

**CITY OF AUBURN HILLS
FIRE DEPARTMENT
PERSONNEL GUIDELINE**

SUBJECT: Employee FLSA Compensation	NUMBER: #113
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PURPOSE:

The purpose is to set forth the guidelines to apply the provisions of the Fair Labor Standards Act (FLSA) Part 553 as they relate to fire protection employees of the City of Auburn Hills.

Application

The content of this guideline will apply to all employees of the Auburn Hills Fire Department as generally described in sections (553.20), and more specifically described in sections (553.210).

INTRODUCTION (553.20)

FLSA requires that covered, non-exempt employees receive not less than one and one-half times their regular rate of pay for hours worked in excess of the applicable maximum hours standards. The standard also allows the employer to provide compensatory time off, with certain limitations, in lieu of monetary overtime compensation that would otherwise be required.

Conditions for use of compensatory time (553.25)

An employee who has accrued compensatory time and requested use of this compensatory time, shall be permitted to use such time off within a "reasonable period" after making the request, if such does not "unduly disrupt" the operations of the department. Whether the request to use compensatory time has been granted within a "reasonable period" will be determined by considering the customary work practices of the department based upon facts and circumstances in each case. Such practices include, but are not limited to the normal schedule of work, anticipated peak workloads based on past experience, emergency requirements for staff and services, and the availability of staff.

When a request for compensatory time off is submitted, it shall be honored unless to do so would be "unduly disruptive" to department operations. The denial of an employee's request for compensatory time off requires that it should reasonably and in good faith anticipate that it would not impose an unreasonable burden on the departments ability to provide services of an acceptable level to the public during the time requested without the use of the employee's services.

Cash Overtime Payments (553.26)

Overtime compensation due the employee may be paid in the employee's normal payroll check at the employer's option, in lieu of providing compensatory time. The FLSA does not prohibit an employer from substituting payment in whole or part for compensatory time off, and an overtime payment would not affect subsequent granting of compensatory time off for future work periods. Payments of overtime compensation must be paid at a rate not less than one and one-half times the regular rate at which the employee is actually compensated.

In a work period during which an employee works hours which are overtime hours under FLSA and for which cash overtime payments will be made, and the employee also takes compensatory time off, the payment for such will be excluded from the regular rate of pay.

Payment for unused compensatory time (553.27)

Payments for accrued and unused compensatory time earned shall be made no later than the second scheduled work period pay cycle in January of each fiscal year, and shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

Upon termination of employment, an employee shall be paid for unused compensatory time earned at a rate of compensation not less than (1) the average regular rate received by such employee during the last 3 years of the employment, or (2) the final regular rate received by such employee, whichever is higher. Where the final period of employment is less than 3 years, the average rate still must be calculated base on the rate (s) in effect during such period.

Occasional or sporadic employment (553.30)

Employees, who solely at their option, work occasionally or sporadically on a part-time basis for the same employer in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime compensation.

The term occasional or sporadic means infrequent, irregular, or occurring in scattered instances. There may be an occasional need for additional resources in the delivery of certain types of services which is at times best met by the part-time employment of an individual who is already a public employee. Where the employees freely and solely, without coercion at their own option enter into such activity, the total hours worked will not be combined for the purpose of determining any overtime compensation due on the regular, primary job. The employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision.

Substitution (553.31)

Two individuals employed in any occupation by the same public agency, may substitute for one another during scheduled work hours. The performance of work in the same capacity shall be excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation. Where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.

Other flsa exemptions (553.32)

Section 7 (K) of the act provides a partial overtime pay exemption for public agency employees employed in fire protection or law enforcement activities. In addition, sections (13) (20) provides a complete overtime pay exemption for any employee of a public agency engaged in fire protection or law enforcement activities, if the public agency employs less than five (5) employees in such activities.

Records to be kept of compensatory time (553.50)

For each employee subject to compensatory time and compensatory time off the employer shall maintain and preserve records containing basic information and data, and in addition, (1) the number of hours of compensatory time earned each work period, by each employee at the rate of one and one-half hour for each overtime hour worked, (2) the number of hours of such compensatory time used each work period, or other applicable work period by each employee, (3) the number of hours of compensatory time compensated in cash, the total amount paid and the date of such payment.

Employment by the same public agency (553.102)

The FLSA does not permit an individual to perform hours of volunteer service when such hours involve the same type of services the individual is employed to perform.

The 1985 amendments provide that employees may volunteer hours of service to their employer provided "such services are not the same type of services which the individual is employed to perform for such employer. The phrase "same type of services" means similar or identical services. Also in the determination will be the consideration of all the facts and circumstances in a particular case, including whether the volunteer service is closely related to the actual duties performed by or responsibilities assigned to the employee.

