

MISCELLANEOUS

Rick Daniels

From: Chamberlin, John <jchamberlin@sbcfire.org>
Sent: Tuesday, September 08, 2015 12:51 PM
To: Rick Daniels
Subject: RE: Fire Service Questions/Concerns

Hi Rick,

Let's get these answered...

1) The expected life of a Type 1 fire engine is 10-15 years depending on wear and tear.... We usually try for an additional 5 years of reserve... So, 15 to 20 years IN TOTAL... Not additional.

2) You own the equipment. The engine was purchased on a CDBG grant. The City made a few payments... however, when Mr. Deveraux the County CEO came in, they switched off that model and purchased the equipment outright. The title was left with the City.

3) Automatic Aid agreement typically are a like for like resource, meaning the same type of staffing and training. We probably would end up with a more of a Mutual Aid arrangement. Your personnel would request our unit... Our Chief would be paged and if the unit was available, we would respond based on the type of incident and need.

4) You will assume all liability for Workers Comp. That is a question outside my boundaries.

5) Again, your area to answer... however, I can tell you that since they are not full time employees, they are not FLSA exempt, so anything over 40 hours is time and half. In addition, you have to factor in the the new Sick Leave provisions.

Hope this helps.

-----Original Message-----

From: Rick Daniels [<mailto:ndlscitymgr@citlink.net>]

Sent: Tue 9/8/2015 12:07 PM

To: Chamberlin, John

Subject: FW: Fire Service Questions/Concerns

Here's the questions from one of the Fire Services Task Force members. Any help that you can provide in answering them is greatly appreciated.

Rick Daniels, City Manager

817 Third Street

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760-326-2113, 313 Office

760-408-4350 Mobile

From: Michael Wright [<mailto:myxbronco@gmail.com>]

Sent: Saturday, September 05, 2015 9:37 AM

To: ndlscclerk@citlink.net

Subject: Fire Service Questions/Concerns

These are a few questions/concerns I have. I'm sure I will have more.

How was the estimate for the longevity of E31 estimated. I believe it might be optimistic to hope for 15 to 20 more years operation.

Can we confirm ownership of equipment specifically before we make any commitment to the city creating their own fire dept.?

Is it possible to consider an automatic aid agreement with SBCoFD to enhance service?

Will the increase of the cities Worker's Comp insurance rates be acceptable?

Do we need to consider the implication of FLSA labor law as it relates to a PCF program?

Cheryl Sallis

From: Chamberlin, John [jchamberlin@sbcfire.org]
Sent: Monday, September 14, 2015 5:11 PM
To: Rick Daniels; Cheryl Sallis
Cc: Mark Bennett; John O. Pinkney
Subject: RE: Needles Fire service questions

A couple more answers...

From: Rick Daniels [mailto:ndlscitymgr@citlink.net]
Sent: Friday, September 11, 2015 4:24 PM
To: Cheryl Sallis
Cc: Chamberlin, John; Mark Bennett; John O. Pinkney
Subject: FW: Needles Fire service questions

Cheryl,

I have answered to the best of my ability and sought answers from those that know more.

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From: Michael Wright [mailto:myxbronco@gmail.com]
Sent: Thursday, September 10, 2015 2:40 PM
To: ndlscity@citlink.net
Subject: Fire service questions

Is there an upfront, lump sum of revenue required by LAFCo to annex to the Fire Dist.? *[Rick Daniels]* Check with LAFCO. From our meetings with them, I don't recall a payment of any kind. The County Fire District would be the applicant and fund the service plan and financial analysis. The City would be a participant, but not the lead in the process. There would be a reallocation of a portion of the City's property tax base (\$870,000) to the District by the County Assessor and the city would receive less (\$575,000) than it gets today, but wouldn't pay the County for (\$612,000) fire services. Also, the City would receive a payment for the book value of its equipment assumed by the District or sold on the open market if they didn't want it.

(John Chamberlin) I believe the City requests that LAFCO annex its fire powers/responsibility into the County Fire Districts Sphere. In the other municipalities cases, the City or Water District is fronting the costs. However, there have been a significantly reduced fee structure put in place if the funding mechanism is not there to make it happen. Twentynine Palms original amount was around \$70,000 for the application and it was reduced to around \$25,000 with a formal written request to LAFCO.

The County Fire District would recommend a reasonable book value (if applicable) to the apparatus and negotiate accordingly. Many of the apparatus are nearing or surpassed their serviceable life expectancy.

How much control of fire services is the city really giving up if annexed into the fire district, compared to the current agreement?**[Rick Daniels]**
Immeasurable and getting less as the Legislature erodes local control with state mandates. Probably all that remains will be personnel selection, salary/benefits, and the color of the trucks.

(John Chamberlin) The entire Fire Powers and expectation for delivery is shifted to the County Fire District. We assume all liability, risk, assets and future replacement for the City of Needles service delivery to its constituents. Keep in mind the current financial structure is that the City of Needles only pays for the 3 Firefighter Paramedics on the engine, 1 per day (3 shifts). The Engineer and Captain are County Fire District and County General Fund paid. The actual cost to run the station is around \$2.1 million and we are looking for less than 33% of the total cost.

If the city created its own fire dept., is the city prepared to incur the cost of a large incident? Example: the brush fire near Jack Smith Park that

happened a few years ago required two strike teams of Type 3 engines from San Bernardino County Fire plus dozers. Approximate cost of that fire was \$80,000. Will the city have to pay cost recovery for those resources if we have our own fire department? **[Rick Daniels]** I am sending this question to Fire Chief Chamberlin. I don't know if there is cross billing between fire agencies in the event of a mutual aid response by others. If there is it would need to be generated and set aside as an emergency reserve.

(John Chamberlin) Technically speaking the City of Needles is responsible for those costs now. However, the County Fire District absorbs the difference in costs associated with the operations because it's contracted with us. We have been absorbing the costs associated for equipment repairs, etc... currently as a good neighbor policy. Obviously, this cannot continue if you separate.

In addition, we would have "mutual aid" with you on an as needed basis. There are no guarantees of who or what will be available at the time of request. In addition, we have a mission specific to our constituents should you choose to pair off.

Mutual Aid is on whomever is providing it. The intent would be for the receiving agency to provide at least logistical support (fuel, meals, foam, etc...) for the responding cooperator. So, yes there is potential costs associated with that. An invoice from other agencies could be generated on an as needed basis.

Is the city required to provide health insurance to employees who work in excess of 30 hours per week since the Affordable Healthcare Act was passed? **[Rick Daniels]** I have asked our Labor Attorney.

How is local control an issue with a fire department compared to our contract with the Sheriff's Dept.? **[Rick Daniels]** Essentially the same.

County Fire and the Sheriff set the service level and the cost and the City pays it. In 2014 the City did receive some payment relief, but at the cost of the volunteer program. As to the Sheriff, we were able to get some temporary relief through a different cost sharing formula on a supervisor. There is no input into the salaries/benefits, work rules, # of firefighters on a truck, whether EMTs or paramedics are involved, or what calls warrant a response.

(John Chamberlin) I continue to remain steadfast as does my staff, that a 5 person station to assist in covering the I-40 and 95 corridors, is necessary. That being said, there is obviously a huge funding gap and we need to outline the necessity via statistics for presentation. In the interim, we have developed a moveup plan (nothing close unfortunately) and worked out soft coverage with Mohave Valley Fire from their fire stations in the event we are not available.

Wouldn't the city gain access to more resources with no extra costs if annexed into the fire dist.?*[Rick Daniels]* The City would be out of the picture if the District took over fire service. The residents would likely expect no change in the service level. The City is paying \$612,000 for this year. Under the proposed Fire District annexation the cost to the City with a permanent shift of tax base would be \$575,000, so there is an immediate \$37,000 savings.

