

FLSA - 1162

September 8, 1988

This is in further response to your letter concerning the application of the Fair Labor Standards Act (FLSA) to firefighters of the City *** (the City). You wish to know if the time which the firefighters spend on standby or on-call must be considered compensable hours of work under the FLSA. 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 the law apply to all employees of State and local governments except to those who are specifically excluded in Section 3(e)(2)(C) of FLSA or who may qualify for exemption from the minimum wage and/or overtime pay requirements of the statute.

Regulations, 29 CFR Part 553, contain rules concerning 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.

You state that the firefighters are furnished with paging devices with which they are summoned to duty on their days off as necessary. The firefighters must remain within a certain radius of the fire stations so that they may respond to a call within approximately 7 minutes of being paged. They are required to reside within a 3.5 road-mile radius of the fire station. The city is a small rural community and is easily traversed within the 7-minute response time. The firefighter is not required to report in uniform and may engage in any activities he or she chooses so long as those activities do not prevent him or her from being contacted or interfere with his or her ability to respond to the fire hall in a timely manner in the case of an emergency.

The compensability of on-call time is explained in section 785.15 of Interpretative Bulletin, 29 CFR Part 785 (copy enclosed). For enforcement purposes, we have taken the position that where employees in an on-call status are free to use the time for their own benefit, the time spent on-call is not hours worked under FLSA unless or until they actually respond to a call to duty. However, if such calls are so frequent that the employee is not really free to use the off-duty time effectively for the employee's own benefit, the intervening periods as well as the time spent in responding to calls would be counted as compensable hours.

It is our opinion that, in the circumstances which you describe, and if no other restrictions apply, the firefighters are not unduly inconvenienced by the requirement to wear a paging device during their off-duty time, and to respond to the fire hall within approximately 7 minutes. Therefore, provided that the firefighters are not called back to duty on a "frequent" basis as described above, only the actual time which they spend during their off-duty hours in responding to calls for assistance must be counted as hours worked under FLSA.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator