



County Technical Assistance Service

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Public Safety Employees-7(k) Exemption

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

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Public Safety Employees-7(k) Exemption

Reference Number: CTAS-970

The FLSA contains a provision that allows the establishment of longer work periods of not less than seven days nor more than 28 days for public safety employees of state and local governments. This partial exemption from the overtime provisions of the FLSA is often referred to as the “7(k)” exemption, or the “tour of duty” rules.^[1]

Public safety personnel employees are those employees engaged in fire protection or law enforcement activities. The term also may include rescue and ambulance service personnel if such personnel form an integral part of the public agency’s fire protection or law enforcement activities. Since these special rules are limited to public agencies, they do not apply in cases in which public safety services are provided to a county under a contract with a private organization.

[1] The regulations for this somewhat complicated procedure are found in 29 C.F.R. part 553, subpart C.

Fire Protection Activities

Reference Number: CTAS-971

The regulations setting out the requirements of the § 7(k) partial exemption for fire protection personnel are found at 29 C.F.R. § 553.210. To be eligible for this exemption, an employee must meet all of the following criteria:

- be trained in fire suppression;
- have the legal authority and responsibility to engage in fire suppression;
- be employed by a fire department of a municipality, county, fire district, or state; and
- be engaged in the prevention, control and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

Fire protection employees can include firefighters, paramedics, emergency medical technicians, rescue workers, ambulance personnel, and hazardous materials workers as long as they meet the criteria listed above. There is no limit on the amount of nonexempt work that an employee employed in fire protection activities may perform. If the employee meets the criteria, the employee qualifies for the partial exemption. (The 80/20 rule for firefighters was deleted from the regulations in 2011.)

Not included in the term “employee in fire protection activities” are the so-called “civilian” employees of a fire department, fire district, or forestry service who engage in such support activities as those performed by dispatchers, alarm operators, apparatus and equipment repair and maintenance workers, camp cooks, clerks, stenographers, etc. These support employees do not qualify for the partial exemption.

Law Enforcement Personnel

Reference Number: CTAS-972

The regulations setting out the requirements of the § 7(k) exemption for law enforcement personnel are found at 29 C.F.R. § 553.211. To be eligible for the exemption for law enforcement officers, an employee must meet each of the following three criteria:

- be a uniformed or plain-clothed member of a body of officers and subordinates who are empowered by State statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes,
- have the power to arrest, and
- be presently undergoing or have undergone or will undergo on-the-job training and/or a course of instruction and study that typically includes physical training, self-defense, firearm proficiency,

criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics.

In order to qualify, a law enforcement employee must spend 80 percent or more of his or her time engaged in law enforcement activities, or activities that are incidental to or in conjunction with fire protection or law enforcement duties. This is sometimes referred to as the “80% rule” or the 20 percent limitation on non-exempt work, found in 29 C.F.R. § 553.212.

Employees who meet these tests are considered to be engaged in law enforcement activities regardless of their rank, or of their status as “trainee,” “probationary,” or “permanent,” and regardless of their assignment to duties incidental to the performance of their law enforcement activities such as equipment maintenance, lecturing, or support activities, whether or not such assignment is for training or familiarization purposes, or for reasons of illness, injury or infirmity.

Typically, employees engaged in law enforcement activities include deputy sheriffs, criminal investigators or detectives who are regularly employed and paid as such, and court marshals or deputy marshals. The term also may include rescue and ambulance service personnel if such personnel form an integral part of the county’s law enforcement activities.

The exemption also specifically covers security personnel in correctional institutions, which includes county jailers.^[1] A correctional institution is any governmental facility maintained as part of a penal system for the incarceration or detention of persons suspected or convicted of having breached the peace or committed some other crime, and includes county jails and workhouses. Employees of correctional institutions who qualify as security personnel for purposes of the special rules are those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions, regardless of whether their duties are performed inside the correctional institution or outside the institution (as in the case of road gangs). These employees are considered to be engaged in law enforcement activities regardless of their rank (e.g., warden, assistant warden, guard) or of their status as “trainee,” “probationary,” or “permanent,” and regardless of their assignment to duties incidental to the performance of their law enforcement activities, or to support activities of the type described whether or not such assignment is for training or familiarization purposes or for reasons of illness, injury or infirmity.

Employees who do not meet the tests described above are not engaged in “law enforcement activities” and do not qualify for the exemption. Employees who normally would not meet these tests include (1) most building inspectors, (2) health inspectors, (3) animal control personnel, (4) sanitarians, (5) civilian traffic employees who direct vehicular and pedestrian traffic at specified intersections or other control points, (6) civilian parking checkers who patrol assigned areas for the purpose of discovering parking violations and issuing appropriate warnings or appearance notices, (7) tax compliance officers, and (8) building guards whose primary duty is to protect the lives and property of persons within the limited area of the building.

