

Policy 6.06 Fire Department 207 (K) Provision: (proposed section):

Overtime for Fire Department hourly first responder employees will be calculated based on the maximum number of hours physically worked for the declared work period. Webb County has declared a 14-day work period under the 207(K) provision of the Fair Labor Standards Act for Webb County Fire Department hourly employees who physically work scheduled 12-hour shifts. Under this exemption, hours physically worked over 106 in the 14-day work period by Fire Department first responder hourly employees will be considered overtime and will be paid at one and one-half times the regular rate. **29 U.S.C § 207(k)**

Fire fighters who work "platoon schedules" will be classified by their employers as "7(k) eligible" and compensated accordingly.

The special work periods and overtime rules are available only for employees who meet the statutory definition of "employees in fire protection activities" which is contained at **§203(y)**:

'Employee in fire protection activities' means an employee, including a **firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker**, who

(1) is trained in fire suppression, 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

(2) is engaged in the prevention, control, and extinguishment of fires or response to emergency medical situations where life, property, or the environment is at risk.

Thus, to qualify for §7(k) pay as a fire protection employee under this statutory definition, an employee must (a) work for a (government) fire department, (b) be trained in fire suppression, (c) have the legal authority to fight fires, (d) have the responsibility to fight fires, (e) and either actually engage in fire suppression work of the type defined or non-fire related emergency responses.

Employees who may be members of the Fire Department and perform support activities, such as **dispatchers, radio operators, repair workers, clerks or janitors** do not qualify for the 207 (K) exemption.

Trading Shifts:

Non Exempt Fire Fighters (First Responders) may trade or substitute tours of duty without being subject to overtime compensation by virtue of the voluntary trading of time by such. (**29 CFR 553.31, section 7(p) (3)**) The following criteria must be met in order to there to be no effect on hours worked for the County Fire Department:

1. Substitution or trading time is done voluntary by both employees involved.
2. The substitution of trading is approved by the Fire Chief beforehand. The employee's decision to substitute of each other should be made without any coercion by the County Fire Department; and the employee should be able to refuse such substitution without explanation.
3. The County Fire Department may suggest that an employee substitute or "trade time" with another employee working in the same capacity during the regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain for justify the decision.
4. The hours worked shall be excluded by the County in the calculation of the hours for which the substituting employee would otherwise entitled to overtime compensation.

5. There is no provision in (29 CFR 553.31 section 7(p) (3)) that requires on individual to "repay" the other individual who agrees to a work substitution agreement. This is a matter for the parties to resolve.
6. The approval requirement is satisfied "when the employer is aware of the substitution and indicates approval in whatever manner is customary." (29 CFR § 553.31Section 7(p)(3))

this title, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(j) EMPLOYMENT IN HOSPITAL OR ESTABLISHMENT ENGAGED IN CARE OF SICK, AGED, OR MENTALLY ILL

No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated subsection (a) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(k) EMPLOYMENT BY PUBLIC AGENCY ENGAGED IN FIRE PROTECTION OR LAW ENFORCEMENT ACTIVITIES No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number



commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

(t) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips.

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

(y) "Employee in fire protection activities" means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who—

(1) is trained in fire suppression, 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

(2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

(June 25, 1938, ch. 676, § 3, 52 Stat. 1060; 1946 Reorg. Plan No. 2, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, ch. 736, § 3, 63 Stat. 911; Pub. L. 87-30, § 2, May 5, 1961, 75 Stat. 65; Pub. L. 89-601, title I, §§ 101-103, title II, § 215(a), Sept. 23, 1966, 80 Stat. 830-832, 837; Pub. L. 92-





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§ 553.31 Substitution—section 7(p)(3).

(a) Section 7(p)(3) of the FLSA provides that two individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked shall be excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under the Act. 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.

(b) The provisions of section 7(p)(3) apply only if employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee substitute or "trade time" with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward by the employer, and (ii) exclusively for the employee's own convenience.

(c) A public agency which employs individuals who substitute or "trade time" under this subsection is not required to keep a

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