



Firefighters, overtime and the Fair Labor Standards Act

This article will explore options for paying part-time and full-time firefighters who work hours that exceed Fair Labor Standards Act (FLSA) overtime requirements.

Note: This article is written from the perspective of the FLSA, which uses the term “on call” to apply to firefighters who have set, paid hours that they are expected to be on duty, and during which they must be available to respond even while “on call” (on paid duty but away from the station). For the purposes of the FLSA, this is not the same thing as what is commonly referred to as “on-call” firefighters who do not have set hours in which they are paid to be on duty, but respond to calls if they are available, and are paid only when and if they do respond for duty.

Many FLSA rules, such as those governing compensable time, minimum wage and overtime, apply to fire protection employees the same way they apply to other township employees. But recognizing that firefighters schedules may not fit the “9 to 5” model, there are some special rules for when overtime is considered compensable, and how to calculate overtime payments.

Paying by shifts

Full-time and part-time firefighters usually work a “tour of duty” (an official, paid work schedule), made up of “shifts” that may or may not be contiguous, during the department’s work period (pay period, such as 14 days). The length of a shift is determined by the employer, and can be any number of hours, including 24 hours. The advantage of working shifts is that the firefighters are available at the station or on-call for callouts. A shift may include time on runs or being available for runs, performing maintenance or other station duties, receiving training, and sleeping. Shifts may be “scheduled” (assigned in advance) or unscheduled. When a 24-hour shift is used in larger fire departments, a firefighter’s entire shift, both work and sleep, may be served at the station.

Smaller paid fire departments, however, may not have the facilities to house the firefighters, but might still require them to be on-call for a full 24-hour shift, even during the eight hours or so that they are not at the station. The FLSA generally allows an employer to pay a different hourly rate for on-call time than for regular work time as long as firefighters are paid an average that equals at least minimum wage for the entire work period and have defined their working hours and rate by agreement. The agreement can either be part of a collective bargaining agreement or an expressed agreement where the employee accepts a position knowing the terms of the agreement. So a firefighter can sleep off-premises and still be compensated and available for the entire 24-hour shift.

For example: A firefighter works two-day tours of duty on and three days off, repeated through a 14-day work period.

Each 48-hour tour of duty has two 24-hour shifts for a total of 144 hours. Each 24-hour shift consists of 16 hours regular work at the rate of \$10 per hour, and eight hours on-call off-premises at \$5 per hour. The firefighter’s pay totals \$160 for regular work (16 hours x \$10/hour), plus \$40 for on-call time (8 hours x \$5/hour) for each shift for a total of \$200 per 24-hour shift. The average hourly rate of pay is \$8.33, which is above the current minimum wage of \$8.15 per hour. See Figure 1.

Figure 1

Two days on & three days off: 24-hour shifts @ \$10/hr for 16 hrs of station work & \$5/hr for 8 hours of on-call time over a 14-day period.						
1	2	3	4	5	6	7
\$10/hr @ 16 hrs. \$5/hr @ 8 hr.	\$10/hr @ 16 hrs. \$5/hr @ 8 hr.	Off	Off	Off	\$10/hr @ 16 hrs. \$5/hr @ 8 hr.	\$10/hr @ 16 hrs. \$5/hr @ 8 hr.
8	9	10	11	12	13	14
Off	Off	Off	\$10/hr @ 16 hrs. \$5/hr @ 8 hr.	\$10/hr @ 16 hrs. \$5/hr @ 8 hr.	Off	Off

Using the regular, 40-hour per week FLSA overtime threshold, how would the firefighter who worked the schedule in Figure 1 be paid? When you have a shift worker who is paid different rates of pay for different activities (work and sleep time), there are several steps used to calculate a total gross wage:

1. Determine if overtime is due

- a. **Week 1:** He worked 96 hours, so 56 hours of overtime is due.
- b. **Week 2:** He worked 48 hours, so 8 hours of overtime is due.

2. Determine an hourly base pay amount by dividing the total compensation by the total hours per week

- a. **Week 1:** $\$800/96 = \$8.33/\text{hour}$ base pay rate (Gross wage/total hours = hourly rate).
- b. **Week 2:** $\$400/48 = \$8.33/\text{hour}$ base pay rate.

3. Calculate regular pay

- a. **Week 1:** $\$8.33 \times 40$ regular hours equals \$333.20 in regular pay.
- b. **Week 2:** $\$8.33 \times 40$ regular hours equals \$333.20 in regular pay.

4. Calculate overtime pay

- a. **Week 1:** $\$8.33 \times 1.5$ equals \$12.50/hour. $\$12.50 \times 56$ hours of overtime equals \$700 in overtime pay.
- b. **Week 2:** $\$8.33 \times 1.5$ equals \$12.50/hour. $\$12.50 \times 8$ hours of overtime equals \$100 in overtime pay.

