

Fact Sheet #7: State and Local Governments Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the [FLSA](#) to State and local government employees.

Characteristics

State and local government employers consist of those entities that are defined as public agencies by the FLSA. “Public Agency” is defined to mean the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States, a State, or a political subdivision of a State; or any interstate governmental agency. The public agency definition does not extend to private companies that are engaged in work activities normally performed by public employees.

Coverage

Section 3(s)(1)(C) of the FLSA covers all public agency employees of a State, a political subdivision of a State, or an interstate government agency.

Requirements

The FLSA requires employers to:

- pay all covered nonexempt employees, for all hours worked, at least the [Federal minimum wage](#) of \$7.25 per hour effective July 24, 2009;
- pay at least one and one-half times the employees’ regular rates of pay for all hours worked over 40 in the workweek;
- comply with the youth employment standards; and
- comply with the recordkeeping requirements

[Youth Minimum Wage](#): The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Compensatory Time: Under certain prescribed conditions, employees of State or local government agencies may receive compensatory time off, at a rate of not less than one and one-half hours for each overtime hour worked, instead of cash overtime pay. Law enforcement, fire protection, and emergency response personnel and employees engaged in seasonal activities may accrue up to 480 hours of comp time; all other state and local government employees may accrue up to 240 hours. An employee must be permitted to use compensatory time on the date requested unless doing so would “unduly disrupt” the operations of the agency.

In locations with concurrent State wage laws, some States may not recognize or permit the application of some or all of the following exemptions. Since an employer must comply with the most stringent of the State or

Federal provisions, it is strongly recommended that the State laws be reviewed prior to applying any of the exclusions or exemptions discussed herein.

For certain employees in the following examples, the calculation of overtime pay **may** differ from the general requirements of the FLSA:

- employees who solely at their option occasionally or sporadically work on a part-time basis for the same public agency in a different capacity than the one in which they are normally employed
- employees who at their option with approval of the agency substitute for another during scheduled work hours in the same work capacity
- employees who meet exemption requirements for Executive, Administrative, Professional or Outside Sales occupations
- hospital or residential care establishments may, with agreement or understanding of employees, adopt a fixed work period of 14 consecutive days and pay overtime after 8 hours in a day or 80 in the work period, whichever is greater
- mass transit employees who spend some time engaged in charter activities
- employees working in separate seasonal amusement or recreational establishments such as swimming pools, parks, etc.

Employees Engaged in Fire Protection and Law Enforcement Activities

Fire protection personnel include firefighters, paramedics, emergency medical technicians, rescue workers, ambulance personnel, or hazardous materials workers who:

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

There is no limit on the amount of nonexempt work that an employee employed in fire protection activities may perform. So long as the employee meets the criteria above, he or she is an employee “employed in fire protection activities” as defined in section 3(y) of the FLSA.

Law enforcement personnel are employees who are empowered by State or local ordinance to enforce laws designed to maintain peace and order, protect life and property, and to prevent and detect crimes; who have the power to arrest; and who have undergone training in law enforcement.

Employees engaged in law enforcement activities may perform some nonexempt work that is not performed as an incident to or in conjunction with their law enforcement activities. However, a person who spends more than 20 percent of the workweek or applicable work period in nonexempt activities is not considered to be an employee engaged in law enforcement activities under the FLSA.

Fire protection and law enforcement employees may at their own option perform special duty work in fire protection and law enforcement for a separate and independent employer without including the wages and hours in regular rate or overtime determinations for the primary public employer.

- Fire Departments or Police Departments **may** establish a work period ranging from 7 to 28 days in which overtime need be paid only after a specified number of hours in each work period.

- Any employee who in any workweek is employed by an agency employing less than 5 employees in fire protection or law enforcement may be exempt from overtime.

For more information on law enforcement and fire protection employees under the FLSA, see Fact Sheet #8.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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