time.*

*Further, board chair Rea sought clarity on 2a where it states compensation for time work and paid leave. She questions paid leave in excess of 40 hours as opposed to time worked of excess of 40 hours in a work week and any paid leave that would be associated with that extra time. She questioned if the City is giving employees overtime pay for being on leave? Mr. Garritt confirmed the City does indeed do that. Beth Machann concurred it goes into hours worked calculation. Mr. Garritt further stated that language is in there to track with the rest of the rule that provides paid leave counts towards hours worked.*

*Pete Garritt clarified with Bob Wolf, Assistant City Attorney that under FLSA if an exempt employee works whether it is authorized or not, the City is not required to pay them? Mr. Wolf clarified only non-exempt employees will get paid per FLSA and he provided his interpretation that currently, for the exempt employees, the City is certainly keeping track of the time they are working on the emergencies. Once an emergency is declared then everyone tracks all their time regardless of what they are doing. Mr. Wolf provided an example that an employee can only account for two hours of the 40 hours they worked in that week, you are not keeping track of them. As soon as they put in hour 41 and it is on the emergency, now they are getting overtime. I think what Board Chair Rea was intimating is that you want a better gauge on whether they truly put in 40 hours a week to entitle them to overtime on the emergency.*

*Ms. Rea reiterated that according to this rule all they have to do is track their emergency time and they shall be paid for it. She would like to see it clarified and that we are driving that process into the rule. She agrees it is a good idea, but would like a process matched up with the intentions. Board member Klinge suggested if caveats in Rule 9, in an umbrella-fashion, could capture and cover the board's concerns. Mr. Garritt agreed that the rule does not capture approval language, but he could add language. Board Chair Rea thinks it makes sense to repost the rule change and think about some of the board comments and see if there is a way that to sure it up.*

*Speaker Theodis "T" Hall, Safety and Industrial Hygiene Prof II, Public Works*

*Mr. Hall asked the board to please consider the revision to the word emergency. Mr. Hall states there are two parts of definition for emergency; 1. declared by the mayor 2. initial definition of catastrophes. Mr. Hall referenced a letter dated June 2012 to Nita Mosby Henry Executive director of OHR to include Safety and Industrial Hygiene Prof II in overtime pay. Mr. Hall states his classification mans a 24hr shift under emergency response on top of 40 hours, plus 28 additional hours by rotating every 6 weeks for the last three years. Mr. Hall states his classification only gets paid for snow emergency. Mr. Hall feels his classification fully meets the definition of emergency. Board Chair Rea clarified Mr. Hall was talking about situations that are not a citywide declared emergency. Mr. Hall responded he feels after hour work, such as addressing citywide, pot holes, floods, broken glass, sand, broken trees in public intersections are addressing emergencies in the public right of way. Mr. Hall further stated the after hours clause was not added to his classification until January of 2014. Ms. Rea asked if there was a staff response. Meredith Crème, Compensation and Classification stated this request is familiar to OHR. OHR conducted studies in 2011, 2012, 2013 around this issue inn terms of whether or not it is appropriate to pay exempt employees overtime, whether that fits within the city's intention, or whether or not its community practice. OHR looked at our employees to other comparables in the market and whether they are paying overtime for that same type and level. The first two years of the study were local comparables. In 2013 OHR took the comparables national and took an in depth look at safety professional work and what is required, whether or not if they are called out after hours and if they are compensated for that under an overtime criteria and rules, and what we found is its not community practiced. The safety profession in itself is required of people who do that work, to be called in after hours, and make those responses. OHR worked with Public Works each three years the study was conducted and following studies. Public Works has dealt with this issue by providing options to their respective employees like adjusting work schedules to accommodate them for weeks for when an employees on call. Additionally, Pubic Works addressed this by providing a day of administrative leave the following week after their week worked on call. Ms Klinge clarified employees are paid with comp time and not hour for hour? Ms. Crème concurred. Paying overtime to this classification does not fit within the City's overtime exception policy and is not community practice. Ms. Klinge thanks Mr. Hall for sharing his perspective and comments on the issue and feels there is some issue around closing the loop and communication surrounding this issue. Melissa Fisher wanted to add a couple of comments regarding the issue at hand. Ms. Fisher explained the internal process for an exempt employee to receive overtime pay:*

- Compensation and Classification team review the request for exempt pay overtime.*
- The request is provided to Executive Director for signature after the review.*

*This letter in particular funneled through that process and the request came from Public Works Management. OHR, Compensation and Classification reviewed the request, provided data, met in person with Public Works Management on a number of occasions to explain why their request could not be approved. OHR also work with Public Works on other alternatives and worked with them to get additional research. Ms. Fisher states it is unfortunate the employees did not received that information. She explained because that actual request came from a certain level of the client group, OHR responded to that level. Classification and Compensation felt it was inappropriate to contact the employees directly because OHR had no way of knowing if the employees knew about the request or not. The issue of employees having to work after hours is something Class and Compensation have brought before the board before with the City's IT and Safety classifications. OHR feels it is a slippery slope when you are trying to go down a path of starting to compensate or reward employees with money or comp time for exempt level staff because its after traditional hours. If you look at their total compensation and how we market the jobs and pay practices implemented we are pretty thorough in trying to figure out is this something we should be providing rewards or compensation for. Ms. Fisher advises to be*

cautious in having to go down this path of providing extra compensation as some of it is inherited being an exempt level employee.

