

FLSA - 1194

October 22, 1987

This is in further response to your letter, with enclosures, concerning the application of the Fair Labor Standards Act (FLSA) to law enforcement personnel who are employed by the City of *** (the City). 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. 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.

On January 16, the Department of Labor published final regulations, 29 CFR Part 553, which implement the Fair Labor Standards Amendments of 1985. These regulations contain rules concerning certain statutory exclusions and exemptions, recordkeeping requirements, and compensatory time provisions which apply to State and local government workers in general, in addition to specific rules for volunteers and for fire protection and law enforcement employees. A copy of the regulations is enclosed for your information.

Your inquiry specifically concerns the proper methods of compensating law enforcement employees, who are paid hourly rates of pay, for their roll-calls, travel, and/or training. These three areas of your concern are responded to in order below.

I. Roll-call

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 law enforcement personnel ranges from 43 hours worked in a 7-day work period to 171 hours worked in a 28-day work period.

The City has chosen a 28-day work period for the purpose of applying the provisions of section 7(k) of FLSA. During these 28 days, police officers are normally scheduled for twenty, 8-hour tours of duty, or a total of 160 hours for the work period. However, under the terms of a collective bargaining agreement the police officers must report for a roll-call formation 15 minutes before the start of each 8-hour tour of duty. You are concerned that these additional 5 hours (20 X 1/4 hour) of work are not being properly compensated under FLSA.

As you were advised in telephone conversations with a member of my staff on March 4 and March 6, the law enforcement employees to whom you refer have been properly compensated under FLSA when, for any work period during which they have worked less than the applicable maximum hours standard, they have received at least the minimum wage (\$3.35 an hour) for all of their hours worked.

For example, a police officer who is paid at a rate of \$10.50 an hour for 160 hours ($\$10.50 \times 160$ hours = \$1,680) is paid in compliance with FLSA even though he or she actually works a total of 165 hours during a 28-day work period ($\$3.35 \times 165$ hours = \$552.75).

A different situation exists when a police officer works in excess of the applicable maximum hours standard for the work period, i.e., over 171 hours in a 28-day period. Under these circumstances, the employee's regular rate of pay must be used to compute the proper compensation due under FLSA. This is explained in section 778.315 of Interpretative Bulletin, 29 CFR Part 778 (copy enclosed).

This can be illustrated in the case of a police officer who is paid \$10.50 an hour and who must work during an unscheduled tour of duty in addition to those which were scheduled (21 X 8 1/4 hours = 173 1/4 hours worked). Under FLSA, this employee must be paid at his or her regular rate of \$10.50 an hour for 171 hours (\$1795.50). This employee must also receive overtime compensation at a rate of not less than one and one-half times the \$10.50 hourly rate (1 1/2 X \$10.50 X 2 1/4 (OT hours) = \$35.44). Therefore, the employee in this example should be paid a total of \$1830.94 (\$1795.50 + \$35.44) for the work period.

II. Travel

The rules concerning the treatment, as hours worked under FLSA, of time spent in traveling are set forth in Interpretative Bulletin, 29 CFR Part 785 (copy enclosed). It is a general rule that the time spent in traveling which is a part of the employee's principal activity must be counted as hours worked and, such time must be properly compensated under FLSA. However, only those hours worked which exceed the applicable maximum hours standard must be paid for at a premium rate of pay.

Section 785.37 of Part 785 refers to time spent in traveling by an employee on a special one-day assignment for the employer in another city or at a different location. As explained in this section of Part 785, such travel is performed for the employer's benefit and, therefore, qualifies as an integral part of the employee's principal activity. However, the time spent in traveling by the employee in the normal, "home-to-work" portions of the trips to and from the location of the assignment may be excluded from the compensable hours worked under FLSA.

As explained in section 785.39 of Part 785, travel that keeps an employee away from home overnight must be paid for as hours worked where this time crosses the employee's workday. In such instances, the employee is substituting travel for other duties which are performed for the employer's benefit.

III. Training

In your letter, you indicate that the law enforcement employees to whom you refer are regularly assigned to attend training sessions which are held outside of their scheduled tours of duty. The City pays, at a rate of one and one-half times the employee's regular rate of pay, for this time spent in training only when the employee's total hours worked exceeds the maximum hours standard (171) for the work period. However, the information in your letter appears to indicate that all time spent in training is counted by the City as hours worked for the purpose of applying the provisions of section 7(k). You are concerned that the City is not properly compensating employees for their time spent in training during those work periods in which the maximum hours standard is not exceeded (less than 171 hours worked).

As explained in our discussion under "roll-call" above, the method of paying for training time which you describe complies with the requirements of FLSA when the police officers are paid at least the minimum wage of \$3.35 an hour for all hours worked in those work periods which do not exceed the maximum hours standard. Again, as discussed above, all of the employees' overtime hours worked must be paid for at rates which are not less than one and one-half times their regular rates of pay.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator