

Public Audit

2016 – 0013

Herbert Wallace Memorial Volunteer
Fire Company

OFFICE OF INSPECTOR GENERAL JEFFERSON PARISH



PUBLIC AUDIT

HERBERT WALLACE MEMORIAL
VOLUNTEER FIRE COMPANY AUDIT

2016-0013

REVIEW
ISSUED 2/15/2017



OFFICE OF INSPECTOR GENERAL
JEFFERSON PARISH

DAVID N. MCCLINTOCK
INSPECTOR GENERAL



DATE: 02/15/2017

TO: The Citizens of Jefferson Parish

FROM: David McClintock, Inspector General

REF: Review #2016-0013 Herbert Wallace Memorial Volunteer Fire Company (“HWMVFC”)

The Jefferson Parish Office of Inspector General (JPOIG) performed a limited scope audit of internal controls over payroll for the HWMVFC pursuant to certain provisions of the Fair Labor Standards Act (FLSA). The scope included a review of the HWMVFC’s payroll records and supporting documents over a three-year period.

The limited scope audit identified two deficiencies, the first issue resulted in unpaid overtime totaling **\$67,980** over a three-year period, and the second issue involved the lack of verification of hours worked by one employee. The first issue was reported to the local office of the U.S. Department of Labor, pursuant to JPCO 2-155.10(11)(r).

A Confidential Draft Audit Report was provided on 12/14/2016, to HWMVFC officials, the Parish Council and the Parish Administration for response and comment. The period for response concluded on 02/01/2017, with no response received.

The JPOIG appreciates the help and assistance provided with the limited scope audit by the Parish Administration and the HWMVFC.

Please also be advised that a synopsis of the report, the findings, and responses will be made available to the general public in order to enhance transparency and the public's trust.

Respectfully,

David McClintock

cc:

Michael S. Yenni, Parish President
Councilman Chris Roberts, At-Large “A”
Chairwoman Cynthia Lee-Sheng, At-Large “B”
Councilman Ricky J. Templet

Councilman Paul D. Johnston
Councilman Mark D. Spears, Jr.
Councilwoman Jennifer Van Vrancken
Keith A. Conley, Chief Operating Officer
Michael J. Power, Parish Attorney
Timothy Palmatier, Finance Director
Barbara Camp, President, HWMVFC
Christian Collins, Chief, HWMVFC



OFFICE OF INSPECTOR GENERAL
JEFFERSON PARISH

DAVID N. MCCCLINTOCK
INSPECTOR GENERAL



JPOIG PROJECT NUMBER: 2016-0013

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OFFICE OF INSPECTOR GENERAL JEFFERSON PARISH

DAVID N. McCLINTOCK
INSPECTOR GENERAL



EXECUTIVE SUMMARY

In accordance with JPCO §2-155.10 (11) (a), the Jefferson Parish Office of Inspector General (“JPOIG”) has completed a limited scope audit of the Herbert Wallace Memorial Volunteer Fire Company (“HWMVFC”). The JPOIG identified approximately \$67,980 in unpaid overtime for the three-year audit period.¹ The audit period is 06/22/2013, through 07/01/2016.

Objectives

The objectives were to ensure that the HWMVFC was in compliance with the following labor-related concerns:

- HWMVFC employees were completing bi-weekly payroll records and those records were approved by supervisory staff, and
- The HWMVFC was in compliance with the Fair Labor Standards Act (FLSA). Specifically, that overtime was being paid to employees who exceeded the maximum working hours as prescribed by the FLSA.

Audit Results

Based upon the audit objectives, we reached the following conclusions:

At least five (5) employees worked in excess of the maximum straight-time hours for their 14-day work period and were not paid their overtime rate for those excess hours. Approximately 7,371.5 hours which should have been paid at the employees’ overtime rate were instead paid at the straight-time rate.

The Administrator’s time sheet is approved by the HWMVFC’s Treasurer at the end of his work period. The Treasurer would not have direct knowledge of the Administrator’s actual hours worked. See recommendations section below.

Recommendations

Following the audit, the JPOIG referred the matter to the United States Department of Labor, Wage and Hour Division (DOL) regarding the unpaid overtime. The DOL notified the JPOIG that they would investigate our findings.

Our recommendations include ensuring adherence to the FLSA and any applicable DOL administrative rules.

