

FLSA - 1180

May 4, 1988

This is in further response to your letters concerning the application of the Fair Labor Standards Act (FLSA) to employees of the *** Department of Police (the Department). We regret the delay in responding to your inquiry.

You state that an officer of the Department has accumulated a number of hours of compensatory time at the rate of time and one-half the actual overtime hours worked. Following the earning of this compensatory time, the officer was accused of an infraction of the Department's rules, was given a disciplinary hearing, and was sentenced to serve an unpaid suspension. The officer wishes to work during this "unpaid suspension" and receive his or her regular pay, and the Department wishes to deduct the appropriate number of hours from the officer's accumulated compensatory time in order to recoup the officer's pay. You wish to know if this would be in compliance with the provisions of FLSA.

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. The application of FLSA to employees of State and local governments is contained in Regulations, 29 CFR Part 553, a copy of which is enclosed.

Section 7(o) of FLSA permits employees of a public agency to receive, under certain conditions described in section 553.21 of the regulations and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is due under FLSA. Employees of a public agency engaged in public safety activities may accrue up to 480 hours of compensatory time for hours worked after April 15, 1986.

You specifically ask if an officer can forfeit compensatory time, which the officer earned by working overtime hours in lieu of serving a disciplinary suspension. It is our opinion that the time which the officer spends on duty during a "suspension" is hours worked under FLSA, and must be compensated for in accordance with its monetary provisions. Since the officer's compensatory time is payment for overtime hours previously worked under FLSA, it would not be permissible to allow the Department to recoup from the officer's accumulated compensatory time the wages paid to the officer for the time worked during his or her "suspension."

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator