



June 23, 2006

FLSA2006-12NA

Dear **Name***:

This is in response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to law enforcement personnel who are employed by a municipality. Your letter raises the question of whether a police officer must be compensated for all time spent transporting prisoners.

You write on behalf of a union that represents law enforcement officers employed by a municipality pursuant to a collective bargaining agreement (CBA). The CBA states that officers who transport prisoners will be compensated for no more than eight hours a day while en route. The hours spent transporting prisoners in excess of eight per day are not counted as hours worked and are not included in the calculation of overtime under FLSA section 7(a). You indicate that prisoner transportation by car may require ten to twelve hours a day and that travel by plane could also require more than eight hours a day. You state that the municipality has not established an FLSA section 7(k) partial overtime exemption. The facts you present raise the question of whether the CBA's treatment of time spent transporting prisoners complies with the FLSA requirement that employees be compensated for all hours worked.

The Department's regulations and interpretive guidance address compensable working time under the FLSA. *See* 29 C.F.R. Part 785; 29 C.F.R. § 553.221(b) (copies enclosed). Specifically, 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." 29 C.F.R. § 553.221(b).

As explained in 29 C.F.R. § 785.41, any work that an employee is required to perform while traveling must be counted as hours worked. Police officers who are guarding prisoners while transporting them and who are responsible for the safety of the prisoners and the public are working while traveling. Consequently, all of the hours an officer spends transporting prisoners are compensable hours and must be compensated in accordance with the provisions of section 6 and 7 of the FLSA. If the transportation requires the officer to stay away from home overnight, the provisions of 29 C.F.R. § 785.39 apply. However, time spent in bona fide meal periods or when the officer is permitted to sleep is not hours worked. 29 C.F.R. § 785.41. Additional guidance regarding compensable hours worked by law enforcement employees can be found in 29 C.F.R. § 553.221.

Except as specifically provided in the FLSA, the provisions of the CBA may not override the employer's obligation to comply with the FLSA. *See Barrentine v. Arkansas-Best Freight Systems, Inc.*, 450 U.S. 728, 740-41 (1981). Therefore, except where specifically excluded by regulation, all of the time an officer spends transporting prisoners is considered working time that must be compensated in accordance with the provisions of sections 6 and 7 of the FLSA.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to a pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this information is responsive to your inquiry.

Sincerely,

Barbara Relerford
Office of Enforcement Policy
Fair Labor Standards Act Team

Enclosures:



29 C.F.R. Part 785
29 C.F.R. § 553.221

Note: * The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7)