

§ 553.226

time involved must be added to the employee's tour of duty and treated as compensable hours of work.

§ 553.226 Training time.

(a) The general rules for determining the compensability of training time under the FLSA are set forth in §§ 785.27 through 785.32 of this title.

(b) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees of State and local governments in required training is considered to be non-compensable:

(1) Attendance outside of regular working hours at specialized or follow-up training, which is required by law for certification of public and private sector employees within a particular governmental jurisdiction (e.g., certification of public and private emergency rescue workers), does not constitute compensable hours of work for public employees within that jurisdiction and subordinate jurisdictions.

(2) Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government (e.g., where a State or county law imposes a training obligation on city employees), does not constitute compensable hours of work.

(3) Time spent in the training described in paragraphs (b) (1) or (2) of this section is not compensable, even if all or part of the costs of the training is borne by the employer.

(c) Police officers or firefighters, who are in attendance at a police or fire academy or other training facility, are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use such time for personal pursuits. Such free time is not compensable.

§ 553.227 Outside employment.

(a) Section 7(p)(1) makes special provision for fire protection and law enforcement employees of public agencies who, at their own option, perform special duty work in fire protection, law enforcement or related activities for a separate and independent employer

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(public or private) during their off-duty hours. The hours of work for the separate and independent employer are not combined with the hours worked for the primary public agency employer for purposes of overtime compensation.

(b) Section 7(p)(1) applies to such outside employment provided (1) The special detail work is performed solely at the employee's option, and (2) the two employers are in fact separate and independent.

(c) Whether two employers are, in fact, separate and independent can only be determined on a case-by-case basis.

(d) The primary employer may facilitate the employment or affect the conditions of employment of such employees. For example, a police department may maintain a roster of officers who wish to perform such work. The department may also select the officers for special details from a list of those wishing to participate, negotiate their pay, and retain a fee for administrative expenses. The department may require that the separate and independent employer pay the fee for such services directly to the department, and establish procedures for the officers to receive their pay for the special details through the agency's payroll system. Finally, the department may require that the officers observe their normal standards of conduct during such details and take disciplinary action against those who fail to do so.

(e) Section 7(p)(1) applies to special details even where a State law or local ordinance requires that such work be performed and that only law enforcement or fire protection employees of a public agency in the same jurisdiction perform the work. For example, a city ordinance may require the presence of city police officers at a convention center during concerts or sports events. If the officers perform such work at their own option, the hours of work need not be combined with the hours of work for their primary employer in computing overtime compensation.

(f) The principles in paragraphs (d) and (e) of this section with respect to special details of public agency fire