

FLSA - 1198

September 11, 1987

This is in further reference to your letter concerning the application of the Fair Labor Standards Act (FLSA) to firefighters who work a shift of 24 hours and 10 minutes. We regret the delay in responding to your inquiry.

The FLSA is the Federal law of most general application concerning wages and hours of work. This law 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.

Section 7(k) of FLSA provides a partial overtime pay exemption for public agency employees employed in fire protection or law enforcement activities (including security personnel in correctional institutions). Under this provision, an employer may establish a work period of 7 to 28 consecutive days for the purpose of paying overtime compensation to employees employed in fire protection or law enforcement activities. The maximum hours standard for fire protection personnel ranges from 53 hours worked in a 7-day work period to 212 hours worked in a 28-day work period. The provisions of FLSA as they apply to fire protection and law enforcement employees of public agencies are set forth in Regulations, 29 CFR Part 553.

Your questions are answered in the order in which they were presented in your letter:

Q.1. What are the procedures for deducting sleep time?

A.1. Where a public employer elects to pay overtime compensation to firefighters after 40 hours in a workweek (section 7(a)(1) of FLSA) the public agency may exclude sleep time from hours worked if the employee is on duty for 24 hours or more and if all the conditions in 785.22 are met. (Interpretative Bulletin, 29 CFR Part 785, copy enclosed.) The maximum period of time which can be deducted as sleep time is 8 hours within a 24 hour or longer duty period.

Where a public employer elects to pay overtime compensation to firefighters after a maximum hours standard in a work period that ranges from 53 hours worked during a 7-day work period to 212 hours worked for a 28-day work period (section 7(k) of FLSA), sleep time can be excluded from compensable hours of work for those firefighters who are on a tour of duty of more than 24 hours but only if there is an expressed or implied agreement between the employer and employees to exclude such time. If the sleep time is interrupted by a call to duty, the interruption must be counted as hours worked. If the sleep period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted.

Q.2. What is meant by uninterrupted sleep and meal periods?

A.2. Where an employee is required to be on duty for 24 hours or more, regularly scheduled sleeping periods of not more than eight hours may be deducted from hours worked provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted (no calls to duty) night's sleep. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted as hours worked. A reasonable night's sleep generally means at least five hours of sleep for each tour of duty that is 24 hours or longer. The five hours of sleep time do not have to be continuous but must be within the scheduled sleeping times.

Bona fide meal periods are not work time. The employee must be completely relieved from duty for the purposes of eating regular meals. The employee is not relieved if he or she is required to perform

any duties whether active or inactive while eating. If the meal period is interrupted by a call to work, it then becomes hours worked.

Q.3. Are the sleep and meal time exclusions independent of each other or is the maximum time that may be excluded eight hours?

A.3. The deduction for meal periods and sleep time are independent of each other. Section 785.22 of the Interpretative Bulletin states that if the sleeping period is of more than 8 hours, only 8 hours may be deducted. Usually 30 minutes or more is long enough for a scheduled meal time. The employer may deduct eight hours of uninterrupted sleep time and up to one hour for each bona fide meal period per 24 hour tour of duty. The employer may not deduct more than three hours total for meal periods and eight hours total for sleep periods, or a maximum of 11 hours per continuous tour of duty of 24 hours. The time which may be deducted for sleep or meal periods may not exceed the amount of time actually spent by the employee in such activities.

Q.4. Can the City change the meal time?

A.4. To constitute a bona fide meal period, it must be a period set aside for a regular meal and must be long enough to allow the employee to use it for this purpose; it must occur at a scheduled hour or within a specified period at a time of day which, in light of the employee's working hours, is suitable for a normal meal period; and, finally, it must be an uninterrupted period during which the employee has no duties whatever to perform. There is some flexibility to adjust the meal period to accommodate a "run" or response to an emergency.

Q.5. Can the City have different sleep time for different individuals?

A.5. There is no specific requirement that the sleeping period must be after dark and before daylight. Section 553.222 of the regulations and CFR 785.22 of the Interpretative Bulletin emphasizes a sleep period that is uninterrupted rather than on whether it falls within daylight or darkness. In the case of Bowers v. Remington Rand, Inc. (6 WH Cases 496, 6 WH Cases 760) an employer used a two platoon system with regular shifts of twenty-four consecutive hours. Each employee was granted a sleeping period of eight consecutive hours during each shift with twenty-four hours off between shifts. Sleeping facilities were provided for employees use during the "sleep shift" as it was then called. The sleep shift was from 12:30 a.m. to 8:30 a.m. Although the question of daytime versus nighttime sleeping was not in issue, it was stated in the opinion: "If the employee receives a normal period of time for uninterrupted sleep, ... and the employer has provided adequate and comfortable sleeping accommodations reasonably comparable to those found in the average home, ... such time need not be considered as time worked, under the provisions of the Fair Labor Standards Act of 1938, There is no requirement that sleeping time shall necessarily be in the nighttime, nor that all employees be scheduled to sleep during the same period. It is a matter which must be mutually agreed upon between the employer and the employee.

We trust the above has been responsive to your inquiry. Please let us know if we can be of further assistance to you.

Sincerely,

Paula V. Smith
Administrator