

**October 2005 Legal Q&A**  
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**Q. What is the total annual compensation a city councilmember can receive per meeting?**

No state law expressly sets the compensation of a city councilmember for cities other than a Type C general law city. For Type A and B general law and home rule cities, state law provides that the governing body may set the amount of compensation of each elected and appointed officer of the city. TEX. LOC. GOV'T CODE §§ 141.001, 141.002, and 141.004; *See also Byrd v. City of Dallas*, 6 S.W.2d 738, 740 (Tex. 1928); Op. Tex. Att'y Gen. No. JM-1194 (1990). A home rule city should also look to its city charter for guidance or limits on the amount of compensation a councilmember may receive.

For a Type C general law city, however, state law specifically provides that the mayor and each member of the governing body are entitled to receive \$5 a day for each regular meeting and \$3 a day for each special meeting of the governing body. TEX. LOC. GOV'T CODE § 141.003. In addition, the mayor or a member of the governing body may not be paid for more than five special meetings in a single month. *Id.* In a Type C city with a population of 2,000 or more, the governing body may set the salary of the mayor and each member of the governing body, in lieu of per diem compensation under section 141.003(a) of the Local Government Code. The amount of the salary set for the mayor in a Type C city may not exceed \$1,200 a year, and the amount of salary set for each member of the governing body may not exceed \$600 a year. *Id.*

**Q. Are city councilmembers eligible to receive group health coverage?**

Local Government Code Chapter 172 provides that a political subdivision "may provide health and accident coverage for political subdivision officials, employees, and retirees," either directly or by participating in a risk pool. TEX. LOC. GOV'T CODE § 172.004(a). "Compensation" may include benefits, such as insurance, provided to officers and

employees. *See Friedman v. Am. Sur. Co. of New York*, 151 S.W.2d 570 (Tex. 1941); Op. Tex. Att'y Gen. No. GA-0130 (2003).

Note that even if a city charter allows for such compensation, a city must also consider whether the group health coverage in which the city participates extends such coverage for councilmembers.

**Q. Is a city council authorized to award an employee a retroactive raise?**

Cities are prohibited from granting extra compensation to employees after their services have been rendered. Tex. Const. Art. 3, §53; *Fausett v. King*, 470 S.W.2d 770, Tex. Civ. App.- El Paso 1971, no writ). However, a city is authorized to correct improper payments. For example, if an employee who is classified as non-exempt under the Fair Labor Standards Act (overtime) was not properly compensated for his or her overtime work, back pay may be proper to remedy that situation. Please consult with local legal counsel regarding specific cases.

**Q. May a city provide employment references for current or former employees?**

Employers are not required to provide employment references for current or former employees. TEX. LAB. CODE § 103.005. However, if the employer chooses to do so, it may generally disclose *truthful* information about a current or former employee without the threat of civil liability. *See* TEX. LAB. CODE §§ 103.001, 103.004. An employer may provide information regarding a current or former employee's job performance to a prospective employer on the request of the employee or prospective employer. TEX. LAB. CODE § 103.003. To avoid any civil liability, it is recommended that only factual information, supported by documentation, about a current or former employee be provided to the prospective employer. Note that immunity from civil liability only applies to a managerial employee or other representative of the employer who is authorized to provide references for the employer. TEX. LAB. CODE § 103.004(b).

In providing an employment reference, advance planning is essential. The city should decide in advance what information will be provided and how it will be provided. If the city does not have a policy regarding employment references, one should be prepared to clarify how future reference requests should be handled. If only name, rank, and date of hire is to be given under the city's policy, only that information must be given for all requests. Also, a specially designated person should handle all reference requests.

**Q. What is the Family Medical Leave Act (FMLA), and must my city comply with it?**

The Family Medical Leave Act (FMLA) covers all public employers, regardless of the number of employees. 29 U.S.C. § 2611(4)(A)(iii); 29 C.F.R. § 825.104. However, not all employees are eligible to receive FMLA benefits. Only employers that employ at least fifty employees or more each working day during each of twenty or more calendar weeks in the current or preceding calendar year are required to provide FMLA leave. 29 U.S.C. § 2611(4)(A)(i); 29 C.F.R. § 825.110(a)(3). A city with less than fifty employees must only comply with the FMLA's administrative requirements, including posting and record-keeping requirements. 29 C.F.R. § 825.300; 29 C.F.R. § 825.500(d).

**Q. What benefits are provided under the FMLA?**

Covered employers must grant an eligible employee up to a total of twelve work weeks of unpaid leave during any twelve-month period for one or more of the following reasons: (1) the birth and care of the newborn child of the employee; (2) placement with the employee of a son or daughter for adoption or foster care; (3) to care for an immediate family member (spouse, child, or parent) with a serious health condition; or (4) to take medical leave when the employee is unable to work because of a serious health condition. 29 C.F.R. § 825.200(a).

**Q. Which employees are eligible to receive the benefits under the FMLA?**

An “eligible employee” of a covered employer is an employee who has been employed by the same employer for at least twelve months and has worked at least 1,250 hours of service during the prior twelve-month period immediately before the commencement of the FMLA leave. 29 C.F.R. § 825.110.

**Q. What are the posting and record-keeping requirements under the FMLA?**

A covered employer is required to post on its premises, in conspicuous places where employees are employed, a notice containing the FMLA provisions and information regarding the procedures to file a complaint. 29 C.F.R. § 825.300(a). Willful violation may include an assessment of at least \$100 for each offense. 29 C.R. R. § 825.300(b).

A covered employer is also required to “make, keep, and preserve records pertaining to their obligations under the Act” in any format for a period of no less than three years and “make them available for inspection, copying, and transcription by representatives of the Department of Labor upon request.” 29 C.F.R. § 825.500. Records must disclose the following types of data: (1) basic payroll and identifying employee data; (2) dates FMLA leave was taken by the eligible employee; (3) hours of leave, if the leave was taken intermittently; (4) copies of employee notices of leave furnished to the employer and employee; (5) any documents describing employee benefits or employer policies regarding the taking of paid and unpaid leave; (6) premium payments of employee benefits; and (7) records of any dispute between the employer and the eligible employee regarding designation of leave as FMLA leave. 29 C.F.R. § 825.500(c). Covered employers with no eligible employees need only maintain basic payroll and identifying employee data for FMLA record-keeping purposes. 29 C.F.R. § 825.500(d).