(John Chamberlin) The City of Needles would enjoy the same if not a more enhanced level of County Fire District assets if annexed into the district. Cost replacement, workman's' compensation insurance, liability insurances are just some of the things factored in.

We currently provide through LRA (Local Responsibility Area) the hand crews, bulldozers and county helicopter free of charge. Again, this could all shift to ABH (Assistance By Hire) for specialized resources if needed outside of an annexation process with us.

Cheryl Sallis

From: Rick Daniels [ndlscitymgr@citlink.net]
Sent: Thursday, September 10, 2015 4:50 PM
To: Mark Bennett
Cc: John O. Pinkney; Cheryl Sallis
Subject: Fire Services Personnel Benefits Requirements

The City is considering terminating its contract with San Bernardino County Fire Department and starting its own Fire Department. After reviewing a number of Fire Department budgets a full time firefighter cost approximately \$140,000- \$150,000 including benefits. Fire fighters work a 3 day/24 hour shift, take three days off then repeat. To staff a fire station it requires a rotation of 6 employees working the two shifts. Volunteers receive no salary, but require nearly the same training as a professional, full time fire fighter.

The City is considering a hybrid model which relies on Paid Call Firefighters (PCF). These are per diem employees who may be a professional firefighter at another agency or someone employed in a non-fire job and looking to pick up additional income, or someone looking for a part- time job. The work shift would be 24/3 and be stationed at the Fire company. The City has been told that such employees are available at \$10/hour with no benefits. Because this is not their permanent full time job we have also been advised that we will need a pool of 18-21 that could be assigned to the time slots.

The first question that I have is, "What benefits is the City required by state or federal law to provide to per diem employees whether they work less or more than half time on an annual basis?" For example is the City required to pay overtime for hours beyond 8/day and 40/week? Sick Leave? Is there a point where vacation leave or health benefits are required?

The second question is "Are per diem employees eligible to form or join a collective bargaining unit?"

Please research the matters and let me know.

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Rick Daniels

From: Mark Bennett <bennett@sbemp.com>
Sent: Tuesday, September 15, 2015 4:41 PM
To: 'Rick Daniels'
Cc: John O. Pinkney
Subject: Fire Department--Confidential
Attachments: ObamaCare & FLSA.pdf

Here are the benefits you may need to provide:

Paid Sick leave—you could use the same policy as you used for the non-MOU employees.

Health Insurance under ObamaCare—Attached is an article that discusses the definition of a full-time employee to whom health insurance must be offered.

CalPers—assume the employees are covered. Many of these workers will have coverage from another employer.

Vacation benefits are not mandatory.

Attached is a DOL publication that maps out the FLSA overtime rules for firefighters. There is flexibility there depending on the work period selected.

These employees may organize if they regularly work for the City.

Mark Bennett

From: stephen schultz <steve@mhbac.com>
Sent: Monday, September 14, 2015 9:47 AM
To: Mark Bennett
Subject: Who is a full-time employee under Obamacare and the Affordable Care Act? It's not as simple as you might think - The Business Journals

<http://www.bizjournals.com/>

Who is a full-time employee under the Affordable Care Act? It's not as simple as you might think



Many businesses have employees for whom it may be difficult to calculate hours of service or are uncertain how to treat certain categories of employees with regard to the Affordable Care Act (ACA).

Paying special attention to these complex employee classification rules can avoid potentially costly mistakes.

For the most part, many people understand the definition of a full-time vs. part-time employee. Under the Affordable Care Act (commonly called ~~Obamacare~~):

1. A full-time employee is reasonably expected to work, and the employee works an average of 30+ hours of service per week (130 hours of service per calendar month).
2. A part-time employee is reasonably expected to work and works an average of less than 30 hours of service per week.
3. Hours of service includes each hour an employee is paid or entitled to be paid for actual hours worked or paid leave (including vacation, holiday, illness, disability, layoff, jury duty, and military leave).

But what about other employee classifications? Here are a few categories to take note of:

Seasonal Employees

1. The typical length of employment for the position is 6 months or less.
2. The period of employment begins at about the same time each year.

