



June 1, 2006

FLSA2006-20

Dear *Name\**,

This is in response to your letter requesting an opinion regarding whether dual-function firefighter/paramedics employed by a Fire Department qualify for the partial overtime exemption under section 7(k) of the Fair Labor Standards Act (FLSA) (copy enclosed). You submitted your request on behalf of the public sector agencies throughout the country that your entity represents, including cities and counties that operate integrated fire suppression and emergency response departments. Based on a review of the information provided, it is our opinion that the dual-function firefighter/paramedics described in your letter qualify for the partial overtime exemption.

In your example, you state that dual-function firefighter/paramedics are the only type of paramedic currently hired. There are no new single-function paramedic hires. Dual-function firefighter/paramedics are hired as firefighters and are required to complete the Fire Academy, a seventeen-week fire suppression training program. Firefighters chosen to become paramedics receive additional training in emergency medical services and paramedic certification. Dual-function firefighter/paramedics are fully trained in fire suppression skills, search and rescue operations, fire prevention, and public safety. They regularly receive fire suppression training and present fire prevention awareness programs. Dual-function firefighter/paramedics may be assigned to fire suppression or paramedic positions on rescue ambulances, and you indicate that in one-third of the stations they routinely rotate between these positions. Dual-function firefighter/paramedics assigned to rescue ambulances are issued breathing apparatus, "turnout" gear, and assigned personal protective equipment that they are required to carry in rescue ambulances at all times.

Dual-function firefighter/paramedics are dispatched to a variety of incidents at which they are expected to perform fire suppression services and medical services, as needed. Rescue ambulances are dispatched to all structure fires and reported smoke incidents, even if there is no express need for advanced life support medical services. To the extent that there are medical emergencies, dual-function firefighter/paramedics will provide emergency medical services. In other instances, the dual-function firefighter/paramedics must perform fire suppression activities when so directed by the Incident Commander. In fact, you state that under certain circumstances, a dual-function firefighter/paramedic may serve as an Incident Commander in charge of the fire scene until relieved by a Captain or Battalion Chief. They perform the same fire attack, ventilation, evacuation, and exposure protection as single-function firefighters and are routinely called upon to perform fire suppression tasks alongside single-function firefighters.

Section 7(k) of the FLSA provides a partial overtime pay exemption for employees employed by a public agency in fire protection or law enforcement activities. Under this provision, a public agency employer may establish a work period of 7 to 28 consecutive days for determining overtime compensation owed to individuals employed in fire protection or law enforcement activities. The maximum hour standard for fire protection personnel ranges from 53 hours worked in a 7-day period to 212 hours worked in a 28-day period. See 29 C.F.R. § 553.230(c) (copy enclosed).

On December 9, 1999, the FLSA was amended to add section 3(y) (copy enclosed), which clarifies the definition of "fire protection activities" for section 7(k) partial overtime exemption purposes.<sup>1</sup>

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<sup>1</sup> It is the Wage and Hour Division's view that section 3(y) supersedes the definition of employee engaged in fire protection activities contained in 29 C.F.R. § 553.210(a) and therefore renders analysis under that regulatory provision unnecessary in this case.



Section 3(y) states:

“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 situations where life, property, or the environment is at risk.

Based on your description of the facts, there is no question that the dual-function firefighter/paramedics described in your letter are trained in and have the legal authority to engage in fire suppression. Further, according to your letter, they are employed by a fire department of a municipality, county, fire district, or state. With respect to the issue whether the dual-function firefighters/paramedics have the responsibility to engage in fire suppression, it is apparent from the facts presented that the dual-function firefighter/paramedics clearly have a responsibility to engage in fire suppression.

Recent guidance provided by the U.S. Court of Appeals for the Ninth Circuit supports the conclusion that the dual-function firefighter/paramedics you describe have firefighting responsibilities. In *Cleveland v. City of Los Angeles*, 420 F.3d 981 (9th Cir. 2005), *cert. denied* 126 S. Ct. 1344 (2006), the Ninth Circuit stated that in order for dual-function firefighter/paramedics to have sufficient fire suppression responsibility under section 3(y), they must “have some real obligation or duty” to engage in fire suppression. *Id.* at 990. Unlike the dual-function firefighter/paramedics described in your letter, the dual-function firefighter/paramedics at issue in *Cleveland* did not, according to the Court, carry fire suppression breathing equipment in their paramedic ambulances, were not expected to wear fire protection gear at fire scenes, did not assist with any fire suppression, and were dispatched only to perform medical services. The court looked at six factors in determining that the dual-function firefighter/paramedics in *Cleveland* did not have “some real obligation or duty” to engage in fire suppression. Using these same factors, it is apparent that the dual-function firefighter/paramedics described in your letter have sufficient fire suppression responsibility under section 3(y): 1) they carry firefighting turnout gear and breathing apparatus; 2) dispatchers assume that at least one dual-function firefighter/paramedic is in each ambulance dispatched to a call; 3) paramedic ambulances are always dispatched to fire scenes, and personnel must notify the Incident Commander at the scene whether they are dual-function firefighter/paramedics or single-function paramedics; 4) dual-function firefighter/paramedics are always expected to wear fire protective gear at a fire suppression scene (including wearing the same color helmet as other firefighters so the Incident Commander can quickly assess the fire suppression resources available); 5) to the extent medical emergencies exist, and to utilize their paramedic training, they are expected to provide emergency medical services as their primary responsibility, but also routinely perform fire suppression duties alongside their firefighting colleagues when not needed for medical care; and 6) they are routinely ordered to perform fire suppression duties, to attend fire suppression training, and to present fire prevention awareness programs. The dual-function firefighter/paramedics you describe therefore meet the Ninth Circuit’s test for “responsibility” to engage in fire prevention, control, and extinguishment. *Id.*

Finally, section 3(y) also requires that employees be engaged in either fire prevention and suppression or response to emergencies. The dual-function firefighter/paramedics you describe appear to engage in both fire prevention, control, and suppression and respond to emergencies where life, property, or the environment is at risk.



In this case, the dual-function firefighter/paramedics you describe are employed in fire protection activities under section 3(y) of the FLSA. They are trained in fire suppression, have the authority and responsibility to engage in fire suppression, and are engaged in fire suppression or response to emergencies. Therefore, the dual-function firefighter/paramedics described above qualify for the partial overtime exemption under section 7(k) of the FLSA because they are employed by a public agency in fire protection activities.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that your organization is not a party to pending private litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.  
Acting Administrator

Enclosures:  
Sections 3(y) and 7(k) of the FLSA  
29 C.F.R. § 553.230

*\* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7)*