Fire Chief Development Program

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Fair Labor Standards Act

How it impacts the Fire Service

- What is FLSA
- 7K exemption
- EMS and 7k exemption
- Volunteers and FLSA

Introduction

- Bill Gardner is the Director of Fire Products at ESO
- ESO is a national leader in public safety electronic documentations with ESO Fire, Firehouse software, ESO eHR, HDE, eCore Scheduling by ESO, ESO Academy with Lexipol partnership(FireRescue1/EMS Academy 1)
- 34 Years in public safety working at various Municipal Fire, Emergency Management and Emergency Medical Services Department.
- Fire Chief (Retired), CFO, CFE, EMT-P,
- Nomination for International Association of Fire Chiefs for the Fire Chief of the year
- Central Texas Firefighter of the Year (2016),
- Finalist for Texas Firefighter of the Year (2017).
- Served as the President of the Texas State Firefighters and Fire Marshals' Association
- Serves on National and State committees
- Lovely wife of almost twenty years, two daughters, and one doggo.

State Firefighters' & Fire Marshals' Association of Texas
Promote, Unify, Represent, and Educate The Fire Service of Texas

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The Fair Labor Standards Act (FLSA) is a federal law which establishes minimum wage, overtime pay eligibility, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments.

Fair Labor Standards Act

The FLSA applies only to employers whose annual sales total $500,000 or more or who are engaged in interstate commerce.

The courts have interpreted the term interstate commerce very broadly. For example, courts have ruled that companies that regularly use the U.S. mail to send or receive letters to and from other states are engaged in interstate commerce. Even the fact that employees use company telephones or computers to place or accept interstate business calls or take orders has subjected an employer to the FLSA.
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Volunteer Definition

A volunteer donates his or her time and energy without receiving financial or material gain. According to the Bureau of Labor Statistics (BLS), the most common volunteer activities are fundraising, tutoring and teaching. Guidelines exist for volunteers in the public and nonprofit sectors in which payment of minimum wage or overtime would not be necessary. The individual would need to a) work toward public service, religious or humanitarian objectives; b) not expect or receive compensation for services; and c) not displace any genuine employees. Under FLSA regulations, an individual cannot volunteer services to a private, for-profit company.

Are you a volunteer or employee?

When Congress amended the FLSA in 1985, it made clear that people are allowed to volunteer their services to public agencies and their community with but one exception - public sector employers may not allow their employees to volunteer, without compensation, additional time to do the same work for which they are employed.

But then said…..

Are you a volunteer or employee?

A nominal fee, however, may not be a substitute for compensation or tied to productivity. A fee would not be considered nominal if it is, in fact, a substitute for compensation, or tied to productivity (e.g., payment of hourly wages for services rendered). This would not prevent, however, payment of a nominal amount on a per call or per assignment basis, for example, to bona fide volunteer EMT or Fireifghters. See 29 CFR §553.106(e). Whether the nature and structure of payments made to individuals would result in their losing volunteer status is determined by examining the total amount of payments made (expenses, benefits, fees) in the context of each **particular situation**.

So can I pay my volunteers

A nominal fee cannot be a substitute for compensation or tied to productivity. *See* 29 C.F.R. § 553.106(e). Generally, a key factor in determining if a payment is a substitute for compensation or tied to productivity is "whether the amount of the fee *varies* as the particular individual spends more or less time engaged in the volunteer activities." Wage and Hour Opinion Letter FLSA2005-51 (Nov. 10, 2005). If the amount varies, it may be indicative of a substitute for compensation or tied to productivity and therefore not nominal. *See id.*; *see also* 29 C.F.R. § 553.106(e).

Employee Definition

29 U.S. Code § 203. Definitions
(e) (C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual
— (i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him;

(4) (A) The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if— (i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
(ii) such services are not the same type of services which the individual is employed to perform for such public agency.
(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

Fair Labor Standards Act

If you are an employee what type of employee; exempt or non-exempt:
Employees who qualify as "**exempt**" are **exempt** from overtime regulations (and minimum wage laws), whereas "**nonexempt**" employees must be paid for every hour of overtime they work. The federal Fair Labor Standards Act (FLSA) and the laws of the 50 states regulate what constitutes "overtime."
Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and Highly compensated employees.

Fair Labor Standards Act

Executive exemption. To qualify as an exempt executive, an employee must:
manage other workers as the primary job duty
direct the work of two or more full-time employees
have the authority to hire, fire, discipline, promote, and demote others or make recommendations about these decisions, and
earn a salary of at least $455 per week. Employees who own at least 20% of the business are exempt only if they are "actively engaged" in its management.

Fair Labor Standards Act

Administrative exemption. An administrative employee generally must:

primarily perform office or nonmanual work directly for company management or administration
primarily use his or her own discretion and judgment in work duties, and earn a salary of at least $455 weekly.

Fair Labor Standards Act

Professional exemption. To qualify as an exempt professional, an employee must:
perform work requiring invention, imagination, originality, or talent in a recognized creative field—such as music, writing, acting, and the graphic arts, or perform work requiring advanced knowledge—work that is predominantly intellectual, requires a prolonged course of instruction, and requires the consistent exercise of discretion and judgment, such as law; medicine; theology; accounting; actuarial computation; engineering; architecture; teaching; various types of physical, chemical, and biological sciences; and pharmacy, and earn a salary of at least $455 per week (although doctors, lawyers, teachers, and many computer specialists need not meet this minimal earning requirement).

