



FLSA2006-36

September 28, 2006

Dear **Name***:

This is in response to your letter requesting an opinion concerning payment of overtime compensation under the Fair Labor Standards Act (FLSA) to civilian public safety dispatchers employed by your client (the City). It is our opinion that the public safety dispatchers are entitled to overtime for all hours worked in excess of 40 in a workweek.

You indicate that the dispatchers are represented by a union for collective bargaining purposes. The union and the City are parties to a collective bargaining agreement that establishes the dispatchers' work schedules and sets forth when dispatchers are entitled to overtime pay. The agreement provides that dispatchers shall be paid overtime pay for "all hours authorized and worked in excess of 48 hours in any one week, or for all hours worked in 7 or more consecutive days." You ask whether the City would violate the FLSA by complying with the agreement strictly and paying overtime only in excess of 48 hours in any one week, but not when the dispatchers work more than 40 but less than 49 hours in a week. You indicate that the dispatchers are non-exempt employees who do not meet the requirements for exemption under FLSA section 7(k) or 13(a)(1).¹

Under section 7(a) of the FLSA, overtime compensation is determined on a workweek basis. The regulations define a workweek as a "fixed and regularly recurring period" of 168 hours comprising 7 consecutive 24-hour periods. 29 C.F.R. § 778.105. A workweek may begin on any day of the week and any hour of the day established by the employer (or by parties where a collective bargaining agreement exists). In this case, you indicate that the workweek begins on Saturday and ends on Friday.

Under section 7(a), a non-exempt employee must receive overtime compensation for all hours worked in excess of 40 in the workweek at a rate of not less than one and one half times the employee's regular rate of pay. Additionally, the FLSA establishes a minimum standard that may be exceeded but cannot be waived or reduced. Under certain conditions, public employees may receive compensatory time off pursuant to section 7(o) in lieu of cash overtime compensation as explained in 29 C.F.R. §§ 553.20-.28.

Based upon the information provided, we believe that the public safety dispatchers are entitled to overtime compensation under section 7(a) of the FLSA. Therefore, it is our opinion that the City would violate the FLSA by complying with the agreement strictly and paying dispatchers an overtime premium only when they work in excess of 48 hours in any workweek. All hours worked, whether authorized or not, in excess of 40 during a workweek are subject to the overtime requirements.

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on 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 letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to 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 letter is responsive to your inquiry.

Sincerely,

Paul DeCamp
Administrator

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