



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2025-109

January 15, 2026

The Honorable Ron McNair
State Representative
10819 Daffodil Court
Harrison, Arkansas 72601

Dear Representative McNair:

I am writing in response to your request for an opinion regarding overtime pay for law enforcement officers. You state that police departments across the state sign annual contracts for federal highway safety grants, which are managed by the Arkansas Highway Safety Office within the Arkansas Department of Public Safety. You further explain that officers receive time-and-a-half pay only after exceeding 80 hours of actual work in a two-week pay period. If an officer takes compensatory time, sick leave, or annual leave, those hours do not count toward the 80-hour threshold; overtime pay does not begin until the officer's actual work hours surpass that mark.

You convey that some officers feel penalized for taking time off but not receiving overtime pay until their actual work hours exceed 80 hours during a two-week period. You also note that when officers work these specialized shifts, they are not allowed to perform normal patrol duties for the agency.

Against this background, you ask the following question:

Based upon an underlying contractual agreement between the Federal Highway Safety Grants Program and the agency to have its officers work specialized shifts for set pay, does the 80-hour threshold of actual work apply to the officer receiving payment for services rendered?

RESPONSE

I cannot opine on the terms of any contract. But neither Arkansas law nor federal law requires overtime to be paid until an employee actually works beyond the applicable overtime threshold during the relevant pay period.

BOB R. BROOKS JR. JUSTICE BUILDING
101 WEST CAPITOL AVENUE
LITTLE ROCK, ARKANSAS 72201

DISCUSSION

I cannot opine on the terms of any contract between a law enforcement agency and the Federal Highway Safety Grant Program. Instead, my analysis is limited to Arkansas and federal law.

For law enforcement and fire protection personnel, the Arkansas Minimum Wage Act requires public agencies to pay “overtime pay in compliance with 29 U.S.C. § 207(k), as it existed on March 1, 2006[.]” otherwise known as the Fair Labor Standards Act (FLSA).¹ The FLSA generally requires that covered nonexempt employees be paid overtime—at least time and one-half their regular rates of pay—for all hours worked beyond 40 in a workweek. However, 29 U.S.C. § 207(k) provides an exemption for law enforcement and fire protection employees. These employees may accrue overtime based on a “work period,” ranging from 7 to 28 consecutive days. For work periods of at least 7 but fewer than 28 days, overtime pay is required when the hours worked exceed the proportionate threshold—calculated by applying the same ratio of hours to days as 171 hours bears to 28 days. For example, in a 14-day work period, overtime begins after 86 hours worked. Agencies may contractually agree to a lower threshold, such as the 80 hours you mentioned.

Crucially, whether a law enforcement employee has met the overtime threshold depends on the definition of “hours worked.” While “hours worked” is not precisely defined in the FLSA, Department of Labor guidance interprets it to include:

[A]ll time an employee must be on duty, or on the employer’s premises or at any other prescribed place of work, from the beginning of the first principal activity of the work day to the end of the last principal work activity of the work day. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work.²

Missing from that definition are hours paid for vacation, sick leave, and compensatory time. This exclusion is explained in 29 C.F.R. § 778.218(a), which states:

Payments which are made for occasional periods when the employee is not at work due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, where the payments are in amounts approximately equivalent to the employee’s normal earnings for a similar period of time, are not

¹ A.C.A. § 11-4-211(e).

² U.S. Dep’t of Labor, Wage & Hour Div., *Handy Reference Guide to the Fair Labor Standards Act*, Revised Nov. 2023, <https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa> (last visited Dec. 2, 2025); *see also* 29 U.S.C. § 203(o) (“Hours Worked – In determining for the purposes of sections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.”).

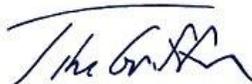
made as compensation for his hours of employment. Therefore, such payments may be excluded from the regular rate of pay under section 7(e)(2) of the Act and, for the same reason, no part of such payments may be credited toward overtime compensation due under the Act.

Thus, under the FLSA, payments made to employees for occasional periods where no work is performed due to vacation, holiday, or illness are not compensation for hours of employment. Because no productive work is being performed during these periods, these hours cannot be counted toward the overtime threshold.

While officers may feel penalized for using their earned leave, the law treats overtime not as a standard benefit attached to a pay cycle, but as a premium paid specifically for the strain of labor performed in excess of statutory or contractual maximums. Officers become legally entitled to the overtime pay rate under the FLSA and the Arkansas Minimum Wage Act only when their actual performance of those duties exceeds those hourly maximums.

Assistant Attorney General Justin Hughes prepared this opinion, which I hereby approve.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Griffin", with a horizontal line above it.

TIM GRIFFIN
Attorney General