Seasonal employees may not need to be treated as full-timers even if they will work 30+ hours of service per week during the season. Verification of hours and testing is needed, but once validated, employers are not required to offer health care coverage to seasonal workers.

Variable Hour Employees

If at hire, an employer cannot reasonably determine whether an employee is expected to work an average of 30+ hours of service per week, the employer may categorize that employee as a variable hour employee.

This determination may be based upon:

1. Whether the employee is replacing an employee who was or was not a full-time employee.
2. The extent to which employees in the same or comparable positions are or are not full-time employees.
3. Whether the job was advertised, communicated or documented (for example, through a contract or job description) as requiring the individual to work more or less than 30 hours of service per week.

Keep in mind that a variable hour employee who averages 30+ hours of service per week during the initial measurement period must be treated as a full-timer and offered healthcare coverage.

Special note for employees of temporary staffing agencies

A staffing agency may use the following criteria to help determine if a new employee is a variable hour employee:

1. Does the individual have the right to reject temporary placements?
2. Are there typically periods in which no placement offers are extended creating gaps in service, and
3. Do placements typically last less than 13 weeks of service?

Short-term and high-turnover positions (temporary employees)

The IRS has stated that it is not allowing any special treatment for employers with individuals who may be employed on a short-term assignment (generally 12 months or less) or for those employees in a position where termination of employment generally is expected after a short period of time (such as 6 months).

Although this is only a short list of potential employee classification issues under ACA, employers should carefully review the make-up of their workforce, develop a strategy to address any issues and prepare for the Shared Employer Responsibility reporting requirements.

Dorothy Miraglia, vice-president of Engage Insurance, contributed to this story.

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FLSA Requirements for Public Safety Employees

This topic provides an overview of FLSA requirements for public safety employees and discusses:

- Maximum nonovertime hours under 7K exemption (public safety).
- 28 day, 212-hour FLSA period example.
- 14 day, 86-hour FLSA period example.

Understanding FLSA Requirements for Public Safety Employees

The FLSA overtime requirements for public safety employees are different from those of other employees, because a specified number of work hours is needed within the FLSA work period before the FLSA rate can be applied to overtime pay. Their work periods vary from seven to 28 days, depending on the work period. Some police officers and fire protection employees have 28-day work periods; some have 14-day work periods. These employees usually receive pay biweekly and have 28-day FLSA pay periods. They can report overtime hours throughout the FLSA period, but FLSA overtime regulations are not invoked until the employee works more than the maximum FLSA hours for the period. After the employee works the maximum FLSA hours for the period, you must pay all overtime over the maximum using the FLSA regular rate.

You must pay overtime to fire protection employees for hours that exceed 212 in a 28-day period. You must pay overtime to law enforcement employees for hours that exceed 171 in a 28-day period. If the work period is fewer than 28 days, the hours are prorated. This enables you to balance work hours over an entire FLSA work period.

Maximum Nonovertime Hours Under 7K Exemption (Public Safety)

For those with work periods of seven to 28 days, the system calculates overtime hours that are reported after an employee's FLSA hours equal the number

shown in the following table, published by the Wage and Hour Division, U.S. Department of Labor:

Days in Work Period	Fire Protection	Law Enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

Example

A firefighter's work period is 28 consecutive days, and she works 80 hours in each of the first two weeks, 52 hours in week three, and none in week four. Her total work hours of 212 ($80 + 80 + 52 + 0$) which does not exceed 212 for the 28-day work period.

Therefore, no overtime pay is due.

If the same firefighter has a work period of 14 days, overtime pay is due for 54 hours (160 minus 106 hours, the amount in the table) for the weeks in which she works two consecutive 80 hour weeks.

Days in work period = 14. Overtime pay is due after 106 hours. Therefore, 54 hours of overtime pay is due.

Fact Sheet #8: Law Enforcement and Fire Protection Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to law enforcement and fire protection personnel of State and local governments.

