

This document is a supplement to the Fire Association Contract

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The FLSA, A User's Manual

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The FLSA

A User's Manual

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F. Fire Protection Employees' Work Schedules.

It is very difficult to avoid FLSA overtime under a traditional 24-on/48-off schedule worked by fire protection employees. Following the general rule of thumb in selecting alternative work periods (select the work period which is the largest which may be evenly divided by the work cycle), the best alternative work period to use under Section 7(k) for a 24-on/48-off work cycle is a 27-day work period.⁵ As can be seen below, even this work period will result in some hours of "FLSA overtime" liability on the part of the employer.

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TABLE 19

FIRE PROTECTION AGENCY

24-ON, 48-OFF SCHEDULE

27-DAY WORK PERIOD

1	2	3	4	5	6	7
X	D/O	D/O	X	D/O	D/O	X
8	9	10	11	12	13	14
D/O	D/O	X	D/O	D/O	X	D/O
15	16	17	18	19	20	21
D/O	X	D/O	D/O	X	D/O	D/O
22	23	24	25	26	27	
X	D/O	D/O	X	D/O	D/O	

Regular Hours of Work:	216.0
Permissible Under FLSA:	204.0
<i>FLSA Flexibility:</i>	<i>(12.0)</i>

Though the 27-day work period does involve roughly 12 hours of overtime pay per month, it is vastly superior to the alternative situation which would arise if no 7(k) exemption were elected, as is illustrated by the following Table 20.

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TABLE 27

*FIRE PROTECTION AGENCY
KELLY DAY EVERY 9TH CYCLE*

28-DAY WORK PERIOD

1	2	3	4	5	6	7
X	D/O	D/O	X	D/O	D/O	X
8	9	10	11	12	13	14
D/O	D/O	X	D/O	D/O	X	D/O
15	16	17	18	19	20	21
D/O	X	D/O	D/O	X	D/O	D/O
22	23	24	25	26	27	28
X	D/O	D/O	X	D/O	D/O	D/O

Regular Hours of Work:	216.0
Permissible Under FLSA:	212.0
<i>FLSA Flexibility:</i>	<i>(4.0)</i>

2. The Work Period Wage Option.

Another way in which the problem of dealing with a 24-on, 48-off work schedule under the FLSA can be addressed by looking at a "work period wage". This option, like the Kelly Day option, is one which would be required to be the subject of collective bargaining, where applicable collective bargaining laws exist.

THE 7(k) EXEMPTION

A hypothetical example best explains the concept of a work period wage. Assume that a fire protection agency employee working a 24-on, 48-off shift earns \$2,000 per month. Prior to the application of the FLSA, this rate translated to an hourly rate of \$8.24, and an overtime rate of \$12.36. Assuming that the work schedule is not changed and that a 7(k) 27-day work period is elected, the lowest possible increase in costs would be computed as follows:

Work Periods per Year: 13.53
Overtime per Work Period: 12.00 hours
Overtime per Year: 162.33 hours

Additional Overtime Cost:
 $(\$12.36 \times 162.33) - (\$8.24 \times 162.33) = \$668.82$
Percent Cost of Overtime: 2.79%

If one assumes that all concerned wish to return to the status quo in terms of monthly remuneration before the application of the FLSA, one first needs to set the desired monthly wage -- in this case, \$2,000. Then, working backwards, one needs to determine the desired "work period wage" in the following manner:

Work Periods per Year: 13.53
Work Periods per Month: 1.23
Desired Monthly Wage: \$2,000
Desired Work Period Wage ($\$2,000/1.23$): \$1,775

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The next step in the process is to calculate the desired hourly rate which will produce the desired work period wage. The following algebraic formula will calculate the desired hourly wage, where the letter "h" stands for hourly wage:

$$(204 \times (h)) + (12 \times (1.5 \times h)) = \$1,775$$

$$204h + 18h = \$1,775$$

$$222 h = \$1,775$$

$$h = \$7.99$$

In this fashion, the hourly wage of the fire protection employee is lowered, from \$8.24 to \$7.99. However, the monthly pay of the employee remains the same. The only difficulty with this approach occurs if the employee works what would have been overtime prior to the application of the FLSA. Since the employee would now be working at a lower hourly rate, the employee would receive a reduction in overtime earnings. To compensate for this effect, all that need be done is to provide by collective bargaining agreement, memorandum of understanding, or personnel rules that the overtime rate for time worked in excess of 24 hours per workday, or 56 hours per week, will be at the former overtime rate of \$12.36 per hour instead of at the new overtime rate of \$11.99 per hour (nothing in the FLSA requires that employees be compensated only at the rate of time and one-half for overtime).

While courts have approved of such work period wage adjustments (also called wage recharacterizations),⁶ they have been reluctant to do so in the absence of some form of agreement on the part of employees.⁷