¹ Should the Department of Labor deem the Assistant Chief an exempt employee, the amount of overtime pay due for the review period is \$22,336.27.

The on-duty shift supervisor should initial the Administrator's time sheet when he arrives and leaves. The Treasurer could then approve the Administrator's hours worked at the end of his pay period.

Items are discussed more fully in the Findings and Observations section of this report. Any detected instances of fraud, waste, abuse, or contractual noncompliance were identified and investigated as necessary.



OFFICE OF INSPECTOR GENERAL
JEFFERSON PARISH

DAVID N. McCLINTOCK
INSPECTOR GENERAL



Date of Report: 02/15/2017	PUBLIC AUDIT	Case # 2016-0013
Period of Audit: 06/22/2013 to 07/01/2016	Report By: David Owen	Status: Final
<u>Subject of Audit</u>		
<ul style="list-style-type: none"> • Herbert Wallace Memorial Volunteer Fire Company • Compliance 		

OBJECTIVES, SCOPE, AND METHODOLGY

Objectives

This audit was limited in scope and based upon allegations received by the Jefferson Parish Office of Inspector General (JPOIG). The objectives were to ensure that the Herbert Wallace Memorial Volunteer Fire Company (HWMVFC) was in compliance with the following labor-related concerns:

- HWMVFC employees were completing bi-weekly payroll records and those records were approved by supervisory staff, and
- The HWMVFC was in compliance with the Fair Labor Standards Act (FLSA). Specifically, that overtime was being paid to employees who exceeded the maximum working hours as prescribed by the FLSA.

Scope and Methodology

The JPOIG conducted an examination of employee attendance and pay records to determine compliance with the U.S. Department of Labor (DOL) standards pertaining to overtime pay. Due to this audit’s limited nature, it is not intended to comply with the Institute of Internal Auditor’s Principles and Standards (the Red Book). Payroll records for the period 06/22/2013, through 07/01/2016 were examined.

Our audit procedures included the following:

- Review of HWMVFC bi-weekly payroll forms;
- Review HWMVFC payroll policies and procedures;
- Interviews of paid HWMVFC firefighting employees, the administrator, and the president to obtain an understanding of work roles and what constitutes their “work period;”
- Review of United States Department of Labor, Wage and Hour Division (DOL) materials including:

- Fact Sheet #8: Law Enforcement and Fire Protection Employees Under the Fair Labor Standards Act (FLSA);
- Fact Sheet #44: Visits to Employers;
- Code of Federal Regulations (Title 29, Subtitle B, Chapter V, Subchapter A, Part 553; § 553.230); Maximum hours standards for work periods of 7 to 28 days – section 7(k);
- FLSA § 203(s).

Standards

The JPOIG Auditor conducted an audit which, due to its limited nature, does not comply with the Institute of Internal Auditor’s Principles and Standards (the Red Book). However, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Acronyms

The following acronyms are used in this document.

- HWMVFC** Herbert Wallace Memorial Volunteer Fire Company
- Parish** Jefferson Parish
- JPOIG** Jefferson Parish Office of Inspector General
- FLSA** Fair Labor Standards Act
- DOL** United States Department of Labor, Wage and Hour Division

BACKGROUND

The HWMVFC is a 501 (c) (3) organization according to the Internal Revenue Service website. It is also registered with the Louisiana Secretary of State as a non-profit corporation, although, the HWMVFC is: “Not In Good Standing for failure to file (its) Annual Report.”

The HWMVFC is one of five (5) fire companies providing fire prevention and suppression services in Jefferson Parish Fire Protection District No. 7. The five (5) companies are:

1. Avondale Volunteer Fire Company;
2. Bridge City Volunteer Fire Company 1;
3. Herbert Wallace Memorial Volunteer Fire Company;
4. Live Oak Manor Volunteer Fire Department; and
5. The Nine Mile Point Volunteer Fire Company #1.

Each of the five (5) companies operates one (1) fire station. The fire companies are funded through a District-wide millage; currently at 24.36 mills. The Parish currently makes monthly transfers of \$65,700 to each of the District’s fire companies to cover their operational expenses.

DATA REVIEW & ANALYSIS

Overtime Payments

The HWMVFC currently has five (5) full-time and four (4) part-time employees. Payroll summary sheets were examined for the period 06/22/2013, through 07/01/2016. This sheet is faxed to Paychex for processing of the agency's bi-weekly payroll.