Examples of volunteer services which do not constitute the "same type of services" include: A city police officer who volunteers as a part-time referee in a basketball league sponsored by the city; an employee of the city parks department who serves as a volunteer city firefighter.

Examples of an individual performing services which constitute the "same type of services" is: A career firefighter cannot volunteer as a firefighter for the same public agency.

Payment of expenses, benefits, or fees (553.106)

Volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers.

An individual who performs services as a volunteer for a public agency may receive payment for expenses and benefits without being deemed an employee to include but not limited to: Uniform allowance, reasonable cleaning expense, routine out-of pocket expenses, tuition reimbursement, transportation and meal costs, books, supplies, or other materials essential to their training or reimbursement for costs thereof.

Individuals do not lose their status as volunteers if they are provided reasonable benefits to include but not limited to: Group insurance plans (such as liability, health, life, disability, workers compensation) or pension plans, and "length of service" awards.

Individuals do not lose their volunteer status if they receive a nominal fee. A nominal fee is not a substitute for compensation and must not be tied to productivity. However, this does not preclude the payment of a nominal amount on a "per call" or similar basis to volunteer firefighters. The following factors are among those used in determining whether a given amount is nominal: Distance traveled, time and effort expended, whether the volunteer has agreed to be available only during specified time periods, and whether the volunteer provides services as needed throughout the year.

An individual who volunteers to provide periodic services on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status.

Statutory provisions: Section 7 (K) (553.201)

The act provides a partial overtime pay exemption for fire protection and law enforcement personnel who are employed by public agencies on a work period basis. The act requires that for employees who have a work period of at least 7 but less than 28 consecutive days, overtime compensation is required when the ratio of the number of hours worked to the number of days in the work period exceeds the ratio of 212 hours to 28 days.

Fire protection activities (553.210)

The act applies to any employee (1) who is employed by an organized fire department; (2) who is trained to the extent required by state law; (3) who has authority and responsibility to engage in the prevention, control, or extinguishment of a fire; (4) who performs activities which include prevention, control, extinguishment, and non firefighting functions such as housekeeping, maintenance, lecturing and home inspections.

The term would include all employees regardless of their status as "Trainee", "Probationary", or "Permanent", or of their particular specialty or job title (firefighter, engineer, fire specialist, fire inspector, lieutenant, captain, fire marshal, battalion chief, deputy chief, or chief), and regardless of their assignment to support activities. The term also includes rescue/ambulance personnel. If such personnel form an integral part of the public agency's fire protection activities.

Not included in the term "Employee in Fire Protection Activities" are the civilian employees of a fire department in such support activities as those performed by dispatchers, apparatus and equipment repair workers, and clerks, etc.

Twenty - percent limitation on non-exempt work (553.212)

Public agency personnel may, at their own option, undertake employment for the same employer on an occasional or sporadic and part-time basis in a different capacity from their regular employment. The hours of work in the different capacity need not be counted as hours worked for overtime purposes on the regular job. An employee who spends more than 20 percent of their time in the above exempt work time would no longer be exempt and must be compensated accordingly under the FLSA.

Trainees (553.214)

The attendance at a fire academy or other training facility, when required by the employing agency, constitutes engagement in activities under section 7(K). The basic training or advanced training is considered incidental to, and part of, the employee's fire protection activities.

Other exemptions (553.216)

Special exemptions for employees of public agencies engaged in fire protection to include a complete minimum wage and overtime pay exemption for employees in executive, administrative or professional capacity as defined in 29 C.F.R. Part 541. This does not result in excluding that employee from the count that must be made to determine the application of Section 13 (B) (20) exemption to the agency.

Tour of Duty (553.220)

The term "Tour of Duty" is applicable to employees for whom the 7 (K) exemption is applied which means the period of time during which an employees is considered to be on duty for the purpose of determining compensable hours. It may be a scheduled or unscheduled period. Such periods include "shifts" assigned to employees often days in advance of the performance of the work. Scheduled periods also include time spent in work outside the "shift" which the employer assigns.

Unscheduled periods include 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 work performed may not have been assigned in advance.

Tour of Duty does not include time spent working in exempt areas as outlined in 553.227, 553.30, and 553.31 of the act.

Compensable hours of work (553.221)

Compensable hours of work generally include all of the time during which an employee is on duty on the employers premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. Such time includes all pre-shift and post-shirt activities which are an integral part of the principal activities.

