



The Fair Labor Standards Act For Public Safety Employees

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Presented by
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The Fair Labor Standards Act For Public Safety Employees

May 28, 2025

10:00 AM PT / 1:00 PM ET

60 minutes

Presented By Ryan Hancock

Overtime Rules and Pay: Understand how the FLSA governs overtime pay for public safety employees, including compensatory time and work-week calculations.

Shift Differentials and On-Call Time: Learn about the legal standards for shift differentials, on-call time, K9 pay, and when employees are entitled to compensation.

Exemptions and Special Provisions: Explore FLSA exemptions specific to public safety agencies and how they impact your rights and compensation.

FLSA Compliance and Common Pitfalls: Key insights into avoiding common FLSA violations and ensuring compliance to protect pay rights.

Ryan Hancock

Mr. Hancock is a fierce advocate for the rights of individuals in employment law matters. He has successfully litigated a broad range of discrimination matters including claims involving sexual orientation, religious accommodation, disability, race, sex and denial of employment based on a criminal record. He also represents clients in wage and hour and whistleblower matters and in contract disputes and formation and internal investigations. Ryan has served as co-lead counsel in several class action lawsuits and has appeared before a variety of federal district and appellate courts on behalf of plaintiffs. Ryan is a graduate of Rutgers School of Law and the University of the Arts in Philadelphia.

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The Fair Labor Standards Act For Public Safety Employees

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LRIS's monthly First Thursday
podcast covers the latest news,
court decisions, and arbitration
awards in the public safety labor
and employment arena.

Major Topics Of Discussion:

- What is the overtime threshold?
- What is the regular rate of pay?
- What are hours worked?
- What are the rules for comp. time?
- Who is exempt from FLSA coverage?
- What are the remedies for violations?

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The Default Overtime Threshold, Section 207(a)(1)



No employer shall employ any of his employees who in any workweek... for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

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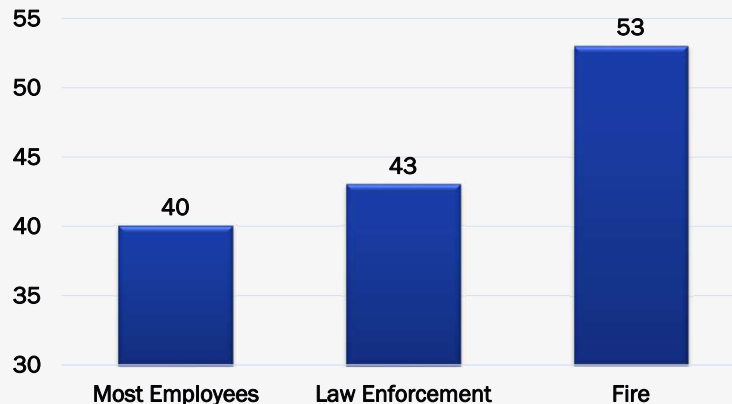
Section 207(k) Overtime Thresholds

- An employer can “establish” an exemption under Section 207(k) of the FLSA for law enforcement and fire protection employees.
- A Section 7(k) exemption allows the employer to use a “work period” instead of a “work week” measuring standard for overtime.
- Work periods can be between 7-28 days.
- The DOL set the maximum work thresholds under Section 7(k) in 1986. No revisions since then.

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Section 7(k) Maximum Non-Overtime Hours

Overtime Thresholds



Thresholds are proportionately longer for work periods greater than seven days.

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FLSA And Non-FLSA Overtime

- Commonly, police and fire contracts call for overtime to be paid whenever the employee works outside the regular shift.
- Assume a police officer is scheduled to work 4/10s. The officer would normally work 160 hours in a 28-day period.
- The first 11 hours the officer works outside the regular shift might be contract overtime, but it would not be FLSA overtime since it was not over the FLSA's 171-hour threshold.

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Basic Principles Of The FLSA Overtime Rate

- Section 207(a)(1) requires that FLSA overtime be paid at time and one-half the "regular rate of pay."
- The regular rate of pay is an "actual fact" that flows as a "matter of mathematical computation" from the amount and form of compensation paid an employee.
- The regular rate must be calculated every work week or, for Section 7(k) employees, every work period.
- It's possible for an employee to have a different regular rate of pay every work week in the year.

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Regular Rate Of Pay

Remuneration for Employment Hours Worked

Remuneration for Employment (a very rough definition)

Virtually anything which appears as non-overtime income on an employee's paycheck is remuneration for employment, with the exception of holiday premium pay and reimbursement for expenses such as cleaning and clothing allowances and mileage reimbursements.

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Regular Rate Of Pay cont.

Salary “add-ons” that must be included in the regular rate of pay.

- Shift Differential
- Specialty Pay, Assignment Pay, and Job Premium Pay
- Longevity
- Hazardous Duty Pay
- Working Out of Classification Pay
- Fitness Pay
- Education Incentive Pay and State Certification Pay
- Standby Pay, and Availability Pay received by Federal Air Marshals
- Insurance “Cash Back” Pay under Flexible Benefits Plans

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Calculating The Regular Rate Of Pay

Assume these facts about a police officer (no Section 7(k) exemption established):

Wages = \$25.00/hr

Longevity = 4%

Shift Differential = 4%

Out Of Class = \$20, for Monday

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Calculating The Regular Rate Of Pay cont.

Item	Amount
Wages	\$1,000.00
Longevity	\$40.00
Work out of Class	\$20.00
Shift Differential	\$40.00
Total Remuneration	\$1,100.00
Hours Worked	40.0
Regular Rate of Pay	\$27.50
Overtime Rate	\$41.25

Not \$25.00

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Regular Rate Of Pay - Other Issues

- Periodic payments (*i.e.* non discretionary bonus) must be included in the regular rate of pay analysis
- Retroactive Wage Increases must be included in the regular rate of pay analysis

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What Are FLSA Hours Worked?

The FLSA's basic phrasing:

- Work includes all time spent in physical or mental exertion, whether burdensome or not, controlled or required by the employer.
- Even if a task involves no exertion at all, the time spent performing it is work time under the FLSA if the work is “(1) controlled or required by an employer, and (2) pursued necessarily and primarily for the benefit of the employer or his business.”
- FLSA work time generally does not include paid leave such as vacation, sick leave, etc.
- Compensable work time includes not only work that an employee is assigned to perform, but also work that an employee is “suffered or permitted” by the employer to perform.

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Suffers Or Permits To Work

- Writing reports.
- Checking e-mail.
- Late and early calls.
- Preparing equipment for work.
- Working through unpaid meal periods.
- Committees and meetings.
- Surveillance.
- Traffic citations.

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Hours Worked – When Does Work Count?

The *de minimis* rule:

- An employer need not compensate employees for small amounts of work which come up only irregularly in the employee's workweek.
- Relevant factors are (1) the amount of time involved and amount of aggregate claim; (2) practical administrative difficulty of recording time; and (3) regularity of work performed.
- The DOL's regulations provide that an employee must be compensated whenever the employee works the greater part of 15 minutes, though rounding to the nearest half-hour is acceptable if it is more beneficial to the employee.

Acceptable = 7 minutes, no pay
Not Acceptable = 8 minutes, no pay

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What Are The Rules For Comp. Time – Section 7(0)?

- Agreement
- Accrual at time and one-half
- Non-forfeitable, but can be cashed out at employer's insistence
- Cashable on termination or retirement at employee's then-current regular rate of pay
- Maximum accruals at any one time of 480 hours (sworn employees) and 240 hours (non-sworn employees)

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Compensatory Time Off Rules cont.

The usage rule under the FLSA.

“... shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.”

The conflict in the courts as to the interplay between

Reasonable period.

Undue disruption.

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Public Safety Employees & Exemption Under The FLSA

“The exemptions do not apply to (public safety) employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.”



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Remedies For Violations Of The FLSA

- Private lawsuits and Department of Labor intervention
- Damages:
 - Back pay
 - Prejudgment Interest
 - Liquidated damages (reasonableness and good faith)
- Statute of Limitations.
 - 2 years v. 3 years (willfulness or recklessness)

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Need More Information?

- Department of Labor publications and web page: www.dol.gov
- Private Law Firm. Willig, Williams & Davidson:
www.wwdlaw.com or Ryan Allen Hancock –
rhancock@wwdlaw.com
- *The FLSA – A User's Manual*, Labor Relations Information System
- *FLSA Handbook*, Thompson Publishing Group.