



INFORMATION MEMO

Governor's Salary Cap Law

Local governments cannot pay employees more than 110 percent of the governor's salary without a waiver from the state. State statute and attorney general opinions have discussed the inclusion of overtime, vacation/sick time, deferred compensation, insurance contributions, pensions, and car allowances in the calculation of an employee's salary.

RELEVANT LINKS:

[Minn. Stat. § 43A.17 subd. 9.](#)

[A.G. Op., Informal \(Jan. 3, 2003\).](#)

[Minn. Stat. § 43A.17 subd. 9.](#)

[MN Mgmt & Budget: Local Government Salary Cap and Salary Waiver Process.](#)

[Minn. Stat. § 43A.17, subd. 9.](#)

[Minn. Stat. § 43A.17, subd. 1.](#)

[Minn. Stat. § 43A.17, subd. 9\(c\).](#)

[Minn. Stat. § 43A.17, subd. 9\(c\) \(1-3\).](#)

I. Limits on compensation

State law limits the amount of compensation political subdivisions may pay employees. The salary cap law does not expressly include elected officials within its scope, and thus, appears to indicate elected officials are not subject to the salary cap limit.

Under the current law, statutory and home rule charter city employees may be paid 110 percent of the governor's salary. Adjustments are made annually based on the Consumer Price Index. Effective Jan. 1, 2017, the compensation limit is \$167,978. For reference, the 2016 compensation limit was \$165,333, and the 2015 limit was \$165,003.

The statutory limitation applies to "salary and the value of all other forms of compensation." Salary is defined as "hourly, monthly, or annual rate of pay including any lump-sum payments and cost-of-living adjustment increases." Employer-provided deferred compensation payments and payroll allocations to purchase an individual annuity contract for an employee are also included as salary. All other direct and indirect forms of compensation that are not specifically excluded must be included in determining an employees' total compensation.

Payments excluded from compensation include the following:

- Employee benefits that are also provided for the majority of all other full-time employees of the political subdivision.
- Vacation and sick leave allowances.
- Health and dental insurance.
- Disability insurance.
- Term life insurance.
- Pension benefits or like benefits, the cost of which is borne by the employee or which is not subject to tax as income under the Internal Revenue Code of 1986.
- Dues paid to organizations that are of a civic, professional, educational, or governmental nature.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[Minn. Stat. § 43A.17, subd. 9\(e\).](#)

[MN Mgmt. and Budget: Local Government Compensation Limits by Year.](#)

[Minn. Stat. § 43A.17, subd. 1.](#)

[Minn. Stat. § 43A.17 subd. 9.](#)

[29 C.F.R. 541.604 \(Fair Labor Standards Act\).](#)

[A.G. Op. 161b-12 \(Aug. 4, 1997\).](#)

[OSA Statement of Position "Car Allowance and Mileage Reimbursement."](#)

- Reimbursement for actual expenses incurred by the employee, which the governing body determines to be directly related to the performance of job responsibilities.
- Relocation expenses paid during the initial year of employment.

II. Waiver process

Cities may request a waiver from the commissioner of Minnesota Management & Budget to pay an employee in excess of 110 percent of the governor's salary. The city must show the position requires special expertise necessitating a higher salary to attract or retain a qualified person. The commissioner reviews each waiver request against the salary rates of other positions with similar responsibilities in the state and nation, and must notify the Legislative Coordinating Commission to receive the commission's advisory recommendation on the waiver. The waiver is tied to a position, versus a specific employee. Thus, once a person leaves a position any previously awarded waiver remains in effect for that position when hiring a new employee. Once a city has received a waiver for a position, additional annual increases can be given based on the Consumer Price Index without the request of a new waiver. As of January 1, 2017, existing waivers will increase by 1.6%

III. Common concerns

A. Overtime and the salary limit

The statutory subdivision defining salary excludes payments due to overtime worked. However, the subdivision that creates the salary compensation limit does not include overtime in the list of specific exceptions. The common practice is to not consider overtime as compensation in determining the salary limit, but each city should get specific advice from its city attorney.

Most city employees reaching the salary cap are exempt employees who are generally not paid overtime. However, a city can pay overtime to an exempt employee pursuant to an employment contract or personnel policy that permits an exempt employee to receive overtime compensation for hours worked beyond the normal job requirements.

