

OCT - 7 1997

Dear

This is in response to your letter inquiring whether time spent by fire and police personnel in undergoing physical examinations required by the City of _____ must be considered compensable hours of work under the Fair Labor Standards Act (FLSA) when the examinations are conducted outside of regular working hours.

The FLSA is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the minimum wage of \$5.15 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

Generally, whenever an employer imposes special requirements or conditions that an employee must meet before commencing or continuing productive work, the time spent in fulfilling such special conditions is regarded as indispensable to the performance of the principal activity the employee is hired to perform. Included in this general category are required physical examinations.

Time spent undergoing a physical examination is time during which the employee's freedom of movement is restricted for the purpose of serving the employer and time during which the employee is subject to the employer's discretion and control. It is immaterial whether the time spent in undergoing the required physical examination is during the employee's normal working hours or during nonworking hours. The physical examination is an essential requirement of the job and thus primarily for the benefit of the employer. Therefore, it is our opinion that the time so spent must be counted as hours worked under the FLSA.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit 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 request might require a different conclusion than the one expressed herein.

I trust that this satisfactorily responds to your inquiry.

Sincerely,

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