

## § 553.50

of its income within 6 months. The 6 months, however, need not be 6 consecutive months. State and local governments operate parks and recreational areas to which this exemption may apply.

(f) Section 13(b)(1) of the Act provides an exemption from the overtime pay requirements for "Any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935." (recodified at section 3102, 49 U.S.C.). With regard to State or local governments, this overtime pay exemption may affect mass transit systems engaged in interstate commerce. This exemption is applicable to drivers, driver's helpers, loaders, and mechanics employed by a common carrier whose activities directly affect the safety of operation of motor vehicles in the transportation on the public highways of passengers or property. (See part 782 of this title.)

(g) Section 7(n) of the Act provides that, for the purpose of computing overtime pay, the hours of employment of a mass transit employee do not include the time spent in charter activities if (1) pursuant to a prior agreement the time is not to be so counted, and (2) such charter activities are not a part of the employee's regular employment.

(h) Additional overtime pay exemptions which may apply to employees of public agencies are contained in sections 13(b)(2) (employees of certain common carriers by rail), 13(b)(9) (certain employees of small market radio and television stations), and section 13(b)(12) (employees in agriculture) of the Act. Further, section 13(a)(6) of the Act provides a minimum wage and overtime pay exemption for agricultural employees who work on small farms. (See part 780 of this title.)

### RECORDKEEPING

#### § 553.50 Records to be kept of compensatory time.

For each employee subject to the compensatory time and compensatory time off provisions of section 7(o) of the Act, a public agency which is a

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State, a political subdivision of a State or an interstate governmental agency shall maintain and preserve records containing the basic information and data required by § 516.2 of this title and, in addition:

(a) The number of hours of compensatory time earned pursuant to section 7(o) each workweek, or other applicable work period, by each employee at the rate of one and one-half hour for each overtime hour worked;

(b) The number of hours of such compensatory time used each workweek, or other applicable work period, by each employee;

(c) The number of hours of compensatory time compensated in cash, the total amount paid and the date of such payment; and

(d) Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time off. If such agreement or understanding is not in writing, a record of its existence must be kept.

#### § 553.51 Records to be kept for employees paid pursuant to section 7(k).

For each employee subject to the partial overtime exemption in section 7(k) of the Act, a public agency which is a State, a political subdivision of a State, or an interstate governmental agency shall maintain and preserve records containing the information and data required by § 553.50 and, in addition, make some notation on the payroll records which shows the work period for each employee and which indicates the length of that period and its starting time. If all the workers (or groups of workers) have a work period of the same length beginning at the same time on the same day, a single notation of the time of day and beginning day of the work period will suffice for these workers.

### Subpart B—Volunteers

#### § 553.100 General.

Section 3(e) of the Fair Labor Standards Act, as amended in 1985, provides that individuals performing volunteer services for units of State and local governments will not be regarded as "employees" under the statute. The

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purpose of this subpart is to define the circumstances under which individuals may perform hours of volunteer service for units of State and local governments without being considered to be their employees during such hours for purposes of the FLSA.

### § 553.101 “Volunteer” defined.

(a) An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, is considered to be a volunteer during such hours. Individuals performing hours of service for such a public agency will be considered volunteers for the time so spent and not subject to sections 6, 7, and 11 of the FLSA when such hours of service are performed in accord with sections 3(e)(4)(A) and (B) of the FLSA and the guidelines in this subpart.

(b) Congress did not intend to discourage or impede volunteer activities undertaken for civic, charitable, or humanitarian purposes, but expressed its wish to prevent any manipulation or abuse of minimum wage or overtime requirements through coercion or undue pressure upon individuals to “volunteer” their services.

(c) Individuals shall be considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer.

(d) An individual shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

### § 553.102 Employment by the same public agency.

(a) Section 3(e)(4)(A)(ii) of the FLSA does not permit an individual to perform hours of volunteer service for a public agency when such hours involve the same type of services which the individual is employed to perform for the same public agency.

(b) Whether two agencies of the same State or local government constitute the same public agency can only be determined on a case-by-case basis. One factor that would support a conclusion

that two agencies are separate is whether they are treated separately for statistical purposes in the Census of Governments issued by the Bureau of the Census, U.S. Department of Commerce.

### § 553.103 “Same type of services” defined.

(a) The 1985 Amendments provide that employees may volunteer hours of service to their public employer or agency provided “such services are not the same type of services which the individual is employed to perform for such public agency.” Employees may volunteer their services in one capacity or another without contemplation of pay for services rendered. The phrase “same type of services” means similar or identical services. In general, the Administrator will consider, but not as the only criteria, the duties and other factors contained in the definitions of the 3-digit categories of occupations in the *Dictionary of Occupational Titles* in determining whether the volunteer activities constitute the “same type of services” as the employment activities. Equally important in such a determination will be the consideration of all the facts and circumstances in a particular case, including whether the volunteer service is closely related to the actual duties performed by or responsibilities assigned to the employee.

(b) An example of an individual performing services which constitute the “same type of services” is a nurse employed by a State hospital who proposes to volunteer to perform nursing services at a State-operated health clinic which does not qualify as a separate public agency as discussed in § 553.102. Similarly, a firefighter cannot volunteer as a firefighter for the same public agency.

(c) Examples of volunteer services which do not constitute the “same type of services” include: A city police officer who volunteers as a part-time referee in a basketball league sponsored by the city; an employee of the city parks department who serves as a volunteer city firefighter; and an office employee of a city hospital or other health care institution who volunteers to spend time with a disabled or elderly