

FLSA - 1178

May 10, 1988

This is in further response to your letter concerning application of the Fair Labor Standards Act (FLSA) to law enforcement officials. You wish to know if clothes changing time constitutes hours worked under FLSA and the Portal to Portal Act. 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. The provisions of FLSA apply to all employees of State and local governments except to those who are specifically excluded in section 3(e)(2)(c) of FLSA and those who may qualify for exemption from the minimum wage and/or overtime pay provisions of FLSA.

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.

You state that the public employer requires law enforcement officers to be fully dressed in uniform and armed at the moment the shift begins. The employer requires these officers to report early for work to dress and equip themselves and to hold over at the end of their shift to change clothes again.

In a telephone conversation with a member of my staff on April 20, you stated there was a collective bargaining agreement (CBA) between the union and the employer. The collective bargaining agreement between the City and the union covering the police officers in question has no express provision regarding the compensability of clothes changing time during which a police officer dons the required uniform on the employer's premises prior to the officer's duty shift. In addition, it is our understanding that there has been no custom or practice between the parties to consider such clothes changing time compensable.

Where the parties to a collective bargaining agreement have excluded clothes changing time from compensable time by an express provision in the collective bargaining agreement, or by custom or practice under the contract such clothes changing time is not compensable under FLSA. This exception is discussed in section 785.26 of 29 CFR Part 785.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator