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DEPARTMENT OF JUSTICE
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OPINION 15-0017

Mr. Dale Branch
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71-1-1

MUNICIPAL FIRE & POLICE CIVIL SERVICE

La. R.S. 33:2211
La. R.S. 33:2213
La. R.S. 33:2214
La. R.S. 33:2497
La. R.S. 33:2531

La. R.S. 33:2538
La. R.S. 33:2557
La. Const. art. X, § 16
29 U.S.C. § 201, *et seq.*

Absent a rule of the civil service board, an order by the Chief of Police for the City of Bogalusa, which excludes sick leave from the calculation of overtime, does not conflict with La. R.S. 33:2211, La. R.S. 33:2557, or La. Const. art. X, § 16.

Dear Mr. Branch:

Our office received your request for an opinion on behalf of the Mayor of the City of Bogalusa. You have asked whether an order issued by the Chief of Police violates state law. In December 2013, Chief Joe Culpepper issued Department Order 2013-03 which states:

Effective January 1, 2014, and each January thereafter, each employee will be given 120 hours of sick leave (10-twelve hour days or 15-eight hour days). Once the employee has taken this allotted time off sick, he or she will not be paid their contract overtime for that month or any subsequent month in which a sick day is taken. For the purpose of this order a month will follow the payroll month, the 21st month to the 20th of the following month.

This applies only to contract overtime, not the 52 week sick leave policy granted by state law.

On November 11, 2014, the Bogalusa Municipal Fire and Police Civil Service Board sent correspondence to Chief Joe Culpepper stating Department Order 2013-03 conflicts with La. R.S. 33:2214, La. R.S. 33:2497, La. R.S. 33:2557 and La. Const. art. X, § 16. Your opinion request asks whether this order violates the laws identified by the Bogalusa Municipal Fire and Police Civil Service Board.¹

After speaking with the Assistant Chief of Police, it is our understanding that contract overtime is pay that is received by employees in their last paycheck of the payroll month

¹ The City of Bogalusa has entered into an agreement with the Office and Professional Employees International Union, Local 89, AFL-CIO-CLC. This opinion does not examine whether Department Order 2013-03 violates this private agreement.

for overtime worked by the employee. Overtime pay is paid by police departments to comply with La. R.S. 33:2213² which provides that:

A. The maximum hours of work required of any full-time paid patrolman, patrolman first class, sergeant, lieutenant, or captain, or any other employee of the police department, except those employed in a position, grade or class above that of captain, in any municipality affected by this Subpart, shall be forty hours in any one calendar week. In cases of emergency, any employee may be required to work in excess of the maximum. For each hour so worked the employee shall be paid at the rate of one and one-half times his usual salary, to be determined by reducing his monthly salary to an hourly scale.

. . .

(2) Each employee subject to the provisions of this Section shall be paid at the rate of one and one-half times his usual salary for all overtime hours worked during a shift cycle.

(3)(a) The total hours worked by each such employee during an entire work shift cycle shall be divided by the number of weeks in the shift cycle to determine the average number of hours worked per week.

(b) The overtime hours worked by each such employee during a shift cycle shall be the number of hours by which the average number of hours worked per week exceeds forty multiplied by the number of weeks in the shift cycle.³

An employee in your department typically works the following schedule per payroll month:

Week 1: twenty-four hours

Week 2: sixty hours

Week 3: twenty-four hours

Week 4: sixty hours

² In *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), the United States Supreme Court recognized that the Fair Labor Standards Act (FLSA) minimum wage provisions extended to state and local government employees. However, states may establish higher standards than those established by the FLSA, and the FLSA preempts state law only to the extent that state laws are less generous than the FLSA. 29 U.S.C. § 218 (a), *Cranford v. City of Slidell*, 25 F.Supp. 2d. 727 (1998). The provisions of the FLSA award overtime to police officers only when an employee works more than 171 hours per 28 day work period. The FLSA is less generous than La. R.S. 33:2213; therefore, the applicable law for computing overtime is La. R.S. 33:2213. See 29 U.S.C. 207(e)(2); 29 C.F.R. § 778.218.

³ La. R.S. 33:2213 is applicable to police departments having a population of not less than twelve thousand nor more than two hundred fifty thousand.

This schedule results in an employee working one hundred sixty-eight hours per four week shift cycle. Per La. R.S. 33:2213, the total hours worked (one hundred sixty-eight hours) would be divided by the number of weeks in the shift cycle (four weeks) to determine the average number of hours worked per week (forty-two hours). The overtime hours worked by an employee during a shift cycle is the number of hours by which the average number of hours worked per week exceeds forty (two hours), multiplied by the number of weeks in the shift cycle (four weeks). In the above scenario, an employee would be entitled to eight hours overtime at the end of the shift cycle.⁴

Under Order 2013-03, once an employee has used one hundred twenty hours of paid sick leave, the department will no longer include sick leave hours in the contract overtime calculation. For instance, if an employee takes sick leave for one twelve-hour shift during the above four week shift cycle, his total hours worked would be (one hundred fifty-six), divided by four weeks, which results in an average of thirty-nine hours worked per week. In this scenario, the employee would not be entitled to overtime pay. Neither the FLSA nor La. R.S. 33:2213 require the inclusion of sick hours for the purposes of calculation of overtime.⁵

