

Wage and Hour Division, Labor

§ 553.216

and maintenance, culinary services, teaching, or in psychological, medical and paramedical services. This is so even though such employees may, when assigned to correctional institutions, come into regular contact with the inmates in the performance of their duties.

§ 553.212 Twenty percent limitation on nonexempt work.

(a) Employees engaged in law enforcement activities as described in § 553.211 may also engage in some nonexempt work which is not performed as an incident to or in conjunction with their law enforcement activities. The performance of such nonexempt work will not defeat either the section 13(b)(20) or 7(k) exemptions unless it exceeds 20 percent of the total hours worked by that employee during the workweek or applicable work period. A person who spends more than 20 percent of his/her working time in nonexempt activities is not considered to be an employee engaged in law enforcement activities for purposes of this part.

(b) Public agency fire protection and law enforcement personnel may, at their own option, undertake employment for the same employer on an occasional or sporadic and part-time basis in a different capacity from their regular employment. (See § 553.30.) The performance of such work does not affect the application of the section 13(b)(20) or 7(k) exemptions with respect to the regular employment. In addition, the hours of work in the different capacity need not be counted as hours worked for overtime purposes on the regular job, nor are such hours counted in determining the 20 percent tolerance for nonexempt work for law enforcement personnel discussed in paragraph (a) of this section.

[52 FR 2032, Jan. 16, 1987, as amended at 76 FR 18856, Apr. 5, 2011]

§ 553.213 Public agency employees engaged in both fire protection and law enforcement activities.

(a) Some public agencies have employees (often called "public safety officers") who engage in both fire protection and law enforcement activities, depending on the agency needs at the

time. This dual assignment would not defeat either the section 13(b)(20) or 7(k) exemption, provided that each of the activities performed meets the appropriate tests set forth in §§ 553.210 and 553.211. This is so regardless of how the employee's time is divided between the two activities. However, all time spent in nonexempt activities by public safety officers within the work period, whether performed in connection with fire protection or law enforcement functions, or with neither, must be combined for purposes of the 20 percent limitation on nonexempt work discussed in § 553.212.

(b) As specified in § 553.230, the maximum hours standards under section 7(k) are different for employees engaged in fire protection and for employees engaged in law enforcement. For those employees who perform both fire protection and law enforcement activities, the applicable standard is the one which applies to the activity in which the employee spends the majority of work time during the work period.

§ 553.214 Trainees.

The attendance at a bona fide fire or police academy or other training facility, when required by the employing agency, constitutes engagement in activities under section 7(k) only when the employee meets all the applicable tests described in § 553.210 or § 553.211 (except for the power of arrest for law enforcement personnel), as the case may be. If the applicable tests are met, then basic training or advanced training is considered incidental to, and part of, the employee's fire protection or law enforcement activities.

§ 553.215 [Reserved]

§ 553.216 Other exemptions.

Although the 1974 Amendments to the FLSA provided special exemptions for employees of public agencies engaged in fire protection and law enforcement activities, such workers may also be subject to other exemptions in the Act, and public agencies may claim such other applicable exemptions in lieu of sections 13(b)(20) and 7(k). For example, section 13(a)(1) provides a complete minimum wage and overtime