Fair Labor Standards Act

Highly compensated employees. Employees who perform office or nonmanual work and are paid total annual compensation of $100,000 or more—which must include at least $455 per week paid on a salary or fee basis—are exempt from the FLSA if they regularly perform at least one of the duties of an exempt executive, administrative, or professional employee as described earlier.

Commonly issues that come up relating to the exemption for executive, administrative, and professional workers.

. There is no formal sick leave policy, but salaried workers are docked for time missed due to illness.

•Allegedly exempt workers are paid less than full salary each week.

•Employees deemed exempt perform nearly exclusively routine work that has no bearing on setting management policies.

•Exempt employees with scholastic degrees perform exclusively unprofessional, unrelated work.

•Acquired job skills are confused with the need to use independent judgment and discretion.

•Salaried employees are all labeled exempt, without regard to actual work duties or the percentage of time spent on them.

While many of the "regular rules" of the FLSA apply to fire protection employees, there are some "special rules," as well. These include "special 7(k) work periods" which may increase the FLSA overtime thresholds, and some peculiar regulations governing "sleep time.“

7(k)" refers to the section of the FLSA in which these special rules are contained, 29 USC §207(k).

Hours worked before OT rate kicks in

Days in Work Period	Fire Protection
28	212
27	204
26	197
25	189
24	182
23	174
22	167
21	159
20	151
19	144
18	136
17	129
16	121
15	114
14	106

Exemptions that don't count towards productive time

Earnings Code	Description	Hours	Effect on FLSA
REG	Regular	78	Hours and amount
MUP	Move-up	3	Hours and amount
MOT	Mandatory overtime	2	Hours and amount
SOT	Special event overtime	4	Hours and amount
CTO	Comp time	2	None
SCK	Sick leave	2	None
Total		91	

Calculate the Overtime Premium

Calculate the overtime premium under FLSA and under the government method as follows:
FLSA overtime premium:
1 × 15.766436 USD × 0.5 = 7.88 USD.

Government overtime premium: 1 × 15.179 USD × 0.5 = 7.59 USD.

The FLSA premium is greater than the government premium, so the employee should receive the FLSA rate if the government pays the higher of FLSA or pays contractual overtime rate.

EMS and 7k exemption

Most counties, cities, and other governmental organizations provide EMS using one of four distinct organizational models:

(1) fire and rescue departments that fully integrate fire and EMS, cross-training and rotating all personnel between fire suppression apparatus and EMS vehicles, and staffing suppression apparatus with personnel trained in basic and/or advanced life support;

(2) fire and rescue departments that have a separate EMS division or bureau that maintain different training requirements for fire suppression and EMS personnel and do not as a matter of course rotate personnel between suppression apparatus and EMS vehicles;

(3) "third-service" public agencies that provide only EMS; and

(4) private companies that provide primary EMS response or respond in conjunction with fire apparatus that have responsibility for patient care and/or transport.

EMS and 7k exemption

Fire department EMS personnel may qualify for treatment under the Section 7(k) exemption "if such personnel form an integral part of the public agency`s fire protection activities”

the regulations state that "an employee engaged in fire protection activities" includes only employees who

(1) are employed by an organized fire department or fire protection district;

EMS and 7k exemption

(2) have been trained to the extent required by State statute or local ordinance;

(3) have the legal authority and responsibility to engage in the "prevention, control or extinguishment of a fire of any type"; and

(4) perform activities which are required for and directly concerned with the prevention, control or extinguishment of fires, which can include incidental non-firefighting functions such as housekeeping, equipment maintenance, lecturing, attending community drills, and inspecting homes and schools for fire hazards.

EMS and 7k exemption

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Single role EMS employees whose jobs do not meet all of the above tests (including being cross-trained in fire and rescue activities) are required to be paid overtime compensation after they work 40 hours each week.

Other possible Exemption deductions

SLEEP TIME—Can your employer deduct on-duty sleep time? Many fire and rescue employees work shifts that span an entire day, and because of the time period involved, sleep at their work sites during each shift. Unless certain conditions are met, a public employer must treat this sleep time as compensable hours (even if no emergency calls come in). Under applicable law, an employer can deduct up to eight hours of sleep time per shift from the number of compensable hours of work that trigger overtime pay only if the following two conditions are both met:

the shift lasts more than 24 hours (e.g., 24 hours, 15 minutes); and

there is an express or implied agreement from the employee that the employer may deduct such time.

Other possible Exemption deductions

MEAL TIME—Should you be getting paid for on- duty meal breaks?

However, an employer may exclude meal periods (and avoid paying overtime) only if the following conditions are met:

- the shift lasts more than 24 hours (e.g., 24 hours, 15 minutes); and
- the time that is designated for eating is a “bona fide” meal period, meaning that the employee is generally relieved of duties during this time such that he uses the time predominantly for his benefit rather than for the employer’s benefit); and
- there is an express or implied agreement from the employee that the employer may deduct such time

So can I pay my volunteers

As a general rule, the Department of Labor finds that a fee paid is (apart from expenses) nominal as long as it does not exceed 20 percent of the amount that otherwise would be required to hire a permanent employee for the same services.

Example –
The stipends for the firefighters and other types of volunteers appear to be as follows with an average of 500 calls a year:

Emergency Medical Technicians (EMTs)	$175.00 per month
Firefighters	$175.00 per month
Firefighter/EMTs	$200.00 per month
Traffic Control Officers	$250.00 per call
Food Service	$ 25.00 per call

Total – $14,900 per year –
Start Salary average around $42,000 so this is a violation.

Questions?

Thank you
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