

FLSA CONSIDERATIONS

1058

(No. 27 August 1992)

INTRODUCTION

1058.1

(No. 27 August 1992)

An employee who is subject to the FLSA ([see Section 1043](#)) must be paid at least minimum wage and receive overtime compensation in accordance with its provisions for all hours worked. Generally, "hours worked" includes all time an employee is required to be on duty, on state premises, or at a prescribed workplace, and all time the employee is suffered or permitted to work for the state.

"Hours worked" is all time spent in physical or mental exertion (whether burdensome or not) controlled or required by the CAL FIRE supervisor and pursued necessarily and primarily for the benefit of the state. It includes any work which the employee performs on or away from the premises, if the supervisor knows or has reason to believe that the work is being performed. CAL FIRE may not accept the benefits of extra work and then refuse to compensate the employee on the basis he/she was not authorized to work.

In some cases state laws, rules, practices, and collective bargaining agreements have granted additional compensation in situations not required by the FLSA. However, in no case may CAL FIRE provide less than what is required by the FLSA. Both of these factors must be balanced with the following FLSA standards.

WAITING TIME

1058.2

(No. 27 August 1992)

Whether waiting time by employees is hours worked under the FLSA depends upon the circumstances. In general, if employees have been assigned to wait for something to occur, they are "engaged to wait" and their waiting time will be counted as hours worked. On the other hand, if the employees arrive early, do not perform any work before their shift starts, and merely wait to start working, their waiting time will not constitute hours worked. If the waiting time is occupied by work-related activity, the time will count as hours worked.

Periods during which employees are completely relieved from duty and which are long enough to enable them to use the time effectively for their own purposes are not hours worked. They are not completely relieved from duty and cannot use the time effectively for their own purposes unless they are definitely told in advance that they may leave the job and will not have to commence work until a specified hour has arrived. Whether the time is long enough to enable them to use it effectively for their own purposes depends upon all of the facts and circumstances of the case.

Example 1:

An office assistant is taken to fire camp and is provided accommodations in a travel trailer which is located on the camp grounds. At the end of his/her regular duty day the employee is told to stay in or around the camp and to check-in all new arrivals. A sign is placed on the door of the trailer so that people arriving at night are advised to knock on the door, wake the employee, and report in.

Unless and until this employee is completely relieved from duty and is free to use time off to pursue personal activities, all the hours spent at the camp under these circumstances will be compensable as time worked.

Example 2:

An office assistant is taken to fire camp and is provided accommodations at the camp. At the end of the regular day the employee is completely relieved from duty and is free to come and go. The employee is not provided with a vehicle for personal use, and the camp is 38 miles from the nearest town with any facilities.

Until this employee is completely relieved from duty and is free to pursue personal activities, he/she is compensated for all hours at the camp under these conditions. Without transportation this employee is effectively restricted to the camp and must be paid for all hours so assigned.

Example 3:

An employee is taken to a fire camp to work and is provided with a motel room in a small town near the camp. The employee is provided transportation to and from the motel room, but does not have a car available for personal use while residing at the motel.

This employee is entitled to compensation only for those hours spent working at the camp. Time spent off duty, away from the camp is the employee's own time and is not compensable time.

PREPARATION TIME

1058.3

(No. 27 August 1992)

Unless provided for by law, MOU, or past practice, time for changing clothes before or after a work shift will not ordinarily constitute hours worked. Preparatory activities which are an integral part of the "principal activity," however, will be counted as hours worked. An example may be time taken by an employee to make his/her bulldozer or fire engine

ready for use. This preparatory activity will be hours worked. Even changing clothes could be counted as hours worked if the employee works in a position which requires changing clothes on the job in order to perform the job. This, however, should not be the case with CAL FIRE employees.

STANDBY TIME

1058.4

(No. 27 August 1992)

Whether the time during which an employee is asked to "standby" is considered to be hours worked is based generally on the extent of control the supervisor has over the employee's activity during the standby period. If the employee is unable to effectively use standby time for his/her own personal purposes, the time will probably be determined to be hours worked. If the employee is required to perform any work-related duties during this standby time, the time will be hours worked.

CAL FIRE employees routinely required to standby have this requirement built into the duty week. With the exception of uninterrupted sleep for Fire Fighters I, employees are compensated for this time.

ON-CALL TIME

1058.5

(No. 27 August 1992)

Employees who aren't required to remain on the employer's premises and are free to engage in their own pursuits, subject only to the understanding that they leave word at their homes or with the employer about where they can be reached, are not working while on call. When an employee is called out on a job assignment, only the time actually spent in making the call is hours worked unless a minimum guarantee exists ([see Section 1057](#)). If calls are so frequent or the readiness conditions are so restrictive that employees are not really free to use the intervening periods effectively for their own benefit the employees may be considered as "engaged to wait" rather than "waiting to be engaged". The former requires compensation and the latter does not.

