U.S. Department of Labor Wage and Hour Division
Washington, D.C. 20210

FLSA2026-3

January 5, 2026

Dear **Name***:

This letter responds to your request to the Wage and Hour Division (WHD or Division) for an opinion letter addressing whether a union and employer of emergency dispatch workers can enter into a collective bargaining agreement (CBA) that mandates a 15-minute "roll call" prior to each scheduled shift, but excludes that time when calculating overtime premiums under the Fair Labor Standards Act (FLSA or Act).

It is our opinion that, based on the information you provided in your request, the proposed 15-minute roll call period would constitute compensable hours worked under the Act and, therefore, must be counted in the total number of hours that an employee works each workweek for purposes of calculating any overtime pay due. Depending upon the contents and structure of the CBA, however, overtime compensation may not be required for this time under section 7(b)(1) or 7(b)(2) of the FLSA, which provide for partial overtime exemptions for workers employed under bona fide CBAs in two specific circumstances.

BACKGROUND

You describe yourself as the chairman of a local union that represents a unit of county 911 dispatch workers. These employees are responsible for fielding calls and requests for, and coordinating the prompt and efficient dispatch and deployment of, law enforcement and fire services in the county. They work under a CBA presumably negotiated between the union and the county government. You assert that the CBA lays out specific work schedules to which employees are assigned, in which each employee works a fixed shift of eight hours per day and follows a "four days on and two days off" schedule, thus working 32 hours over each six-day period. Over the course of a year, this amounts to less than the 2,080 hours typical of a full-time work year (40 hours per week × 52 weeks).

Your request states that the county and union are considering a CBA proposal that would establish a mandatory 15-minute roll call prior to each scheduled shift to bring employees closer to 2,080 hours per year. Under the terms of the proposal, the mandatory 15-minute roll call would be considered "hours worked" under the FLSA but would be excluded from being counted toward the calculation of overtime.

Accordingly, you request an opinion letter that answers three questions:

1. Whether the mandatory 15-minute roll call period may be properly classified as "hours worked" under the FLSA;

2. Whether the mandatory 15-minute roll call period can be used to supplement pay periods that would otherwise fall below 80 hours on an ongoing basis; and

3. Whether the mandatory 15-minute roll call period can be excluded from the overtime calculation given that its sole purpose is to bring employees closer to 2,080 annual hours.

GENERAL LEGAL PRINCIPLES

A. The Fair Labor Standards Act

The FLSA requires covered employers to pay non-exempt employees no less than the federal minimum wage for all hours worked in a workweek. 29 U.S.C. § 206. In addition, the statute requires payment "at a rate not less than one and one-half times the regular rate at which [the employee] is employed" to all non-exempt employees for all hours worked over 40 hours in a workweek. *Id.* § 207(a)(1).

The Act defines the term "employ" to include "to suffer or permit to work." *Id.*§ 203(g). Work not requested but suffered or permitted is compensable work time. 29 C.F.R. § 785.11; *see, e.g.*, *Craig v. Bridges Bros. Trucking LLC*, 823 F.3d 382, 388–89 (6th Cir. 2016). Under the FLSA, an employee must be compensated for all hours worked. Specifically, as noted above, covered employees are entitled to the minimum wage for all hours worked in a workweek, and non-exempt employees are entitled to overtime compensation for all hours worked over 40 hours in a workweek.

As a general rule, the term "hours worked" includes "[a]ll time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace" and "all time during which an employee is suffered or permitted to work whether or not he is required to do so." 29 C.F.R. § 778.223(a); *see, e.g.*, *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 943–44 (9th Cir. 2019). This is true even if there is a custom, contract, or agreement not to pay for the time worked. *Tenn. Coal, Iron & R. Co. v. Muscoda Loc. No. 123*, 321 U.S. 590, 602–03 (1944); 29 C.F.R. § 785.8. Certain "preliminary" and "postliminary" activities performed prior or subsequent to the workday—terms that do not include any of the employee's "principal" activities or those "integral and indispensable" to those principal activities—can generally be excluded from working time. 29 U.S.C. § 254(a); *Integrity Staffing Sols., Inc. v. Busk*, 574 U.S. 27, 33 (2014); *see also* 29 C.F.R. § 785.9(a); 29 C.F.R. §§ 790.1–790.12. Nonetheless, an activity that would otherwise be considered preliminary or postliminary is still considered compensable hours worked under the FLSA if it has been made compensable by contract, custom, or practice. 29 U.S.C. § 254(b); *see* 29 C.F.R. § 790.10.