The HWMVFC operates on a 14-day work period. FLSA's maximum hours standards for work periods of 7 to 28 days, requires that overtime be paid for any hours worked over 106 in a 14-day work period.¹

During the 36-month review period, the JPOIG noted that 7,371.5 hours were paid at the straight-time rate which should have been paid at the overtime rate. This amounts to \$67,980.47 in unpaid overtime. See Table 1.²

Table 1 Employee Hours Worked in Excess of FLSA			
Title	Hours above FLSA Maximum	Period of Occurrence	Underpayment
Shift Captain	1,323	6/22/2013 to 7/01/2016	\$10,409.61
Assistant Chief	4,430	6/22/2013 to 7/01/2016	\$45,508.20
Operator	190	11/23/2013 to 12/19/2014	\$10,915.40
Shift Captain	1,427.5	6/22/2013 to 6/17/2016	\$1,141.20
Former Employee	1	11/23/2013 to 12/06/2013	\$6.06
Total:	7,371.5		\$67,980.47

On 08/26/2016, the JPOIG referred the matter to the DOL for consideration. On 09/08/2016, the DOL responded that the conditions "will be looked into as soon as possible."

Time Cards

For paid firefighting personnel, time cards are kept in a red binder on the table in the day room. These time sheets are reviewed by the Chief and the Assistant Chief. The Chief approves the time sheets.

The HWMVFC also has a part-time Administrator whose job responsibilities include submission of payroll to the vendor (Paychex) and handling all insurance-related items for the building and personnel. The Administrator's time sheet is kept in his office. It is approved by the HWMVFC Treasurer. The Treasurer is not in a position to routinely know when the Administrator is at work.

¹ Title 29: Labor, Part 553 – Application of the Fair Labor Standards Act to employees of state and local governments, Subpart C – Fire protection and Law Enforcement Employees of Public Agencies, §553.230 section 7(k).

² If the Department of Labor finds that the Assistant Chief is an exempt employee, overtime hours would be reduced to 2,941.5 and the amount of overtime pay due for the review period is \$22,336.27.

The HWMVFC must develop and use a system which can accurately verify the hours worked by the Administrator. Because the Administrator is part-time and works irregular hours, it is recommended that he sign in and out with the shift supervisor (an employee working a 24-hour shift). His time sheet could still be approved by the treasurer.

FINDINGS AND OBSERVATIONS

A finding indicates a material or significant weakness in controls or compliance that was not detected or corrected by an entity in the normal course of performing its duties. Findings can be any one or the combination of the following: (1) significant deficiencies in internal controls; (2) fraud and illegal acts; (3) violations of contracts and grant agreements; (4) abuse.

Finding #1 – Failure to follow the Fair Labor Standards Act regarding overtime.

Condition: During the three (3) year audit period, at least five (5) employees have worked in excess of the maximum straight-time hours for their 14-day work period and were not paid their overtime rate for those excess hours. Total unpaid overtime for the three (3) year audit period amounted to \$67,980.47.

Criteria: Electronic Code of Federal Regulations § 553.230, Application of the Fair Labor Standards Act to employees of state and local governments; Subpart C – Fire Protection and Law Enforcement Employees of Public Agencies³ states:

(a) For those employees engaged in fire protection activities who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceeds the number of hours which bears the same relationship to 212 as the number of days in the work period bears to 28.

In a 14-day work period, overtime pay would be required for hours worked in excess of 106.

Cause: Management of the HWMVFC was unaware of this.

Exposure: According to the DOL Fact Sheet 44, “The FLSA gives the Department of Labor (“Department”) the authority to recover back wages and liquidated damages (to be paid to employees), and to assess civil money penalties (to be paid to the government), in instances of minimum wage, overtime, and other violations.”

Unpaid overtime for the audit period totaled \$67,980.47.²

Recommendation: Strictly adhere to all applicable sections of the FLSA and all related federal rules.

³ While employees of the HWMVFC are not public employees, they are still covered because they work in a position which is normally a government function (firefighting).

Finding #2 – Preventive controls over all employees’ time cards not in place.