Characteristics

Fire protection personnel include firefighters, paramedics, emergency medical technicians, rescue workers, ambulance personnel, or hazardous materials workers who:

1. are trained in fire suppression;
2. have the legal authority and responsibility to engage in fire suppression;
3. are employed by a fire department of a municipality, county, fire district, or State; and
4. are engaged in the prevention, control and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

There is no limit on the amount of nonexempt work that an employee employed in fire protection activities may perform. So long as the employee meets the criteria above, he or she is an employee "employed in fire protection activities" as defined in section 3(y) of the FLSA.

Law enforcement personnel are employees who are empowered by State or local ordinance to enforce laws designed to maintain peace and order, protect life and property, and to prevent and detect crimes; who have the power to arrest; and who have undergone training in law enforcement.

Employees engaged in law enforcement activities may perform some nonexempt work which is not performed as an incident to or in conjunction with their law enforcement activities. However, a person who spends more than 20 percent of the workweek or applicable work period in nonexempt activities is not considered to be an employee engaged in law enforcement activities under the FLSA.

Coverage

Section 3(s)(1)(C) of the FLSA covers all public agency employees of a State, a political subdivision of a State, or an interstate government agency.

Requirements

Hours of work generally include all of the time an employee is on duty at the employer's establishment or at a prescribed work place, as well as all other time during which the employee is suffered or permitted to work for the employer. Under certain specified conditions time spent in sleeping and eating may be excluded from compensable time.

The FLSA requires that all covered nonexempt employees be paid the statutory minimum wage of not less than \$7.25 per hour effective July 24, 2009.

The FLSA requires that all covered nonexempt employees be paid overtime pay at no less than time and one-half their regular rates of pay for all hours worked in excess of 40 in a workweek.

Section 13(b)(20) of the FLSA provides an overtime exemption to law enforcement or fire protection employees of a public agency that employs less than five employees during the workweek in law enforcement or fire protection activities.

Section 7(k) of the FLSA provides that employees engaged in fire protection or law enforcement may be paid overtime on a "work period" basis. A "work period" may be from 7 consecutive days to 28 consecutive days in length. For work periods of at least 7 but less than 28 days, overtime pay is required when the number of hours worked exceeds the number of hours that bears the same relationship to 212 (fire) or 171 (police) as the number of days in the work period bears to 28. For example, fire protection personnel are due overtime under such a plan after 106 hours worked during a 14-day work period, while law enforcement personnel must receive overtime after 86 hours worked during a 14-day work period.

Under certain prescribed conditions, a State or local government agency may give compensatory time, at a rate of not less than one and one-half hours for each overtime hour worked, in lieu of cash overtime compensation. Employees engaged in police and fire protection work may accrue up to 480 hours of compensatory time.

An employee must be permitted to use compensatory time on the date requested unless doing so would "unduly disrupt" the operations of the agency.

At the time of termination an employee must be paid the higher of (1) his or her final regular rate of pay or (2) the average regular rate during his or her last three years of employment for any compensatory time remaining "on the books" when termination occurs. For more information on state and local governments under the FLSA, see Fact Sheet #7.

No covered employer may employ any minor in violation of the youth employment provisions of the FLSA. The Act establishes specific provisions concerning prohibited occupations and/or hours of employment of minors under age 18.

Covered employers must make, keep and preserve payroll-related records as described by regulations 29 CFR Part 516.

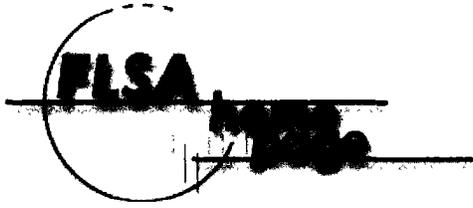
Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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While many of the "regular rules" of the FLSA apply to fire protection employees, there are some "special rules," as well. These include "special 7(k) work periods" which may increase the FLSA overtime thresholds, and some peculiar regulations governing "sleep time."

Special "7(k) Work Periods."

