

FLSA-1306

April 19, 1995

This is in response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to certain employees of the City of *** that volunteer as firefighters, but who are employed in other capacities by the City. We regret the delay in responding to your inquiry.

You state that the City employs two individuals in its public works department and one employee in its public safety department (in duties not related to fire fighting) who, in addition to their regular duties, volunteer as firefighters during their normal working hours and while off-duty from their regular jobs. The City relies on such volunteers to supplement its one firefighter stationed in the fire station, and the police/firefighter (cross trained) employees whom it specifically employs for public safety purposes. The City proposes to give the volunteer firefighters paid administrative leave from their regular jobs when called out to fire fighting duties during their normal working hours. You ask if this practice would jeopardize their status as volunteers with respect to off-duty firefighting.

We have long taken the position that time spent by employees in work for public or charitable purposes requested, directed or controlled by their employer during normal working hours (on-duty time) is compensable under the FLSA. Thus, where the employees in question perform fire fighting during their normal working hours for the City on their regular jobs, they must be compensated (and will be under the proposal) for such time in accordance with the FLSA. See 29 CFR section 785.44.

On the other hand, time spent voluntarily in fire fighting activities by such employees outside of their normal working hours is not considered to be hours worked for FLSA purposes. Id. Thus, the fact that they will be compensated (based on their normal pay for their regular jobs) for fire fighting while on-duty will not effect their status as volunteers with respect to off-duty firefighting.

We trust that the above is responsive to your inquiry.

Sincerely,

Maria Echaveste
Administrator