SENT HOME FOR LACK OF WORK

1058.6

(No. 27 August 1992)

If an employee is told upon reporting for work that there is no work available and the employee is immediately sent home, the employee will not be considered to have spent any time working unless an MOU provides otherwise. If, however, the employee is suffered or permitted to wait for work after his/her regular shift was scheduled to begin, the time spent in waiting between the scheduled commencement of the shift and the time the employee starts work or is sent home is counted as hours worked.

DUTY OF 24-HOURS OR MORE

1058.7

(No. 27 August 1992)

Where an employee has a duty shift of 24-hours or longer, his/her exclusive representative may agree that sleeping period and meal periods will not be counted as hours worked. If the sleeping time is interrupted by a call to duty, the time of the interruption must be counted as hours worked. If the employee does not get at least five hours of sleep during the scheduled sleeping period, the entire time is hours worked. The five hours of sleep 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.

Section 8.01 (2) of the Unit 8 collective bargaining agreement addresses sleep time exclusions for the Fire Fighter I class. No other class has such a deduction (see Personnel Procedures Handbook [Section 1051](#)).

TRAVEL TIME AND PORTAL-TO-PORTAL

1058.8

(No. 27 August 1992)

Determining whether or not time spent in travel is working time depends upon the kind of travel involved. The Portal Act excludes from work any time spent walking, riding, or traveling to and from the actual place where the employees perform their principal activity, both prior to the time they commence and subsequent to the time they cease the activity, unless the time is compensable by express contract provisions or by practice. This is consistent with the policy of the state, including the practice of excluding travel returning to the work site due to being called back. There are two exceptions: (1) [see Section 1056](#) regarding portal-to-portal compensation for Unit 8 and those in Work Week Group 4D22; and (2) Section 8.13 of the Unit 8 collective bargaining agreement.

INDEPENDENT TRAINING

1058.9

(No. 27 August 1992)

When employees on their own initiative attend an independent school, college, or independent trade school after hours, the time is not counted as hours worked even if the courses are related to their jobs and the employer pays the tuition.

LECTURES, MEETINGS, AND TRAINING PROGRAMS (No. 27 August 1992)

1058.10

Attendance at lectures, meetings, training programs, and similar activities need not be counted as working time if:

1. Attendance is outside the employee's regular work hours;
2. Attendance is voluntary;
3. The course, lecture, or meeting is not directly related to the employee's job; and,
4. The employee does not perform any productive work during the attendance.

Attendance is not voluntary if it is required by the supervisor or CAL FIRE policy. It is also not voluntary if the employee is given or led to believe that present working conditions or the continuation of employment would be adversely affected by failure to attend.

Training is directly related to the employee's job if it is designed to make the employee handle the job more effectively, as distinguished from training for another job or for a new or additional skill.

TRADING TIME

1058.11

(No. 27 August 1992)

The FLSA provides that two individuals employed in any occupation by the same public agency may agree, at their option and with the approval of the supervisor, to substitute for one another during scheduled work hours in performance of work in the same capacity. Extra hours worked to fulfill the trade are not taken into consideration when determining the employer's overtime obligation. This concept is reflected in Section 8.16 of the Unit 8 collective bargaining agreement and the attendance instructions for Work Week Groups 2D, 2E, and 4D22.

WORK PERIODS

1058.12

(No. 27 August 1992)

An employee covered by the FLSA who is not subject to an overtime pay exemption (e.g., Section 7(K) for fire service personnel) must be compensated at time and one-half for all time worked over 40 hours in a work period.

A work period is a regularly recurring period of 168 hours in the form of seven consecutive 24-hour days. The work period need not be the same as the calendar week. The work week may begin on any day of the week and at any hour of the day.

Once established, a work week may not be changed unless the change is intended to be permanent.

The work week for affected CAL FIRE employees begins at 0600 on Mondays. This includes those classifications shown in Section 8.04 of the Unit 8 collective bargaining agreement when the incumbents do not routinely perform fire protection duties. It also includes Fire Fighters I during NERP.

As used in Section 7(K), the term "work period" refers to any established and regularly recurring period of work which cannot be less than seven consecutive days or more than 28 consecutive days for fire protection personnel. Except for this limitation, the work period can be of any length, and it need not coincide with the pay period or with a particular day of the week or hour of the day. An employer may have one work period applicable to all of its employees or different work periods for different employees or groups of his/her employees. The work period for affected Unit 8 employee began at 0800 hours on July 1, 1985, and continues for consecutive 28-day periods thereafter. This includes incumbents covered by Sections 8.01 (during ERP) and 8.02 of the collective bargaining agreement.

For those employees who have a work period of 28 consecutive days, no overtime compensation is required until the number of hours worked exceeds the number of hours which bear the same relationship to 212 as the number of days in the work period bears to 28. A chart of this relationship appears in the attendance instructions for Work Week Groups 2D and 2E.

[\(see next section\)](#)

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