Public-sector (government) fire departments may establish special "7(k) work periods" for sworn firefighters, which can increase the FLSA overtime "thresholds" beyond the normal 40 hour week. Firefighters covered by these special work periods are entitled to FLSA overtime only for hours worked in excess of a threshold set by the Department of Labor on a chart. For example, in a 2 day work period, fire fighters would be entitled to FLSA overtime only for hours actually worked over 212 during that 28 day period (in essence, a 53 hour work week). "7(k)" refers to the section of the FLSA in which these special rules are contained, 29 USC §207(k). Most fire fighters who work "platoon schedules" will be classified by their employers as "7(k) eligible" and compensated accordingly.

The special work periods and overtime rules are available only for employees who meet the statutory definition of "employees in fire protection activities" which is contained at §203(y):

'Employee in fire protection activities' means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who

(1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State, and

(2) is engaged in the prevention, control, and extinguishment of fires or response to emergency medical situations where life, property, or the environment is at risk.

Thus, to qualify for §7(k) pay as a fire protection employee under this statutory definition, an employee must (a) work for a (government) fire department, (b) be trained in fire suppression, (c) have the legal authority to fight fires, (d) have the responsibility to fight fires, (e) and either actually engage in fire suppression work of the type defined or non-fire related emergency responses.

There is at least one court decision which has held that arson investigators employed at fire departments are not eligible for §7(k) pay as "employees in fire protection." Arson investigators may be eligible for § 7(k) pay as "employees in law enforcement activities," using the different thresholds permitted for these employees. (See, [FLSA and Police Officers.](#)) Some EMS

employees may be eligible for §7(k) pay as employees in fire protection activities, however some EMS workers may be "40 hour week" employees. (See, FLSA and Paramedics.)

Private fire protection employers are not permitted to use the special §7(k) work periods, and employees of private fire companies must be paid FLSA overtime for all hours worked over 40 per week. A private fire company means a fire protection unit of private industry. A public sector fire company means that the employer is the government. Employees of "volunteer" fire departments probably count as public sector employees.

Hours Worked.

For FLSA purposes, "hours worked" means time when the employee is actually performing services for the employer. These are the only hours which must be included when determining FLSA overtime is due. Thus, for example, "Kelly days" or other paid leave days do not count as hours worked for FLSA purposes. "Sleep time" and meal breaks may or may not count as FLSA hours worked, see below. FLSA overtime is due only when and to the extent that FLSA hours worked exceed the applicable FLSA overtime threshold -- 40 hours per week or whatever the applicable "chart" hours are for a 7(k) work period. So long as employees receive at least minimum wage for FLSA hours worked under the FLSA overtime threshold, there is generally no federal violation. "FLSA overtime" may therefore be different from "contract overtime."

FLSA hours worked include not only "on the clock" hours worked, but also "off the clock" hours worked, so long as the employer "knows or has reason to believe" that the employee is performing this "extra" work and permits it to happen. The following may constitute compensable FLSA hours worked when performed during off the clock time: Care and maintenance of work equipment (e.g., arson dogs, trucks and engines, hoses, uniforms), work performed before or after regular shifts, job-related paperwork performed at home, job-related telephone calls from home, (most) training time.

Overtime Rate.

An employee's FLSA overtime rate should be calculated to include not only "base pay" but also various "wage augments" such as "longevity pay" and "shift differentials." These must be included only for calculating the employee's FLSA overtime rate, and need not be included for any other pay purposes.

Sleep Time.

The FLSA permits employers to exclude up to 8 hours from work time when shifts are exactly 7 consecutive hours (private sector) or more than 24 hours (public sector), as "sleep time." To permit a sleep time exclusion requires that there be an "agreement" with the employees. An employee who takes a job which has a sleep time exclusion in place will be deemed to have "agreed" to it. There must also be adequate sleeping facilities, and the employees must normally have the opportunity to obtain 5 hours of sleep. The 5 hours need not be consecutive, and if an employee does not have the opportunity to get at least 5 hours of sleep no sleep time exclusion is permitted. Any time during the sleep period when an employee is actually performing work must be counted as work time.

