



**Kentucky League of Cities**

# **Report: Projected Impact on Kentucky Cities of Ruling in Firefighter Overtime Case**

August 27, 2007

The Kentucky Court of Appeals ruled in a decision rendered August 3, 2007 that education incentive pay for firefighters employed on a schedule of 24-hours on, 48-hours off should be reduced to an hourly rate for calculation of overtime pay based on a 40-hour work week.

The education incentive pay is an amount paid to eligible firefighters pursuant to the provisions of the Kentucky Professional Firefighters Foundation Program Fund, KRS 95A.200 - KRS 95A.300. Each local government meeting requirements established in KRS 95A.230 is eligible to share in distributions from the fund. In order to qualify for distributions, each firefighter employed by the local government must successfully complete a basic training course of a minimum of 400 hours within one year of employment and an intensive training program of at least 100 hours in each calendar year.

Funds for the incentive pay are derived pursuant to KRS 136.392 from an insurance premium surcharge imposed by the state on insurers on each \$100 of premium paid by policyholders on risks located in Kentucky.

The program entitles an eligible local government to receive annually a salary supplement of \$3,000 for each qualified professional firefighter it employs, along with an additional \$100 per year allocated in the state's biennial budget, for a total annual salary supplement of \$3,100 for each qualified firefighter employed by the local government. An eligible local government is further entitled to receive an amount equal to the required employer's contribution on the salary supplement for payment by the local government to the appropriate retirement system.

The decision rendered by the Court of Appeals in the case of Commonwealth of Kentucky, Department of Labor v. Michael Hasken, et al. was originally filed as a wage and hour complaint with the Department of Labor challenging the methods used by the City of Louisville to calculate overtime pay for firefighters. Louisville firefighters are required pursuant to KRS 95.275 to be employed on a 24-hours on, 48-hours off work schedule. KRS 337.285 requires non-exempt employees working in excess of 40 hours per week to receive compensation at a rate not less than one and one-half times the employee's hourly wage rate.

The point of controversy in the case was whether to use the total number of hours annually worked on a 24-hours on, 48-hours off work schedule as the divisor to convert annual education incentive pay to an hourly rate for calculation of overtime pay, or to use the traditional 40-hour work week figure as the divisor.

The City of Louisville reduced the annual state education incentive pay of \$3,100 to an hourly rate by dividing the incentive pay by 2,912 - the number of scheduled hours annually worked on a 24-hours on, 48-hours off work schedule. In calculating the hourly rate, the city relied on a formula provided to Louisville and other cities by the Kentucky Department of Labor.

The Court of Appeals determined the state education incentive pay should be reduced to an hourly rate by dividing the incentive pay by 2,080 - the number of hours derived from

multiplying 40 hours per week by 52 weeks. The Court additionally determined the statute of limitations for cut-off of claims for overtime pay is five years from the date of filing of the wage and hour complaint pursuant to KRS 413.120.

The opinion is not final pending any further proceedings requested by the Louisville/Jefferson County Metro Government. If the decision stands, the potential financial impact for Kentucky cities is large. Cities with firefighters employed on a 24-hours on, 48-hours off work schedule will be obligated to pay significantly larger overtime costs per firefighter for each \$3,100 received by the firefighter as a result of participation in the Professional Firefighters Foundation Program Fund.

Many Kentucky cities employ firefighters on a 24-hours on, 48-hours off work schedule. As previously noted, Louisville firefighters are required by KRS 95.275 to be employed on a 24-hours on, 48-hours off work schedule. Second class cities and urban county governments are required pursuant to KRS 95.500 to be employed on a similar schedule. Kentucky has twelve second class cities and one urban county government. Additionally,

many third class cities and some fourth class cities have elected to adopt a 24-hours on, 48-hours off work schedule for firefighters.

Using 2,080 as the divisor for the calculation of overtime on the \$3,100 education incentive pay, as determined by the Court of Appeals, will cost each local government with firefighters employed on a 24-hours on, 48-hours off work schedule a minimum of \$1,859 per firefighter per year calculated as follows:

$$\$3,100 \div 2,080 = \$1.4903846 \text{ per hour}$$

$$\text{Hours of scheduled overtime for firefighters} = 2,912 - 2,080 = 832 \text{ hours}$$

$$\text{Time and } \frac{1}{2} \text{ rate} = \$1.4903846 \times 1.5 = \$2.2355769 \text{ per hour}$$

$$832 \text{ hours of scheduled overtime} \times \$2.2355769 \text{ per hour} = \$1,859.99$$

Thus, the projected additional cost to local governments with firefighters employed on a 24-hours on, 48-hours off work schedule to accept the \$3,100 per firefighter annual training incentive from the state is \$1,859.99 per firefighter per year, if 2,080 is used as the divisor to convert the incentive pay to an hourly rate for calculation of overtime pay.