- Condition:** The administrator works part-time, irregular hours for the HWMVFC. His time card is kept in his office while other employees’ time cards are kept in a binder in the day room. For the firefighting staff, the Chief checks their time cards against the work schedule. The administrator’s time card is approved by the treasurer who is not in a position to verify when the administrator was at work.
- Criteria:** Adequate internal controls over payroll expenses, such as the review and approval of employee timecards, are standard for governmental organizations.
- Cause:** The HWMVFC did not monitor all employees’ time cards.
- Exposure:** The HWMVFC uses taxpayers’ money to meet its payroll obligation. There is a risk that payroll irregularities could occur.
- Recommendation:** Because the administrator works part-time, irregular hours at the HWMVFC, the following is recommended:
1. Whenever possible, the current shift supervisor should initial the starting and ending work times on the administrator’s time card.
 2. If work is done away from the fire station, there should be a written explanation of the work as well as the times started and finished.
 3. Continue to require a board member approve the completed time card in writing.

DOL Fact Sheet #8



Fact Sheet #8: Law Enforcement and Fire Protection Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the [FLSA](#) to law enforcement and fire protection personnel of State and local governments.

Characteristics

Fire protection personnel include firefighters, paramedics, emergency medical technicians, rescue workers, ambulance personnel, or hazardous materials workers who:

1. are trained in fire suppression;
2. have the legal authority and responsibility to engage in fire suppression;
3. are employed by a fire department of a municipality, county, fire district, or State; and
4. are engaged in the prevention, control and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

There is no limit on the amount of nonexempt work that an employee employed in fire protection activities may perform. So long as the employee meets the criteria above, he or she is an employee “employed in fire protection activities” as defined in section 3(y) of the FLSA.

Law enforcement personnel are employees who are empowered by State or local ordinance to enforce laws designed to maintain peace and order, protect life and property, and to prevent and detect crimes; who have the power to arrest; and who have undergone training in law enforcement.

Employees engaged in law enforcement activities may perform some nonexempt work which is not performed as an incident to or in conjunction with their law enforcement activities. However, a person who spends more than 20 percent of the workweek or applicable work period in nonexempt activities is not considered to be an employee engaged in law enforcement activities under the FLSA.

Coverage

Section 3(s)(1)(C) of the FLSA covers all public agency employees of a State, a political subdivision of a State, or an interstate government agency.

Requirements

[Hours of work](#) generally include all of the time an employee is on duty at the employer’s establishment or at a prescribed work place, as well as all other time during which the employee is suffered or permitted to work for the employer. Under certain specified conditions time spent in sleeping and eating may be excluded from compensable time.

The FLSA requires that all covered nonexempt employees be paid the statutory [minimum wage](#) of not less than \$7.25 per hour effective July 24, 2009.

The FLSA requires that all covered nonexempt employees be paid overtime pay at no less than time and one-half their regular rates of pay for all hours worked in excess of 40 in a workweek.

Section 13(b)(20) of the FLSA provides an overtime exemption to law enforcement or fire protection employees of a public agency that employs less than five employees during the workweek in law enforcement or fire protection activities.

Section 7(k) of the FLSA provides that employees engaged in fire protection or law enforcement may be paid overtime on a "work period" basis. A "work period" may be from 7 consecutive days to 28 consecutive days in length. For work periods of at least 7 but less than 28 days, overtime pay is required when the number of hours worked exceeds the number of hours that bears the same relationship to 212 (fire) or 171 (police) as the number of days in the work period bears to 28. For example, fire protection personnel are due overtime under such a plan after 106 hours worked during a 14-day work period, while law enforcement personnel must receive overtime after 86 hours worked during a 14-day work period.

Under certain prescribed conditions, a State or local government agency may give compensatory time, at a rate of not less than one and one-half hours for each overtime hour worked, in lieu of cash overtime compensation. Employees engaged in police and fire protection work may accrue up to 480 hours of compensatory time.

An employee must be permitted to use compensatory time on the date requested unless doing so would "unduly disrupt" the operations of the agency.

At the time of termination an employee must be paid the higher of (1) his or her final regular rate of pay or (2) the average regular rate during his or her last three years of employment for any compensatory time remaining "on the books" when termination occurs. For more information on state and local governments under the FLSA, see Fact Sheet #7.

