

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

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This is in reply to your letter of June 28, 1976, regarding the application of the Fair Labor Standards Act to Federal fire fighters.

As you know, employees engaged in fire protection or law enforcement activities (including security personnel in correctional institutions) who are entitled to the monetary benefits of the Act may be paid overtime compensation in accordance with section 7(a), which requires payment of time and one-half an employee's regular rate of pay for hours worked in excess of 40 in a workweek. Alternatively, they may be paid in accordance with section 7(k), which provides that such overtime compensation may be paid on a work period basis as explained in section 553.16 of 29 CFR Part 553, a copy of which you have.

Since payment of wages to Federal employees under Title 5 is a matter within the jurisdiction of the Civil Service Commission, it would not be appropriate for us to opine on the payment of overtime compensation to Federal fire fighters or on the administration of the Federal annual leave and sick pay provisions. In this connection, the Civil Service Commission is authorized under section 4(f) of the Act to administer the provisions of the Fair Labor Standards Act with respect to most Federal employees.

Under the Act, an employee paid on a salary basis must be paid overtime compensation in accordance with the agreement or understanding of the parties as to the number of hours of work which the salary is intended to compensate. Thus, if it is understood or agreed that the salary, for example, is payment for 40 hours per week, the regular rate on which overtime pay is computed is determined by dividing the salary by 40 hours. Of course, the regular rate may not be less than the applicable minimum wage rate. This is further explained in section 778.113 of 29 CFR Part 778.

On the other hand, where there is a clear understanding of the parties that the fixed salary is compensation for all hours worked in the workweek, whatever their number, few or many, the regular rate is determined by dividing the weekly salary by the number of hours worked in the workweek, and overtime pay is computed by multiplying one-half the regular rate by the number of hours in excess of 40. This method of overtime computation is further discussed in section 778.114 of Part 778.

Under the Act, overtime pay is due a covered employee when more than the statutory maximum hours have been worked in the workweek. Absences due to illness or vacation do not affect the computation of overtime pay since such hours are not hours worked.

If you have any further questions, we will be happy to meet with you at your convenience.

Sincerely,

Donald M. Essig

for
Ronald J. James
Administrator
Wage and Hour Division