B. Partial Overtime Exemptions for Specific Collective Bargaining Agreements

Sections 7(b)(1) and 7(b)(2) of the Act outline two partial overtime exemptions applicable to employees who work pursuant to CBAs that meet certain conditions.[1] These exemptions, where

[1] The Supreme Court has held that exemptions under the FLSA deserve a "fair (rather than a narrow) interpretation" because the exemptions are "as much a part of the FLSA's purpose as the overtime-pay requirement[s]." *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 88–89 (2018) (internal quotation marks and citation omitted). Accordingly, the Division applies a "fair reading" standard to all FLSA exemptions—including the section 7(b)(1) and 7(b)(2) partial exemptions from the overtime pay requirement. A "fair reading" is "neither narrow nor broad," *Dep't of Lab. v. Bristol Excavating, Inc.*, 935 F.3d 122, 135 (3d Cir.

applicable, relieve the employer from the requirement to pay an overtime premium for an employee's hours worked over 40 in a workweek under the conditions outlined in the exemptions.

Section 7(b)(1) applies to employees employed "in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board [(NLRB)], which provides that no employee shall be employed more than [1,040] hours during any period of [26] consecutive weeks." 29 U.S.C. § 207(b)(1).

Section 7(b)(2) applies to employees employed:

> in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of [52] consecutive weeks the employee shall be employed not more than [2,240] hours and shall be guaranteed not less than [1,840] hours (or not less than [46] weeks at the normal number of hours worked per week, but not less than [30] hours per week) and not more than [2,080] hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) or [2,080] in such period at rates not less than one and one-half times the regular rate at which he is employed.

Id. § 207(b)(2). Both exemptions additionally require that a covered employee receive "compensation for employment in excess of [12] hours in any workday, or for employment in excess of [56] hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed." *Id.* § 207(b); *see also* 29 C.F.R. § 778.602 (explaining that an employee "must be paid at such overtime rate for all hours worked in the workweek in excess of the applicable daily maximum or in excess of the applicable weekly maximum, whichever number of hours is greater").

Broken out into simpler terms, the exemptions in sections 7(b)(1) and 7(b)(2) both require that (1) the employee be employed pursuant to a CBA between the employer and a "bona fide" union that is certified by the NLRB, and (2) the employer must pay the employee overtime premiums for all hours worked over 12 in a day or over 56 in a workweek. *Id.* § 207(b)(1), (2).[2]

2019), and requires that "we must interpret each FLSA exemption the same way we would any other statutory provision—with full attention to its text." *Munoz-Gonzalez v. D.L.C. Limousine Serv., Inc.*, 904 F.3d 208, 216 (2d Cir. 2018).

[2] The requirement in sections 7(b)(1) and 7(b)(2) that a bargaining representative be certified by the NLRB as "bona fide" applies to both private-sector and public-sector employee unions. Certification by the NLRB for purposes of section 7(b) can be a relatively routine matter, initiated by a letter of request. The FLSA does not require use of the NLRB's procedures under the National Labor Relations Act for certification of the union as the exclusive bargaining representative of the employees within a particular bargaining unit. *See* WHD Opinion Letter FLSA2004-9 (Sept. 9, 2004); WHD Opinion Letter FLSA 1232.

For the exemption set forth in section 7(b)(1), in addition to these two requirements, the CBA must state that the employee will not work more than 1,040 hours in *any* consecutive 26-week period. *Id.* § 207(b)(1).

With respect to the exemption in section 7(b)(2), in addition to the two requirements above, the CBA must:

> (1) specify the rate at which the employee is paid for all hours worked or guaranteed;
>
> (2) guarantee the employee, during a specified consecutive 52-week period, (a) at least 1,840 hours of work or 46 "normal" weeks of work of at least 30 hours of work per week, and (b) no more than 2,080 hours;
>
> (3) prohibit the employee from working more than 2,240 hours during the specified 52-week period; and
>
> (4) require the employer to pay the employee overtime compensation for all hours worked over the guaranteed number of hours that are also over 40 in a given workweek and for all hours worked over 2,080 in the specified 52-week period.

Id. § 207(b)(2).