No covered employer may employ any minor in violation of the youth employment provisions of the FLSA. The Act establishes specific provisions concerning prohibited occupations and/or hours of employment of minors under age 18.

Covered employers must make, keep and preserve payroll-related records as described by regulations 29 CFR Part 516.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

DOL Fact Sheet #44



Fact Sheet #44: Visits to Employers

This Fact Sheet provides general information about the laws enforced by the Wage and Hour Division (WHD).

Purpose of Visit

WHD is responsible for administering and enforcing a number of federal laws which set basic labor standards, among them:

- [The Fair Labor Standards Act](#)
- [The Family and Medical Leave Act](#)
- [The Migrant and Seasonal Agricultural Worker Protection Act](#)
- [The field sanitation standards of the Occupational Safety and Health Act](#)
- [The Employee Polygraph Protection Act](#)
- [Certain employment standards and worker protections under the Immigration and Nationality Act](#)
- [Government contracts prevailing wage statutes such as the Davis-Bacon and related Acts and the McNamara-O'Hara Service Contract Act](#)
- [Garnishment provisions of the Consumer Credit Protection Act](#)

An investigator from WHD may conduct an investigation to determine whether these laws apply to an employer. If the employer is subject to these laws, the investigator will verify that workers are paid and employed properly according to the laws administered, and that youths under age 18 are employed as provided by the child labor provisions. The WHD does not require an investigator to previously announce the scheduling of an investigation, although in many instances the investigator will advise an employer prior to opening the investigation. The investigator has sufficient latitude to initiate unannounced investigations in many cases in order to directly observe normal business operations and develop factual information quickly.

An investigator may also visit an employer to provide information about the application of, and compliance with, the labor laws administered by WHD.

Why is an employer selected for an investigation?

The WHD conducts investigations for a number of reasons, all having to do with enforcement of the laws and assuring an employer's compliance. WHD does not typically disclose the reason for an investigation. Many are initiated by complaints. **All complaints are confidential; the name of the worker and the nature of the complaint are not disclosable; whether a complaint exists may not be disclosed.**

In addition to complaints, WHD selects certain types of businesses or industries for investigation. The WHD targets low-wage industries, for example, because of high rates of violations or egregious violations, the employment of vulnerable workers, or rapid changes in an industry such as growth or decline. Occasionally, a number of businesses in a specific geographic area will be examined. The objective of targeted investigations is to improve compliance with the laws in those businesses, industries, or localities. Regardless of the particular reason that prompted the investigation, all investigations are conducted in accordance with established policies and procedures.

Investigation Procedures

Investigations may be conducted under any one or more of the laws enforced by WHD. Most employers are subject to the Fair Labor Standards Act (FLSA), which is the primary federal law of most general application requiring payment of the [minimum wage](#) and [overtime premium pay](#), keeping certain basic payroll and employment records, and limiting the working hours and types of jobs for certain underage youths. The procedures described below for FLSA investigations are generally applicable to WHD investigations under other laws.

Section 11(a) of the FLSA authorizes representatives of the Department of Labor to investigate and gather data concerning wages, hours, and other employment practices; enter and inspect an employer's premises and records; and question employees to determine whether any person has violated any provision of the FLSA.

The WHD investigator will identify himself/herself and present official credentials. The investigator will explain the investigation process and the types of records required during the review.

An investigation consists of the following steps:

- Examination of records to determine which laws or exemptions apply. These records include, for example, those showing the employer's annual dollar volume of business transactions, involvement in interstate commerce, and work on government contracts. **Information from an employer's records will not be revealed to unauthorized persons.**
- Examination of payroll and time records, and taking notes or making transcriptions or photocopies essential to the investigation.
- Interviews with certain employees in private. The purpose of these interviews is to verify the employer's payroll and time records, to identify workers' particular duties in sufficient detail to decide which exemptions apply, if any, and to confirm that minors are legally employed. Interviews are normally conducted on the employer's premises. In some instances, present and former employees may be interviewed at their homes or by mail or telephone.
- When all the fact-finding steps have been completed, the investigator will ask to meet with the employer and/or a representative of the firm who has authority to reach decisions and commit the employer to corrective actions if violations have occurred. The employer will be told whether violations have occurred and, if so, what they are and how to correct them. If back wages are owed to employees because of [minimum wage](#) or [overtime](#) violations, the investigator will request payment of back wages and may ask the employer to compute the amounts due.