The cost will rise to \$2,489.63 per firefighter per year if local governments are responsible for payment of additional retirement contribution costs on the salary supplement, using the required 33.87% hazardous duty employer contribution rate for the 2007-2008 fiscal year.

$$\$1,859.99 \times 33.87 = \$629.64 \text{ in employer contributions for hazardous duty retirement}$$

$$\$1,859.99 + \$629.64 = \$2,489.63$$

The chart set forth on the following page indicates the number of known Kentucky cities that employ firefighters on a 24-hours on, 48-hours off work schedule and use the divisor of 2,912 determined by the Department of Labor to reduce education incentive pay received by firefighters to an hourly rate for calculation of overtime pay. One city using the 2,912 divisor employs firefighters on a 24-hours on, 24-hours off work schedule. The chart includes the projected liability for each of the forty-one (41) cities based on the opinion of the Court of Appeals.

The cities collectively employ 2,632 firefighters. If the cities are required to use a divisor of 2,080 to reduce the education incentive pay to an hourly rate, they will collectively owe an additional \$4,911,399 million per year in overtime pay to firefighters. The cost will rise if the impacted cities are responsible for payment of additional retirement contributions on the incentive pay.

The potential total liability for payment of back wages by the impacted cities over a five-year period is \$24,556,998 million. The potential total liability is increased to \$32,896,904 million if the impacted cities are responsible for payment of additional retirement contributions on the incentive pay over a five-year period.

### Projected Firefighter Incentive Costs

City	Class	24 on/48 off rotation?	# of full-time fire-fighters	Projected Costs		
				One-Year Wages*	Five-Year Wages	Five-Year Wages + CERS (33.87%)
Ashland	2	Yes	53	\$98,580	\$492,900	\$659,845
Berea	4	Yes	18	\$33,480	\$167,400	\$224,098
Bowling Green	2	Yes	111	\$206,460	\$1,032,300	\$1,381,940
Corbin	4	Yes	20	\$37,200	\$186,000	\$248,998
Covington	2	Yes	118	\$219,480	\$1,097,400	\$1,469,089
Cynthiana	4	Yes	16	\$29,760	\$148,800	\$199,199
Danville	3	Yes	25	\$46,500	\$232,500	\$311,248
Elizabethtown	4	Yes	49	\$91,140	\$455,700	\$610,046
Erlanger	3	Yes	19	\$35,340	\$176,700	\$236,548
Florence	3	Yes	50	\$93,000	\$465,000	\$644,955
Frankfort	2	Yes	87	\$161,820	\$809,100	\$1,083,142
Georgetown	4	Yes	54	\$100,440	\$502,200	\$672,295
Glasgow	3	Yes	39	\$72,540	\$362,700	\$485,546
Harrodsburg	4	Yes	17	\$31,620	\$158,100	\$211,648
Hazard	3	Yes	18	\$33,480	\$167,400	\$224,098
Henderson	2	Yes	52	\$96,718	\$483,590	\$647,382
Hopkinsville	2	Yes	79	\$146,940	\$734,700	\$983,543
Lexington	UCG	Yes	532	\$989,520	\$4,947,600	\$6,623,352
Louisville	Metro	Yes	527	\$980,220	\$4,901,100	\$6,561,103
Madisonville	4	Yes	56	\$104,160	\$520,800	\$697,195
Maysville	3	Yes	20	\$37,200	\$186,000	\$248,998
Middlesborough	3	Yes	25	\$46,500	\$232,500	\$311,247
Murray	3	Yes	33	\$61,380	\$306,900	\$410,847
Newport	2	Yes	37	\$68,820	\$344,100	\$460,647
Nicholasville	3	Yes	45	\$83,700	\$418,500	\$560,245
Owensboro	2	Yes	92	\$171,120	\$855,600	\$1,145,392
Paducah	2	Yes	64	\$119,040	\$595,200	\$796,794
Paintsville	4	Yes	26	\$48,360	\$241,800	\$323,697
Paris	3	Yes	34	\$63,240	\$316,200	\$423,296
Pikeville	3	Yes	26	\$48,360	\$241,800	\$323,697
Prestonsburg	4	Yes	13	\$24,180	\$120,900	\$161,848
Providence	4	No (24/24)	11	\$36,341	\$181,708	\$243,252
Radcliff	2	Yes	25	\$46,500	\$232,500	\$311,247
Richmond	2	Yes	69	\$128,340	\$641,700	\$859,044
Russellville	4	Yes	7	\$13,020	\$65,100	\$87,149
Shelbyville	4	Yes	17	\$31,620	\$158,100	\$211,648
Shively	3	Yes	17	\$31,620	\$158,100	\$211,648
Somerset	3	Yes	60	\$111,600	\$558,000	\$746,995
Versailles	4	Yes	11	\$20,460	\$102,300	\$136,949
Wilder	5	Yes	9	\$16,740	\$83,700	\$112,049
Winchester	3	Yes	51	\$94,860	\$474,300	\$634,945
<b>Totals:</b>			<b>2,632</b>	<b>\$4,911,399</b>	<b>\$24,556,998</b>	<b>\$32,896,904</b>

