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## Hot Topic: FLSA Firefighter Definition Revised

Dennis Wolf

*Municipal Technical Advisory Service, [Dennis.Wolf@tennessee.edu](mailto:Dennis.Wolf@tennessee.edu)*

Richard Stokes

*Municipal Technical Advisory Service, [Richard.Stokes@tennessee.edu](mailto:Richard.Stokes@tennessee.edu)*

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**March 20, 2012**

**FLSA FIREFIGHTER DEFINITION REVISED**

**Dennis Wolf, Fire Management Consultant  
and Richard L. Stokes, PHR, IPMA-CP, Human Resource Consultant**

In 2001, the U.S. Congress passed Public Law 106-151 amending the Fair Labor Standards Act (FLSA) definition of an “employee in fire protection activities” to clear up any confusion that has existed when a firefighter was engaged in other related activities such as EMS response.

Under this definition, an employee engaged in fire protection activities can be “a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel or hazardous materials worker.”

This significantly altered what activities a firefighter can perform without violating the 20 percent rule. The 20 percent rule, simply stated, says that if firefighters work at functions not included in the FLSA definition of a firefighter, they lose their partial exemption from overtime allowed under the 407(k) provisions of the Fair Labor Standards Act.

In order for this definition to apply, the employee must meet both the following tests:

1. The employee must be trained in fire suppression and have the legal authority and responsibility to engage in fire suppression and must be employed by a fire department of a municipality, county, fire district, or state; and

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

If a local government employs firefighters who also run EMS calls, rescue calls or are on hazardous materials teams, and the firefighters meet both tests established by the amendment, then the 20 percent rule no longer applies to any of the functions specifically mentioned in the definition. The number of EMS runs or hours spent on rescue missions will not jeopardize the 207(k) status of a firefighter. 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.

This definition cleared up conflicting court opinions and the different tests that have been applied to each situation. In similar cases, the 4th and 8th U.S. Court of Appeals handed down totally opposite rulings on how to treat firefighters who engaged in EMS activities. The disagreement between the various courts resulted in several different tests being applied with regard to the partial exemption, leaving many public employers in considerable doubt as to how to apply the FLSA overtime guidelines to firefighters.

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According to the U.S. Department of Labor (DOL), EMS workers who do not meet both tests established by this new law are not subject to the 207(k) exemption and are therefore considered 40-hour employees. It is important to remember that this law applies only to fire departments. The mere fact that an employee works for a local government and engages in fire protection does not exempt the employee from the overtime provisions in the FLSA. EMS workers who work for police departments, public works departments or other such units of a local government cannot qualify for the 207(k) partial overtime exemption.

Also, the 80/20 rule still applies to firefighters on non-exempt work. If firefighters engage in work that is not covered by this definition and more than 20 percent of their time is spent on non-exempt work, they will lose the partial exemption from overtime as allowed under section 207(k) of the Fair Labor Standards Act.

Local governments that employ firefighters should remember that future DOL interpretations of the new law and future case law may impact the interpretation of this law. Local governments should watch for an emerging case law on this issue. The DOL has a website resource for rulings and interpretations on FLSA at this address: <http://www.dol.gov/whd/opinion/opinion.htm>.

For more information, contact:

Dennis Wolf, fire consultant  
[dennis.wolf@tennessee.edu](mailto:dennis.wolf@tennessee.edu)

or

Richard Stokes, human resource consultant  
[richard.stokes@tennessee.edu](mailto:richard.stokes@tennessee.edu)

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**MUNICIPAL TECHNICAL ADVISORY SERVICE**

Knoxville (Headquarters) . . . (865) 974-0411  
Jackson . . . . . (731) 423-3710  
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