

JAN 22 1997

This is in response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to certain employees of Sea Isle City. The employees at issue work in various City departments and also serve as emergency medical technicians (EMTs) with the Sea Isle Volunteer Ambulance Corps, or serve as firefighters in the Sea Isle City Volunteer Fire Department.

You state that police officers employed by the City who have obtained EMT certification are paid \$500 in addition to their regular pay. They use their EMT skills while doing their police work. You indicate that the additional \$500 (as a result of a wage-hour audit) is now incorporated in the officers' "regular rate" of pay for FLSA overtime compensation purposes.

Some employees of the Public Works Construction Office and City Hall also serve as EMTs for which they receive a similar payment pursuant to the applicable union contract. However, unlike police officers, these employees serve the Sea Isle Volunteer Ambulance Corps, which is a separate nonprofit corporation that, presumably, serves the citizens of the community.

Finally, the Sea Isle Volunteer Fire Department (a City Department) is served by City employees who "volunteer" their services. The City does not employ any paid firefighters or EMTs.

City employees who volunteer as firefighters leave their regular jobs to respond to fire calls and return to their regular city jobs when finished. They are paid \$115 annually to reimburse them for mileage and use of their personal vehicles to respond to fire calls.

We understand that the City pays its employees their regular wages for the time spent in volunteer activities that occur

during their normal workday to insure that employees do not lose income as a result of volunteering.

In light of this background, you ask several questions that will be addressed in the order presented. For sake of clarity, we have edited your questions.

Q.1. Must the \$500 EMT payment paid to public works and other City employees pursuant to applicable union bargaining agreements be included in calculating overtime under the FLSA? Does it make any difference that the employees at issue perform the EMT services after leaving their City jobs by volunteering their services to the Volunteer Ambulance Corps (a separate nonprofit corporation) and then returning to their city jobs?

A.1. Yes. The \$500 EMT payment must be included in calculating the employees' regular rates of pay for the purpose of FLSA overtime compensation. Unless otherwise specifically excluded pursuant to §7(e) of the FLSA, all remuneration paid to employees as compensation pursuant to their employment contract must be included in determining the FLSA "regular rate" for overtime compensation purposes. In other words, the EMT compensation must be treated in the same fashion for other City employees as it is treated in the case of police officers.

It does not matter that the employees are members of the Volunteer Ambulance Corps and that the employees at issue leave their City jobs when performing EMT services.

Q.2. What about the mileage payment of \$115 per year paid to City employees who "volunteer" as firefighters?

A.2. Individuals do not lose their status as "volunteers" because they are reimbursed for transportation costs. Volunteers are discussed in 29 CFR Part 553 (copy enclosed). See 29 CFR §§ 553.100 - .106. Payments to reimburse an employee for expenses of the type described may be excluded in calculating the employees' regular rates of pay. This is discussed in the general overtime regulation, 29 CFR Part 778 (copy enclosed). See 29 CFR §778.217.

Q.3. When a City employee who is trained as an EMT leaves his or her regular city job to respond to an EMT call with the Corps, is the employee considered to be working in two types of jobs for the City?

A.3. No. An employee may "volunteer" services to their public agency employer provided such services are not the same type of services which the individual is employed to perform for their employer. For example, a worker in public works who performs refuse collection or street and lighting maintenance/repairs could volunteer as an EMT to the City, or to a separate and independent organization. The hours of service rendered in such situations would not be subject to the minimum wage, overtime, or recordkeeping provisions of the FLSA.

Q.4. Are there any other exemptions/exceptions that would affect the workers described above?

A.4. No.

Q.5. Can police officers who are qualified EMTs volunteer to the Volunteer Ambulance Corps during off-duty hours?

A.5. We cannot give you a definite answer without more information as to the relationship between and the Ambulance Corps, especially the Corps governing board and how its members are appointed and removed. We would also need more information regarding the arrangement between the City and the Corps with respect to the services furnished and territory covered. However, we have enclosed for your guidance opinion letters dated August 19, 1994, and March 18, 1993, that discuss in considerable detail volunteering that is permissible and impermissible under the FLSA. With regard to Q.4., please note paragraph 4 on page 3 of the August 19, 1994 letter.

We trust that the above is responsive to your inquiry. If you have further questions, please contact Walt Steinmann of this office at 202-219-4907.

Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team

Enclosures