



# City of Lowell - Law Department


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## MEMORANDUM

**TO:** Thomas A. Golden, Jr., City Manager 

**FROM:** Corey F. Williams, First Assistant City Solicitor

**DATE:** March 8, 2023

**SUBJECT: MOTION RESPONSE:** Req. City Manager Have Proper Department Provide A Report As To Why Not All Hourly Employees Are Required To Use Time Clocks.

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The issue of hourly employees being required to use time clocks is best analyzed in two parts – union and nonunion. The reason for this bifurcation is due to the fact that the City may have certain obligations to the union that need to be satisfied prior to implementing a time clock system. Whereas nonunion employees do not have the same statutory rights as union employees, and the City is free to implement a time clock system for them at any time.

As a general matter, the simple answer as to why all hourly employees do not use time clocks is because many do not have a time clock system at their disposal. For example, City Hall employees do not currently have a time clock system. In other departments outside of City Hall, hourly employees do have time clock systems (digital, mechanical, etc.) and those employees use them to track their time accordingly. The City of Lowell is not unlike many other municipalities when it comes to the initial implementation of time clocks, as the process often evolves over time and it is quite common for different union groups to have time clocks implemented in different cycles (topics discussed during contract negotiations often range in priority depending on the particular union).

For hourly union employees who currently use time clocks, that language can be found in their respective CBA (i.e. that language was negotiated into the contract at one time). Time clocks are considered a mandatory subject of bargaining, which is covered by MGL c. 150E s. 10(a)(5). Meaning that implementing time clocks is considered a “change in workplace conditions” and the City is required to bargain in good faith with the union prior to implementation. However, current case law makes an important distinction in this process that should be noted. The implementation of time clocks is considered a mandatory subject of bargaining when accompanied by new rules or policies as they apply to the tracking of employee time. The implementation of time clocks is not considered a mandatory subject of bargaining when there is no change to the rules or policies that govern the tracking of employee time. The court reasons that a new rule or policy is a “change

in workplace conditions” and no change in policy is simply an employer’s managerial right to more efficiently track an employee’s time.

The City already has a Time Clock Policy that applies to all employees i.e. those who use time clocks and those who don’t. Therefore, it stands to reason that if the City were to implement time clocks for union employees, there would not be an obligation to negotiate prior to implementation. However, if the City desires to implement a time clock system for union employees who do not currently have one, a strong recommendation would be made for the City to contact the union and have a discussion prior to implementation. In all likelihood the union would object to the City unilaterally implementing time clocks and file an unfair labor practice at the Massachusetts Department of Labor Relations (DLR) for refusing to bargain in good faith over a mandatory subject of bargaining in violation of MGL c. 150E s. 10(a)(5) and 10(a)(1) derivatively. Ultimately, it will more than likely take less time to have a discussion with the union prior to implementation than not.