\* Also represents future annual costs with the same number of fire fighters

Note: Jeffersontown is also a second class city, but it is served by a fire protection district

Some cities such as Independence, Jeffersontown and Prospect are served by a fire protection district established pursuant to KRS 75.010 to KRS 75.080. Cities that are members of fire protection districts that employ firefighters on a 24-hours on, 48-hours off work schedule may experience indirect costs as a result of the opinion of the Court of Appeals if personnel is reduced or equipment not replaced due to increased overtime costs.

In its brief filed in the Court of Appeals in the Hasken case, the Department of Labor noted the legislative history of the Professional Firefighters Foundation Program Fund. The initial legislation establishing the program required the incentive pay to equal 15% of a firefighter's annual compensation. When the incentive was changed effective July 1, 1982 to an annual amount applicable to all firefighters regardless of compensation, the Department of Labor for the first time advised cities with firefighters employed on a 24-hours on, 48-hours off work schedule that the education incentive pay should be reduced to an hourly rate for calculation of overtime pay by dividing the incentive pay by 2,912 -

the total amount of all scheduled hours, including scheduled overtime hours. As stated in the Department's brief, "This has been the consistent advice given to local fire departments by the Department since the education incentive was changed from a percentage to a specific yearly sum."

The Department's position is based on its long-standing interpretation of the requirements of Kentucky's wage and hour laws in reference to the statutory provisions establishing the education incentive pay as an annual supplement unrelated to hourly wages. Kentucky cities across the state with firefighters employed on a 24-hours on, 48-hours off work schedule relied on the interpretation provided to cities by the Department of Labor in calculating overtime pay for firefighters. As a result, many Kentucky cities are potentially subject to serious financial consequences.

Cities with firefighters employed on a 24-hours on, 48-hours off work schedule have already experienced in 2007 a 20% increase in the required employer's contribution to the County Employees Retirement System (CERS) on wages earned by firefighters. In FY 2007-2008, cities must pay 33.87 percent of a hazardous duty employee's salary to CERS, up from 28.21 percent in FY 2006-2007. The rate is projected by the Board of Directors of the Kentucky Retirement Systems to rise to 60 percent by FY 2013. The rapid increase in CERS employer contributions for hazardous duty employees has already forced cities to raise taxes, cut personnel and/or institute hiring freezes to fund current and future CERS increases.

Cities spend approximately 36% of their budgets on public safety. Most of that is spent on wages and benefits, including hazardous duty retirement benefits. Public safety is more than just protecting the public from violence and crime. It also broadly encompasses fire protection, life-saving rescue services, homeland security and response to natural disasters. Providing for the public's safety is one of the most vital functions of local government, but is

seriously threatened by rising costs. Local level responsibilities are increasing so rapidly that the system is becoming unsustainable.

The opinion of the Court of Appeals in the Hasken case overrules interpretations of wage and hour laws provided by the Department of Labor since 1982. Cities could not plan for or expect a major change in long-standing procedures for calculation of overtime pay for firefighters. Nevertheless, they are exposed to potentially significant financial costs, on top of already significantly increased costs for public safety personnel, as a result of their reliance on what they believed, and continue to believe, to be correct interpretation of Kentucky's wage and hour laws by the Department of Labor.

The Kentucky League of Cities will assist the Louisville/Jefferson County Metro Government in any effort to seek review of the opinion by the Kentucky Supreme Court and will request permission to file an amicus curiae brief in the Supreme Court on behalf of all Kentucky cities with firefighters employed on 24-hours on, 48 hours-off work schedule, if the Supreme Court grants discretionary review of the opinion of the Court of Appeals.