

MAR 18 1993

This is in response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to firefighters when they are "on-call," and whether the on-call hours are compensable under the FLSA.

Both the Wage and Hour Regional Office in \_\_\_\_\_ and this office advised, in response to prior inquiries from the Fire Chief and the City Attorney, that the time spent by firefighters on-call, under the facts made available, is not compensable under the FLSA, provided that the calls are not so frequent that the employees cannot use the time effectively for their own purposes. The compensability of on-call time for the firefighters may well turn on the frequency of such emergency calls. If calls to duty are so frequent that employees cannot use their off-duty time effectively for their own benefit, the entire on-call period would be compensable. However, you have not provided any new factual information in this regard.

Whether a particular factual situation will be considered to constitute hours of work under the FLSA is not always easy to predict. 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 Norton v. Worthen Van Service Inc., 839 F.2d 653 (10th Cir. 1988) and Boehm v. Kansas City Power & Light Co., 868 F.2d 1182 (10th Cir. 1989).

You may wish to review the frequency of calls received by on-call firefighters in light of this case law. As indicated in §785.2 of 29 CFR Part 785, the ultimate decisions on interpretations of the FLSA are made by the courts.

We trust that the above is responsive to your inquiry.

*Signed*

Acting Administrator