



WHD-OL-1993-0015

February 26, 1993

Name*

This is in response to your inquiry concerning the application of §207(k) of the Fair Labor Standards Act (FLSA) to arson investigators employed by the _____ Fire Department.

You state that arson investigators are experienced firefighters trained in fire suppression who have been classified and assigned to the arson investigator positions in the Fire Department. Arson investigators have also been trained as peace officers and they perform law enforcement duties such as conducting investigations into the cause of fires; interviewing and interrogating witnesses and suspects; obtaining criminal complaints and warrants; arresting and detaining suspects; assisting prosecutors and testifying in the courts; and similar law enforcement activities.

Arson investigators respond to all major fire incidents of undetermined origin. They begin investigations before the fires are totally extinguished by using their firefighting knowledge and experience in evaluating and determining whether the causes were accidental or the result of arson.

As used in §207(k), any employee employed in fire protection activities "refers to any employee who is employed in an organized fire department. . . . who performs activities which are required for, and directly concerned with the prevention, control or extinguishment of fires. . . ." See §553.210(a) of 29 CFR Part 553. Based upon the information you have provided, we conclude that arson investigators do not perform activities that are directly concerned with the prevention, control, or extinguishment of fires. "[T]hey look for signs of arson at fires, follow up leads, compile evidence, and assist in the arrest and prosecution of suspected arsonists." Carlson v. City of Minneapolis, 925 F.2d at 265 (8th Cir. 1991).

Consequently, arson investigators do not qualify as fire protection employees under the provisions of 7(k) of FLSA. The authority and training of the City of _____ arson investigators, as described in the documents provided, appear to satisfy the three requirements for employees engaged in law enforcement activities contained in 29 C.F.R. §553.211(a). The fact that the Fire Department, and not the Police Department, is the employer of the arson investigators does not require a different result; the regulation at 29 C.F.R. §553.211(c) does not limit the category of agency by which an employee engaged in law enforcement activities may be employed.

We trust that the above is responsive to your inquiry.

Sincerely,

Acting Administrator

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