

Reading File Copy

October 8, 1993

Earlene Tester  
City Manager  
City of Pigeon Forge  
P.O. Drawer 1350  
Pigeon Forge, Tennessee 37868-1350

Dear Earlene,

I've done some research into the problems we discussed regarding hours worked and compensation rates for dispatchers.

As you know, the *Fair Labor Standards Act (FLSA)* is the federal law guiding hours worked and compensation rates. Thus, we need to look to the *FLSA* for answers to our questions.

As it turns out, dispatchers are not considered "law enforcement" employees under the *FLSA*. They do not meet any of the three "tests" for law enforcement employees (being empowered to "prevent and detect" crimes, having the "power of arrest", and receiving special training in firearms proficiency, self-defense, etc.). But since they work in the police department and are so critical to the public safety effort, it's only natural to think they would be considered "law enforcement" employees.

As you know, law enforcement employees receive a partial exemption from the 40-hour per week overtime liability established under the *FLSA*. Among other things, the law enforcement exemption reduces overtime liability to all hours worked in excess of 43 in a work week. Thus, police officers can work up to 43 hours per week before overtime must be paid.

But since dispatchers are not considered law enforcement employees, they must be paid overtime, at the rate of time and one-half their straight-time rate, for all hours worked in excess of 40 per week.

This is a problem since Pigeon Forge dispatchers normally work 41.25 hours per week and are therefore entitled to 1.25 hours at the overtime rate.

In researching the City's liability it appears as though we are liable for the difference between what they've already been paid (which is "straight-time"), and the overtime rate to which they are entitled (which is "straight-time" and one-half). This liability extends for two years back.

All of this means the dispatchers are due one-half time (since we've already paid them straight-time), for all hours worked in excess of 40 per week, for the past two years. However, the hourly rate at which the additional one-half time is calculated is different than the hourly rate they've been receiving. This is because the *FLSA* requires us to determine the hourly rate based on actual hours worked. In the past, dispatchers have been paid a "salary", largely unrelated to the actual number of hours worked.

As a result of this discovery, we need to do a couple of things. First, we need to immediately reschedule the dispatchers so that they are not working more than 40 hours per week. Or, we need to begin paying overtime for all hours worked in excess of 40.

Second, we need to work toward paying what is owed. If we come forward now, the Department of Labor (who enforces *FLSA* provisions) should rule the City's conduct was not willful, but was merely an oversight which we want to correct. In this way, our liability should only be as I've described it above. If we don't come forward the Department of Labor may rule (when the problem is discovered) that we've acted willfully to avoid the *FLSA*, and then we can be assessed up to double the back pay in liquidated damages for three years.

I've spoken with Mr. Tom Cambrian, of the Department of Labor's Wage and Hour Division in Nashville. He conveyed what I've said above and helped me walk through the process of calculating the City's back pay liability. Based on these discussions Cathy and I have worked to arrive at a cost estimate required to fix this problem. It should be about \$3,968, which is the maximum amount we believe is owed in back wages. I say maximum, because these calculations were made using wages dispatchers are making today. However as we go back two years, different, lesser wages were paid. Cathy will be able to calculate the exact amount, but for now I've outlined on the attached page how we arrived at the \$3,968 figure.

I know all of this isn't good news, but it's better to identify the problem now so we can take care of it and thus limit the City's future liability. As you can imagine, this exact problem is quite common - many cities have experienced the same

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difficulty. Most folks assume as you have that dispatchers are a part of the police department and are considered "law enforcement" employees. All in all though, it's impressive that Cathy and yourself caught the problem at this point in time! That will really help alleviate the City's future exposure.

If you need me to help with explanations or other details related to this problem, just let me know. I'd be happy to do so in any way possible. In the meantime, let me know what happens.

Sincerely,

Patrick Hardy  
Municipal Management Consultant

enc: calculations of estimated back pay cost

### Calculations of Estimated Back Pay Cost

\$21,487.96 (current salary of dispatchers)  
÷  
2,145 (# hours worked per year - 41.25/week x 52 weeks)  
\$ 10.02 (FLSA rate of pay per hour each should have been paid)

\$ 10.02 (hourly rate of pay)  
x  
40 (regular hours per week)  
plus  
\$ 15.03 (overtime hourly rate - \$10.02 x 1.5)  
x  
1.25 (# overtime hours per week)  
\$419.59 (total pay each dispatcher should have received per week)

\$419.59 (total each dispatcher should have received/week)  
-  
\$413.23 (total already paid each dispatcher per week)  
\$ 6.36 (total weekly pay owed each dispatcher)

\$ 6.36 (total weekly pay owed each dispatcher)  
x  
52 (# weeks per year)  
\$ 330.72 (total owed each dispatcher per year)

\$ 330.72 (total owed each dispatcher per year)  
x  
2 (# years back pay City is required to pay)  
x  
6 (# of dispatchers)  
\$3,968.64 (total estimated amount needed to award back pay and correct the problem)