

**U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210**

FLSA2008-9NA
2008 DOLWH Lexis 15

May 30, 2008

Dear Name *:

This is in response to your request for an opinion regarding whether “jailers” employed by your city qualify for the partial overtime exemption under section 7(k) of the Fair Labor Standards Act (FLSA) as “law enforcement” personnel, which specifically include “security personnel in correctional institutions.” 29 U.S.C. § 207(k). ** You state that the jailers in question, despite lacking the power to make arrests, meet the criteria of “security personnel in correctional institutions” as described in 29 C.F.R. § 553.211(f). It is our opinion that the jailers, despite lacking the power to make arrests, are security personnel in a correctional institution, and therefore qualify for the partial overtime exemption of section 7(k).

The FLSA provides a partial overtime exemption for fire protection and law enforcement personnel employed by public agencies on a “work period” basis. 29 U.S.C. § 207(k). Section 7(k) states that “[n]o public agency shall be deemed to have violated subsection (a) of this section [requiring the payment of overtime compensation] 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 an employee receives overtime compensation in accordance with the tours of duty described in section 7(k). Id. Overtime guidelines for law enforcement personnel include maximum hours standards (before overtime compensation is required) for work periods between 7 and 28 consecutive days. See 29 C.F.R. § 553.230(b).

Section 553.211(a) of the regulations defines “any employee in law enforcement activities” as

any employee (1) who is a uniformed or plainclothed member of a body of officers and subordinates who are empowered by State statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes, (2) who has the power to arrest, and (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics. 29 C.F.R. § 553.211(a).

Section 553.211(f) of the regulations, in turn, specifically interprets the statutory term “security personnel in correctional institutions.” Unlike the general “law enforcement” definition contained in section 553.211(a), the specific description of “security personnel in correctional institutions” in section 553.211(f) does not require that the employee have the power to make arrests in order to come within the section 7(k) partial exemption. Rather, “[e]mployees of correctional institutions who qualify as security personnel for purposes of the section 7(k) exemption are those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions” 29 C.F.R. § 553.211(f). Therefore, the jailers here meet the definition of an “employee in law enforcement” under section 7(k).

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Monty Navarro
Office of Enforcement Policy
Fair Labor Standards Team

* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).

** Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov