Subpart A—General

INTRODUCTION

§ 553.1 Definitions.

(a) *Act* or *FLSA* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201–219).

(b) *1985 Amendments* means the Fair Labor Standards Amendments of 1985 (Pub. L. 99–150).

(c) *Public agency* means a State, a political subdivision of a State or an interstate governmental agency.

(d) *State* means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other Territory or possession of the United States (29 U.S.C. 203(c) and 213(f)).

§ 553.2 Purpose and scope.

(a) The 1985 Amendments to the Fair Labor Standards Act (FLSA) changed certain provisions of the Act as they apply to employees of State and local public agencies. The purpose of part 553 is to set forth the regulations to carry out the provisions of these Amendments, as well as other FLSA provisions previously in existence relating to such public agency employees.

(b) The regulations in this part are divided into three subparts. Subpart A interprets and applies the special FLSA provisions that are generally applicable to all covered and nonexempt employees of State and local governments. Subpart A also contains provisions concerning certain individuals (*i.e.*, elected officials, their appointees, and legislative branch employees) who are excluded from the definition of ''employee'' and thus from FLSA coverage. This subpart also interprets and applies sections 7(o), and 7(p)(2), 7(p)(3), and 11(c) of the Act regarding compensatory time off, occasional or sporadic part-time employment, and the performance of substitute work by public agency employees, respectively.

(c) Subpart B of this part deals with ''volunteer'' services performed by individuals for public agencies. Subpart C applies various FLSA provisions as they relate to fire protection and law enforcement employees of public agencies.

§ 553.3 Coverage—general.

(a)(1) In 1966, Congress amended the FLSA to extend coverage to State and local government employees engaged in the operation of hospitals, nursing homes, schools, and mass transit systems.

(2) In 1972, the Education Amendments further extended coverage to employees of public preschools.

(3) In 1974, the FLSA Amendments extended coverage to virtually all of the remaining State and local government employees who were not covered as a result of the 1966 and 1972 legislation.

(b) Certain definitions already in the Act were modified by the 1974 Amendments. The definition of the term ''employer'' was changed to include public agencies and that of ''employee'' was amended to include individuals employed by public agencies. The definition of ''enterprise'' contained in section 3(r) of the Act was modified to provide that activities of a public agency are performed for a ''business purpose.'' The term ''enterprise engaged in commerce or in the production of goods for commerce'' defined in section 3(s) of the Act was expanded to include public agencies.

SECTION 3(E)(2)(C)—EXCLUSIONS

§ 553.10 General.

Section 3(e)(2)(C) of the Act excludes from the definition of ''employee'', and thus from coverage, certain individuals employed by public agencies. This exclusion applies to elected public officials, their immediate advisors, and certain individuals whom they appoint or select to serve in various capacities. In addition, the 1985 Amendments exclude employees of legislative branches of State and local governments. A condition for exclusion is that the employee must not be subject to the civil service laws of the employing State or local agency.

§ 553.11 Exclusion for elected officials and their appointees.

(a) Section 3(e)(2)(C) provides an exclusion from the Act's coverage for officials elected by the voters of their jurisdictions. Also excluded under this provision are personal staff members

and officials in policymaking positions who are selected or appointed by the elected public officials and certain advisers to such officials.

(b) The statutory term ''member of personal staff'' generally includes only persons who are under the direct supervision of the selecting elected official and have regular contact with such official. The term typically does not include individuals who are directly supervised by someone other than the elected official even though they may have been selected by the official. For example, the term might include the elected official's personal secretary, but would not include the secretary to an assistant.

(c) In order to qualify as personal staff members or officials in policymaking positions, the individuals in question must not be subject to the civil service laws of their employing agencies. The term ''civil service laws'' refers to a personnel system established by law which is designed to protect employees from arbitrary action, personal favoritism, and political coercion, and which uses a competitive or merit examination process for selection and placement. Continued tenure of employment of employees under civil service, except for cause, is provided. In addition, such personal staff members must be appointed by, and serve solely at the pleasure or discretion of, the elected official.

(d) The exclusion for ''immediate adviser'' to elected officials is limited to staff who serve as advisers on constitutional or legal matters, and who are not subject to the civil service rules of their employing agency.

§ 553.12 Exclusion for employees of legislative branches.

(a) Section 3(e)(2)(C) of the Act provides an exclusion from the definition of the term ''employee'' for individuals who are not subject to the civil service laws of their employing agencies and are employed by legislative branches or bodies of States, their political subdivisions or interstate governmental agencies.

(b) Employees of State or local legislative libraries do not come within this statutory exclusion. Also, employees of school boards, other than elected officials and their appointees (as discussed in § 553.11), do not come within this exclusion.

SECTION 7(O)—COMPENSATORY TIME AND COMPENSATORY TIME OFF

§ 553.20 Introduction.

Section 7 of the FLSA requires that covered, nonexempt employees receive not less than one and one-half times their regular rates of pay for hours worked in excess of the applicable maximum hours standards. However, section 7(o) of the Act provides an element of flexibility to State and local government employers and an element of choice to their employees or the representatives of their employees regarding compensation for statutory overtime hours. The exemption provided by this subsection authorizes a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, to provide compensatory time off (with certain limitations, as provided in § 553.21) in lieu of monetary overtime compensation that would otherwise be required under section 7. Compensatory time received by an employee in lieu of cash must be at the rate of not less than one and one-half hours of compensatory time for each hour of overtime work, just as the monetary rate for overtime is calculated at the rate of not less than one and one-half times the regular rate of pay.

§ 553.21 Statutory provisions.

Section 7(o) provides as follows:

(o)(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only—

(A) Pursuant to—

(i) Applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) In the case of employees not covered by subclause (i), an agreement or understanding