Under either section 7(b)(1) or 7(b)(2), if the employee works more than the specified maximum hours (1,040 hours in *any* consecutive 26-week period for 7(b)(1), or 2,240 hours in the *specified* 52-week period for 7(b)(2)), the exemption no longer applies to that employee. In that case, the employer must recalculate that employee's earnings for each workweek within the applicable time period and pay overtime premiums for each hour worked over 40 in a given workweek. The employer may, however, credit any payments already made against the amount of wages due to the employee as a result of the recalculation, and may continue to apply the 7(b)(1) or 7(b)(2) exemption to employees who have not exceeded the maximum number of hours. *See* WHD Opinion Letter FLSA 204 (July 23, 1986); WHD Opinion Letter FLSA 1232, 1985 WL 1087359 (Nov. 1, 1985).

Finally, under either exemption, the employer must comply with the recordkeeping requirements described in 29 C.F.R. Part 516, including maintaining copies of the relevant CBA(s) and NLRB certification(s); list(s) of the employees employed pursuant to the CBA and the time periods they were employed; the hours employees worked on a daily, weekly, and annual basis; and the employees' overtime compensation. *See* 29 C.F.R. §§ 516.2, 516.5, 516.20.

C. Prior Wage and Hour Division Guidance on Section 7(b)(2)

In some prior guidance on section 7(b)(2), while utilizing the legal framework described above, the Division characterized the exemption as requiring that employees be "guaranteed annual employment." *See, e.g.*, WHD Opinion Letter FLSA 204; WHD Opinion Letter FLSA 1232. The imprecision of this language reflected the terminology for the types of CBAs the exemption was intended to cover, which were often referred to as "annual guarantee," "annual wage," or "annual employment" plans. To avoid any implication that employers must guarantee employment beyond

what is required by the statute—that is, a guarantee of at least 1,840 hours or 46 normal workweeks of at least 30 hours per workweek, and no more than 2,080 hours, during a specified 52-week period—this letter does not use the term "guaranteed annual employment," but instead refers directly to the statutory criteria.

OPINION

Based on the information presented, the Division concludes that the "roll call" time must be counted as hours worked and, therefore, must be counted for purposes of determining whether employees work more than 40 hours in a workweek and are entitled to overtime compensation under 29 U.S.C. § 207(a). However, the parties to the proposed CBA described in your request could draft the applicable provision to said CBA to satisfy the requirements of 29 U.S.C. § 207(b)(1) or 207(b)(2), thereby partially exempting the employees at issue from the overtime requirements of 29 U.S.C. § 207(a), as described below.[3]

A. Hours Worked

In response to your first question, "[w]hether a mandatory 15-minute roll call prior to each shift may properly be classified as 'hours worked' under the FLSA," the 15-minute roll call would constitute hours worked. As noted above, in general, all time an employee is required to be on duty, on the employer's premises, or at a prescribed workplace is considered hours worked. *See* 29 C.F.R. § 778.223(a)(1). And although certain "preliminary" activities prior to the workday are generally excepted from hours worked, they are nonetheless compensable if made so by contract, custom, or practice. 29 U.S.C. § 254(a)–(b); *see* 29 C.F.R. §§ 785.9, 790.4, 790.9–790.10. Here, as you have described it, the proposed CBA provision would make the roll call time compensable by contract. Therefore, regardless of whether it could potentially constitute a "preliminary" activity—a question we do not address here—the time would be considered hours worked under the FLSA. *See O'Brien v. Town of Agawam*, 350 F.3d 279, 297 n.27 (1st Cir. 2003) (noting that the Portal-to-Portal Act, the amendment to the FLSA that excepts "preliminary" activities from hours worked, "does not bar compensation for roll-call time expressly made compensable by [a] CBA").

Similarly, in response to your second question, because an employer must compensate all employees for all hours worked and because the 15-minute roll call time constitutes compensable hours worked, it must be counted as part of the workweek of each employee who attends roll call, regardless of the number of hours each employee works in that workweek.

[3] In responding to your request, the Division did not consider the applicability of the partial overtime exemption in section 7(k) for public agency employees engaged in fire protection or law enforcement activities. *See* 29 U.S.C. § 207(k). Based on the facts presented in your letter—namely, that the workers covered by the CBA at issue are dispatchers—this exemption does not appear to apply. *See, e.g.*, *Haro v. City of Los Angeles*, 745 F.3d 1249, 1257 (9th Cir. 2014) (holding that dispatchers do not have the "responsibility to engage in fire suppression" and, therefore, are not covered by the section 7(k) overtime exemption); *Baker v. Stone Cnty., Mo.,* 41 F. Supp. 2d 965, 992 (W.D. Mo. 1999) (holding that dispatchers are not law enforcement personnel subject to section 7(k)); *see also* 29 C.F.R. §§ 553.210, 553.211.

