



11-7-1985

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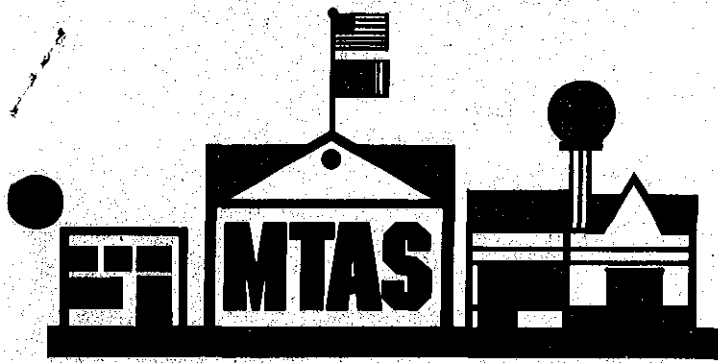
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### Recommended Citation

Ellis, Richard M., "Technical Bulletins: FLSA: New Legislation Lessens Impact" (1985). *MTAS Publications: Technical Bulletins*.

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# TECHNICAL BULLETIN

MUNICIPAL TECHNICAL ADVISORY SERVICE  
THE UNIVERSITY OF TENNESSEE  
IN COOPERATION WITH THE TENNESSEE MUNICIPAL LEAGUE

U.T. No. E14-1050-00-004-86

November 7, 1985

## FLSA: NEW LEGISLATION LESSENS IMPACT

By Richard Ellis, Municipal Management Consultant

Congress has passed legislation which moderates the FLSA's impact on local governments. Signed into law Nov. 4, the legislation postpones until April 15, 1986, the application of FLSA's overtime and recordkeeping requirements and precludes liability for any violations of those requirements occurring before that date. However, these provisions apply only to those employees who were not considered to be covered by the FLSA under the DOL's enforcement policy for local government employees in effect prior to the Garcia decision. This policy stated that employees of the following were not covered by FLSA regulations: schools, hospitals, police and fire departments, sanitation departments, public health agencies, parks and recreation departments, libraries, and museums. These are considered to be traditional local government functions. This new legislation will not affect the original effective date (April 15, 1985) for those city employees not considered to be traditional. MTAS is attempting to get a more comprehensive listing of governmental functions considered to be traditional and non-traditional.

The new legislation exempts employees of local legislative bodies from the overtime provisions of FLSA unless they are covered by civil service laws.

The changes that will affect local governments are presented below:

### Compensatory Time

The new law allows the use of compensatory time in lieu of cash overtime payments. However, the employer must give 1.5 hours of comp time for each

overtime hour worked, and there will be a cap (480 hours for public safety and seasonal personnel, 240 hours for all others) on the amount of comp time accruable.

The use of comp time under these rules would be permissible for any city which has a practice of utilizing comp time as of April 15, 1986. For new employees hired after April 15, 1986, the city would be required to reach an "understanding" with the employee regarding comp time. This understanding would be an implied agreement: if the city has a policy of providing comp time in lieu of overtime, and the employee is provided notice of this policy prior to hiring, an understanding exists and requires no formal written agreement. If the city has a collective bargaining agreement which allows the use of comp time, it will remain in force except that comp time would have to be at the rate of time-and-a-half.

#### Volunteers

The new law provides that any person currently considered to be a volunteer by the city will maintain that status until April 15, 1986, even if the volunteer receives payment (nominal fees, expenses, or reasonable benefits) for his or her services which, under current DOL regulations, might compromise his or her volunteer status. The new law requires that DOL issue new regulations by March 15, 1986, stating what payments can be made to volunteers without compromising volunteer status. The effective date of these new regulations will be April 15, 1986.

#### Joint Employment

Special detail work by public safety employees on an optional basis is defined as separate employment under the new law, even if the city requires that the second employer hire its public safety employees for particular work or is in any other way involved. In other words, the city can require and/or approve the use of public safety personnel by a second employer, collect the

compensation from the second employer, and then pay the public safety employee directly at whatever rate is agreed upon. Compensation does not have to be tied to the employee's regular rate of pay.

Another question regarding joint employment has been addressed by the new law. In cases where full-time city employees occasionally work part-time in a different capacity from their primary employment in the employing jurisdiction, the two jobs shall not be considered as one for purposes of determining overtime liability. For example, if you have a police officer who works part-time in the recreation department, the two jobs may be considered separately.

In contrast to existing regulations, the new law provides that time spent performing volunteer work for a neighboring jurisdiction under a mutual aid agreement does not count as work time for which the employer-city must pay minimum wage and overtime.

#### **Shift Trading by Public Safety Employees**

Under the old law, shift trading among police and fire employees was permissible only if the employer kept records of time traded. The new law will allow voluntary shift trading without the maintenance of such records.

#### **Effective Date/Retroactivity**

As mentioned above, under the new law the FLSA will not apply to traditional employees of local government until April 15, 1986, except that actual payment of overtime due subsequent to April 15, 1986, may be delayed until August 1, 1986, without being subject to penalty. All FLSA liability existing as of April 14, 1986, for overtime pay or minimum wages for traditional government functions is eliminated.

As MTAS receives additional information and interpretations of this new law, it will be passed on to you as soon as possible. If you have questions regarding compliance with FLSA, please call your MTAS Municipal Consultant, the MTAS office in Knoxville at (615)974-5301, or the FLSA hotline at 1-800-233-3572.

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