



September 9, 2005

FLSA2005-9NA

Dear *Name**,

This is in response to your request for an opinion regarding whether paramedic and emergency medical personnel employed by a county-run fire department are exempt from the overtime requirements of the Fair Labor Standards Act (FLSA) pursuant to Section 7(k) as employees in fire protection activities.

Section 7(k) of the FLSA provides a partial overtime pay exemption for employees employed by a public agency in fire protection or law enforcement activities. Under this provision, a public agency employer may establish a work period of 7 to 28 consecutive days for the purpose of determining overtime compensation owed to individuals employed in fire protection or law enforcement activities. 29 U.S.C. § 207(k). The maximum hour standard for fire protection personnel ranges from 53 hours worked in a 7-day period to 212 hours worked in a 28-day period. 29 C.F.R. § 553.230(c). The provisions of the FLSA as they apply to fire protection and law enforcement employees of public agencies are set forth in 29 C.F.R. Part 553.

On December 9, 1999, the FLSA was amended to add Section 3(y), which clarifies the definition of "fire protection activities" for purposes of the Section 7(k) partial overtime exemption. Section 3 was amended by adding at the end the following:

"(y) 'Employee in fire protection activities' means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who-

(1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district or State; and

(2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk."

You state that the county currently does not employ paramedic or emergency medical technician (EMT) personnel within a fire department and you created the following hypothetical scenario in the hopes it will satisfy the partial overtime exemption provided by Section 7(k). If it does not, however, you asked that we consider a second hypothetical scenario.

Scenario: County firefighters/paramedics working within a newly-established county fire department:

The county would create a fire department that would employ EMTs and paramedics who are also trained firefighters. Because fire protection services in the county are currently provided by several volunteer run fire protection districts (hereinafter referred to as fire districts) that lack emergency medical staff, the paramedics and EMTs employed by the newly established county fire department would work in conjunction with and support those mostly volunteer districts.

The county employees would respond to all fire and other emergency calls alongside fire district volunteers, and would be stationed at the districts' fire stations. Moreover, both fire district-owned fire fighting equipment and county-owned emergency medical equipment would be used when needed, thus avoiding duplicative costs for either the county or the fire districts. While the county EMTs and paramedics would respond to all emergency calls (fire and medical), it is likely that the majority of their time would be spent providing emergency medical services, as those calls occur far more frequently than do fire calls.



The job description for the EMT and paramedic positions would include responsibility for fire suppression in addition to responsibility for providing emergency medical services at fire, accident, or disaster scenes. Because they would be trained as fire fighters in accordance with State law and local ordinance, and because their job descriptions and duties would include responsibility for fire suppression, EMTs and paramedics would have the legal authority and the responsibility to engage in the suppression of fires.

Application of 3(y)

The EMTs and paramedics in your scenario would meet the criteria for being employed in fire protection activities under Section 3(y). They are cross-trained as firefighters in accordance with State law and local ordinances which would give them the legal authority to engage in fire suppression, their job description would include the responsibility of fire suppression as employees of a county fire department, and they would respond to all emergency calls (fire and medical) to provide emergency medical services.

Application of 7(k)

Section 7(k) of the FLSA provides a partial overtime pay exemption for employees employed by a public agency in fire protection or law enforcement activities. The EMTs and paramedics in your scenario would be employed by a county fire department in fire protection activities as defined in Section 3(y) of the FLSA. Therefore, the EMTs and paramedics in your scenario would be eligible for the Section 7(k) partial overtime exemption.

Because we have concluded that your first scenario satisfies the exemption, we have not addressed your second hypothetical situation.

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 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.

Sincerely,

Barbara R. Relerford
Office of Enforcement Policy
Fair Labor Standards Team

Enclosures

Public Law 106-151
Regulation Part 553

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