5. Add regular pay to overtime pay for a total gross wage for the pay period

- a. **Week 1:** \$333.20 regular pay, plus \$700 overtime pay, equals a total gross wage of \$1,033.20.
- b. **Week 2:** \$333.20 regular pay, plus \$100 overtime pay, equals a total gross wage of \$433.20.

The total pay that the firefighter is legally entitled to for the 14-day pay period comes to 1,466.40.

Overtime and the 7(k) rule

Under 29 U.S.C. §207(k), commonly known as the “7(k) rule” in the FLSA, public sector fire departments may increase the FLSA overtime thresholds beyond 40 hours per week to the thresholds established by the U.S. Department of Labor for fire department personnel who perform fire protection activities. **See Figure 2.**

Establishing a 7(k) work period can minimize overtime burdens. Instead of being paid overtime for hours over 40 hours per week, if a firefighter works tours of duty that total more than 212 hours in a 28-day work period, then he/she must be paid overtime at one and one-half times his/her regular rate for the hours over 212 hours. In seven-day or 14-day work periods, firefighters could work up to 53 or 106 hours, respectively, without incurring overtime costs.

Although the 7(k) exemption allows you to set any work period between seven to 28 days, the longer the work period, the more flexibility you have in scheduling. Using a work period that is the same as your payroll cycle will also make payroll administration easier.

7(k) qualifications

To qualify for the 7(k) rule, a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or other hazardous materials worker must:

- 1) Be employed by an organized fire department or fire department district.
- 2) Be trained in fire suppression.
- 3) Have the legal authority and responsibility to engage in fire suppression.
- 4) Be engaged in the prevention, control and extinguishment of fires or response to emergency medical situations where life, property or the environment is at risk.

Performing fire protection activities includes incidental non-firefighting functions such as housekeeping, equipment maintenance, lecturing, attending community fire drills, and inspecting homes and schools for fire hazards.

Figure 2

Work Period (days)	Maximum Hours Worked Before Overtime Must Be Paid
28	212
27	204
26	197
25	189
24	182
23	174
22	167
21	159
20	151
19	144
18	136
17	129
16	121
15	114
14	106
13	98
12	91
11	83
10	76
9	68
8	61
7	53

Employees who satisfy the above criteria are considered fire protection employees regardless of their status as trainees, probationary or permanent employees, or their particular specialty or job title. This includes part-time or full-time employees or temporary workers employed for a particular fire or time period. The exemption does not cover department personnel who do not fight fires on a regular basis, or who are paid a salary.

Firefighters who hold multiple work positions within a township may also be eligible for the 7(k) exemption as long as 80 percent or more of their work time is spent on fire protection activities. For example, if a firefighter is also the building inspector, she is eligible for the 7(k) exemption if at least 80 percent of her total township work hours are served as a firefighter, and no more than 20 percent of her total hours are worked for the building department in the total work period. (29 CFR 553.212(a))

Calculating overtime under the 7(k) rule

Under the 7(k) rule, you do not calculate overtime per a 40-hour week. You calculate it over the full work period (and it works best if that is the same as the pay period).

So, would the firefighter who worked the hours in Figure 1 still be eligible for overtime under the 7(k) rule?

Yes, because he worked 144 hours when only 106 hours are allowed in a 14-day work period before overtime must be calculated. Here’s how the final pay is calculated:

1. Determine if overtime is due

He worked 144 total hours in the 14-day work period. The 7(k) threshold for a 14-day period would allow the firefighter to work 106 hours. So 38 hours of overtime is due for the work period.

2. Determine an hourly base pay amount by dividing the total compensation by the total hours per work period

$\$1,200/144 = \$8.33/\text{hour base pay rate}$

3. Calculate regular pay

$\$8.33 \times 106 \text{ regular hours equals } \$882.98 \text{ in regular pay.}$

4. Calculate overtime pay

$\$8.33 \times 1.5 = \$12.50. \$12.50 \times 38 \text{ overtime hours equals } \$475 \text{ in overtime pay.}$

5. Add regular pay to overtime pay for total gross wage for the pay period

$\$882.99 \text{ (regular hours) plus } \$475 \text{ (overtime hours) equals a total gross wage of } \$1,357.99.$

Using the 7(k) exemption reduces the employer’s overtime liability by \$108.41 compared to the 40-hour week calculation.

Fair compensation for an invaluable service

Township firefighters provide an invaluable service to their community. Township officials must ensure that these hometown heroes are fairly compensated, including paying overtime compliant with federal law, for the duties performed when protecting township residents. But townships may use the 7(k) exemption to better reflect the unique nature of firefighters’ shifts while moderating overtime costs.

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This is the final article in a three-part series about township firefighter compensation. For Parts 1 & 2, visit MTA’s “Fire Departments and Fire Protection” Web page on the members-only section of www.michigantownships.org.