Also not included within the exemption are the so-called “civilian” employees of law enforcement agencies or correctional institutions who engage in such support activities as those performed by dispatchers, radio operators, apparatus and equipment maintenance and repair workers, janitors, clerks and stenographers. The exemption also does not include employees in correctional institutions who engage in building repair and maintenance, culinary services, teaching, or in psychological, medical or paramedical services. This is true even though such employees may, when assigned to correctional institutions, come into regular contact with the inmates in the performance of their duties.

[1] 29 C.F.R. § 553.211(f).

Fire Protection and Law Enforcement

Reference Number: CTAS-973

Employees who engage in both fire protection and law enforcement activities may use the special § 7(k) rules, provided that each of the activities performed meets the appropriate tests. This is true regardless of how the employee’s time is divided between the two activities. However, all time spent in nonexempt activities by public safety officers within the work period, whether performed in connection with fire protection or law enforcement functions, or with neither, must be combined for purposes of the 20 percent limitation on nonexempt work discussed in 29 C.F.R. § 553.212.

The maximum hours standards are different for employees engaged in fire protection and for employees engaged in law enforcement. For those employees who perform both fire protection and law enforcement activities, the applicable standard is the one which applies to the activity in which the employee spends the majority of work time during the work period. For more information on this topic, see the regulations found at 29 C.F.R. § 553.213.

Trainees

Reference Number: CTAS-974

Attendance at a bona fide fire or police academy or other training facility, when required by the county, constitutes engagement in fire protection or law enforcement activities as long as the employee meets all the applicable tests (except for the power of arrest for law enforcement personnel) for the partial exemption under § 7(k). If the applicable tests are met, then basic training or advanced training is considered incidental to, and part of, the employee's fire protection or law enforcement activities. See 29 C.F.R. § 553.214. For more information on this topic, see [Training Time](#) under Compensable Hours.

Emergency Medical Service Employees

Reference Number: CTAS-975

Emergency medical service employees often work in conjunction with law enforcement agencies and/or fire departments. Under regulations found at 29 C.F.R. § 553.210, paramedics, emergency medical technicians, rescue workers, and ambulance personnel may qualify for the § 7(k) exemption if they meet all of the requirements for an "employee in fire protection activities," which means that the employee: (1) is trained in fire suppression, (2) has the legal authority and responsibility to engage in fire suppression, (3) is employed by a fire department of a municipality, county, fire district, or state, and (4) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

Courts interpreting these requirements appear to focus on whether the employee has the responsibility to engage in fire suppression. The outcome turns on whether the employee has a real obligation or duty to fight fires. The court in *Cleveland v. City of Los Angeles*, 420 F.3d 981 (9th Cir. 2005), *cert. denied* 126 S. Ct. 1344 (2006), looked at six factors to determine whether dual function paramedics/firefighters had "some real obligation or duty" to engage in fire suppression. The Department of Labor also used these factors in making its determination in Wage and Hour Opinion Letter FLSA2006-20, dated June 1, 2006, noting, "If a fire occurs, it must be their job to deal with it." The six-factor test examines evidence of the following:

1. the paramedic carries firefighting gear and breathing apparatus,
2. dispatchers assume that at least one dual function firefighter/paramedic is in each ambulance dispatched to a call,
3. paramedic ambulances are regularly dispatched to fire scenes and not just when there is a need for advanced life support medical services,
4. dual function firefighter/paramedics are always expected to wear fire protective gear at a fire suppression scene,
5. they are expected to provide emergency medical services as their primary responsibility but they also routinely perform fire suppression duties when not needed for medical care, and
6. they are routinely ordered to perform fire suppression duties.

Based on the evidence presented, the court in *Cleveland v. City of Los Angeles* found that there was no real duty to perform fire suppression activities. Applying these factors to different facts and circumstances, the Department of Labor found in its 2006 opinion that the dual-function firefighter/paramedics did have a real obligation to engage in fire suppression. The Department of Labor also noted that those firefighter/paramedics, as part of their fire suppression duties, regularly attended fire suppression training and presented fire prevention awareness programs.

