

§ 553.221

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 work as provided in § 553.30. The tour of duty does not include time spent substituting for other employees by mutual agreement as specified in § 553.31.

(d) The tour of duty does not include time spent in volunteer firefighting or law enforcement activities performed for a different jurisdiction, even where such activities take place under the terms of a mutual aid agreement in the jurisdiction in which the employee is employed. (See § 553.105.)

§ 553.221 Compensable hours of work.

(a) The general rules on compensable hours of work are set forth in 29 CFR part 785 which is applicable to employees for whom the section 7(k) exemption is claimed. Special rules for sleep time (§ 553.222) apply to both law enforcement and firefighting employees for whom the section 7(k) exemption is claimed. Also, special rules for meal time apply in the case of firefighters (§ 553.223). Part 785 does not discuss the special provisions that apply to State and local government workers with respect to the treatment of substitution, special details for a separate and independent employer, early relief, and work performed on an occasional or sporadic and part-time basis, all of which are covered in this subpart.

(b) Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is suffered

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or permitted to work for the employer. Such time includes all pre-shift and post-shift activities which are an integral part of the employee's principal activity or which are closely related to the performance of the principal activity, such as attending roll call, writing up and completing tickets or reports, and washing and re-racking fire hoses.

(c) Time spent away from the employer's premises under conditions that are so circumscribed that they restrict the employee from effectively using the time for personal pursuits also constitutes compensable hours of work. For example, where a police station must be evacuated because of an electrical failure and the employees are expected to remain in the vicinity and return to work after the emergency has passed, the entire time spent away from the premises is compensable. The employees in this example cannot use the time for their personal pursuits.

(d) An employee who is not required to remain on the employer's premises but is merely required to leave word at home or with company officials where he or she may be reached is not working while on call. Time spent at home on call may or may not be compensable depending on whether the restrictions placed on the employee preclude using the time for personal pursuits. Where, for example, a firefighter has returned home after the shift, with the understanding that he or she is expected to return to work in the event of an emergency in the night, such time spent at home is normally not compensable. On the other hand, where the conditions placed on the employee's activities are so restrictive that the employee cannot use the time effectively for personal pursuits, such time spent on call is compensable.

(e) Normal home to work travel is not compensable, even where the employee is expected to report to work at a location away from the location of the employer's premises.

(f) A police officer, who has completed his or her tour of duty and who is given a patrol car to drive home and use on personal business, is not working during the travel time even where the radio must be left on so that the officer can respond to emergency calls.

Of course, the time spent in responding to such calls is compensable.

(g) The fact that employees cannot return home after work does not necessarily mean that they continue on duty after their shift. For example, firefighters working on a forest fire may be transported to a camp after their shift in order to rest and eat a meal. As a practical matter, the firefighters may be precluded from going to their homes because of the distance of the fire from their residences.

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§ 553.222 Sleep time.

(a) Where a public employer elects to pay overtime compensation to firefighters and/or law enforcement personnel in accordance with section 7(a)(1) of the Act, the public agency may exclude sleep time from hours worked if all the conditions in §785.22 of this title are met.

(b) Where the employer has elected to use the section 7(k) exemption, sleep time cannot be excluded from the compensable hours of work where

(1) The employee is on a tour of duty of less than 24 hours, which is the general rule applicable to all employees under §785.21, and

(2) Where the employee is on a tour of duty of exactly 24 hours, which is a departure from the general rules in part 785.

(c) Sleep time can be excluded from compensable hours of work, however, in the case of police officers or firefighters who are on a tour of duty of more than 24 hours, but only if there is an expressed or implied agreement between the employer and the employees to exclude such time. In the absence of such an agreement, the sleep time is compensable. In no event shall the time excluded as sleep time exceed 8 hours in a 24-hour period. If the sleep time is interrupted by a call to duty, the interruption must be counted as hours worked. If the sleep period is interrupted to such an extent that the employee cannot get a reasonable night's sleep (which, for enforcement purposes means at least 5 hours), the entire time must be counted as hours of work.

§ 553.223 Meal time.

(a) If a public agency elects to pay overtime compensation to firefighters and law enforcement personnel in accordance with section 7(a)(1) of the Act, the public agency may exclude meal time from hours worked if all the tests in §785.19 of this title are met.

(b) If a public agency elects to use the section 7(k) exemption, the public agency may, in the case of law enforcement personnel, exclude meal time from hours worked on tours of duty of 24 hours or less, provided that the employee is completely relieved from duty during the meal period, and all the other tests in §785.19 of this title are met. On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., "stakeouts"), they are not considered to be completely relieved from duty, and any such meal periods would be compensable.

(c) With respect to firefighters employed under section 7(k), who are confined to a duty station, the legislative history of the Act indicates Congressional intent to mandate a departure from the usual FLSA "hours of work" rules and adoption of an overtime standard keyed to the unique concept of "tour of duty" under which firefighters are employed. Where the public agency elects to use the section 7(k) exemption for firefighters, meal time cannot be excluded from the compensable hours of work where (1) the firefighter is on a tour of duty of less than 24 hours, and (2) where the firefighter is on a tour of duty of exactly 24 hours, which is a departure from the general rules in §785.22 of this title.

(d) In the case of police officers or firefighters who are on a tour of duty of more than 24 hours, meal time may be excluded from compensable hours of work provided that the tests in §§785.19 and 785.22 of this title are met.

§ 553.224 "Work period" defined.

(a) As used in section 7(k), the term "work period" refers to any established and regularly recurring period of work which, under the terms of the Act and legislative history, cannot be less than 7 consecutive days nor more than 28