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This is in response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to your employment as a police canine officer. Your inquiry concerns whether on-call duty periods that you are assigned by your employer are compensable under the FLSA.

You state that a canine officer is on-call two out of every six weeks on a 24-hour standby basis. While on-call an officer works his or her regular shift and may not take leave of any kind. He or she carries a pager and must respond to a call within ten minutes, and is restricted from drinking alcoholic beverages. In light of these facts, you ask whether the FLSA requires any compensation for such restrictions.

Whether waiting time is to be treated as "hours worked" under the FLSA depends on whether the time is spent predominately for the employer's benefit or for the employees. With respect to on-call time, it is our position that an employee who is not required to remain on the employer's premises but must carry a pager or be otherwise reachable when off-duty, is not working while on call. See 29 CFR §785.17 (copy enclosed).

In Bright v. Houston Northwest Medical Center Survivor, Inc., 934 F.2d 671, 30 WH Cases 609 (5th Cir. en banc 1991), cert. denied, 30 WH Cases 1176 (US Sup Ct 1992), the Fifth Circuit concluded that on-call time which a hospital's biomedical equipment repair technician spent at home or in locations he chose was not working time, even though he was required to be reachable by beeper, to remain sober, and to arrive at the hospital within about 20 minutes after being called.

However, in Renfro v. Emporia, 948 F.2d 1529, 30 WH Cases 1017 (10th Cir. 1991), cert. dismissed, 112 S. Ct. 1310 (1992), the court found on-call time spent by firefighters compensable where they responded to an average of three to five calls in a 24-hour on-call period, and as many as 13 calls on occasion. The court stressed the "fact based nature" of these cases in distinguishing Renfro from its holdings in other cases. Thus, it is not always easy to predict whether a particular factual situation involving on-call time is hours worked under the FLSA.

In our view, the requirements imposed by your employer are not sufficient by themselves to convert the on-call periods into "hours worked" for FLSA purposes. Other factors such as frequent calls as in the Renfro case would be necessary.

Some employers compensate employees for the inconvenience of being on-call whether or not such on-call periods are "hours worked." While the FLSA does not require such payments, they will, if made, affect the computation of any overtime payment due an employee. This is discussed in 29 CFR §778.223 (copy enclosed).

We trust that the above is responsive to your inquiry.

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

Enclosures