

**7(k) EMPLOYEES & ACTIVITIES**

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**Fire Protection  
Activities Defined**

Fire protection activities include work directly concerned with:

- Responding to and controlling and extinguishing fires; or
- Inspecting facilities and equipment for the primary purpose of reducing or eliminating fire hazards when performed by trained firefighters eligible for reassignment to fire control and suppression or prevention duties; or
- Providing primary (i.e., the first called) rescue and ambulance service in connection with fire protection functions. [5 CFR 551.215(b) (2007)]

Fire protection activities do NOT include work involving:

- Research in fire protection or in the design and development of fire protection and prevention equipment and materials performed by professional engineers, engineering technicians and similar employees;
- Fire protection support activities (e.g., those engaged in maintenance of fire apparatus, equipment, alarm systems, or communications and dispatching work) when employees are not trained firefighters eligible for reassignment to fire control and suppression or prevention duties;
- Fire suppression work performed by employees whose primary duties are not related to fire protection on an as needed basis, provided the fire suppression work constitutes less than 80% of the employee's hours of work in any workweek; and
- Rescue and ambulance service provided by those who are not trained in fire suppression; do not have fire suppression authority and responsibility; or are employed by an organization, such as a hospital, that does not have fire suppression as a primary mission. [5 CFR 551.215(d) (2007)]

### Employees Engaged in Fire Protection Activities

Employees,<sup>1</sup> including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel or hazardous materials worker, are considered engaged in fire protection activities for the purpose of determining possible application of 29 USC 207(k) of the FLSA if:

- They are trained in fire suppression, has authority and responsibility to engage in fire suppression, and is employed by an organization with fire suppression as a primary mission; AND
- They are engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

Examples of employees who may meet the above requirements and, therefore, may be covered by 29 USC 207(k) of the FLSA include:

- (1) Employees in positions properly classified in the Fire Protection and Prevention series (GS-081), including any qualified firefighter who is assigned to perform support functions (e.g., communications or dispatching functions, equipment maintenance or repair) or who is transferred to an administrative or supervisory position within the fire protection activity, except when such administrative or supervisory work exempts the employee under executive, administrative, and professional considerations.
- (2) Employees in positions properly classified in other series, such as Forestry Technician (GS-462), for whom fire protection functions constitute substantially fulltime assignments throughout the year or for the duration of a specified fire season within the year.
- (3) Temporary employees hired solely to perform fire suppression work on an as-needed basis.
- (4) Members of rescue and ambulance crews with fire suppression training, authority, and responsibility, who are part of a fire suppression organization and meet the conditions outline at the top of the page and at 5 CFR 551.215(c)(1)(i) (2007).
- (5) Any other employee in any workweek in which the employee performs fire control or suppression work for 80 percent or more of the total hours worked.  
[5 CFR 551.215(c) (2007)]<sup>2</sup>

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<sup>1</sup> OPM emphasizes in the regulations and its responses to those who commented on the draft regulations, that 29 USC 207(k) is applied only to employees receiving certain types of premium pay associated with extended tours of duty.

<sup>2</sup> OPM notes that wildland firefighters are not covered by section 29 USC 207(k) of the FLSA. 72 Fed.Reg. 52753, 17 September 2007, @ 52760.

### Law Enforcement Activities Defined

Law enforcement activities include work directly and primarily involved with:

- Patrolling and controlling, including patrolling an area to enforce law and order, and to protect lives, property, and civil rights of individuals through prevention and detection of criminal acts; responding to complaints, violations, accidents, and emergencies; investigating for clues at the scene of a crime, interviewing witnesses, and evaluating evidence to locate suspects; and, apprehending and arresting persons suspected of or wanted for criminal violations under a statutorily prescribed arrest authority;
- Executing orders of a federal court, that include serving civil writs and criminal warrants issued by federal courts; tracing and arresting persons wanted by warrants; seizing and disposing of property under court orders;
- Planning and conducting investigations relating to alleged or suspected violations of criminal laws, including the arrest of suspected or wanted persons under a statutorily prescribed arrest authority;
- Performing security functions in a correctional institution involving direct custody and safeguarding of inmates charged with or convicted of violations of criminal laws;
- Providing primary (i.e., first called) rescue and ambulance service in connection with law enforcement activities described above. [5 CFR 551.216(b) (2007)]

Law enforcement activities do NOT include work involving:

- Protection of government property from hazards such as sabotage, espionage, theft, fire, accidental or willful damage and in so doing, control the movement of persons and protect lives and property of persons on government property (e.g., Guards, GS 085, and watchmen or other similar workers);
- Determination of the applicability of or compliance with laws and regulations by inspecting products, premises, property or papers of persons or firms to obtain compliance with laws and regulations (e.g., Immigration Inspectors, GS 1816; Coal Mine Inspectors, GS 1822; Alcohol, Tobacco and Firearms Inspectors, GS 1854; Plant Quarantine Inspectors, GS 436);

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- Planning and conducting investigations covering the character, practices, suitability or qualifications of persons or organizations seeking, claiming or receiving federal benefits, permits or employment (e.g., General Investigating, GS 1810);
  - Working within correctional institutions but do not have direct custody and safeguarding of inmates as their primary duty; and
  - Providing rescue and ambulance service in connection with law enforcement activities only in unusual situations (e.g., when the primary crews are unavailable or when an emergency situation requires more crews than can be provided by the primary service).
- [5 CFR 551.216(d) (2007)]

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### Employees Engaged in Law Enforcement Activities

Examples of employees<sup>3</sup> engaged in law enforcement activities for the purpose of determining possible application of 29 USC 207(k) of the FLSA include employees in positions properly classified in:

- (1) The Police Series, GS 083 and employees excepted from the General Schedule who perform similar functions;
  - (2) The Border Patrol Agents, GS 1896; Customs Patrol Officers, GS 1884; and other employees whose primary duties involve similar patrol and control functions performed to detect and apprehend persons suspected of violating criminal laws;
  - (3) The U.S. Marshal Series, GS 082;
  - (4) The Criminal Investigating Series, GS 1811, and other employees performing criminal investigation as their primary duty; except as provided in 5 CFR 551.213, which exempts a criminal investigator from the provisions of the FLSA while receiving law enforcement availability pay under 5 USC 5545a;
  - (5) The Correctional Officer Series, GS 007, and Guards, GS 085, whose primary duty is maintaining custody of inmates of a correctional institution; and
  - (6) Rescue and ambulance crews that provide the primary service in connection with law enforcement functions, provided crew members have received intensive training in specialized rescue and first aid procedures related to law enforcement emergencies (e.g., gunshot wounds) and actually respond to law enforcement emergencies on a regular and recurring basis.
- [5 CFR 551.216(c) (2007)]

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<sup>3</sup> OPM emphasizes in the regulations and its responses to those who commented on the draft regulations, that 29 USC 207(k) is applied only to employees receiving certain types of premium pay. [72 Fed.Reg. 52753, 17 September 2007, @ 52761.]

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Much of this material also was included in material issued earlier by the U.S. Civil Service Commission, which was later restructured to become the U.S. Office of Personnel Management. See Attachment 1, FPL Letter 551-5, 15 January 1975.

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