B. Applicability of 7(b)(1) and 7(b)(2) Exemptions

Your third question asks "[w]hether such time may be excluded from overtime calculation if its purpose is solely to bring employees to 2,080 annual hours, rather than to compensate for work in excess of 40 hours per week." As explained above, because this time constitutes hours worked, it cannot be excluded from employees' weekly hours for purposes of determining entitlement to, or the calculation of, overtime. However, the proposal you describe could be structured to qualify for either the section 7(b)(1) or 7(b)(2) exemption. Based on the facts you present, the schedule of hours contemplated by the CBA could be compatible with either exemption. That said, there is insufficient information about the CBA in your letter to state affirmatively whether the proposed CBA contains language meeting the requirements for either exemption. For the purposes of our analysis below demonstrating how the exemptions could apply, the Division assumes that (1) the union has sought and received certification from the NLRB to meet the definition of "bona fide"; (2) the employer pays overtime compensation at one and one-half the regular rate for all hours worked over 12 in a day and over 56 in a week; and (3) the final CBA would include all of the terms specified above required for each exemption.

1. Section 7(b)(1) Exemption

For section 7(b)(1)'s partial overtime exemption to apply, the employee must be employed pursuant to a CBA between the employer and a union certified as "bona fide" by the NLRB, the employer must pay the employee overtime compensation for all hours worked over 12 in a day or over 56 in a week, and the CBA must state that no employee will work more than 1,040 hours in *any* consecutive 26-week period. 29 U.S.C. § 207(b)(1).

Assuming that all employees adhere to the "four days on and two days off" schedule and eight-hour shifts described in your letter, the addition of 15 minutes of roll call time per shift—or one hour per each six-day period—would not cause any employee to work more than the maximum threshold of 1,040 hours in any consecutive 26-week period.[4] Moreover, it would not cause any employee to work more than the 12-hour-per-day or 56-hour-per-week thresholds that would require the employer to pay overtime compensation for hours worked over those thresholds.[5]

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[4] Using 8-hour shifts and the "four days on and two days off" shift schedule, employees are currently scheduled for 32 hours each 6-day period, or 224 hours every 6 calendar workweeks (which include seven 6-day periods and 28 shifts). This yields an average of 37.33 hours per workweek, and approximately 970.67 hours per 26-week period. Adding an additional 15 minutes per shift would result in an additional 1 hour per 6-day period and 7 hours per 6-workweek, 28-shift cycle. This additional time worked would raise the average weekly scheduled hours by about 1.17 hours (7 hours ÷ 6 workweeks), from 37.33 to 38.5 per workweek. Thus, over the course of a 26-week period, the additional 15-minute roll call period would only elevate the employees' scheduled hours to 1,001 hours (38.5 × 26 weeks = 1,001 hours), well below the 1,040-hour maximum threshold under the section 7(b)(1) exemption.

[5] On days when an employee is "on," their scheduled hours will increase from 8 hours per day to 8.25 hours per day, below the applicable 12-hour-per-day overtime threshold. In any given week, an employee is scheduled to work 4 or 5 shifts. Therefore, under the schedule, the most an employee should work in any week is 41.25 hours (8.25 hours × 5 shifts = 41.25 hours), below the applicable 56-hour-per-week overtime threshold. If, due to a deviation from the regular schedule, an employee's hours worked exceeds one or both thresholds, overtime compensation must be paid as described in 29 C.F.R. § 778.602.

Therefore, if the CBA includes the required language of section 7(b)(1) and the employer adheres to the statutory requirements, the Act would not require the employer to pay overtime compensation for the additional 15-minute roll call periods.

We note, however, that if an employee, contrary to the CBA's terms, works more than the maximum of 1,040 hours in *any* consecutive 26-week period, the section 7(b)(1) exemption does not apply to that employee and the employer must recalculate the employee's earnings without the exemption. To ensure that it meets this requirement, an employer taking the section 7(b)(1) exemption should compute its employees' hours *each week* to ensure that no employee for whom the employer is taking the exemption worked more than 1,040 hours in the preceding 26-week period.[6] If any employee exceeded that threshold amount, the employer must again calculate the employee's earnings for the 26-week period without the benefit of the section 7(b)(1) exemption and pay any overtime premiums due.[7]

2. Section 7(b)(2) Exemption

As explained above, for section 7(b)(2)'s partial overtime exemption to apply, the employee must be employed pursuant to a CBA between the employer and a "bona fide" union as certified by the NLRB, the employer must pay the employee overtime compensation for all hours worked over 12 in a day or over 56 in a week, and the CBA must (1) specify the rate at which the employee is paid for all hours worked or guaranteed; (2) guarantee the employee, during a specified consecutive 52-week period, at least 1,840 hours of work or 46 "normal" weeks of work of at least 30 hours of work per week, and no more than 2,080 hours; (3) prohibit the employee from working more than 2,240 hours during the specified 52-week period; and (4) require the employer to pay the employee overtime compensation for all hours worked over the guaranteed number of hours that are also over 40 in a given workweek and for all hours worked over 2,080 in the specified 52-week period.

