

MOUNTAIN BROOK FIRE DEPARTMENT

POLICY NO. 103.05

VOLUME: I

SUBJECT: Fair Labor Standards Act: Work Cycle Definition and Application of the Standard

SIGNED: _____
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Revised

Scope: The Fair Labor Standards Act (FLSA) is a very definitive document with respect to how organizations provide pay and compensation to employees. This policy is designed to provide information and guidance to all employees regarding how the Mountain Brook Fire Department meets/will meet the standard in operational practice as well as record keeping mechanisms for reporting compliance to the act.

Exempt and Non-Exempt Employees: The FLSA allows for certain positions to be held exempt from the payment of overtime and other positions to be held non-exempt from the payment of overtime. The Mountain Brook Fire Department has defined the posture of all positions with respect to this status. These are listed below.

Executive Exempt Status:

- Fire Chief
- Deputy Fire Chief
- Battalion Chief
- Fire Lieutenant - Shift (see note)

Non-Exempt Status

- Apparatus Operator
- Firefighter
- Administrative Assistant
- Fire Lieutenant (Fire Inspector)

Note: The Fire Lieutenant, when assigned to a shift, is officially held exempt from overtime; however, the City Administration has deemed that this position be paid straight time or equivalent comp time hours off for all hours worked over normal work cycle hours.

Work Cycle Defined: The Mountain Brook Fire Department works a 26 day cycle under the 7 K exemption defined for fire departments within the FLSA. Under this cycle, shift personnel are due overtime for all hours worked over 197 hours. However, MBFD personnel working regular shifts will not work more than 192 hours in a 26 day cycle as established. Two shifts are scheduled to work nine (9) 24 hour shifts in a cycle (216 hours) and one shift is scheduled to work eight (8) 24 hours shifts in a cycle (192 hours). The two shifts scheduled to work 216 hours will each receive a kelly day during this cycle which offsets the hours back to the 192 hours maximum. As long as kelly days are taken within established guidelines (not out of cycle for the unit), and shifts are worked on a regular basis, all shift personnel (including swingmen) will not exceed the hours as defined by the 26 day cycle.

Varied Unit Cycles: If the entire department worked from a single 26 day cycle, then all kelly days would occur at the same time. This would mean that the swingmen (normally less senior members) would all be on-duty at the same time and more senior members would be off on kelly day. This could impact operations as well as impact leave time opportunities (swingmen get pegged when staffing is short). To keep this from happening, each unit was placed on a separate 26 day cycle years ago (four cycles). Record keeping to meet standards for four different cycles is too cumbersome. The department will move to two cycles: Engine 3 and Ladder one will be on cycle #1 (kelly days the same) and Engine 2 and Engine 1 will be on cycle #2 (kelly days the same). The cycles are one day apart. The dates for the cycles will be provided each calendar year for each unit for record keeping purposes.

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A one-time adjustment in the FLSA work cycle length will have to be made for personnel being transferred from one cycle to the other (one time cycle change to get in sync with the other 26 day cycle -see below). This adjustment will be based on the day/hour table for 7K exemptions within the FLSA and will be recorded on the time card.

Employee moving from Cycle #1 to Cycle #2: Work Cycle = 27 Days (overtime paid after 204 Hrs.)

Employee moving from Cycle #2 to Cycle #1: Work Cycle = 25 Days (overtime paid after 189 Hrs.)

Summary: Working from a single FLSA cycle would be easier to manage (record keeping), but would make taking leave time more difficult when the swingmen are pegged. Working from two cycles will be more difficult to manage (record keeping), but will give more flexibility in taking leave time during kelly days when swingmen are pegged.

Overtime: The FLSA provides that departments that use the 26 day cycle can wait until the end of the cycle to “ring up” the total hours to see if overtime has been earned. In our situation, overtime would be earned if the employee has worked more than 192 hours in the cycle. This would significantly delay employees getting paid for earned overtime. Our current practice is to pay overtime as it is earned (next payday after earning OT), and to pay it at the time and one-half rate for non-exempt employees. This will remain our practice.

On-Premise Rule: The FLSA states that any leave time taken during the 26 day cycle can be balanced against whether hours worked above 192 hours will be paid at the time and one-half rate or the straight time rate. This is known as the on-premise rule. Our practice has been not to use the on-premise rule in OT calculations. This will remain our practice.

Five Hour variation: Under the FLSA 26 day cycle , OT is called for after an employee has worked 197 hours. Our normal cycle is 192 hours worked in the period. Therefore, common practice for departments using a 26 day cycle is to pay straight time for the first 5 hours over 192 worked before looking to pay time and one-half. Since our practice has been to pay OT as soon as it is earned and at the time and one-half rate, we have not used this 5 hour variation. This will remain our practice.

Overtime at the appropriate rate will be paid for employees that work past a shift, that are called in for active duty to maintain minimum staffing, and other miscellaneous situations/incidents where staffing is needed to complete our mission and employees have to work more hours than their normal work experience.

Schedule Changes/Adjustments: Occasionally, the department will require an employee to attend a training class which is held on a different schedule than the normal 24 hours on-duty and 48 hours off-duty (for example a 40 hour certification course at the AFC). This schedule change by its very nature will change the number of hours worked for the employee. The FLSA allows for time adjustments to be made to balance the hours worked during the work cycle. However, the time adjustments brought about by the schedule changes must be made within the same 26 day cycle so that the total hours worked do not exceed 192 hours. This will be the practice of our department.

Employees that request/volunteer to attend training classes do not fall under the FLSA 192 hour requirements with respect to OT or time adjustments. Therefore, compensation/time balance for hours worked beyond the normal cycle is not mandatory. However, one of our established

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core values is education; therefore, our department will balance time for those requesting training in the same FLSA cycle as well.

Required Record Keeping: The FLSA is fairly clear on its requirements for the keeping of records as they relate to work hours, etc. The FLSA requirements govern records that the fire department maintains as well as the payroll department. The Mountain Brook Fire Department will have in place, and maintain, a record keeping system that meets the requirements of the FLSA.

The primary instrument for adequately keeping employee time records for the fire department will be the employee time cards that each supervisor completes at the end of each shift. The card has been revised to include required relevant information which relates to the 26 day cycle and the hours worked in each cycle. To be effective, supervisors must follow the below process:

- ▶ Employee leave-time and hours worked must be logged on the day that they actually occur. In other words, if an employee works a 24 hour shift, then 24 hours should show in the square for that particular day. If an employee is attending a 40 hour certification class, then there should be 8 hours showing for each of the five days in attendance. Also, if an employee worked overtime for 2 hours, then 2 hours overtime should be listed on the day that it was earned. If a time adjustment was made due to a schedule change, then this amount of time should be shown as well in the appropriate date square. We must account for each hour worked and the date on which it was worked. The FLSA does not allow exceptions to this fact. This information will be logged before the supervisor leaves the shift to go off duty.
- ▶ The begin date and the end date of the 26 day cycles must be listed on the card in the space provided. These dates will be provided to each unit.
- ▶ At the end of each 26 day cycle the hours worked during the cycle must be totaled by the supervisor and entered in the appropriate space. Kelly days and Time Adjustments (time given off to balance hours) will not be calculated as time worked. All other leave time will be calculated as hours worked. If the employee has worked overtime during the cycle, then this will reflect with an hourly total exceeding 192 hours. The employee should have already been paid for the overtime or at least have an overtime card already in process to be paid for the time. It would be advisable to check with the employee to confirm this or check the computerized leave time system to see that OT has been listed for the employee on the appropriate date.
- ▶ After the 26 day cycle has been totaled, the supervisor and employee should review the hours and the employee place his/her initials in the appropriate space if he/she concurs. If there is a discrepancy, the shift commander should be involved.
- ▶ At the end of the year, the Lt's. will sign the card of their subordinates and turn the card in to the office for historical records purposes.

Shift Commanders will perform a visual audit of the time cards at least on a quarterly basis to make sure that information is being entered in the prescribed fashion to meet the FLSA requirements.