

## FLSA-92

February 13, 1995

This is in response to your inquiry on behalf of Mayor \*\*\* of \*\*\*. Mayor \*\*\* is concerned about the application of §7(k), 29 U.S.C. 207(k), of the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 et seq., to firefighters who are cross-trained as emergency medical service (EMS) employees.

Section 7(k) of the FLSA provides a partial overtime exemption for fire protection and law enforcement personnel (including security personnel in correctional institutions) who are employed by public agencies on a work period basis. 29 CFR §553.201. The term "any employee .... in fire protection activities" refers to any employee (1) who is employed by an organized fire department or fire protection district; (2) who has been trained to the extent required by state statute or local ordinance; (3) who has the legal authority and responsibility to engaged in the prevention, control or extinguishment of a fire or any type; and (4) who performs activities which are required for, and directly concerned with, the prevention, control or extinguishment of fires, including such incidental nonfirefighting functions as housekeeping, equipment maintenance, etc. The term also includes rescue and ambulance personnel that form an integral part of the public agency's fire protection activities. 29 CFR §553.210(a) and .215.

We have concluded that firefighters who are cross-trained as EMS employees qualify for exemption under §7(k) as fire protection employees where they are principally engaged as firefighters meeting the four tests outlined in 29 CFR §553.210(a), as set forth above, and where the EMS functions they perform meet the tests described in 29 CFR §553.215 for ambulance and rescue employees. Under these circumstances, we would consider that ambulance and rescue activities are incidental to the employees' fire protection duties within the meaning of the fourth test in 29 CFR §553.210(a), including any ambulance and rescue activities related to medical emergencies, rather than fires, crime scenes, riots, natural disasters, and accidents.

In these circumstances, the time engaged in ambulance and rescue activities would be considered to be work performed as in incident to or in conjunction with the employees' fire protection activities within the meaning of 29 CFR §553.212(a), and would not count in the 20 percent limitation on nonexempt work.

Nevertheless, as the City's Labor counsel advised, caution may be in order. The statutory language of §7(k) does not clearly indicate that it applies to EMS employees or activities. The applicable regulations were promulgated based upon the legislative history of the 1974 FLSA Amendments (See Congressional Record-House, March 28, 1974, Conference Report on S.2747, pages 2380-81).

If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,

Daniel F. Sweeney  
Deputy Assistant Administrator