
Coates' Canons Blog: The FLSA's Overtime Pay Provisions for Law Enforcement and Firefighting Employees

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The Fair Labor Standards Act has two exceptions from its overtime pay rules for nonexempt employees who work different numbers of hours from week to week: the fluctuating workweek method and the section 207(k) exemption for law enforcement officers and firefighters. Look here for a post I wrote about the fluctuating workweek method, which can be used for any employee whose hours fluctuate. This post discusses the 207(k) exemption, which is limited to law enforcement officers and firefighters. It is called the 207(k) exemption because it is found at 29 U.S.C. § 207(k) (it is sometimes called the 7(k) exemption after its location in the original bill). The 207(k) exemption is well-liked by law enforcement agencies and fire departments because it makes calculating the overtime of their employees more efficient and because it reduces overtime costs in a small, but real, way.

Background

The FLSA requires employers to pay employees at a rate of one-and-one-half times their regular rate of pay for each hour worked over 40 in a week (unless they are exempt). Law enforcement officers and firefighters present a bookkeeping and payroll challenge because they frequently work shifts of 12- or 24-hours and may be scheduled to work these shifts several days in a row, piling up a lot of hours quickly. In that sense, law enforcement officers and firefighters work the ultimate fluctuating workweek.

How the 207(k) Exemption Works

The 207(k) exemption allows public employers to figure overtime compensation for law enforcement and fire employees on the basis of work periods longer than the one-week work periods that apply to all other employees. The work period can be as long as 28 days. The employer still maintains whatever payroll schedule that it prefers – weekly, bi-weekly or monthly – and law enforcement officers and firefighters still get paid on that schedule. But overtime premium pay for law enforcement officers and firefighters is determined and paid out at the end of the 207(k) work period.

When a law enforcement agency adopts the longest possible work period – 28 consecutive days – officers earn time-and-one-half overtime pay only after they have worked 171 hours within that 28-day work period. For firefighters on a 28-day work schedule, overtime is earned only after 212 hours.

The FLSA regulations allow law enforcement and fire departments to use the 207(k) exemption for work periods of **any** length between seven and 28 days, and to prorate accordingly the number of hours that must be worked before overtime kicks in. Most departments use work periods that are multiples of seven. Those multiples work out this way:

	Law Enforcement	Fire Protection
28 days	171 hrs.	212 hrs.
14 days	86 hrs.	106 hrs.
7 days	43 hrs.	53 hrs.

As noted earlier, an employer does not have to alter its pay schedule to align with a 207(k) work period. For example:

- Suppose the employing department has chosen a 28-day work schedule and the employer pays its employees on a weekly basis. In that case, employees working under the 207(k) exemption receive their regular straight-time rate for all of the hours they have worked on each of the first three weekly pay periods on the 28-day cycle. They receive their regular straight-time compensation and any overtime due for that 28-day pay period on the final weekly pay period of that cycle.
- Suppose the employing department has chosen a 28-day work schedule and the employer pays its employees on a bi-weekly basis. In that case, employees working under the 207(k) exemption receive their regular straight-time rate for all of the hours they have worked during the first two weeks on the first bi-weekly pay period of the 28-day cycle. They receive their regular straight-time compensation for the second two weeks and any overtime due for that 28-day pay period on the second bi-weekly pay period of that cycle.

The 207(k) Exemption and Comp Time

Employees scheduled in accordance with section 207(k) may be compensated for overtime hours worked with compensatory time off rather than with cash overtime pay, just like employees on a regular one-week work period. For the regulation, see [here](#).

Establishing the 207(k) Exemption

Law enforcement agencies and fire departments do not have to obtain permission from either the U.S. Department of Labor or their employees to adopt a 28-day work schedule and use the 207(k) exemption. They do, however, have to satisfy two requirements. First, the adoption of the schedule must be documented in the employer's payroll records, along with the length of the work period (that is, 28-days, 14-days, or whatever it is) and the starting date and time of each work period. Second, the payroll notation must state that the schedule has been adopted "pursuant to section 207(k) of the FLSA and 29 CFR Part 553" (see [here](#) for this requirement).

Who Qualifies as a Law Enforcement Officer or Firefighter for 207(k) Purposes?

Not every employee of a law enforcement agency or fire department may be compensated using the 207(k) exemption. The exemption is limited to sworn law enforcement officers and to those with the legal authority to fight fires.

For the purposes of the 207(k) exemption, the FLSA regulations define law enforcement officers as:

- uniformed or plainclothes members of a body of officers,
- who have the statutory power to enforce the law, and
- who have the power to arrest, and
- who have participated in a special course of law enforcement training.

The regulations provide that an unsworn jailer counts as a law enforcement officer for 207(k) purposes, **but other civilian employees of the police or sheriff's department do not.**

A firefighter is defined for 207(k) purposes as "an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker," who—

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

No other employees of a fire department may be compensated using the 207(k) exemption.

Other Public Safety Employees

Some jurisdictions place emergency medical personnel under the supervision of a law enforcement agency or a fire department. This arrangement is lawful and makes organizational sense for some cities and counties. But employees whose primary job duties are the provision of emergency medical services do not qualify for the 207(k) exemption unless they meet the statutory and regulatory definitions of either a law enforcement officer or a firefighter. Several North Carolina local governments cross-train and cross-utilize their public safety personnel in this way, but they are the exception and not the rule.

Citations

The regulations covering the issues discussed in this blog post and not otherwise linked in the text may be found here, here, here, here, and here.

Links

- canons.sog.unc.edu/?p=7961
- www.law.cornell.edu/uscode/text/29/207
- canons.sog.unc.edu/?p=7019
- www.law.cornell.edu/cfr/text/29/553.231
- www.law.cornell.edu/cfr/text/29/553.51
- www.law.cornell.edu/cfr/text/29/553.211
- www.law.cornell.edu/cfr/text/29/553.210
- www.law.cornell.edu/cfr/text/29/553.201
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