B. Allowances

Officials sometimes receive a "cash allowance" for the personal use of a car, an "expense allowance," or a "housing allowance" regardless of actual expenses. Generally these forms of compensation are considered part of the position's salary.

RELEVANT LINKS:

[Minn. Stat. § 43A.17, subd. 9\(c\) \(3\).](#)

[A.G. Op. \(Nov. 21, 2005\).](#)

[A.G. Op. 161b-12 \(Aug. 4, 1997\).](#)

However, reimbursement for “actual expenses incurred” by the employee, such as mileage reimbursements for travel on official business, should not be included as salary. If an employee receiving a cash allowance for use of a car tracks his or her mileage, that cash allowance may arguably be excluded from the salary cap.

C. Calculating benefit cost

For purposes of calculating the cost of a benefit that must be included as salary to the employee, the value of other forms of compensation is the annual cost to the political subdivision.

D. Insurance differentials

Some cities may allow their management team a higher insurance contribution for health insurance than other employees receive. There are likely a couple of different ways to look at whether cities must count the difference as salary for calculating the cap. Some cities believe any contribution by the city toward benefits exceeding what other employees receive is included in salary. Other cities interpret the employer’s contribution as excluded, regardless of the amount, since there is no language “provided to a majority of other employees” included with the health and dental insurance exclusion language in the statute.

The attorney general has stated that the benefit does not have to be equal to be excluded because it is a common practice for employers to award benefits at different levels based on factors such as longevity or position held. Since this is a matter of interpretation, cities are strongly encouraged to work with their city attorney and city auditor regarding what additional compensation, if any, in the way of benefits is appropriate for employees.

Federal health care reform is likely to make unequal payments to highly compensated employees problematic in the future. Therefore, cities should review this practice with the city attorney.

E. Accrued leave payouts

Upon termination of the employment relationship, unused vacation and sick time may be paid to the employee without being included in the salary limit. An employment contract that allows the employee to cash in accrued vacation or sick time during the employment relationship is compensation that must be included in the salary determination as a “lump sum payment.”

RELEVANT LINKS:

[A.G. Op. 161b-12 \(Aug. 4, 1997\).](#)

[Minn. Stat. § 43A.17, subd. 9\(c\) \(1-3\).](#)

[Minn. Stat. § 43A.17, subd. 9\(c\).](#)

[Minn. Stat. § 353.028, subd. 3.](#)

[Minn. Stat. § 356.24.](#)

F. Life insurance exclusions from the salary cap

The value of term life insurance is specifically excluded from the employee's salary by statute. Split-dollar life insurance policies and other types of life insurance would be considered compensation and must be included in the employee's salary. In a split-dollar life insurance policy, the city and the employee share the cost and the benefit of the policy.

G. Contributions to employee post-employment health savings accounts

City contributions to the employee's post-employment health savings account are not likely counted toward the salary cap limit. Such contributions would probably be covered by the exemption for "pension benefits or like benefits, the cost of which is borne by the employee or which is not subject to tax as income under the Internal Revenue Code of 1986."

H. Which pension benefits should be included in the employee's salary?

Employer contributions to any deferred compensation plans should be included as salary. Common types of deferred compensation plans for city employees include 403(b), 457(b), or 457(f) plans. Employee contributions are not considered salary because they have already been counted as salary received from the employer and therefore should not be counted twice.

I. PERA and city managers

A city may contribute to a deferred compensation plan or the PERA-administered defined contribution plan for a city manager who elects to be excluded from membership in the PERA general employees retirement plan. The city may contribute up to the amount the city manager would receive as an employer contribution if the city manager were a member of the general employees retirement plan.

The city's contribution would not be included for salary cap calculation purposes, but any agreement must be in writing. If contributing to a deferred compensation plan, the program must be administered by the Minnesota State Retirement System or meet the requirements of section 457 of the Internal Revenue Code of 1986, as amended. While the law allows a city to contribute up to one-half the amount allowed by the Internal Revenue Code on a dollar-for-dollar matching basis, only the amount that is in lieu of a PERA contribution can be excluded from the salary cap.

RELEVANT LINKS:

IV. Conclusion

The salary cap law continues to change. For many years, the state Legislature has enacted and amended the law that limits the maximum amount of money a public employee may earn. Numerous amendments and revisions make for a complicated statute. Best practice suggests careful consultation with the city attorney for current law and guidance on specific salary limits.