The population of the City of Bogalusa was 12,232 in the 2010 United States Census.⁶ We note that La. R.S. 33:2497, which governs leaves of absence for Fire and Police Civil Service in Municipalities between thirteen thousand and two hundred and fifty thousand, is not applicable to the City of Bogalusa.⁷ Instead, our opinion will examine whether the Order 2013-03 violates La. R.S. 33:2557, which governs leaves of absence for Fire and Police Civil Service in small municipalities having populations of not less than seven thousand and not more than thirteen thousand.⁸

La. R.S. 33:2557 provides that:

The board shall adopt rules to provide for leaves of absence in the various classes of the classified service. Such rules shall provide for annual vacation and sick leaves with pay, and for special leaves with or without pay. They may provide for special extended leaves with or without pay or with reduced pay for employees disabled through injury or illness arising out of their employment. The right to regulate the time at which any employee may take an annual leave, or any other leave which is not beyond the control of the employee, shall be vested at all times in the appointing authority.

⁴ The opinion request states "in order to comply with the Fair Labor Standards Act, the City of Bogalusa pays 12 hours of 'contract overtime' each month to its employees." It is unclear how the City of Bogalusa arrived at twelve hours overtime for employees of the police department. Louisiana Revised Statute 33:2213 should govern the computation and payment of overtime.

⁵ 29 U.S.C. 207(e)(2); 29 C.F.R. § 778.218 (overtime pay is based on "hours worked").

⁶ <http://quickfacts.census.gov/qfd/states/22/2208150.html> (accessed 6/11/2015).

⁷ See La. R.S. 33:2471.

⁸ La. R.S. 33:2531.

La. R.S. 33:2214(B)(1), applicable to municipalities with populations between twelve thousand and two hundred fifty thousand persons, grants employees of the municipal police department fifty-two weeks of sick leave in any calendar year when the conditions actually warrant.⁹ The Bogalusa Municipal Fire and Police Civil Service Board has also adopted rules providing for sick leave which state in pertinent part, "full salary shall be paid for the first twelve (12) months of said sick leave, as provided under. . . Act 101 of 1948 covering employees of the Police Department."¹⁰ "Pay" is defined by the Bogalusa Municipal Fire and Police Civil Service Rules as:

Salary, wage, fees, and all other forms of valuable consideration, or the amount of any one or more of them , earned by or pad to an employee, by reason of service rendered in any position, but does not include any allowance for expense authorized and incurred as incidence of employment.¹¹

Although the above definition clearly requires that an employee receive payment for his sick leave, it does not require that sick leave hours be included in the overtime calculation.

Order 2013-03 essentially excludes sick leave from the calculation of overtime once an employee has taken one hundred twenty hours of sick leave. This Order does not take away any of the sick leave granted by the Bogalusa Municipal Fire and Police Civil Service Rules or La. R.S. 33:2214(B)(1). Since the Order does not limit the amount of sick leave available to employees, it is our opinion that the Order does not conflict with La. R.S. 33:2214(B)(1) or La. R.S. 33:2557. Additionally, since an employee still receives his full pay during sick leave absences from work, it is our opinion that the Order does not conflict with the Bogalusa Municipal Fire and Police Civil Service Rules.

Louisiana Constitution Article X, § 16 simply establishes a system of classified fire and police civil service which applies to all municipalities with populations exceeding thirteen thousand. Because Bogalusa has a population of less than 13,000, it is not necessary for us to consider this question.

Although it is our opinion that Order 2013-03 does not conflict with the statutes and constitutional article identified by the Bogalusa Municipal Fire and Police Civil Service Board, we note that the Board does have rulemaking authority pursuant to La. R.S. 33:2538. Our office has previously recognized that it is within the authority of civil service boards established pursuant to La. R.S. 33:2531 *et seq.* to determine what constitutes hours worked. In La. Atty. Gen. Op. No. 12-0116, our office found that the Eastbank Consolidated Fire Department (ECFD) of Jefferson Parish had the rulemaking authority to determine pay and entitlement to overtime compensation. Specifically, we

⁹ See La. R.S. 33:2211. La R.S. 33:2214(2) also makes La. R.S. 33:2214 applicable to municipalities having populations of more than two hundred fifty thousand persons.

¹⁰ Section 25 of the Bogalusa Municipal Fire and Police Civil Service Rules.

¹¹ Rule 1.19 of the Bogalusa Municipal Fire and Police Civil Service Rules.

found it was within the authority of the ECFD to enact a rule which counted annual leave, sick leave utilized for an on-duty injury or illness, on-duty fifty-two week leave, military leave with pay, and holidays as "hours worked" towards the computation of overtime.

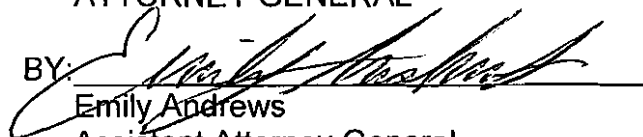
Currently there is no civil service rule which conflicts with Order 2013-03. However, the Bogalusa Municipal Fire and Police Civil Service Board may exercise its rulemaking authority pursuant to La R.S. 33:2538 to enact a rule to determine what constitutes "hours worked" for overtime purposes.

We hope that this opinion has adequately addressed the questions you have submitted. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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BY:



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