

Wage and Hour Division, Labor

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even though such employees may, when assigned to correctional institutions, come into regular contact with the inmates in the performance of their duties.

§ 553.212 Twenty percent limitation on nonexempt work.

(a) Employees engaged in fire protection or law enforcement activities as described in §§ 553.210 and 553.211, may also engage in some nonexempt work which is not performed as an incident to or in conjunction with their fire protection or law enforcement activities. For example, firefighters who work for forest conservation agencies may, during slack times, plant trees and perform other conservation activities unrelated to their firefighting duties. The performance of such nonexempt work will not defeat either the section 13(b)(20) or 7(k) exemptions unless it exceeds 20 percent of the total hours worked by that employee during the workweek or applicable work period. A person who spends more than 20 percent of his/her working time in nonexempt activities is not considered to be an employee engaged in fire protection or law enforcement activities for purposes of this part.

(b) 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. (See § 553.30.) The performance of such work does not affect the application of the section 13(b)(20) or 7(k) exemptions 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 tolerance for nonexempt work discussed in paragraph (a) of this section.

§ 553.213 Public agency employees engaged in both fire protection and law enforcement activities.

(a) Some public agencies have employees (often called "public safety officers") who engage in both fire protection and law enforcement activities, depending on the agency needs at the

time. This dual assignment would not defeat either the section 13(b)(20) or 7(k) exemption, provided that each of the activities performed meets the appropriate tests set forth in §§ 553.210 and 553.211. This is so 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 § 553.212.

(b) As specified in § 553.230, the maximum hours standards under section 7(k) 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.

§ 553.214 Trainees.

The attendance at a bona fide fire or police academy or other training facility, when required by the employing agency, constitutes engagement in activities under section 7(k) only when the employee meets all the applicable tests described in § 553.210 or § 553.211 (except for the power of arrest for law enforcement personnel), as the case may be. 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.

§ 553.215 Ambulance and rescue service employees.

(a) Ambulance and rescue service employees of a public agency other than a fire protection or law enforcement agency may be treated as employees engaged in fire protection or law enforcement activities of the type contemplated by sections 7(k) and 13(b)(20) if their services are substantially related to firefighting or law enforcement activities in that (1) the ambulance and rescue service employees have received training in the rescue of

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fire, crime, and accident victims or firefighters or law enforcement personnel injured in the performance of their respective duties, and (2) the ambulance and rescue service employees are regularly dispatched to fires, crime scenes, riots, natural disasters and accidents. As provided in §553.213(b), where employees 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.

(b) Ambulance and rescue service employees of public agencies subject to the Act prior to the 1974 Amendments do not come within the section 7(k) or section 13(b)(20) exemptions, since it was not the purpose of those Amendments to deny the Act's protection of previously covered and nonexempt employees. This would include, for example, employees of public agencies engaged in the operation of a hospital or an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institutions.

(c) Ambulance and rescue service employees of private organizations do not come within the section 7(k) or section 13(b)(20) exemptions even if their activities are substantially related to the fire protection and law enforcement activities performed by a public agency or their employer is under contract with a public agency to provide such services.

§553.216 Other exemptions.

Although the 1974 Amendments to the FLSA provided special exemptions for employees of public agencies engaged in fire protection and law enforcement activities, such workers may also be subject to other exemptions in the Act, and public agencies may claim such other applicable exemptions in lieu of sections 13(b)(20) and 7(k). For example, section 13(a)(1) provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in 29 CFR part 541. The section 13(a)(1) exemption can be claimed for any fire protection or law enforcement em-

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ployee who meets all of the tests specified in part 541 relating to duties, responsibilities, and salary. Thus, high ranking police officials who are engaged in law enforcement activities, may also, depending on the facts, qualify for the section 13(a)(1) exemption as "executive" employees. Similarly, certain criminal investigative agents may qualify as "administrative" employees under section 13(a)(1). However, the election to take the section 13(a)(1) 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 section 13(b)(20) exemption to the agency's other employees.

TOUR OF DUTY AND COMPENSABLE HOURS OF WORK RULES

§553.220 "Tour of duty" defined.

(a) The term "tour of duty" is a unique concept applicable only to employees for whom the section 7(k) exemption is claimed. This term, as used in section 7(k), means the period of time during which an employee is considered to be on duty for purposes of determining compensable hours. It may be a scheduled or unscheduled period. Such periods include "shifts" assigned to employees often days in advance of the performance of the work. Scheduled periods also include time spent in work outside the "shift" which the public agency employer assigns. For example, a police officer may be assigned to crowd control during a parade or other special event outside of his or her shift.

(b) Unscheduled periods include time spent in court by police officers, time spent handling emergency situations, and time spent working after a shift to complete an assignment. Such time must be included in the compensable tour of duty even though the specific work performed may not have been assigned in advance.

(c) The tour of duty does not include time spent working for a separate and independent employer in certain types of special details as provided in §553.227. The tour of duty does not include time spent working on an occasional or sporadic and part-time basis in a different capacity from the regular