

MAR 19 1993

This is in response to your inquiry, addressed to former Administrator Paula V. Smith, concerning the application of the Fair Labor Standards Act (FLSA) to emergency medical service (EMS) employees of a public employer who may respond to an accident or other medical emergency when they are off-duty. We regret the delay in responding to your inquiry.

You state that an EMS employee may on occasion, while off duty, come upon the scene of an accident or other emergency and he or she may stop to assist the victim(s). You indicate that the EMS employee is not under any compulsion or instruction from the employer to lend or render aid when off-duty, but simply acts as a "good Samaritan." You ask whether any of the time spent by the EMS employee in rendering assistance to the victims in such situations would be considered compensable under the FLSA by the employer. You present several situations for our consideration which will be discussed in turn.

The FLSA defines the term "employ" to mean "suffer or permit to work." As indicated in 29 CFR 785.7, the U.S. Supreme Court has held that employees subject to the Act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer (emphasis supplied) and pursued necessarily and primarily for the benefit of the employer or his business." Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123, 321 U.S. 590 (1944).

Under the situations described in questions 1 and 2 of your inquiry, we would not consider the "good Samaritan" assistance to accident victims rendered by off-duty EMS employees to be compensable by the employer under the FLSA. However, in situations where the off-duty employee remains on the scene after the on-duty EMS employees arrive (question 3), we would consider any subsequent time spent by him or her in rendering assistance to be compensable under the FLSA. At this point, the employer controls the situation and suffers or permits work by the off-duty EMS employee. Even if the time so spent is not great, but can be ascertained, it must be considered hours worked for purposes of the FLSA. See 29 CFR 785.47.

We would also like to advise you that we would question an arrangement under which EMS employees on a regular basis would "volunteer" services during their off-duty hours to their employer as "good Samaritans." In our view, such "volunteering" would be contrary to the underlying purpose and rationale of §3(e)(4)(A). In this regard, see Senate Report No. 99-159, October 17, 1985, page 14, 2 U.S. Cong. News 1985, page 662 ("the Committee wishes to prevent any manipulation or abuse of minimum wage requirements through coercion or undue pressure upon employees to 'volunteer'").

We trust that the above is responsive to your inquiry.

Sincerely,

*Signed*

Acting Administrator