An employee who is not required to remain on the employer's premises but is merely required to remain available and within radio contact distance is not working while on call, and is not considered compensable hours. However, the time on-call may be compensable depending on whether the restriction placed on the employee preclude using time effectively for personal pursuits.

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, except for the time spent in responding to calls for service which are compensable.

Meal time (553.223)

Where the employer elects to use the 7(K) exemption for firefighters, meal time cannot be excluded from the compensable hours of work where the employee is on a tour of duty of less than 24 hours.

Work period (553.224)

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 cannot be less than 7 consecutive days or more than 28 consecutive days. Except for this limitation, the work period can be of any length, and it need not coincide with the duty cycle or pay period or with a particular day of the week or hour of the day. Once the beginning and ending time of an employee's work period is established, however, it remains fixed regardless of how many hours are worked within the period. The beginning and ending of the work period may be changed, provided that the change is intended to be permanent and is not designed to evade the overtime compensation requirements.

An employer may have one work period applicable to all employees, or different work periods for different employees or group of employees.

Early relief (553.225)

It is common practice among employees engaged in fire protection activities to relieve employees on the previous shift prior to the scheduled starting time. Such early relief time may occur pursuant to employee agreement, either expressed or implied. This practice will not have the effect of increasing the number of compensable hours of work for employees employed under Section 7 (K) where it is voluntary on the part of the employees and does not result, over a period of time, in their failure to receive proper compensation for all hours actually worked.

Training time (553.226)

Time spent in attending training required by the employer is normally considered compensable hours of work.

Maximum hours standards for work periods (553.230)

Employees engaged in fire protection activities who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7 (K) until the number of hours worked exceeds the number of hours worked bears the same relationship to 212 as the number of days in the work period.

The ratio of 212 hours to 28 days for employees engaged in fire protection activities is 7.57 hours per day (rounded).

Compensatory time off (553.231)

Fire protection employees who are subject to the 7(K) exemption may receive compensatory time off in lieu of overtime pay for hours worked in excess of the maximum for their work period as set forth in 553.230.

Section 7 (K) permits public agencies to balance the hours of work over an entire work period for fire protection employees. For example, if a firefighter's work period is 28 consecutive days, and he or she works 80 hours in each of the first two weeks, but only 52 hours in the third week, and does not work in the fourth week, no overtime compensation (in cash wages or compensatory time) would be required since the totals hours worked do not exceed 212 for the work period.

Overtime pay requirements (553.232)

If a public agency pays employees subject to section 7 (K) for overtime hours worked in cash wages rather than compensatory time off, such wages must be paid at one and one-half times the employee's regular rates of pay.

Application of section 7 (K)

The application of the Fair Labor Standard Act, Section 7 (K) Exemption for Non-Exempt Employee's of The City Of Auburn Hills Fire Department will be as follows:

1. The work period will be a seven (7) day work period.
2. The employee's base hourly rate will apply to all hours worked from the first through the fifty third hours.
3. For all hours worked starting at the fifty fourth hour and above, the employee shall be compensated at one and one-half times the employee's regular base hourly rate.
4. The employee shall have the option to receive compensatory time off in lieu of overtime pay for hours worked in excess of the maximums listed below, for the established work period. The maximum bank of accrued compensatory hours cannot exceed eighty (80) hours for each fiscal year.
5. For each hour worked from the 41st hour through the 53rd hour the employee may elect to receive compensatory time equally one hour for hour worked.
6. For each hour worked from the 54th hour and above the employee may elect to receive compensatory time at one and one-half times for each hour worked.
7. With the approval of the Fire Chief, the employee shall have an option to accrue and utilize an additional forty (40) hours of compensatory time after November 1, if the employee has taken their accrued eighty (80) hours prior to this date.
8. For all unscheduled activities beyond the normal tour of duty such as time spent in response to and the handling of emergency situations, the employee will be compensated for a minimum of one (1) hour, and then quarter hour increments as follows after the first hour:
 - 8 minutes past the hour.....25 hours
 - 23 minutes past the hour.....50 hours
 - 38 minutes past the hour.....75 hours
 - 53 minutes past the hour.....1.00 hour
9. The tour of duty for the employees will be one-half scheduled from 7:00 A.M. to 3:00 P.M., and the remaining half scheduled from 8:00 A.M. to 4:00 P.M.
10. The employee's shall be compensated at their base hourly rate for a one-half hour lunch during the scheduled tour of duty.

Additional Benefits Provided

Full time employees will receive all other benefits as provided in the benefits resolution, as approved by City Council.

Part time (on-call) employees will receive all other benefits as provided in Operational Guideline #73.