Gap Time Explained

The FLSA requires public and private employers to compensate employees at the rate of time and one-half for overtime hours worked. An exemption in Section 7(k) of the FLSA for police and fire departments permits public employers to compute overtime pay for police and fire personnel with reference to a work period that ranges from the normal 7 consecutive calendar days up to a 28-day work cycle. For police, liability for overtime pay is incurred once an officer works in excess of 171 hours in a 28-day cycle. For fire, the threshold is 212 hours. Hours, for the purposes of measuring whether an employee has reached the applicable threshold, refers to hours actually worked and does not include paid time off.

Most collective bargaining agreements provide overtime compensation far more generously than the FLSA mandates. As a result, police departments pay time and one-half long before the 171-hour limit is reached, and fire departments pay time and one-half before the 212-hour limit is reached. This occurs because most public employers pay overtime for any hours outside of the regularly scheduled shifts. In the case of police, a 4 and 2 work schedule will produce a maximum of 160 hours of regularly scheduled duty in any 28-day period. The result is 11 hours of what is called "Gap Time", which means that the employer will pay overtime for 11 hours before the FLSA mandated threshold is reached for police officers.

This comes in to play when employees seek to require employers to include pay differentials and other forms of compensation in the overtime rate. Under the FLSA, this computation is required and the overtime rate must be computed to take into account educational incentives, shift differential, longevity pay, and other forms of additional compensation other than expense reimbursements. Many employers do not calculate the overtime rate in this manner leading to disputes with employees over what the FLSA requires.

The FLSA requires these amounts to be included in the overtime calculation but only for overtime that is paid based upon the FLSA's mandates. In other words, for police officers in municipalities using the 28-day period, only the hours worked over 171 in a 28-day cycle need to be paid based upon the higher overtime rate. Gap time comes in to play because any overtime premiums paid prior to reaching the FLSA threshold may be offset against any liability an employer may have for failing to pay overtime at the FLSA rate (including differentials, etc.). For example, in a particular 28-day cycle, a police officer on a 4 and 2 shift has worked 160 regular hours. The officer in our example ends up working a total of 180 hours in the 28-day cycle and has been compensated at time and one-half the base hourly rate for 20 hours. Under the FLSA, only 9 hours of overtime are mandated. If we assume that the addition of differentials and other compensation would add $2 per hour to the overtime rate, the employee might claim that he was under compensated for the 9 hours of FLSA overtime by a total of $18. However, the employer paid the officer an additional half-time premium for 11 hours before reaching the FLSA threshold. If we assume that the half-time compensation paid was at least $8 per hour, we can see that the employer has $88 to offset the $18 underpayment. The premiums paid for Gap Time overtime in this example helped the employer avoid FLSA liability completely.