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# PREMIUM PAY IN KENTUCKY CITIES

Cities may use the American Rescue Plan Act (ARPA) Local Fiscal Recovery Funds to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency or to give grants to third-party employers with eligible workers performing essential work.

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## ELIGIBLE WORKERS PERFORMING ESSENTIAL WORK

Workers that are eligible for premium pay if they perform essential work include:

- State, local, or tribal government workers
- Staff at nursing homes, hospitals, and home care settings
- Workers at farms, food production facilities, grocery stores, and restaurants
- Janitors and sanitation workers
- Truck drivers, transit staff, and warehouse workers
- Public health and safety staff
- Childcare workers, educators, and other school staff
- Social services and human services staff

Essential work means:

- It is not performed while teleworking from a residence; and
- For the individual performing the work, it involves:
  - Regular in-person interactions with the public or coworkers; or
  - Regular physical handling of items that were handled by, or are to be handled by, the public or coworkers.

Treasury guidance presumes that law enforcement, firefighters, and utility employees qualify for premium pay. For other employees to receive premium pay, the executive authority must make a written determination that the employees performed essential work as defined above. Elected officials do not qualify for premium pay under ARPA.

## PREMIUM PAY AMOUNT

Essential workers can receive up to \$13 per hour in premium pay. The payments must be tied to the hours worked by the essential worker. Workers cannot receive a total greater than \$25,000 in premium pay. If a worker's total pay – base pay plus premium pay – is greater than 150% times the annual state or county average rate of pay, the city must provide a written justification for the total pay amount.



## IMPACT ON OVERTIME

For non-exempt employees who are eligible for overtime, premium pay increases the employee's base rate of pay. As a result, an employee will receive one-and-one-half of their new base rate of pay for any amount of overtime work.

### Example:

Base rate of pay: \$10/hour

▶ Overtime rate: \$15/hour

Premium pay: \$5/hour

▶ Overtime rate: \$7.50/hour

New base rate: \$15/hour

▶ Overtime rate: \$22.50/hour

## BONUSES VS. LUMP-SUM PAYMENTS

Kentucky cities cannot provide bonuses to city employees, nor does ARPA allow cities to provide bonuses to all city workers. Premium pay can go to workers who perform(ed) essential work through back pay and/or on a going-forward basis. Amounts calculated for back pay can be paid in a lump sum; however, premium pay must be based on an hourly rate of pay, which means overtime and pay-related benefits are also affected. Exempt salaried employees may also qualify, but premium pay must still correlate to the hours worked. Cities will need to document the hours worked to qualify for premium pay.

Cities will also need to amend their budget and their pay and classification ordinance to address premium pay, and the latter should include a sunset provision, such as a date or total dollar amount.

## LOOKING BACKWARD OR FORWARD

The Department of the Treasury encourages cities to provide retrospective premium pay where possible, and essential workers may receive both back pay and prospective pay for current or ongoing work. Both come with significant considerations for elected and appointed officials:

### Back Pay

- Cities can provide premium pay for work performed back to January 27, 2020.
- Because the premium pay adjusts the base rate of pay for an employee, any overtime performed would also need to be recalculated for back pay.
- Cities will also need to recalculate all tax, pension, or other withholdings for the back pay.
- ARPA money can be used to pay for associated benefit costs, but it is administratively more challenging to calculate.

### Going Forward

- Because premium pay is completely additive, cities cannot use it to cover pay raises already approved, even if they haven't been paid yet (e.g., collective bargaining agreements).
- ARPA is onetime money, so the funds will expire either through spending all money or reaching December 31, 2024.
- Employees will likely consider removal of premium pay as a de facto pay cut.
- Elected officials may be pressured to continue the higher rates of pay without funds to support them.



## THIRD-PARTY GRANTS

ARPA allows cities to grant businesses money to provide premium pay to eligible workers performing essential work. For example, if a city contracts with a business to provide sanitation services, the city could give funds to the business to provide premium pay to their employees. In this scenario, the business would be a subrecipient and the city would need to maintain records and report to Treasury how the business has used the funds.

The mayor in mayor-council cities, the commission in that form of government, or the board of commissioners in city manager cities may add additional sectors (from those included above) as eligible workers. Those sectors must be deemed critical to protecting the health and well-being of residents. The executive authority can issue an executive or municipal order to add these sectors, but those workers must still meet the essential work requirements to receive premium pay.

*The information contained here is not legal advice. It will be subject to change based on updates from the U.S. Department of the Treasury, and any recipients should confirm applicability to their specific situation.*



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