

## Building Blocks of Employee Compensation

Community Action Agencies (CAAs), like many employers across the United States, are experiencing challenges retaining their existing staff and recruiting new employees in the wake of the COVID-19 pandemic. To help CAAs strategize for employee recruitment and retention in a post-pandemic world, CAPLAW has created this guide identifying some types of compensation they can offer, and the laws and regulations governing their salaries and benefits. When making any changes to their salary and benefits packages, CAAs should carefully review applicable laws and guidance in consultation with an employment attorney in their state, since state and local wage and hour laws will also apply. The rules and compensation types discussed here are not exhaustive, but we hope they will help you lay the foundation for a more engaged and experienced workforce.

To view an interactive infographic explaining each compensation type, visit the [CAPLAW Resource Library](#).

<u>Compensation Type</u>	<u>Description</u>	<u>Rules</u>	<u>In Practice</u>	<u>Remember!</u>
<b>Salaries and wages</b>	Regular, periodic payments for work performed in the ordinary course of business	<p><b>Federal, state, and local minimum wage and overtime</b> – CAAs must pay at least minimum wage and overtime in accordance with federal, state or local laws, whichever is most favorable to employees.</p> <p><b>HHS Appropriations Act</b> - Funds appropriated by the Department of Health and Human Services may not be used to pay the portion of compensation that exceeds Executive Level II (set annually by the federal Office of Personnel Management).</p> <p><b>Head Start Act, <a href="#">Sec. 653(a)</a></b> – Head Start salaries and wages must be comparable to the rates paid for comparable services in the area, and federal funds may not be used to pay any part of the compensation of a Head Start employee whose salary exceeds Executive Level II.</p> <p><b>Uniform Guidance, <a href="#">2 CFR § 200.430(a)</a></b> – Total compensation for each employee must be reasonable, follow the CAA’s written policy, be</p>	CAAs often maintain a salary table developed using wage comparability data collected from peer organizations and resources from its community action state association or state association of nonprofits.	Tax-exempt charities must report compensation (including benefits) on their annual tax return, Form 990, for key employees (those with certain responsibilities and reportable compensation greater than \$150,000) and the five highest compensated individuals with reportable compensation of \$100,000 or more.

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		<p>supported by sufficient documentation, and be allocable to the funding source charged.</p> <p><b>Internal Revenue Code, <a href="#">26 CFR § 53.4958-6(a)</a></b> – Compensation must not confer an “excess benefit” on key employees. Compensation paid to key employees will be presumed reasonable if approved in advance by independent members of the board and based on documented, objective comparability data evaluated concurrently with approval.</p>		
<b>Cost-of-Living-Adjustment (COLA)</b>	Permanent salary or wage increase to reflect the rising cost of goods and services over time	<b>Head Start Act, <a href="#">Sec. 640(a)(3)(A)(i)(I)</a></b> – Annual appropriations and allocations may provide a cost-of-living increase for each Head Start agency to maintain the level of services provided during the prior year.	A CAA may adopt a policy to raise all employee salaries commensurate with the Head Start COLA, so long as funding is available.	If Congress appropriates Head Start COLA funds, the Head Start Act requires that grant recipients increase the compensation of Head Start employees regardless of whether they have available funding to increase the compensation of non-Head Start staff. Grant recipients concerned that they cannot increase salaries for Head Start staff due to wage comparability issues should include local public-school salaries for elementary staff in their comparisons.
<b>Incentive compensation</b>	One-time bonus or lump sum paid to an employee or employees as a reward for individual or organizational achievements	<p><b>Uniform Guidance, <a href="#">2 CFR § 200.430(f)</a></b> – Reasonable incentive compensation is allowable if earned for a permissible purpose (“cost reduction, efficient performance, suggestion awards, safety awards, etc.”) under a pre-existing agreement or written policy followed so consistently as to imply, in effect, an agreement.</p> <p><b>Office of Head Start, <a href="#">ACF-IM-HS-21-05</a></b> – Programs are encouraged to use one-time Head Start funding under the American Rescue Plan (ARP) and other COVID-19 relief funding to make incentive</p>	A CAA may adopt a recruitment bonus policy using federal funds to pay a cash incentive to employees who refer candidates for employment who are hired by the CAA and retained for a certain period of time.	Federal funding sources review bonus policies and payments closely, which has resulted in large disallowances in some cases. <a href="#">CAPLAW’s 2019 article</a> on incentive compensation discusses issues to consider when drafting and implementing a policy to mitigate the risk of disallowance.

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		<p>payments, such as hiring and retention bonuses, to support retention.</p> <p><b>Internal Revenue Service, <a href="#">Information Letter 2002-0021</a></b> – While permissible, the IRS evaluates several factors relating to incentive pay, including whether it has a real and discernible business purpose, is established by independent board members, and results in reasonable total compensation.</p>		
<b>Hazard Pay</b>	Temporary supplement to an employee’s salary or wages for performing dangerous or physically distressing work	<p><b>Uniform Guidance, <a href="#">2 CFR § 200.430(a)</a></b> – Compensation must be reasonable, conform to the CAA’s established written policy, be supported by sufficient documentation, and be allocable to the grant charged.</p> <p><b>Office of Head Start, <a href="#">ACF-IM-HS-21-05</a></b> – Programs are encouraged to use one-time Head Start funding under the ARP and other COVID-19 relief funding to support staff retention, including instituting hazard pay.</p>	A CAA may adopt a hazard pay policy for employees with increased exposure to certain risks, such as COVID-19, threats to physical safety, or other disasters, as a result of their working conditions.	Hazard pay should correlate with an employee’s exposure to a dangerous hazard. Applying this principle consistently means that employees who have not been exposed should not receive hazard pay.
<b>Fringe Benefits</b>	Allowances and services provided to employees in addition to regular salaries and wages	<p><b>Uniform Guidance, <a href="#">2 CFR § 200.431(a)</a></b> – Fringe benefits must be reasonable and established by law, agreement, or the CAA’s established written policy.</p> <p><b>Office of Head Start, <a href="#">ACF-IM-HS-21-05</a></b> – Programs are encouraged to use one-time Head Start funding under the ARP and other COVID-19 relief funding to support staff retention, including offering child care stipends and student loan repayment assistance.</p> <p><b>Internal Revenue Service, <a href="#">IRS Publication 15-B</a></b> – Some employee benefits will be subject to withholding and treated as taxable employee compensation.</p>	Fringe benefits can take many different forms, such as paid leave, health and wellness benefits, retirement plans, technology reimbursement, student loan repayment or forgiveness, parking/commuter reimbursements, cell phone/technology allowances, or gym memberships.	

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