

**FLSA-435**

May 14, 1993

This is in response to the joint inquiry submitted by you and \*\*\* Representative, United Firefighters Union of \*\*\*. The issue of concern is whether time spent by firefighters in hazardous materials handling training is compensable under the Fair Labor Standards Act (FLSA).

You state that the city and the union jointly agreed to establish a Hazardous Materials Handling (Haz-Mat) Team. \*\*\* State law does not require a fire department to have a Haz-Mat Team, but does require that firefighters possess a Hazardous Materials Specialist Certificate if the fire department has such a team.

The Haz-Mat Team is composed of firefighters who have volunteered for the assignment and who are in training for, or have completed, the training required by the state. Training for the state-required certificate is only available outside of the city and outside a firefighter's regularly scheduled work hours.

As indicated in §553.226(b)(2) of 29 CFR Part 553, attendance outside of regular working hours at specialized training or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government, does not constitute compensable hours of work. Since \*\*\* law imposes the training requirement in question, the Haz-Mat training time is not compensable under the FLSA.

We have also considered the Haz-Mat training under the general rules set forth in 29 CFR 785.27 through 785.32. Attendance at training programs is not compensable if all four conditions described in 29 CFR 785.27 are met. Under the facts described in your letter, clearly (a) and (d) are met. Further, the program is voluntary in nature and there is nothing in your joint submission which indicates that a firefighter's failure to participate would adversely affect his present working conditions or the continuance of his or her employment by the city. Thus, we conclude that condition (b) is met. See 29 CFR 785.28.

Since the purpose of the training is development of another skill, we conclude that condition (c) is also met. See 29 CFR 785.29. Thus, under the general rules, the Haz-Mat training is not compensable under the FLSA.

We trust that the above is responsive to your inquiry.

Sincerely,

Daniel F. Sweeney  
Deputy Assistant Administrator