



WHD-OL-1992-0008

December 16, 1992

NAME*

This is in response to your inquiry concerning the application of §213 (a) (1) of the Fair Labor Standards Act (FLSA) to certain “administrative” employees of a fire district, which is a local government unit.

You state that the employer allows administrative employees to respond to fire alarms during their off-duty time (we assume this means that they serve as firefighters when responding to alarms). The district has a policy of awarding compensatory time off to such employees for responding to fire alarms but does not allow compensatory time off for any other additional time worked. You indicate that the compensation paid to these employees is not subject to any deductions for any reason. You ask whether the exempt status of these administrative employees may be jeopardized because of this compensatory time off policy. In other words, would this policy adversely affect the salary basis of payment requirement for exemption described in §541.118 of 29 CFR Part 541.

For purposes of our response, we assume that the “administrative” employees you have in mind would otherwise meet the duties and responsibilities tests under §541.2 of the regulations, and that responding to fire calls would not adversely affect the “primary” duty test. See §541.206 of the regulations.

In our view, the furnishing of compensatory time off under the circumstances you describe would not affect the salary basis of payment requirement for the administrative exemption stated in §§541.2(e) and 541.118 of the regulations. However, engagement in the performance of substantial amounts of nonexempt firefighting activities could affect the application of the administrative exemption to the employees at issue.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit 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 different conclusion than the one expressed herein. You have also represented that this opinion is not sought on behalf of a client or firm that is under investigation by the Wage and Hour Division, or that is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with, the provisions of the FLSA.

We trust that the above is responsive to your inquiry,

Sincerely,

Karen R. Keesling
Acting Administrator

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