Meal Periods.

Unpaid meal periods may be excluded from FLSA hours worked, so long as the employee actually gets to take an "uninterrupted" meal break. Minor interruptions will be tolerated, but if an employee "works through lunch" the time must be included as FLSA hours worked. Merely being "on call" during a meal period is not sufficient to require meal breaks to be included as FLSA hours worked.

"On Call" or "Stand By" Time.

On call or stand by time need not generally be included as FLSA hours worked. An employer may require employees to "remain available" to be called into work without having to pay FLSA wages for that time. The only exception is if the employer places restrictions on the use of stand by or on call time which make it virtually impossible for the employee to use the time for any personal purposes. Such situations are very rare. "If you can watch TV when you are on call, you probably are not entitled to FLSA compensation for the time." Any work an employee does during on call or stand by status must be compensated appropriately.

Schedule Adjustments.

The FLSA permits employers to adjust schedules to avoid FLSA overtime, so long as the adjustments occur within a work period. Thus, a fire company may, consistent with the FLSA, require an employee "not to work" within a work period, for the purpose of avoiding the employee reaching the FLSA overtime threshold during that work period. However, an employer is not permitted to "average" FLSA hours worked from work period to work period. Stated another way, the FLSA is generally not concerned with an employee's actual schedule within a work period. The employer may, consistent with the FLSA, require an employee to work pretty much when he wishes. The FLSA generally governs only how an employee must be paid for FLSA overtime worked during a work period. The employee's FLSA hours worked "vest" at the end of the last day of the work period. At that point, the total FLSA hours worked (during that work period) are added, and any FLSA hours worked over the FLSA threshold must be compensated as overtime. Overtime owed for FLSA hours worked during one work period may not be offset by "hours not worked" during some other work period. Note that local law, employment contracts, or collective bargaining agreements may independently restrict an employer from requiring schedule adjustments, irrespective of the FLSA.

Compensatory Time.

Government employers are permitted to pay some FLSA overtime with "comp. time" in lieu of cash wages. To be permitted to pay FLSA overtime with comp. time instead of cash, there must be an "agreement" with the employees before the FLSA overtime work is performed. If the employees are represented by a union, this agreement must be collectively bargained. If not, it may be a "condition of employment" (at least for new hires) or contained in individual agreements. Comp. time in lieu of cash wages for FLSA overtime must be paid at the appropriate FLSA overtime rate -- time and one-half. Employees must be permitted to use their accrued FLSA comp. time pretty much when they want to (on reasonable notice), but an employer may require an employee to "burn" accrued FLSA comp. time. An employer may not prohibit an employee from using accrued FLSA comp. time unless the time off would create a real disruption in operations. A desire by the employer to avoid having to call in another employee for shift coverage are not sufficient reasons to deny comp. time requests, as that is a financial reason and not an operational hardship.

The FLSA comp. time rules apply only to "FLSA comp. time." This is "time" awarded in lieu of cash wages for hours worked which would be required to be treated and paid as overtime under the FLSA. Some employers grant comp. time to employees for other purposes or on other schedules. The FLSA comp. time rules do not apply to this kind of comp. time.

"Moonlighting" and "Dual Employment."

Employees may not "volunteer" to do similar work for the same employer without the time being counted as FLSA work time. Firefighters may not perform "additional" fire related activities for their employers without that time being included as hours worked for FLSA pay computation purposes. Also, employees who work "two jobs" for the same employer must aggregate their total hours worked for FLSA pay purposes. For example, a fire fighter who works 40 hours as a firefighter and an additional 20 hours as an animal control officer has a total of 60 FLSA hours worked. Employees are permitted to work "moonlighting" jobs -- for separate employers -- with the hours being aggregated. Employees may sometimes work for "joint employers," such as when they are assigned to a "task force." In such cases, each employer is equally liable to be sure FLSA wages are paid properly.

See, also, [Paramedics](#).

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