Employers may be represented by their accountants or attorneys at any point during this process. When the investigator has advised the employer of his/her findings, the employer or representative may present additional facts for consideration if violations were disclosed.

What enforcement *remedies* are available under the laws administered?

The FLSA gives the Department of Labor ("Department") the authority to recover back wages and liquidated damages (to be paid to employees), and to assess civil money penalties (to be paid to the government), in instances of minimum wage, overtime, and other violations.

What enforcement *procedures* are provided under the laws administered?

The Department makes every effort to resolve most compliance issues administratively. If appropriate, the Department may litigate and/or recommend criminal prosecution.

Administrative procedures:

- The Department is authorized to supervise the payment of unpaid minimum wages and/or unpaid overtime compensation owed to any employee(s).
- In lieu of litigation, the Department may seek back wages, liquidated damages, and civil money penalties, if applicable, through settlements with employers.

- Civil money penalties may be assessed for child labor violations and for repeat and/or willful violations of FLSA minimum wage or overtime requirements.

Litigation procedures:

- The Department may file a lawsuit in U.S. District Court on behalf of employees for back wages and an equal amount in liquidated damages.
- The Department may seek a U.S. District Court injunction to restrain violations of the law, including the unlawful withholding of proper minimum wage and overtime pay, failure to keep proper records, and retaliation against employees who file complaints and/or cooperate with the Department.
- The Department may seek an order for payment of civil money penalties from a U.S. Department of Labor Administrative Law Judge where appropriate.
- An employee may file a private suit to recover back wages, an equal amount in liquidated damages, plus attorney's fees and court costs. In such a case, the Department will not seek the same back wages and liquidated damages on that employee's behalf.
- The FLSA provides that DOL may seek a U.S. District Court order to prevent the shipment of the affected goods.

Criminal prosecution:

- Employers who have willfully violated the law may be subject to criminal penalties, including fines and imprisonment.

Retaliation is prohibited

Employees who have filed complaints or provided information cannot be discriminated against or discharged on account of such activity. If adverse action is taken against an employee for engaging in protected activity, the affected employee or the Secretary of Labor may file suit for relief, including reinstatement to his/her job, payment of lost wages, and damages.

Other laws administered by WHD

Many of the above provisions are found in other laws administered by WHD. For example, the Migrant and Seasonal Agricultural Worker Protection Act also provides for the assessment of back wages, civil money penalties, criminal sanctions, fines and imprisonment.

In the case of the government contracts statutes, contract funds may be withheld for violations under the Walsh-Healey Public Contracts Act, McNamara-O'Hara Service Contract Act, Davis-Bacon and Related Acts, and Contract Work Hours and Safety Standards Act. Administrative hearings or, in some cases, court action may be initiated to recover back pay under these laws. In addition, liquidated damages may be assessed for certain violations. Violators of these laws may also lose their Federal contracts and be declared ineligible for future contracts for a specified period.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website:

<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

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Frances Perkins Building
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Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

Code of Federal
Regulations §553.230,
Section 7(k)



Wage and Hour Division, Labor

§ 553.230

up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government (*e.g.*, where a State or county law imposes a training obligation on city employees), does not constitute compensable hours of work.

(3) Time spent in the training described in paragraphs (b) (1) or (2) of this section is not compensable, even if all or part of the costs of the training is borne by the employer.

(c) Police officers or firefighters, who are in attendance at a police or fire academy or other training facility, are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use such time for personal pursuits. Such free time is not compensable.

§ 553.227 Outside employment.

(a) Section 7(p)(1) makes special provision for fire protection and law enforcement employees of public agencies who, at their own option, perform special duty work in fire protection, law enforcement or related activities for a separate and independent employer (public or private) during their off-duty hours. The hours of work for the separate and independent employer are not combined with the hours worked for the primary public agency employer for purposes of overtime compensation.

(b) Section 7(p)(1) applies to such outside employment provided (1) The special detail work is performed solely at the employee's option, and (2) the two employers are in fact separate and independent.

(c) Whether two employers are, in fact, separate and independent can only be determined on a case-by-case basis.

(d) The primary employer may facilitate the employment or affect the conditions of employment of such employees. For example, a police department may maintain a roster of officers who wish to perform such work. The department may also select the officers for special details from a list of those wishing to participate, negotiate their pay, and retain a fee for administrative expenses. The department may require that the separate and independent employer pay the fee for such services directly to the department, and establish

procedures for the officers to receive their pay for the special details through the agency's payroll system. Finally, the department may require that the officers observe their normal standards of conduct during such details and take disciplinary action against those who fail to do so.

(e) Section 7(p)(1) applies to special details even where a State law or local ordinance requires that such work be performed and that only law enforcement or fire protection employees of a public agency in the same jurisdiction perform the work. For example, a city ordinance may require the presence of city police officers at a convention center during concerts or sports events. If the officers perform such work at their own option, the hours of work need not be combined with the hours of work for their primary employer in computing overtime compensation.

(f) The principles in paragraphs (d) and (e) of this section with respect to special details of public agency fire protection and law enforcement employees under section 7(p)(1) are exceptions to the usual rules on joint employment set forth in part 791 of this title.

(g) Where an employee is directed by the public agency to perform work for a second employer, section 7(p)(1) does not apply. Thus, assignments of police officers outside of their normal work hours to perform crowd control at a parade, where the assignments are not solely at the option of the officers, would not qualify as special details subject to this exception. This would be true even if the parade organizers reimburse the public agency for providing such services.

(h) Section 7(p)(1) does not prevent a public agency from prohibiting or restricting outside employment by its employees.

OVERTIME COMPENSATION RULES

§ 553.230 Maximum hours standards for work periods of 7 to 28 days—section 7(k).

(a) For those employees engaged in fire protection activities who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k)

§ 553.231

until the number of hours worked exceeds the number of hours which bears the same relationship to 212 as the number of days in the work period bears to 28.

(b) For those employees engaged in law enforcement activities (including security personnel in correctional institutions) who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceeds the number of hours which bears the same relationship to 171 as the number of days in the work period bears to 28.

(c) The ratio of 212 hours to 28 days for employees engaged in fire protection activities is 7.57 hours per day (rounded) and the ratio of 171 hours to 28 days for employees engaged in law enforcement activities is 6.11 hours per day (rounded). Accordingly, overtime compensation (in premium pay or compensatory time) is required for all hours worked in excess of the following maximum hours standards (rounded to the nearest whole hour):

Work period (days)	Maximum hours standards	
	Fire protection	Law enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

§ 553.231 Compensatory time off.

(a) Law enforcement and fire protection employees who are subject to the section 7(k) exemption may receive compensatory time off in lieu of overtime pay for hours worked in excess of the maximum for their work period as set forth in § 553.230. The rules for com-

pensatory time off are set forth in §§ 553.20 through 553.28 of this part.

(b) Section 7(k) permits public agencies to balance the hours of work over an entire work period for law enforcement and fire protection employees. For example, if a firefighter's work period is 28 consecutive days, and he or she works 80 hours in each of the first two weeks, but only 52 hours in the third week, and does not work in the fourth week, no overtime compensation (in cash wages or compensatory time) would be required since the total hours worked do not exceed 212 for the work period. If the same firefighter had a work period of only 14 days, overtime compensation or compensatory time off would be due for 54 hours (160 minus 106 hours) in the first 14 day work period.

§ 553.232 Overtime pay requirements.

If a public agency pays employees subject to section 7(k) for overtime hours worked in cash wages rather than compensatory time off, such wages must be paid at one and one-half times the employees' regular rates of pay. In addition, employees who have accrued the maximum 480 hours of compensatory time must be paid cash wages of time and one-half their regular rates of pay for overtime hours in excess of the maximum for the work period set forth in § 553.230.

§ 553.233 "Regular rate" defined.

The rules for computing an employee's "regular rate", for purposes of the Act's overtime pay requirements, are set forth in part 778 of this title. These rules are applicable to employees for whom the section 7(k) exemption is claimed when overtime compensation is provided in cash wages. However, wherever the word "workweek" is used in part 778, the words "work period" should be substituted.

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

Subpart A—General

- Sec.
- 570 1 Definitions.
- 570 2 Minimum age standards.

Fair Labor Standards Act
§ 203(s)



Sec. 203(s)

(s)

(1) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that—

(A)

(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated);

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) is an activity of a public agency.

(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

(t) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips.

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

(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—