Tours of Duty

Reference Number: CTAS-976

The FLSA authorizes the establishment of work periods of not less than seven nor more than 28 days for public safety personnel. The regulations establish the maximum allowable non-overtime hours as 212 hours per 28-day period for firefighters, and 171 hours per 28-day period for law enforcement officers. For tours of duty of less than 28 days, the maximum allowable non-overtime hours of work during the tour of duty must bear the same ratio as 212 hours to 28 days for firefighters (7.57 hours per day), and 171 hours to 28 days for law enforcement personnel (6.1 hours per day). For those local governments that may wish to use the “tour of duty” option, the maximum number of allowable hours in work periods of particular lengths before overtime compensation must be paid to public safety personnel for additional hours have been calculated in the following table:

| Work Period (days) | Maximum Hours | |
|--------------------|---------------|--------|
| | Fire | Police |
| 28 | 212 | 171 |
| 27 | 204 | 165 |
| 26 | 197 | 159 |
| 25 | 189 | 153 |
| 24 | 182 | 147 |
| 23 | 174 | 140 |
| 22 | 167 | 134 |
| 21 | 159 | 128 |
| 20 | 151 | 122 |
| 19 | 144 | 116 |
| 18 | 136 | 110 |
| 17 | 129 | 104 |
| 16 | 121 | 98 |
| 15 | 114 | 92 |
| 14 | 106 | 86 |
| 13 | 98 | 79 |
| 12 | 91 | 73 |
| 11 | 83 | 67 |
| 10 | 76 | 61 |
| 9 | 68 | 55 |
| 8 | 61 | 49 |
| 7 | 53 | 43 |

A firefighter or law enforcement officer may perform work that is not related to fire protection or law enforcement activities. However, if more than 20 percent of an employee’s work hours are spent on unrelated activities, the employee cannot qualify for use of the tour of duty rules and would therefore have to

be paid overtime on a time and one-half basis for any hours worked in excess of 40 hours in a seven-day period.

Public agency fire protection and law enforcement personnel may, at their own option, undertake employment for the same employer on an occasional or sporadic and part-time basis in a different capacity from their regular employment. The performance of such work does not affect the application of the special rule with respect to the regular employment. In addition, the hours of work in the different capacity need not be counted as hours worked for overtime purposes on the regular job, nor are such hours counted in determining the 20 percent limitation for non-exempt work. In order to qualify, the work must not be regularly scheduled. This special rule is narrowly construed by the DOL, and an employer must be careful to thoroughly examine the regulations found at 29 C.F.R. § 553.30 before relying on this rule.

Sleep Time under § 7(k)

Reference Number: CTAS-977

For firefighters and law enforcement personnel using the § 7(k) rules, there is one sleep time rule for employees on duty for 24 hours or less, and another for those who work a shift of more than 24 hours. If an employee's shift is 24 hours or less, all of the time is considered work time and there is no sleep time exclusion; allowing employees to sleep when they are not busy does not render the time to be non-compensable sleep time, nor does the furnishing of facilities to sleep, as long as an employee is still on duty.

When an employee's shift is longer than 24 hours, up to eight hours of sleeping time can be excluded from compensable working time if:

1. An expressed or implied agreement excluding sleeping time exists; and
2. Adequate sleeping facilities for an uninterrupted night's sleep are provided; and
3. At least five hours of sleep is possible during scheduled sleep periods; and
4. Interruptions to perform duties are considered hours worked.

If the employee does not get at least five hours of sleep time during the scheduled sleeping period, the entire time is hours worked. The five hours of sleep time need not be five continuous, uninterrupted hours of sleep. However, if interruptions during the sleep period are so frequent as to prevent reasonable periods of sleep totaling at least five hours, the entire period would be considered hours worked. No more than eight hours of sleeping time may be excluded from hours worked in any 24-hour period. There must be an advance agreement with the employee, and sleeping facilities must be furnished. The regulations applicable to § 7(k) employees appear at 29 C.F.R. § 553.222, and refer to the regulations at 29 C.F.R. § 785.22.

Outside Employment

Reference Number: CTAS-978

There is a special provision for fire protection and law enforcement employees who, solely at their own option, perform special duty work in fire protection, law enforcement or related activities for a separate and independent employer (public or private) during their off-duty hours, such as a sheriff's deputy working a funeral. These special detail assignments may be performed for the second employer without FLSA overtime obligations applying even if the county selects a particular police officer for the assignment from a list of officers who wish to perform the work, negotiates the fee, compensates the officer for the special detail work through the county's regular payroll system, or retains a fee for administrative expenses. However, the officer must perform the work at his or her option; the special detail exception will not apply if the employer directs the officer to perform the outside work. The two employers must also, in fact, be separate. Special detail assignments are exceptions to the general FLSA rules which, in the absence of the statutory exception, would define such arrangements as joint employment relationships and treat the two jobs as one job for purposes of the overtime provisions of the FLSA.^[1]

[1] See 29 C.F.R. § 553.227.

Interrelationship with Other Exemptions

Reference Number: CTAS-979

Employees in fire protection and law enforcement activities also may be exempt as bona fide executive, administrative or professional employees, as those terms are defined and delimited. However, the election to take such an exemption for an employee who qualifies for it will not result in excluding that employee from the count that must be made to determine the application of the exemption for public safety agencies having five or fewer employees.

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