

FLSA - 1186

March 9, 1988

This is in response to your request for an opinion concerning the application of the Fair Labor Standards Act (FLSA) to jailer/dispatchers employed by the City of *** who also volunteer to work as reserve police officers.

The FLSA is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the minimum wage of \$3.35 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek. The provisions of FLSA apply to all employees of State and local governments except to those who are specifically excluded in section 3(e)(2)(C) of FLSA and to those who may qualify for exemption from the minimum wage and/or overtime pay requirements of FLSA.

On January 16, 1987, the Department of Labor published final regulations, 29 CFR Part 553, which implement the Fair Labor Standards Amendments of 1985. These regulations contain rules concerning statutory exclusions and exemptions, recordkeeping requirements, and compensatory time provisions which apply to State and local government workers in general, in addition to specific rules for volunteers and for fire protection and law enforcement employees. A copy of the regulations is enclosed for your information.

In your letter, you outlined three hypothetical situations and asked how the employee should be paid in each instance. Each situation involved an employee who worked 40 hours during the week as a jailer/dispatcher and 16 hours as a "volunteer" reserve police officer.

As a volunteer reserve police officer the individual receives a monthly uniform allowance, plus he is paid on an hourly rate for certain enforcement details such as court appearances and security at high school functions.

Section 3(e)(4) of FLSA excludes from the definition of the term "employee" any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate government agency if (i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and (ii) such services are not the same type of services which the individual is employed to perform for such public agency.

Since the individual in question receives compensation for some of the hours he spends as a reserve police officer, he is not excluded from the definition of "employee" under section 3(e)(4). Since he is employed as a reserve police officer, he cannot work as an unpaid volunteer to perform that type of service.

The employee should be paid for all hours worked as a reserve police officer at his regular rate for that job, apparently the rate for police officer, step A. Since he is paid two different rates during the week, he should be paid overtime premium based on the average rate of pay for the week.

Here is an example of computing overtime premium on the average rate:

Jailer/Dispatcher:

40 hours x \$8.816 = \$352.64

Reserve Police Officer:

16 hours x \$11.210 = \$179.36

Total straight time pay = \$532.00

\$532.00 divided by 56 hours = \$ 9.50 average rate

\$9.50 divided by 2 = \$ 4.75 overtime premium

\$4.75 x 16 overtime hours = \$ 76.00 overtime premium

In question number 3, you asked what rate the individual who is working a shift as a reserve police officer should be paid for the 15 minutes he fills in for the dispatcher while the dispatcher is on break. Since a different straight time rate of pay (of not less than the applicable minimum wage) has been established for the dispatcher position, you may pay the dispatcher rate for the time in question, or continue the higher rate of the police officer position.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator