

FLSA 1200

September 4, 1987

This is in further response to your letter concerning the application of the Fair Labor Standards Act (FLSA) to certain deputy sheriffs employed by ***. You specifically wish to know if FLSA requires that deputy sheriffs be paid for the time they spent on stand-by duty.

The FLSA is the Federal law of most general application concerning wages and hours of work. It requires that all covered and nonexempt employees be paid not less than the minimum wage of \$3.35 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek. Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. The general rules on compensable hours of work are set forth in Interpretative Bulletin, 29 CFR Part 785, a copy of which is enclosed.

Whether or not hours spent "on-call" are compensable hours of work is a question of fact to be decided in the context of a given case. As explained in section 785.17, an employee who is not required to remain on the employer's premises but is merely required to leave work where he or she may be reached is not working while "on-call". However, if calls are so frequent or the "on call" conditions so restrictive that the employee cannot effectively use the "on-call" time for his or her own purposes, the "on-call" waiting time would be considered hours worked.

It is difficult to reply unequivocally to the question of what constitutes restrictive "on-call" conditions. Whether being confined to his or her home for the duration of the stand-by period has the effect of precluding an employee's freedom to follow his or her own pursuits while waiting is a question of fact that can be determined only after careful review of the particular circumstances. As you have noted, the facts may show that the employee is engaged to wait or they may show that he or she is waiting to be engaged.

You indicate that the *** employs deputy sheriffs in on-call status to augment the limited Sheriff's Department staff. You state that on any given day, "on-call" deputies are utilized an average of 40 hours county-wide. Specifically "on-call" deputies are required to remain at home during "on-call" hours and to be able to "respond to calls for service immediately, in uniform, and in a marked patrol car." They are provided a marked patrol car for official use only.

It is our conclusion that the requirements for immediate response by deputies, in uniform, are too restrictive for employees to effectively use "on-call" time for their own benefit. Our analysis of the standby conditions as you have described them indicates that the deputies are engaged to wait. We would, therefore, consider the "on-call" time as compensable hours worked under FLSA.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator