Fire Protection Employee

Dear Reader:

The following document was created from the MTAS website (mtas.tennessee.edu). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Reference Number: MTAS-2097

Definition of Employees Covered by 207(k) - Fire Protection Employee

To be covered by the 207(k) exemption for fire protection employees, the regulations state that an employee in fire protection activities means "an employee, including firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel or hazardous material worker, who (29 U.S.C. § 203(y)); (29 C.F.R. § 553.210(a)):

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."

These employees are covered "regardless of whether they are part-time or full-time employees or are temporary or casual workers employed for a particular fire or a particular time period.

This definition means that if your city employs firefighters who also run EMS or rescue calls or are on hazardous materials teams, who meet both the tests established by the amendment, then the 20 percent rule no longer applies to any of the functions specifically mentioned in the definition. It is very important that all fire department employees who are eligible to take advantage of the partial exemption from the overtime provisions of the FLSA meet both the tests. No longer will the number of EMS runs or hours spent on rescue missions threaten to jeopardize the 207(k) status of a firefighter. 29 C.F.R. § 553.212(a).

This new definition has cleared up the conflicting court opinions and the different tests that have been applied to different situations. According to the U.S. Department of Labor, EMS workers who do not meet the tests established by this new law are not subject to the 207(k) exemption and are therefore considered 40-hour employees. Just because an employee works for a local government and engages in fire protection, the employee still is not exempt from the overtime provisions. If EMS workers work for the police department, public works or other such units of the city they cannot qualify for the 207(k) partial overtime exemption. It is important to remember that this revision of the law applies to fire departments.

Another area of concern has been the status of volunteer firefighters. According to an August 7, 2006, DOL Wage and Hour opinion letter to the International Association of Fire Chiefs, any fee paid to a volunteer firefighter is considered nominal as long as the fee does not exceed 20 percent of what that public agency would otherwise pay to hire a full-time firefighter. The implementing regulations at 29 C.F.R § 553.106(e) provide that "a volunteer may be paid only expenses, reasonable benefits or a nominal fee, or any combination thereof, without losing volunteer status. This does not allow a firefighter already on the payroll as a full-time firefighter to respond on his off-duty time as a volunteer. Examples of permissible expenses or benefit payments are described as payment for expenses, such as dry cleaning; an allowance for a requirement, such as a uniform; reimbursement for an out-of-pocket expense, such as transportation; a payment to provide materials, such as supplies; or a payment for benefits, such as participation in group insurance plans.

While the statute and implementing regulations do not define what constitutes a "nominal fee," the regulations provide guidance for determining whether a fee is nominal and permissible. If a fee is not nominal, the individual does not qualify as a volunteer and is considered an employee who is covered by the FLSA minimum wage and overtime provisions. FLSA Regulation 29 C.F.R § 553.106(e) provides that "the factors to consider in making the determination include but are not limited to:

1. The distance traveled and the time or effort required of a volunteer;

2. The availability — limited or unlimited — of a volunteer to provide services; and

3. The basis — as needed or throughout the year — on which a volunteer agrees to perform services."

"Also not qualifying for the 207(k) exemption are civilian support employees of fire departments, fire districts or forest services, such as dispatchers, alarm operators, mechanics, camp cooks maintenance workers, clerks or stenographers." 29 C.F.R. § 553.210(b).

Source URL (retrieved on *07/09/2020 - 5:31am*): http://www.mtas.tennessee.edu/reference/ fire-protection-employee