*Speaker Jay Castle, Safety and Industrial Hygiene Prof II, Public Works*

*Mr. Castle stated his classification is providing 128 hours of emergency coverage without compensation in addition to any time they are available for overtime or emergency type work. Mr. Castle states they have not been told about the administration leave accommodation. Mr. Castle states this overtime issue at hand is for Mayoral declared overtime emergency work and his classification performs citywide emergency work on a continuous basis. Mr. Castle feels he is donating time to the City on a constant level and is getting nothing back, and is very frustrated. Board Chair Rea clarified it is 128 hours a year? Mr. Castle explained the formula of a weeks time is divided by 8 or so depending on level of staff because it is always adjusting and sometimes staff is as low as four staff members, every four weeks. Pete Garritt also clarified that non-exempts on standby for of 128 hours and therefore would get paid the equivalent of 1.5 hours for every 8 hours on standby. Mr. Castle agreed and added you would minus that if you went off overtime. Mr. Garritt further clarified Mr. Castle would get overtime for an actual call which Mr. Castle agreed.*

*Board Chair Rea stressed the need to come back to the point of what is being paid in the common in the community and that typically when employees are paid exempt level salary the higher salary is in anticipation for extra hours required by the particular position. Ms. Fisher added the comparables for Mr. Castle's classification have been completed and communicated thoroughly to Public Works management. Mr. Castle feels those comparisons do not accurately compare to his classification because they access vehicle accident, personal injury, and take employees to conduct drug and alcohol testing. Ms. Crème added the City did extensive work and included a national survey and asked those type of operational questions within that respective safety professional, in addition to what types of things are they responding to as well as what level of detail their jobs entail. Mr. Castle states his classification provides emergency coverage 365 days a year and would like to know the difference between that type of emergency coverage and snow duty, a function his classification gets paid for. Ms. Fisher reiterated the bigger issue is as 9-93 states, it has be to an emergency as in a snow storm and the employee has to be doing work that is different than what they normally do. Further Ms. Fisher would like to table this discussion and provide some follow up to the board at a later day. Board Chair Rea agreed and asked to get back at the issue that is before the board as is related to declared citywide emergencies as a specific thing that is in this particular rule change. Ms. Rea appreciates Mr. Castle and Mr. Hall coming and bringing these things to the boards attention, however, it is beyond the scope of this particular rule change. Mr. Rea feels this is something that should be tabled and discussed in the rules committee and with management. Mr. Rea further stated this is much more limited and is intended to be much more limited. Mr. Castle's issue is a different section of the rule that is at issue for public hearing. Mr. Castle asked Board Chair Rea if the board could ask OHR look into this issue further? Ms. Rea stated the board would want to see what OHR has done in more detail because none of that information has been brought to their attention in connection with this particular rule change. Ms. Rea would be reticent to require that to be done at this junction without having more information. Board member Patti Klinge moved that we table approval of this issue until some language is changed and this issue will be revisited as soon as they can.*

*The Board tabled approval of Public Hearing Notice No. 485.*

**V. Approval to Post:** *None.*

**VI. Director's Briefing:**

1. *Valerie McNaughton, Hearing Office presented 2014 first quarter statistics with the board. Valerie McNaughton, Hearing Officer, Career Service Hearing Office provided the board with an update on first quarter analytics for the Hearing Office. Board member Klinge had a question on*

*audit comments and the reference to the template 2013 Denver Employees Survey as it pertains to questions related to employee's awareness of the familiarity with the hearing process. Ms. Klinge referenced a 360 survey that was implemented two years ago and will also be implemented again this year. Ms. Klinge further stated she would like the language pertaining to the audit changed in the section the auditor seeks the status on the trend analysis on disciplinary issues, her understanding is that the trend analysis was underway. Ms. Klinge commended Ms. McNaughton on the results of the mediation and the pre-hearing order.*

*Ms. Fisher stated this analysis from the 2012 360 survey can be obtained from the Analytics Bureau and will be provided to Pete Garritt in preparation of the audit response. She added OHR turned on the labor admin module in PeopleSoft this year in an effort for service teams to begin tracking data to go back to collect first quarter data in an effort to start the trend analysis.*

*Additionally Colleen Rea asked for a copy of one of the completed survey forms so the auditor's office can see a survey that was filled out anonymously. The board would like to make sure the response is 100% accurate and therefore Pete Garritt will provide Valerie McNaughton a copy of his response to ensure we are all on the same page. Ms. McNaughton stated as soon as she gets that information from Pete on the 360 survey she will amend the information to the auditor on this respective report.*

**VII. New Cases:**

**VIII. Pending Cases:**

1. Frank Kemp II v. Denver Sheriff's Department, Appeal No. 19-13  
*The board AFFIRMED the Hearing Officer's decision, written order to follow.*

**IX. Executive Session:**

*Board went into executive session at 6:19 p.m. to discuss cases and staffing matters.  
Board re-convened Board meeting at 8:05 p.m.*

**X. Adjournment:** *Adjournment was at 8:05 p.m.*