

Employers who do not understand §207(k) may face liability

A recent court decision illustrates that if an employer does not understand the partial overtime exemption for police and fire employees under §207(k), the employer may violate the Fair Labor Standards Act (FLSA) by misclassifying such individuals and may face liability under the act.

The Case

Sebastian Chavez, worked as an EMT/paramedic for the city of Katy, Texas from October 1999 until he resigned in August 2003. He was also trained in fire suppression. When he resigned, he sued the city because he was not paid based on the standard seven day, 40-hour work period. His employer based his pay on a 28-day work period instead. The employer has the burden of demonstrating that a particular employee qualifies for the exemption once they apply the exemption.

29 C.F.R. §553.215 notes that ambulance and rescue service employees can qualify as employees engaged in fire protection under the §207(k) exemption if, “(1) the ambulance and rescue service employees have received training in the rescue of fire, crime, and accident victims or firefighters and law enforcement personnel injured in the performance of their respective duties, and (2) the ambulance and rescue service employees are regularly dispatched to fires, crime scenes, riots, natural disasters and accidents.”

The court found that Chavez received the required training, but the city did not show that he was regularly dispatched to the specified emergencies, and therefore did not qualify for the exemption.

After deciding Chavez did not qualify for the exemption under the regulations, the court considered his status under the FLSA statute’s definition of an employee performing fire protection activities. 29 U.S.C. §203(y) states that an employee in fire protection activities can include an EMT, but the individual must be trained in firefighting and must have the legal authority to do so, be employed by a public fire department, and must be “engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.”

The court decided that Chavez did not have the legal authority to fight fires and also found that it wasn’t clear whether Chavez’s EMS employer was a part of the city’s fire department.

Conclusion

The court concluded that Chavez did not qualify for the §207(k) exemption under either the regulatory or the statutory test and the city owed Chavez back pay for his overtime hours.

What This Case Means to Counties

Before claiming the §207(k) exemption, be certain that the employee meets each requirement and make sure it can be proven in case a worker’s status is ever challenged.

For more information, contact CTSI at 303-861-0507.