Based on the "four days on and two days off" schedule and current eight-hour shifts described in your letter, the addition of 15 minutes of roll call time per shift would not cause any employee to work more than the maximum threshold of 2,240 hours in the specified 52-week period.[8] Therefore, the CBA provision at issue could be structured to comply with the requirements of section 7(b)(2) such that the additional 15-minute roll call periods do not automatically trigger the

[6] Alternatively, the CBA at issue may state that the section 7(b)(1) exemption applies only to a specified 26-week period in a given year, in which case the exemption may not apply to the subsequent 26-week period during that year. *See* WHD Opinion Letter FLSA 1232.

[7] Specifically, the employer must tally again the earnings of that employee for each workweek within the 26-week period and pay statutory overtime premiums for each hour, or partial hour, worked in excess of 40 in any workweek. *See* WHD Opinion Letter FLSA 204; WHD Opinion Letter FLSA 1232. All straight-time and overtime pay previously paid may be credited against the amount of wages found due as a result of such recalculation. *See id.*

[8] As explained above, *supra* n.4, employees are currently scheduled for an average of 37.33 hours per workweek. This works out to approximately 1,941.33 hours per 52-week period. Adding an additional 15 minutes per shift would raise the average weekly scheduled hours from 37.33 to 38.5 for each workweek. Over the course of a 52-week period, the additional 15-minute roll call period would only elevate the employees' scheduled hours to 2,002 hours (38.5 × 52 weeks = 2,002 hours), well below the 2,240-hour maximum threshold under the section 7(b)(2) exemption.

requirement to pay overtime compensation under section 7(a) when an employee's weekly hours exceed 40, and should result in minimal, if any, overtime liability on its own.[9] We note, however, that under the partial exemption in section 7(b)(2), overtime compensation must still be paid in the following circumstances:

- for all hours an employee works over 12 hours per day or 56 hours per week;
- once an employee has worked the number of hours guaranteed in the CBA, for all hours an employee works over 40 in a given workweek; and
- for all hours an employee works over 2,080 hours in the 52-week period.

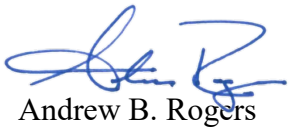
29 U.S.C. § 207(b)(2).

Moreover, in the event that an employee is employed in excess of 2,240 hours during the specified 52-week period, the section 7(b)(2) exemption does not apply and the employer must recalculate the employee's earnings without the exemption and pay all applicable overtime premiums earned during the relevant 52-week period.[10]

This letter is an official interpretation of the governing statutes and regulations by the Administrator of the Wage and Hour Division of the United States Department of Labor for the purposes of the Portal-to-Portal Act. *See* 29 U.S.C. § 259. This interpretation may be relied upon in accordance with section 10 of the Portal-to-Portal Act, notwithstanding that after any such act or omission in the course of such reliance, the interpretation is "modified or rescinded or is determined by judicial authority to be invalid or of no legal effect." *Id.*

We trust that this letter is responsive to your inquiry.

Sincerely,



Andrew B. Rogers
Administrator

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(6).** You represent that you do not seek this opinion for any party that the Wage and Hour

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[9] As discussed above, *supra* n.5, the addition of the 15 minutes per shift of roll call time should not implicate either the 12-hour-per-day or the 56-hour-per-week thresholds if the schedule is adhered to. Similarly, because this additional time would only elevate the employees' scheduled hours to 2,002 in a 52-week period, the 2,080-hour overtime threshold should not be implicated. Whether this additional time will cause an employee to exceed the number of hours guaranteed in the CBA will depend on the specific guarantee chosen by the parties in their CBA (not less than 1,840 hours or 46 weeks of at least 30 hours per week, and not more than 2,080 hours); however, parties can select a guarantee that is likely to minimize overtime liability.

[10] *See supra* n.7.

Division (WHD) is currently investigating or for any litigation that commenced prior to your request. This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. The existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein.