

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

December 23, 1965

Marion E. Martin, Commissioner

Labor and Industry

Phillip M. Kilmister, Assistant

Attorney General

Computation of Hourly Wages of Firemen

QUESTION #1:

Is a fireman employed during the hours that he is not required to stay in the fire station but is limited to a specified geographical area and, therefore, must be paid the minimum wage for those hours?

ANSWER:

A qualified no.

26 M.R.S.A. § 663 (7) provides minimum wage coverage for firemen and reads as follows:

"Members of municipal fire fighting departments, other than volunteer or call departments, who are paid salaries or regular wages, are deemed to be employees within the meaning of this section and are covered by this subchapter. However, $1\frac{1}{2}$ times the hourly rate shall not be paid for all work done over 48 hours under this subsection."

In order to determine whether or not the minimum hourly wage rate is being complied with in any given municipality, the weekly fixed salary of firemen must be divided by the number of hours actually worked, notwithstanding the fact that the number of hours worked may vary from week to week.

It cannot be said that in order to be employed, an employee must perform productive work or remain on the premises of his employer. On the other hand, the mere fact that an employee is in some small degree deprived of some freedom of action does not constitute the time during which such deprivation occurs as working time.

"What constitutes working time is a question of fact depending on the particular circumstances and must be determined in accordance with common sense and the general concept of work or employment. . . . There must be a giving up by the employee of a substantial measure of time and effort. . . ." 56 C.J.S. (Master and Servant) § 151 (26).

For lack of a better term, what might be called the totality of circumstances test should be applied to a given employment situation in order to determine whether the so-called off-duty hours of an employee (fireman) are compensable.

Is the employee required to remain on or about the premises? Is the employee free to engage in personal activities during periods of idleness? How many consecutive hours is the employee subject to call without being required to perform active work? These queries and others must be answered before a determination of compensable hours of employment can be made.

The fact that a fireman during his off-duty hours must remain within the geographical limits of the city which employs him in order to be able to meet an emergency call does not, per se, constitute such off-duty hours as working hours.

By enacting 26 M.R.S.A. § 663 (7) into law, the legislature has given no guidelines as to what shall be considered working hours of fireman. The legislature has merely said that regardless of the number of hours worked, under no circumstances shall a municipality pay its firemen less than the amount per hour established in 26 M.R.S.A. § 664.

QUESTION #2:

Is it possible for the Commissioner to make a ruling consistent with your decision on the above question?

ANSWER:

Yes.

Any rule made and promulgated by the Commissioner would have to be broad in scope and might not prove a helpful guideline to determining the number of working hours of firemen in any given municipality. For example, a rule might be set forth which states that where the employee is subject to the complete control of his employer during his off-duty hours, said off-duty hours shall be computed as working hours of the employee. Such a rule embodies the spirit of our minimum wage laws which are designed to prohibit an employer from claiming all of an employee's time and compensating him for only a part of it. Left completely unanswered unfortunately, is the question of what constitutes complete control of the employee.

In the final analysis, this office feels that certain inherent occupational disadvantages of firemen, such as restriction of movement during off-duty hours, represents a problem which can best be solved at the local level between the municipality and the firemen, acting either individually or through a collective bargaining agent.

Phillip M. Kilmister
Assistant Attorney General

PMK/all