

Staff Overtime Pay

Dear Reader:

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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,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

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Staff Overtime Pay

Reference Number: MTAS-1194

The FLSA does not limit the number of hours that an employee may work, either daily or weekly. The act creates an overtime “threshold,” and all hours worked in excess of the threshold must be compensated at a premium rate of pay one and one-half times the normal rate of pay. 29 U.S.C. § 207 (a)(1). For most employees, the overtime threshold is 40 hours in a workweek, but the act contains an exemption for fire and police personnel, which allows longer work periods. The threshold for law enforcement personnel is based on the length of the work period.

The act does not require overtime pay for hours worked in excess of a scheduled shift on any given day or for hours worked on a regularly scheduled off day. Under the act, overtime applies only to hours worked in excess of the overtime threshold for the entire work period.

Work Periods

Reference Number: MTAS-1195

The standard work period for most employees, such as dispatchers and secretaries, is one week (seven days). The law enforcement exemption allows work periods from one week to four weeks (seven days to 28 days). Most employers will use one-week increments for work periods, and the most prevalent work periods are one week, two weeks, and four weeks. 29 C.F.R. § 553.230.

It should be noted that work periods are not necessarily the same as pay periods. For example, an employer may have a one-week work period but a two-week pay period. Two-week pay periods are actually quite common. If the work period is one week, as it always is for non-public safety employees, overtime is calculated for each of the one-week work periods in the pay period.

The employer can have pay periods that are shorter than the work period. This is very common for fire departments and, to a lesser degree, police departments, especially police departments working 12-hour shifts. Overtime is calculated at the end of the work period, encompassing both pay periods. There is a longer discussion later in this publication of the benefits of longer work periods when an employer uses shifts longer than the traditional eight-hour shift.

Work periods longer than one week only apply to bona fide police officers. Persons performing clerical duties or dispatcher duties are not bona fide police officers, even if the employer designates them as such. The definition applies to the duties performed by the employee, not the title of the employee. For employees with varied job duties, the tasks performed the majority of the time determine the employee's status. For example, if a police officer occasionally works as a dispatcher, the officer would still be subject to the law enforcement exemption.

Overtime Threshold

Reference Number: MTAS-1196

The overtime threshold is determined by the length of the work period. For non-public safety employees the work period is always one week, and the overtime threshold is 40 hours. For law enforcement officers the work period may be longer.

Non-law Enforcement Officers

Includes dispatchers, clerks, secretaries, and civilian parking control officers.

- One-week work period threshold 40 hours overtime

Law Enforcement Officers

- One-week work period: overtime threshold is 43 hours
- Two-week work period: overtime threshold is 86 hours

- Four-week work period: overtime threshold is 171 hours
29 C.F.R. § 553.230.

Once the number of hours actually worked in the work period exceeds the overtime threshold, the employee must be compensated at one and one-half times the normal rate of pay. It does not matter how many hours an employee works in any given day during the work period, whether the day fell on a holiday, or whether the work was on a regularly scheduled day off; overtime is calculated on the total number of compensable hours worked *in excess of the overtime threshold for the work period*.

Canine Handlers

Reference Number: MTAS-1197

Many police departments have drug dogs, bomb dogs, or general patrol dogs. The officers assigned to handle these dogs usually care for the animals at their homes and sometimes train the dogs outside their normal work schedules. This constitutes time worked, and the time must be compensated. The employer cannot allow the employee to volunteer to care for the animal. Wage and Hour Opinion Letters, Dec. 30, 1985, June 13, 1989, and Aug. 11, 1993.

Since the employee is caring for the animal at home, there is no way to monitor the time an employee actually spends caring for the animal. Monitoring can be accomplished by establishing a policy dictating how much time the employee will spend each day caring for the animal. Courts have held that 30 minutes a day can be an adequate amount of time to care for the animal, but the employer should establish what it deems as a reasonable amount of time. If the handler also trains the animal outside the regular work schedule, this time should be built into the policy.

Of course, any unexpected time, such as emergency visits to a veterinarian, should be counted as additional time worked.

Trading Shifts

Reference Number: MTAS-1198

Police officers may trade shifts or substitute tours of duty with another employee without the employer being subject to additional overtime by virtue of one employee working the additional hours during the work period. The following criteria must be met in order for there to be no effect on hours worked:

- Substitution or trading is done voluntarily; and
- The substitution or trading is approved by the employer.

29 U.S.C. § 207 p(3).

The employees' decision to substitute for each other must be made without any coercion by the employer, and they should be free to refuse the substitution without sanction or explanation. There is no requirement that the employer maintain a record of the time traded or substituted, nor is there any period of time for which the time traded must be paid back by the other employee. 29 C.F.R. § 553.31.

Small Police Departments

Reference Number: MTAS-1199

Police departments with fewer than five total officers, including the chief of police, are exempt from the overtime requirements of the FLSA. This number also includes any part-time officers, regardless of the number of hours they work. 29 C.F.R. § 553.200.

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