

FLSA - 1161

November 2, 1988

This is in further response to your letters concerning the application of the Fair Labor Standards Act (FLSA) to fire protection personnel employed by the City ***. You ask whether the time spent by such employees outside of regular working hours attending specialized and follow-up training is compensable under FLSA. We regret the delay in responding to your inquiry.

You state that all employees classified as firefighting personnel are required by the City to obtain and maintain proper certifications as emergency medical technicians (EMT). This requirement is a condition of continued employment and frequently requires the employees to attend training classes outside of regular working hours. You indicated that this training is not voluntarily undertaken by the employees. In this regard, you state that we may "assume that the training and certification requirements are all required by [the] law of the City, i.e., that the job description and applicable civil service rules which established the requirements have been authorized and adopted by appropriate resolution of the City Council of the City .

Regulations, 29 CFR Part 553 (copy enclosed) contain rules concerning statutory exclusions and exemptions, recordkeeping requirements, and compensatory time provisions which apply to public employees in general, in addition to specific rules for volunteers and for fire protection and law enforcement employees. As indicated in section 553.226 of Part 553, time spent in attending required training outside of regular working hours is noncompensable if (1) such training is required by law for certification of public and private sector employees within a particular governmental jurisdiction, or (2) is required for certification of employees by law of a higher level of government (e.g. where a State or county law imposes the training obligation on city employees).

Since you state that the training requirement is imposed on the firefighting personnel by "law of the City," it is our opinion that the exceptions provided in section 553.226 are not applicable (We presume that there are no "private sector" employees subject to the training requirements established by the City). Therefore, the time spent by firefighters in attending mandatory EMT training outside of their regular working hours is compensable. See section 785.28 of Regulations, 29 CFR Part 785 (copy enclosed). The general rules for determining the compensability of training time are set forth in sections 785.27 through 785.32 of Part 785.

You also ask whether certain training for fire lieutenants would be compensable under FLSA. You state that as a condition of promotion to the rank of fire lieutenant and continued employment in that rank, an appointee is required within 18 months after appointment to complete a training course and obtain a *** certificate as a Fire Officer I. In addition, the appointee must obtain an associate degree in either fire science or public administration. Attendance at the classes for such training is ordinarily outside of normal working hours.

As indicated in section 785.29 of Part 785, where training is undertaken for the purpose of advancement through upgrading the employee to a higher skill and is not intended to make the employee more efficient in the present job, the training is not considered directly related to the employee's job and is not considered compensable even though the course incidentally improves the employee's skills in doing the regular job. However, under the facts you present, we would consider the time spent in fire lieutenant training after promotion to be compensable because it is directly related to the fire lieutenant job and because such training is not voluntary. See sections 785.27(b) and (c) and 785.28.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator