

## CHAPTER 21—FIRE DEPARTMENT

## SECTION.

19-2104.1. Cities with population of 15,000 or more—Equal number in platoons—Maximum hours—No reduction of salary—Epidemics, conflagrations or emergencies.

19-2106.1. Reimbursement for use of equipment beyond corporate limits.

19-2106.2. Liability for damages outside corporate limits.

19-2104.1. Cities with population of 15,000 or more — Equal number in Platoons — Maximum hours — No reduction of salary — Epidemics, conflagrations or emergencies. — Irrespective of the provisions of Section 2 [§ 19-2104] of Act 135 of 1923, as amended, the uniformed force of fire departments in cities of the State of Arkansas having a population of fifteen thousand (15,000) or more, according to the latest official United States Census shall be divided into platoons. The responsible chief officer of the Fire Department in cities of this State affected by this Act shall assign as near as practicable, an equal number of employees of said department to each platoon, so that each employee shall work, as near as practicable, an equal number of hours per month, but not to exceed an average of fifty-six (56) hours per week for each period of three weeks. Provided, that there shall be no reduction of salaries of employees of said fire departments because of the number of hours worked during each week as provided herein. Provided, further, that the head or chief officer of such department may, at his discretion, in case of an epidemic, conflagration or like emergency, require such employee

to continue on duty for a greater period than herein provided, during such epidemic, conflagration or like emergency. [Acts 1969, No. 326, § 1, p. 981; 1973, No. 278, § 1, p.-.]

Compiler's Note.

This section was also amended in 1973 by Acts 1973, ch. 151 which act was repealed by Acts 1973, No. 278, § 3.

Amendment.

The 1973 amendment in the second sentence substituted "an average of fifty-six (56) hours" for "64 hours" and inserted "for each period of three weeks" at the end of the sentence.

Repealing Clause.

Section 3 of Acts 1969, No. 326 repealed all laws and parts of laws in conflict therewith.

Section 3 of Acts 1973, No. 278, read: "Act 1951 of 1973 is hereby repealed."

Separability.

Section 2 of Acts 1969, No. 326, read: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Effective Date.

Section 2 of Acts 1973, No. 278 provided that § 1 of the act should become effective on July 1, 1973.

Emergency.

Section 4 of Acts 1969, No. 326, read: "It is hereby found and determined by the General Assembly that the maximum work week for firemen is prescribed by law as 72 hours per week; that a work week of 72 hours is unduly long and that firemen cannot give the best service to the people of this State when required to work 72 hours per week; that the maximum work week of firemen in certain cities must be reduced in order that such firemen can provide the best possible fire protection to the residents of such cities; and that this Act is immediately necessary to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Approved March 26, 1969.

Section 4 of Acts 1973, No. 278 read: "The General Assembly finds that the maximum work week of firemen in certain cities, which is presently 64 hours per week, must be reduced in order that such firemen can provide the best possible fire protection to the residents of such cities; that Act 151 of 1973 did reduce said maximum work week to 56 hours per week, but that the immediate effectiveness of said Act 151 of 1973, caused by the fact that said Act 151 contained an emergency clause, has presented the cities to which said Act 151 applies with a financial problem for which they had not budgeted, and which they need time to meet. It is necessary, therefore, that said Act 151 of 1973 be immediately repealed and replaced by this Act. An emergency is therefore declared

to exist, and this Act being necessary for the public peace, health, and safety, shall be effective immediately upon its passage and approval." Approved March 9, 1973.

19-2106.1. Reimbursement for use of equipment beyond corporate limits.—When the organized fire department of a city or town combats a fire beyond the corporate limits of the city or town, a reasonable effort must be made for ninety (90) days to obtain compensation or reimbursement for such services from the property owner involved. However, if the city or town is unable to obtain payment or reimbursement from the property owner for such services within the ninety (90) day period, the county wherein said property is located may reimburse the municipality for such service in an amount not to exceed two hundred dollars (\$200). [Acts 1973, No. 114, § 1, p. -.]

19-2106.2. Liability for damages outside corporate limits.—Neither the municipality nor any municipal official or fire department official or employee involved in combatting the fire shall be liable for any damages or loss that occurs while the fire department is combatting the fire outside the corporate limits of the city or town. Provided further however, that the fire fighter [fighters] shall have the same coverage as they now have if they are injured while outside the city limits. [Acts 1973, No. 114, § 2, p. -.]

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## MAINE

### Ch. 7, Sec. 663

7. Minimum wage for firemen. 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. Firemen's wages may be paid by the municipality based upon the average number of hours worked during any one work cycle which is not to exceed 12 weeks in duration. However, 1½ times the hourly rate shall not be paid for all work done over 48 hours under this subsection (1965, c. 399, § 1.) (1967, c. 385.)

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#### MICHIGAN

Act No. 78, Public Acts of 1973 -- Approved by Governor July 31, 1973

#### ENROLLED HOUSE BILL NO. 4609

AN ACT to amend section 2 of Act No. 125 of the Public Acts of 1925, entitled "An act to regulate the hours of labor of employes in the fire departments of municipalities, and providing penalties for the violation thereof," being section 123.842 of the Compiled Laws of 1970.

The People of the State of Michigan enact:

Section 1. Section 2 of Act No. 125 of the Public Acts of 1925, being section 123.842 of the Compiled Laws of 1970, is amended to read as follows:

Section 2. The provisions of section 1 shall not apply  
(a) To the chief officer or the assistant chief officer in command of the fire department of a municipality.

(b) To employees of a fire department who are employed subject to call.

(c) To the members or employees of a fire department when required to remain on duty by the chief officer of such department, his aides or assistants, in cases of public necessity arising from great conflagration, riot, flood, epidemic of pestilence, or disease, necessary absence of regularly employed men due to military service, or for disciplinary measures.

(d) To the members of any volunteer fire department.

(e) To any municipality which, by agreement with the collective bargaining agent representing affected employees, does not require its employees engaged in fire fighting or subject to the hazards thereof, to be on duty more than 40 hours in any consecutive 7-day period.

This act is ordered to take immediate effect.

(40)

Act 125, 1925, p. 166; Eff. Aug. 27.

AN ACT to regulate the hours of labor of employes in the fire departments of municipalities, and providing penalties for the violation thereof.

The People of the State of Michigan enact:

123.841 Fire department employees; period of duty; days off duty; work hours per week.

Sec. 1. It shall be unlawful for any municipality, or any officer or employee thereof, in municipalities which maintain or may hereafter maintain an organized paid or part-paid fire department, to require any person in the employ of the fire department who is engaged in fire fighting or subject to the hazards thereof to be on duty in such employment more than 24 hours, or to be off duty

less than 24 consecutive hours out of any 48-hour period. All persons in the employ of any organized paid or part-paid fire department who are engaged in fire fighting or subject to the hazards thereof shall be entitled to an additional 24 consecutive hours off duty in every 12-day period, beginning July 1, 1966, thereby requiring firemen to work not more than an average of 63 hours per week, and effective July 1, 1967, an additional 24 consecutive hours off duty in every 6-day period, thereby requiring firemen to work not more than an average of 56 hours per week.

HISTORY: CL 1929, 2725;—Am. 1937, p. 49, Act 38, Eff. Oct. 29;—Am. 1941, p. 65, Act 57, Eff. Jan. 10, 1942;—Am. 1947, p. 632, Oct. 335, Eff. Oct. 11;—CL 1948, 123.841;—Am. 1965, p. 151, Act 115, Eff. Mar. 31, 1966.

123.842 Persons Exempt.

Sec. 2. The provisions of section 1 shall not apply

- (a) To the chief officer or the assistant chief officer in command of the fire department of a municipality;
- (b) To employees of a fire department who are employed subject to call;
- (c) To the members or employees of a fire department when required to remain on duty by the chief officer of such department, his aids or assistants, in cases of public necessity arising from great conflagration, riot, flood, epidemic of pestilence or disease, necessary absence of regularly employed men due to military service, or for disciplinary measures; nor
- (d) To the members of any volunteer fire department.

HISTORY: CL 1929, 2726;—Am. 1937, p. 49, Act 38, Eff. Oct. 29,—Am. 1947, p. 632, Act 335, Eff. Oct. 11,—CL 1948, 123.842.

**123.843 Penalty for violations.**

Sec. 3. Any officer or employe or agent of such municipality who shall require any employe or other person in any such fire department, save as hereinbefore excepted in section 2 of this act, to be on duty in such employment for a longer time than that hereinbefore provided, or to be off duty for a lesser time than that hereinbefore provided, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than 100 dollars or by imprisonment in the county jail for not more than 3 months, or by both such fine and imprisonment.

HISTORY: CL 1929, 2727,—CL 1948, 123.843.

Sec. 4. (This was a repeal section.)

HISTORY: CL 1929,2728;—Rep. 1945, p. 406, Act 267, Imd. Eff. May 25.

**MONTANA**

11-1931. Hours of work of members of paid fire departments in cities of first class. The city council, city commission, or other governing body in cities of the first class, shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than eight (8) hours of each consecutive twenty-four hours, except in the event of a conflagration or other similar emergency when such members or any of them may be required to serve so long as the necessity therefor exists. Each member shall be entitled to at least one (1) day off duty out of each eight-day period of service without loss of compensation.

11-1934. Hours of work of members of paid fire departments in second class cities. The city council, city

commission, or other governing body in cities of the second class, shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than eight (8) hours of each consecutive twenty-four hours, except in the event of a conflagration or other similar emergency when such members or any of them may be required to serve so long as the necessity therefor exists. Each member shall be entitled to at least one (1) day off duty out of each eight-day period of service without loss of compensation.

History: En. Sec. 1, Ch. 136, L. 1939.

Collateral References

Municipal Corporations 194.

62 C.J.S. Municipal Corporations § 600.

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## NEW JERSEY

40A:14-46 Two-platoon system in certain municipalities having a paid fire department and force.

The governing body of a municipality, having a paid fire department and force, by resolution, may divide the members and officers of such department and force into 2 platoons, one platoon serving 24 hours of duty while the other is off duty for the same period of time.

Source: R.S. 40:47-38.

40A:14-47 Two-platoon system for fire department in certain municipalities; establishment; referendum.

In municipalities, except cities of the first class, wherein a proposal for a 2-platoon system shall have been adopted the governing body of the municipality, or the

board or officer in charge of a paid or part-paid fire department and force, shall divide the paid members and officers of the said department and force into 2 platoons, one designated as a day force, the other as a night force. Each force, respectively, shall alternate the hours of duty on every fourth day. The hours of duty of the day force shall be from 8:00 A.M. to 6:00 P.M. and the night force from 6:00 P.M. to 8:00 A.M. the following morning, except that on every fourth day, for the purpose of such alternation the number of said hours of duty may be exceeded but one force shall be off duty at all times, except as otherwise provided by law.

The 2-platoon system shall be inoperative unless and until a proposal for such a system shall have been submitted to and adopted by the legal voters of the municipality at a primary or general election or at an election held for that purpose. It may be submitted as a public question, in the manner prescribed by law, by resolution of the governing body, or by filing with the governing body of the municipality a petition for such submission signed by at least 10% of the legal voters of the municipality in substantially the following form:

“(Insert the name of the municipality and state the question.)” The ballot shall contain 2 squares to the left of the question, one with the word “Yes”, the other with the word “No”, respectively, to the right thereof. The ballot shall also contain instructions to voters to vote by marking a cross (X), or plus sign (+) or check mark ( ) in the square according to their choice. If voting machines are used a vote of “Yes” or “No” shall be equivalent to such markings, respectively.

The municipal clerk shall forthwith canvass the returns of the election and shall certify the results thereof to the

governing body of the municipality. If a majority of the legal voters voting on the question shall vote "Yes", the 2-platoon system shall become operative and the governing body or the board or officer in charge of said paid or part-paid fire department and force shall then proceed to establish such system.

This section shall not be construed to repeal or modify in any form any existing law relating to salaries, annual vacations, sick or disability leave of any of the members or officers of the paid or part-paid fire department or force.

Source: R.S. 40:47-39; 40:47-40 amended 1938, c. 276; 40:47-42; 40:47-43; 40:47-44; 40:47-45; 40:47-46; 40:47-47; 40:174-66; 40:174-67; 40:174-68; 40:174-69; 40:174-70; 40:174-71; 40:174-72.

40A:14-48 Two-platoon system for fire department in cities of the first class: emergency service; compensatory time off.

In cities of the first class, the governing body, by resolution, or the board of fire commissioners or officials in charge of a fire department and force, may divide the members and officers of such fire department and force into 2 platoons, one serving while the other is off duty. Each platoon, respectively, shall alternate the hours of duty for the purpose of alternating the day force with the night force and vice versa, and for the purpose of giving each platoon 24 hours off duty every 6 days. The hours of duty of the day force shall be from 8:00 A.M. to 6:00 P.M. and the night force from 6:00 P.M. to 8:00 A.M. the following morning.

In cases of conflagration or other emergency the officials in charge of the fire department and force shall have authority to retain on duty any or all members and

officers of such department and force during the period of the emergency, but in any such case and within 12 months thereafter, such members or officers shall be given a day or proportion thereof off for extra time so served by them during the emergency.

Nothing contained herein shall be deemed to repeal or modify existing laws relating to salaries, annual vacations or sick or disability leaves of the members or officers of such department or force.

Source: R.S. 40:174-132; 40:174-133; 40:174-134; 40:174-135; 40:174-136; 40:174-137; 40:174-138; 40:174-139; 40:174-140.

40A:14-49 Fifty-six hour week for members and officers; referendum.

The governing body of any municipality, by ordinance, may adopt a schedule of hours of actual duty for the members and officers of a paid or part-paid fire department and force based upon an average of 56 hours per week in any 6-week cycle, but in cases of emergency the officials in charge shall have authority to retain any uniformed member or officer on duty during the period of the emergency, and in any such case and within 12 months thereafter such member or officer shall be given hours off from the average of 56 hours per week in any 6-week cycle to compensate him for the extra hours served by him during such emergency.

Any such ordinance shall be inoperative unless and until it shall be submitted to and adopted by the legal voters of the municipality at a primary or general election or an election held for such purpose.

Said adoption may be submitted as a public question in the manner prescribed by law, by resolution of the governing body or by filing with the governing body a

petition for such submission, signed by at least 10% of the registered voters of the municipality. The question shall be submitted substantially on the ballot as follows:

Insert the name of the municipality and state the question. "Shall the ordinance providing that the uniformed members and officers of its fire department and force shall be maintained in such manner as to provide that no member or officer thereof shall be required to remain on duty in excess of 56 hours per week in any 6-week cycle except in cases of emergency be adopted?"

If a majority of the legal voters voting on such question vote in favor of the adoption, the ordinance on and after January 1 following such election shall become operative.

Source: C. 40:47-47.2 (1948, c. 73, s. 1 amended 1949, c. 100, s. 2); C. 40:47-47.3 (1948, c. 73, s. 2 amended 1949, c. 100, s. 3); C. 40:47-47.4 (1948, c. 73, s. 3 amended 1949, c. 100, s.4).

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## NORTH DAKOTA

### GENERAL PROVISIONS

34-01-08 Maximum hours for cities in this state having a population of *five thousand* or more inhabitants shall work for such city more than eight hours in any one day or more than fifty-six hours in any one week except in case of emergency. This section shall not apply to a public officer who is elected to his said office, nor to members of the police force, nor to the members and employees of the fire department, nor to the head of any department of the city.

Source: S.I., 1935, ch. 201, § 1; 1937, ch. 177, § 1;  
R.C. 1943, § 34-0108.

Cross-Reference.

Civil Service for city employees, see ch. 40-44.

Collateral References.

Labor Relations 1367, 1379.

48 Am. Jur. 2d, Labor and Labor Relations, § 1863.

51B C.J.S. Labor Relations, § 1197; 56 C.J.S. Master and Servant, § 17.

34-01-09. Violation of hours of employment for city employees – Penalty. – Any employee who shall willfully violate section 34-01-08, and any city officer and any member of any board, bureau, or commission having charge of or supervision over the employment of any such employee who shall require such employee to violate such section, is guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

Source: S.L. 1935, ch. 201, § 2; 1937, ch. 177, § 2;  
R.C. 1943, § 34-0109.

34-01-09.1. Maximum hours of labor. – No employee, other than the chief of a fire department in any city of North Dakota with a population of twenty thousand or more inhabitants, shall be required to work more than one hundred and forty-four hours in any two-week period but shall be subject to call while off duty in case of emergency not to exceed more than one hundred and forty-four hours in this two-week period. Any person who shall violate any provision of this section shall be guilty of a misdemeanor and shall be punished by a fine

of not less than twenty-five dollars nor more than one hundred dollars.

Source: S.L. 1949, ch. 223, §§ 1, 2; R.C. 1943, 1957 Supp., §§ 34-01091, 34-01092.

Note.

The provisions of section 34-01-09.2 have been combined with this section.

**Collateral References.**

Labor Relations 1351-1420.

48 Am. Jur. 2d, Labor and Labor Relations, §§ 1838-1865.

51B C.J.S. Labor Relations, §§ 1186-1209; 56 C.J.S. Master and Servant, §§ 14-17.

Beauty Shops, control of hours of work by statute or ordinance regulating, 56 ALR 2d 892.

34-01-09.2. Penalty.—Repealed by omission from this code.

Note.

The provisions of this section have been combined with section 34-01-09.1.

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## PENNSYLVANIA

### **THIRD CLASS CITY CODE OF PENN. 53 PURDON'S STATUTES 37103**

Section 2103. Platoon System; Hours of Service; Vacation; Sick Leave.—The director of the department having charge of the fire bureau in each city shall divide the officers and members of companies of the uniformed

fire force in the employ of such cities, and any other firemen and drivers regularly employed and paid by the city, excepting the chief engineer and assistant chiefs, and those employed subject to call, into two bodies or platoons to perform service during such hours as the director shall fix, except as herein otherwise provided.

The hours of day service shall not exceed ten, commencing at eight o'clock in the morning, the hours of night service shall not exceed fourteen, commencing at six o'clock in the afternoon; and the hours of day service shall not exceed fifty hours in any one calendar week, and the hours of night service shall not exceed seventy hours in any one calendar week, unless the hours of day and night service shall be equalized, in which case neither the hours of day or night service shall exceed fifty-six in any one calendar week: Provided, That for the duration of any war in which the United States is engaged, and six months thereafter, the hours of service may exceed the number hereinbefore provided as the maximum number of hours of service, and in such cases, council shall provide for the payment of extra compensation for any hours of service, at the same rate as paid for regular service in excess of such maximum hours of service. The employes of such fire forces shall be allowed to have at least twenty-four consecutive hours of rest in every calendar week, to have an annual vacation of not less than fourteen working days, and shall be entitled to twenty-one days sick leave annually without diminution of the salary or compensation fixed by ordinance. In those instances in which sick leave exceeds four days at any one time, it shall be necessary for the employe to present evidence satisfactory to the director of the department showing either injury, hospitalization, or

illness attended to by a physician. In cases of riot, serious conflagration, times of war, public celebrations, or other such emergency, the chief engineer of the bureau of fire, or the assistance chief deputy, or chief officer in charge at any fire shall have the power to assign all the members of the fire force to continuous duty, or to continue any member thereof on duty, if necessary. No member of any of said shifts, bodies or platoons shall be required to perform continuous day service or continuous night service for a longer consecutive period than two weeks, nor be kept on duty continuously longer than ten hours in the day shifts, bodies or platoons or fourteen hours in the night shifts, bodies or platoons, excepting as may be necessary to equalize the hours of duty and service, and also excepting in cases of emergency, as above provided. (Amended July 19, 1957, P.L. 1012.)

Section 2104. Fire Marshal; Powers. — Every city may, by ordinance, provide for the creation of the office of fire marshal who shall be appointed by the mayor, by and with the approval and consent of council, biennially. The fire marshal and his assistants, if council shall provide for such assistants, shall inspect all constructions or buildings within the city or upon property owned or controlled by the city or a municipality authority of the city within the Commonwealth, whether public, private, or business, and shall enforce all laws of the Commonwealth and ordinances of the city relating to such constructions or

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## SOUTH DAKOTA

CLASSIFICATION AND CONDITIONS  
OF EMPLOYMENT

3-6-18

duties of employees, within the time designated, the classifications, the minimum essentials of efficiency, the uniform system of efficiency ratings, the equitable salary scale, the plan for pooling and transferring clerks, stenographers, clerical assistants, and common and skilled laborers, and the plan for co-ordination of duties of employees, submitted by the director of employment shall thenceforth be in full force and effect. Such classifications, minimum essentials of efficiency, uniform system of efficiency ratings, equitable salary scale, plan for pooling and transferring clerks, stenographers, clerical assistants, and common and skilled laborers and plan for co-ordination of duties of employees shall continue in force and effect until amended or revised by a majority vote of the board of finance at any regular meeting.

Source: SL 1927, ch 73; SDC 1939, 55.2701 (9).

## Cross-Reference.

Rules and regulations, procedure for adoption, §§ 1-26-2 to 1-26-14.

3-6-17. Maximum hours of duty for public employees – Special provision for city firemen. – No employee of the state or any of its political subdivisions, nor of any municipal corporation shall be employed more than eight hours in any day, nor more than forty-eight hours in any calendar week except in case of unavoidable emergency, and except that full-time employees of city fire departments shall have their own hours of employment governed by a mutual agreement with respective

municipal corporations and shall not exceed one hundred twelve hours during a fourteen-day period.

Source: SL 1933 (SS), ch 10, § 2; R.C. 1939, § 17.0103; SL 1949, ch 75,—; 1951, ch 93, § 1; 1959, ch 100; 1966 ch 63, § 12.

Cross-References.

Legislative employees, hours of duty, § 2-5-7.

Record of attendance for state employees, § 3-6-11.

Workmen's Compensation Computation.

Statute which fixes maximum number of hours public employee may be required to work is not applicable in computing daily wage under workmen's compensation statute. Millage v. Canton Township (1949) 73 SD 26, 38 NW 2d 755.

Opinions of Attorney General.

“Emergency” as applied to circumstances arising at Yankton state hospital, Report 1949-50, p. 209.

Not unlawful to employ in excess of eight hours, permitted in emergency cases, Report 1955-56, pp. 278, 318.

Overtime pay permitted when caused by unavoidable emergency, Report 1943-44, p. 150; 1955-56, p. 299.

Overtime pay permitted when employee works hours beyond those contemplated at time of employment, Report 1943-44, p. 215.

3-6-18. Public officers and agricultural workers exempt from restriction on hours.—Nothing in § 3-6-17 shall be construed to apply to public officers elected or appointed as such for any specific term or part of a term.

TEXAS

Art. 1269p CITIES, TOWNS AND VILLAGES Title 28

Art. 1269p. Hours of labor and vacations of firemen and policemen in certain cities.

Cities over 25,000; hours of labor

Section 1. No member of any fire department or police department in any city of more than twenty-five thousand (25,000) inhabitants shall be required to be on duty more than six (6) days in any one week.

Exception for emergencies

Sec. 2. The preceding subdivision shall not apply to cases of emergency.

Cities over 30,000; vacations

Sec. 3. Each member of any such departments in any city of more than thirty thousand (30,000) inhabitants shall be allowed fifteen (15) days vacation in each year with pay; provided that the provisions of this Section of this Act shall not be applied to any member of any such department in any city of more than thirty thousand (30,000) inhabitants unless such member shall have been regularly employed in such department or departments for a period of at least one (1) year.

Number of vacation days and holidays

Sec. 3a. Firemen and Policemen shall have the same number of vacation days and the same number of holidays, or days in lieu thereof, that is granted to other municipal employees.

Federal Census

Sec. 4. Each preceding Federal Census shall determine the population.

Designation of vacation days and holidays

Sec. 5. The city officials having supervision of the fire department and police department shall designate the days of the week upon which each such member shall not be required to be on duty, and the days upon which each such member shall be allowed to be on vacation.

Cities over 10,000; hours of labor

Sec. 6. It shall be unlawful for any city having more than ten thousand (10,000) inhabitants but not more than sixty thousand (60,000) inhabitants, according to the last preceding Federal Census, to require or permit any fireman to work more than seventy-two (72) hours during any one calendar week. It shall be unlawful for any city having more than sixty thousand (60,000) inhabitants but not more than one hundred twenty-five thousand (125,000) inhabitants, according to the last preceding Federal Census, to require or permit any fireman to work more than an average, during a calendar year, of sixty-three (63) hours per week. It shall be unlawful for any city having more than one hundred twenty-five thousand (125,000) inhabitants, according to the last preceding Federal Census, to require or permit any fireman to work more than an average, during a calendar year, of sixty (60) hours per week.

Provided further, that in any city having more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census, the number of hours in the work week of members of the fire department whose duties do not include fighting fires, including but not limited to mechanics, clerks, investigators, inspectors, fire marshals, fire alarm dispatchers and maintenance men, shall not exceed the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen.

Provided further, that in computing the hours in the work week of firemen subject to the provisions of the preceding paragraph, there shall be included and counted any and all hours during which such firemen are required to remain available for immediate call to duty by continuously remaining in contact with a fire department office by telephone or by radio.

Provided, however, that in any such city having more than ten thousand (10,000) inhabitants, in the event of an emergency, firemen may be required to work more than the maximum number of hours herein provided; and in such event firemen working more than the maximum hours herein provided shall be compensated for such overtime at a rate equal to one and one-half times the compensation paid to such firemen for regular hours.

#### Cities over 10,000; overtime

Sec. 6A. It shall be unlawful for any city having more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census, to require or permit any policeman to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen.

Provided, however, that in any such city having more than ten thousand (10,000) inhabitants, in the event of an emergency, policemen may be required to work more than the number of hours in the normal work week of the majority of other city employees; and in the event policemen are ordered to work a greater number of hours than the number of hours in such normal work week of other city employees, such policemen shall be

compensated for any such overtime at a rate equal to one and one-half times the compensation paid to such policemen for regular hours.

#### Effectiveness of Act

Sec. 6B. The governing body of each city which comes under the provisions of this Act<sup>1</sup> shall put into effect the provisions hereof, without referendum or election, on or before the first day of the next fiscal year of such city after the effective date of this Act.

#### Working extra hours

Sec. 7. The provisions of this Act shall not be construed to prevent firemen and policemen from working extra hours when exchanging hours of work with each other with the consent of the department head.

#### Penalty

Sec. 8. The city official having charge of the fire department or police department in any such city who violates any provision of this Act shall be fined not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars, and each day on which said city official shall cause or permit any Section of this Act to be violated shall constitute and be a separate offense.

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**Defendant's Exhibit No. 5**

CITY OF LOMPOC CALIFORNIA  
CITY HALL  
119 WEST WALNUT AVENUE  
TELEPHONE REgent 6-1261

September 27, 1974

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839 17th Street, N.W.  
Washington, D.C. 20006

Dear Mr. Ryhne:

I note that you have been retained as Chief Counsel for the National League of Cities to take on the 1974 Fair Labor Standards Act as it applies to the states or local governments.

I have been fighting what I consider to be a lonely skirmish on this battleground. The attached materials document my point. To put it bluntly the Department of Labor, in its approach to compensatory time, is flat wrong and will not condescend to think about changing its position but instead cites a case which does not apply to compensatory time.

So far as I am concerned this City is going to continue to pay compensatory time and if the Department of Labor objects we will win the point in court.

You may find that the point I urge is of some persuasive value in your case. I presume your case will be

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one of urging states' rights, and my point indicates what kind of a right is interfered with: i.e. the right for a public employee and his employer to decide upon compensatory time as compensation for labor.

I will be in San Diego 7th and 8th if you wish to discuss the point further.

Very truly yours,

/s/ Alan Davidson  
ALAN DAVIDSON  
City Attorney

June 3, 1974

U.S. Department of Labor  
Washington, D.C.

ATTENTION: Assistant Secretary Bernard E. Delury

Gentlemen:

We understand that it is the interpretation of the Department of Labor that under the 1974 Fair Labor Standards Act that cities may no longer give compensatory time to employees who have worked overtime, but must only pay them money. It was our interpretation of the law that "comp." time could still be given, but that at a rate of time and one-half.

If it is the department's position that only money can be paid for overtime, we would appreciate its specifying the section of the Code or Act upon which such an interpretation is based.

Very truly yours,

ALAN D. DAVIDSON  
City Attorney

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WASHINGTON, D.C. 20210

Mr. Alan D. Davidson  
City Attorney  
119 West Walnut Ave.  
Lompoc, California

Dear Mr. Davidson:

Your letter of June 3, 1974 to Assistant Secretary of Labor Bernard E. Delury has been referred to this office for a reply. In your letter you question the Department's position regarding compensatory time off under the Fair Labor Standards Act.

The overtime compensation requirements of the Act are discussed in the enclosed bulletin, Part 778. Section 778.106 indicates that the payment of both the minimum wage and overtime compensation due an employee must ordinarily be made at the regular payday for the period in which the work was performed. An employer may not credit an employee with compensatory time (even at a time and one-half rate) for overtime earned which is to be taken at some mutually agreed upon later date subsequent to the end of the pay period in which the overtime was earned, rather than pay cash for the overtime as it is earned.

However, it is permissible for the employer employing one at an hourly rate, or at a fixed salary for a fixed workweek, to lay off the employee a sufficient number of hours during some other week or weeks of the same pay period to offset the amount of overtime worked (i.e.

at the time and one-half rate) so that the desired wage or salary for the pay period covers the total amount of compensation, including overtime for each week taken separately. Under this method the employer does not average hours over a period longer than a week. He controls the earnings by controlling the number of hours the employee is permitted to work.

If you need additional information, you may wish to contact our office in Room 504, 6777 Hollywood Boulevard, Hollywood, California 90028, phone 213-472-3181, Ext. 373. The people in that office will be happy to help you in any way possible.

Sincerely,

/s/ William Hoffman  
William Hoffman, Chief  
Division of Minimum Wage  
and Hour Standards  
Wage and Hour Division

Enclosure

**Section 778.106 Time of Payment.**

There is no requirement in the Act that overtime compensation be paid weekly. The general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends. When the correct amount of overtime compensation cannot be determined until some time after the regular pay period, however, the requirements of the Act will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practicable. Payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may payment be delayed beyond the next pay day after such computation can be made. Where retroactive wage increases are made, retroactive overtime compensation is due at the time the increase is paid, as discussed in §778.303. For a discussion of overtime payments due because of increases by way of bonuses, see §778.209.

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CITY OF LOMPOC  
CALIFORNIA  
CITY HALL  
119 WEST WALNUT AVENUE  
TELEPHONE REgent 6-1261

July 16, 1974

William Hoffman  
Chief, Division of Minimum Wage  
and Hour Standards  
Wage and Hour Division  
United States Department of Labor  
Washington, D. C. 20210

Thanks to your kind reply, we have received the United States Department of Labor Interpretive Bulletin No. 788 which is part of Title 29 of the Code of Federal Regulations relating to overtime compensation. This interpretive bulletin interpreted the Fair Labor Standards Act of 1938. It is still being used to interpret the recently adopted Fair Labor Standards Act of 1974, which added public employees to this Act.

Section 778.106 covers the question of when payment for overtime shall be made and quite properly indicates that payment in cash shall be made at the earliest payday. Delays are only allowed when computation cannot immediately be made. This interpretation is most correct in relating to cash payments because such delayed payment can be less than full payment, for several reasons.

This section has been applied to overtime compensation which compensation will be in the form of compensatory time (leave from work) at the rate of one

and one-half times the overtime worked. This means under strict application of section 778.106, and as reflected in your letter on the subject, that any time and one-half compensatory time must be given the same pay period. Because, however, the practical necessities of scheduling work and workloads do not fit into a compensatory scheme designed to discharge the employers obligation in a one or two-week or even one-month payroll period, the practical application means that compensatory time cannot be used. (Compensatory time is given employees at the time of slack periods.) Slack periods relate to the demands of the work, not pay theories and practices. *The upshot of the interpretation is that the giving of compensatory time by public bodies to their employees is effectively prohibited under the 1974 Act.* A review of the provisions of the 1974 Act do not show an intention of Congress to change the salutary and often practiced granting of compensatory time to public employees.

There are several considerations relating to compensatory time which should be seriously considered by the Secretary of Labor:

1. If the employee (whom we are trying to protect) prefers compensatory time off to money, and many of them do, he should not be thwarted in the receiving of such time by rules promulgated by the Department. Such an important principle should be clearly and exactly decided by Congress itself.

2. Many jurisdictions have varying work loads but may not have the money to pay the time and one-half in cash. To require the jurisdiction to pay money and not be able to use slack work periods for this compensation is a consequence not clearly indicated by Congress.

Compensatory time off in public employment is 99 percent of the time granted to an employee at his request, he tacks it onto weekends and vacations. Compensation time is of great utility to the employer and the employee alike and should not be thrown out by these rules.

3. There is no reason why there could not be a reasonable limit on the granting of compensatory time. Section 778.106, or a similar section, could provide that if compensatory time is to be given it shall be given at the same rate as is overtime pay but must be given within a reasonable time, i.e., six months or one year.

4. These rules are backing public jurisdictions into a guaranteed 40-hour week. Such a principle should only be adopted by Congress, and clearly so. The reason is this: if the time and one-half is paid in cash the next pay period, and then three months later a slack period appears and the employer gives the employee time off, this time off will be *without pay*. (If this time off were credited against the overtime account, it would be *with pay*.) Thus, if the employer who has ups and downs in his work load must allow employees time without pay because he doesn't have the money to pay them at the time, it is going to be creating a hardship on the employees. They will have pay periods where they will get large overtime pay and pay periods where they will get small pay. This causes hardship and resultant poor employee relations, with increased union activity and demand for guaranteed minimum 40-hour weeks. We request that the Department not back public jurisdictions into such a corner by the inadvertent application of a section relating to payment in cash.

This is a request that the Secretary of Labor consider and enter into an adoption of interpretive rules relating

to compensatory time used as compensation under the Fair Labor Standards Act, and that he (or whoever) specifically either provide that Section 778.106 does not apply to non-cash payment or adopt a new section covering the problems raised by the granting of compensatory time.

This question is not merely the concern of the undersigned. From materials I have observed, the National League of Cities has published this interpretation and I know from experience it is being followed by most public jurisdictions. I have determined this is particularly true in California. The problems caused by applying this section to compensatory time are immediate and I ask that you move quickly on this matter.

Yours truly,

/s/Alan D. Davidson  
ALAN D. DAVIDSON  
City Attorney

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WASHINGTON, D.C. 20210

Alan D. Davidson, Esq.  
City of Lompoc  
119 West Walnut Avenue  
Lompoc, California 93436

Dear Mr. Davidson:

This is in reply to your letter of July 16, 1974, regarding the Department's position with respect to compensatory time-off under the Fair Labor Standards Act.

There is not much that we can add to that which we wrote you on July 9, 1974. By its own terms, the Act requires that overtime compensation be computed and paid on the basis of each workweek standing alone. This is a long established principle which has been in effect since the law's inception and which has been upheld by the courts. See the Supreme Court's opinion in *Walling v. Harnischfeger Corporation*, 325 U.S. 427 (1945). That decision indicates that overtime payments must be made within the regular pay period, unless for some reason delay is required to allow the employer to compute overtime payments. Where delay is unavoidable, payment must be made as soon as practicable. Neither the Administrator of the Wage and Hour Division nor the Secretary of Labor has specific authority to waive this requirement.

There is no indication that Congress, in enacting the 1974 amendments to the Act, contemplated any change in the requirement that overtime due under the Act must be paid in cash upon completion of the pay period and not in the form of compensatory time-off at some subsequent date.

Sincerely,

/s/ William Hoffman  
William Hoffman, Director  
Division of Minimum Wage  
and Hour Standards  
Wage and Hour Division

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**Defendant's Exhibit No. 6**

CITY OF CAPE GIRARDEAU  
CAPE GIRARDEAU, MISSOURI 63701

October 15, 1974

Mr. Jack. R. Younce  
Area Director  
Wage and Hour Division  
Department of Labor  
Room 563, 210 North 12th Street  
St. Louis, Missouri 63101

Mr. James McDonald  
Compliance Officer  
Room 142, Federal Office Building  
Box 554, 339 Broadway  
Cape Girardeau, Missouri 63701

Re: Minimum Wage Law Compliance

Gentlemen:

By this letter I must inform you that the City of Cape Girardeau, Missouri, will not comply in any fashion with the Fair Labor Standards Act of 1974 and will make itself available for no audits or inspections of any kind. After careful consideration and study, it has been determined that the Fair Labor Standards Act of 1974 is and shall be treated as being unconstitutional.

It is our every intention and our desire to obey the law. We take this action very regretfully and after much

soul-searching. However, in view of the nature of local governments, the tradition and growth of local governments, and the constitutional basis for local governments, we can take no other action but to deny the constitutionality of this Act as it applies to our City.

Please be advised, however, that in the event this Act is ruled to be constitutional, the City of Cape Girardeau, of course, will comply with the Fair Labor Standards Act of 1974 and will do so fully and immediately. However, we expect the test case on the Fair Labor Standards Act of 1974 to be decided in favor of States and Local Governments and against the Federal Congress, i.e. unconstitutional.

Again, I want to say that we take this action not in an effort to beat the law or in an effort to break the law, but because of our considered and counseled opinion that this Fair Labor Standards Act of 1974 is, in fact, not the law because of its unconstitutionality.

We will await communication with you on the matter and if we can further clarify our position in any way, please feel free to call or contact me.

Very truly yours,

Thomas M. Utterback  
City Attorney

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**Defendant's Exhibit No. 7**

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE SOLICITOR  
911 WALNUT STREET – ROOM 2106  
KANSAS CITY, MISSOURI 64106

November 20, 1974  
KCL:DM:DRB

Mr. Thomas M. Utterback  
City Attorney  
City of Cape Girardeau  
Cape Girardeau, Missouri 63701

*Re: Brennan v. City of Cape Girardeau, Missouri*

Dear Mr. Utterback:

Enclosed is a copy of a complaint which we have sent for filing in the United States District Court at St. Louis, Missouri. Formal service will be made upon Mr. Lawley in due course.

Should you so desire, we would be pleased to discuss the case with you at an early date.

Sincerely,

T.A. Housh, Jr.  
Regional Solicitor

By /s/ Donald McCoy  
Donald McCoy  
Attorney

Enclosure

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

PETER J. BRENNAN, )  
SECRETARY OF LABOR, )  
UNITED STATES  
DEPARTMENT OF LABOR, ) CIVIL ACTION  
 )  
Plaintiff, ) FILE NO.  
 )  
v. )  
 )  
CITY OF CAPE  
GIRARDEAU, MISSOURI, )  
 )  
Defendant. )

**COMPLAINT**

Plaintiff brings this action to enjoin defendant from violating the provisions of section 15(a)(2) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 *et seq.*), hereinafter called the Act, including the restraint of any withholding of payment of minimum wages and overtime compensation found by the Court to be due employees under the Act.

**I**

Jurisdiction of this action is conferred upon the Court by section 17 of the Act.

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II

Defendant, the City of Cape Girardeau, Missouri, is a political subdivision of the State of Missouri located in the county of Cape Girardeau, Missouri, within the jurisdiction of this Court.

III

The activities of defendant, a public agency as defined by section 3(x) of the Act, were, and are, related and performed through unified operation or common control for a common business purpose, and have, since May 1, 1974, constituted an enterprise within the meaning of section 3(r) of the Act.

IV

At all times since May 1, 1974, said enterprise has had employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce and has been a public agency as defined in section 3(x) of the Act. Said enterprise, therefore, was and is an enterprise engaged in commerce or in the production of goods for commerce as defined in section 3(s)(5) of the Act.

V

Defendant has violated and is violating the provisions of sections 6(b) and 15(a)(2) of the Act by failing to pay to certain of its employees, for their employment in an enterprise engaged in commerce or the production of goods for commerce, wages at rates not less than \$1.90 per hour since May 1, 1974.

**VI**

Defendant has violated the provisions of section 7 and 15(a)(2) of the Act by employing certain of its employees in an enterprise engaged in commerce or in the production of goods for commerce, for workweeks longer than 40 hours since May 1, 1974, without compensating said employees for their employment in excess of 40 hours in such workweeks at rates not less than one and one-half times the regular rates at which they were employed.

**VII**

As a result of the violations alleged in paragraphs V and VI hereof, defendant has unlawfully withheld and continues to withhold unpaid minimum wages and overtime compensation due certain of its employees.

**VIII**

Defendant has repeatedly and willfully violated the aforesaid provisions of the Act. A judgment permanently enjoining and restraining the violations herein alleged including the restraint of the continued withholding of unpaid minimum wages and overtime compensation due defendant's employees is specifically authorized by section 17 of the Act.

WHEREFORE, cause having been shown, plaintiff prays judgment permanently enjoining and restraining defendant, its officials, agents, servants, employees, and those persons in active concert or participation with defendant who receive actual notice thereof, from violating the provisions of section 15(a)(2), including the restraint of any withholding of payments of unpaid

minimum wages and overtime compensation found by the Court to be due to defendant's employees, together with interest thereon from the dates when such amounts became due, and for such other and further relief as may be necessary and appropriate, and costs.

William J. Kilberg  
Solicitor of Labor

T. A. Housh, Jr.  
Regional Solicitor

Room 2106, 911 Walnut Street  
Kansas City, Missouri 64106  
(816) 374-2281

/s/ Donald McCoy  
Donald McCoy  
Attorney  
United States Department of Labor

and

Donald J. Stohr  
United States Attorney

Office of the Attorney  
1114 Market Street  
St. Louis, Missouri 63101  
(314) 622-4205

By  
Michael W. Reap  
Assistant United States Attorney

Attorneys for Plaintiff

**Defendant's Exhibit No. 8****CAPE GIRARDEAU SOUTHEAST  
MISSOURIAN 11-17-74****AUTONOMY OF LOCAL GOVERNMENT  
THREATENED BY LABOR REGULATION  
BY MAYOR HOWARD C. TOOKE**

On Oct. 15, 1974, the City of Cape Girardeau gave written notice to the Wage and Hour Division of the Department of Labor that the city believes the application of the Fair Labor Standards Act to municipalities is unconstitutional. This action was not taken hastily, nor was it taken without full consideration of the issues involved and the consequences.

At issue in this matter is whether the citizens of this country in establishing their government and electing their representatives at various levels of government, intended those at any one level to interfere with or dictate to those at another level.

Specifically, we do not believe that the federal government has the constitutional authority to inject itself into employe matters which should be settled at the local level. Nor do we believe that the same standards of wages and hours and overtime compensation should prevail in every city in the United States. Substantial differences in work requirements exist now between various cities, and we see no valid reason to standardize local work assignments along federal lines.

Case in point: Cape Girardeau over a period of many years developed a workable system for fire protection—one that was within their financial

capabilities and yet allowed for a fire department staffed entirely of professional fire fighters and not dependent upon volunteers for manpower as are a great many departments.

Under this system, the Cape Girardeau Fire Department achieved a degree of professional efficiency second to none. The city takes a great pride in its fire department: available evidence indicates also a great personal pride in their work on the part of individual firemen. Long tenure in employment by many firemen suggests satisfaction with their conditions of employment.

This has all been accomplished at the local level, without help or hindrance from other levels of government. However, now the federal government is injecting itself into purely local government in this instance, as well as others. We think that financial consequences of such regulation will create great fiscal problems for many cities.

In Cape Girardeau, the fire department budget alone, now at about \$350,000 annually, would increase by up to \$400,000 annually if the present level of service were maintained by existing personnel. By hiring additional employes and eliminating overtime, the cost could be brought down to where the increase would be about \$250,000.

Based on the present assessed valuation of property in Cape Girardeau, this increase would be a minimum of 40 cents per \$100 assessed valuation per year; this compares to our existing general revenue tax levy of 50 cents. To send our tax levy from 50 cent to 90 cents would be a drastic change for the taxpayers of this city.

Many cities faced with such massive increase in costs will consider the alternate course of reduction in level of service, and herein lies a real threat to cities such as ours—that because of increased costs artificially generated by federal bureaucracy, our local government services might be reduced. For instance, a city government could decide to get by with fewer firemen on duty and depend upon securing additional manpower by calling out off-duty personnel. Obviously this would be much less desirable than our present system.

Another system being seriously considered by quite a few cities is that of creating a category of employes known as "public safety officers" who would have duties as both policemen and firemen as the need developed. This would result in monetary savings, but not in strict professionalism, and would not meet with enthusiasm from either policemen or firemen.

Any of these radical adjustments are totally unnecessary if the federal government will only stay out of the regulation of local government, and allow each unit of local government to determine the level of service necessary to meet the needs of their particular citizens, balanced against the willingness of such citizens to provide the necessary taxes for the support of such services.

The contention of some in federal government is that cities are subject to federal regulation because they engage in interstate commerce, due to their purchase of supplies manufactured in other states. This reasoning is absurd, and if followed to its logical conclusion would place everyone in this country in interstate commerce. Every person reading this newspaper would be engaged in interstate commerce by the purchase of the paper,

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because the paper on which it is printed was produced outside the State of Missouri.

Cities are not engaged in commerce, interstate or otherwise. Nor do we need federal regulation of municipal employment. Leave us to our own destiny, and let us continue our existing services.

**Defendant's Exhibit No. 9**

December 11, 1974

**MEMORANDUM**

TO: City Attorney  
FROM: W. G. Lawley, City Manager  
SUBJECT: IMPACT OF FLSA ON FRINGE  
BENEFIT COST

You recently inquired about the effect FLSA might have on the cost of employee fringe benefits should the city be required to comply. All those fringe benefits the cost of which varies in direct relationship to payroll dollars will increase proportionately as employee pay increases because of FLSA applications. Included in this category of benefits are social security, workmen's compensation insurance, retirement program, sick leave, vacation, and pay for holidays worked. On the average, fringe benefits cost the City now about 28% of payroll and in the case of departments having lower retirement ages, namely the fire and police departments, fringe benefits cost about 30 percent for the Police Department

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and 35 percent for the Fire Department. If you need additional information on this subject please let me know.

I have included fringe cost in the summary of cost increases which might be expected under various alternatives available to the City should it be necessary to apply FLSA to our employees.

December 10, 1974

MEMORANDUM

TO: Thomas M. Utterback, City Attorney  
FROM: W. G. Lawley, City Manager  
SUBJECT: FLSA '74

The Fire Department is presently not in compliance with FLSA in that the Department's work week is not changed since the law first became effective, May 1; and the starting salary of \$500 is \$93.00 less than the starting salary per month computed at \$1.90 per hour for a 72 hour duty week. After January 1, 1975, we will be out of compliance in a similar fashion in that the minimum rate of \$2.00 per hour applied to the new 60 hour week – considering present circumstances wherein the Fire Department utilizes a 72 hour duty week, resulting in 16 on-duty personnel in addition to the Chief, the Inspector, and the Mechanic – will result in a minimum salary of \$520, which is still \$20 greater than the current starting rate of \$500.

We have five major methods of complying with the FLSA:

1. Employ additional fire fighters, to maintain existing on-duty strength.
2. Retain the existing number of employees, reduce the duty week and make overtime payments to maintain on-duty strength.
3. Keep the same number of personnel but reduce duty week and reduce on-duty strength in lieu of making overtime payments.
4. Utilize an entirely or partially reserve (volunteer) unit.
5. Combine the police and fire departments to create a public safety department and cross-train policemen and firemen to perform both functions.

Of these, the first three have been reviewed in detail, the 4th has received only cursory attention, and the 5th, because of the nature of the change, would involve lengthy study.

Consideration of items 1 and 2 is based on the premise that FLSA requirements are that by 1977 a minimum duty week of 54 hours must be established and that in the following year the work week will be based on national averages. A recent survey indicates a national average duty week of 51 hours in cities polled by the International City Management Association. It appears reasonable to assume that – should all cities now using greater schedules reduce duty weeks to 54 hours by 1977 – the national average schedule would then drop to at least 48 hours per week.

To implement a 54 hour duty week and maintain existing strength levels would require 12 additional firefighters at an annual cost in 1977 of about \$141,000.

To establish a 48 hour duty week would require a total of 19 additional employees from 1974 levels at an annual cost of \$223,000.

To retain a 72 hour work week and pay overtime to maintain existing on duty strength would require annual overtime payments of about \$340,000 by 1978. Should the average work week be reduced to 48 hours, the annual overtime payment would then be about \$427,000.

The data given above for overtime payments and starting pay levels does not include the cost of compensating raises in departments other than the fire department so that all other employees would receive equal increases. The 72 hour duty week for firemen would result in approximately \$306 per month average increase in fire salaries across the board to maintain parity. Extending a similar raise to non-fire departments would increase cost by an additional \$964,000 annually.

Should staffing remain at 42 fire employees and on duty hours be reduced without expanding the number of men then the number of on duty personnel would decrease. A 54 hour duty week with 42 employees would result in a decrease from on duty strength of 15.4 to 11.6 after allowing 3 week's vacation and 1 week sick leave for all employees in the fire department. This reduction would allow the City to maintain 2 substations with 3 men on duty and 5.6 men, which translates to 5 or 6 men, on duty at the central station each day.

Should the duty week further reduce to 48 hours at a 42 staffing level, the on-duty strength would decrease from 15.4 to 10.3. This would result in operating 1 substation with 3 employees on duty and a central station with 7.3 employees on duty or would allow maintaining 2 substations with 2 men on duty at each plus maintaining the central station with 6.3 duty officers.

The City currently operates 3 substations with 3 men on duty at all times plus the central station with 6.4 men on duty. Because sick leave taken ordinarily averages less than 1 week per year per man, the City is ordinarily able to have at least 16 men on duty in addition to the Fire Chief, the Inspector and the Mechanic.

Cost data is not yet available for the 4th and 5th alternative courses of action; however, it is apparent that implementing either would result in a major change in local conditions as a result of legislation enacted by persons who are not experienced, not qualified, and otherwise without knowledge for making such decisions and as a result of regulations by agencies with similar expertise.

The Police Department would not be affected by implementation of FLSA standards with the possible exception of application of regulations to the police reserve unit. Promulgated regulations are unclear, but it seems likely that as now operated the reserve unit would not be affected until regulations are changed by FLSA Administrators; i.e., the Department of Labor.

The major impact of record-keeping requirements of FLSA, as I understand them, would be the necessity to change the method of reporting hours worked in the various departments and then centralizing detailed records of hours worked and paid. Presently much information is kept at department levels with only summary data reported to the central office for the purpose of computing payroll. The present system works to the benefit of employees to make sure they are properly paid within existing city payroll [page missing] clerical and other salary levels are conducted to insure that city salaries are competitive. In addition, it is the

City's policy to establish its lowest pay scale for the least demanding position at or near the federal minimum wage existing at the time salary scales are reviewed with the result that all city salaries are equal to or exceed federal minimum scales. In fact, when basic salary levels were last established, in 1970, base pay for the lowest paid position was scaled at \$1.80 per hour compared to the then existing minimum wage of \$1.60 per hour. All city employees other than college students, and similar temporary or part time employees are well above the federal minimum level of \$1.90 to \$2.30. An exception exists under recently promulgated rules, which require that the minimum wage be applied to sleep and meal time of firemen and not just to on-duty hours. This causes starting fireman pay to be less than \$1.90 per hour. Presently, firemen and police employees earn salaries equivalent to and in most cases greater than those of teachers in the local public school system. When the value of fringe benefits is added, the pay scales of fire and police personnel are clearly superior.

#### ADDITIONAL INFORMATION:

Fringe benefits are:

1. a. Social Security Benefits
- b. Workman's Compensation Insurance
- c. Group Medical and hospital including major medical – Employee at City cost. Dependents at employee cost.
- d. Retirement plan
  - employee cost, 4% pay;
  - City picks up balance.
  - Benefits = 1% of high 5 year average salary per year of service + duty death, duty disability and other features. (On Retirement)

- e. Sick leave
  - accumulative at 1 day per month up to 90 work days.
- f. Vacation
  - accumulative at 1 – 1 1/2 days per month – 24 day maximum accumulative
- g. 9 holidays.
- h. Guaranteed annual wage policy, i.e., no layoff because of weather, etc.

## 2. FIRE RUN DATA

Year	No. Of Runs		Time On Fire Runs Annual	% of Avail. Min. Hrs.		Man-Hours On Fire Runs	
	Per			Run	Per Run**	Aver. Hrs. Per Man	Per Year
	Year	Annual	Week				
73	389	7.5	318:09	44	3.6	1537:11	36.6
72	398	7.7	213:19	32	2.4	1286:57	36.8
71	451	8.7	NA*	—	—	1477:30	42.2
70	434	8.3	NA*	—	—	1368:20	39.1
69	336	6.5	202:18	36	2.3	NA*	—
68	353	6.8	171:13	29	2.0	NA*	—
67	307	5.9	160:05	31	1.8	NA*	—
66	344	6.6	186:27	33	2.1	NA*	—
65	295	5.7	169:46	35	1.9	NA*	—
64	390	7.5	227:30	35	2.6	NA*	—

\*change in report

\*\*25 hours/day x 365 days = 8,760 available hours.

3. Police overtime cost is expected to increase by about \$8,000 per year because of pay at rate of 1 1/2 for hours over 40 per week, compared to previous practice of paying straight hourly rate for overtime hours worked.

**Defendant's Exhibit No. 10**

SALT LAKE CITY CORPORATION  
LAW DEPARTMENT  
101 CITY & COUNTY BUILDING  
SALT LAKE CITY, UTAH 84111

October 23, 1974

Mr. Charles S. Rhyne  
General Counsel  
National Institute of Municipal  
Law Officers  
839-17th Street, N.W.  
Washington, D.C. 20006

RE: Fair Labor Standards Act

Dear Mr. Rhyne:

Thank you for your inquiry dated October 15, 1974, concerning the adverse effects of the Fair Labor Standards Act on Salt Lake City government. Our personnel director, Lynn J. Marsh, has outlined in some detail the affect of this amendment on Salt Lake City operations. I have attached a copy of his evaluation for your records.

However, with specific reference to your inquiry concerning compensatory time off, I can state that the Federal requirements are met with great dismay by the City. As you are aware, Salt Lake City is located in the mountains at approximately 5000 feet elevation. In the winter months, commencing the latter part of October and often continuing through April, we receive copious amounts of snow. The snow must be plowed from our streets and salt applied to enable traffic to operate. In the past, the City has utilized street department employees to perform this service during the winter months; these employees often work long overtime hours and are on call 24 hours a day during this hazardous season. They have been given the option to accept compensatory time off on the basis of one and one-half hours off for each overtime hour worked or to receive time and one-half overtime pay. By far the vast majority of the workers have chosen to take compensatory time off during the summer months.

You will note from Mr. Marsh's correspondence, that it is estimated that the cost of overtime payments for the City would approach \$500,000.00, a sum, I might add, the City does not presently have. Further, it is a procedure which is not desired by the majority of city employees; but is rammed down our throats by Federal fiat for reasons apparently known only to big labor and the Washington social planners.

You will also note the other areas of the Act which will have impact on the city. It would appear that the City will definitely be unable to hire the number of young people it has in the past years because of the increased salary which must be paid to these young people. We feel this high pay to be a strong detriment to

our community because: (a) we can see no need to pay the high salaries to our young people, which is entirely out of phase with what has been standard pay for teen age employment; and (b) it will substantially reduce the number of employment opportunities available to these young people. We fear they will be left idle with the potential of substantially increasing our juvenile delinquency and prank problems.

I trust the foregoing will be of some assistance to you in your case preparation. If I can be of any further aid, please advise.

Sincerely,

/s/ Roger  
ROGER F. CUTLER  
City Attorney

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**Defendant's Exhibit No. 11**

SALT LAKE CITY CORPORATION  
PERSONNEL DEPARTMENT  
503 CITY & COUNTY BUILDING  
SALT LAKE CITY, UTAH 84111

September 18, 1974

Mr. Allen E. Pritchard, Jr.  
Executive Vice President  
National League of Cities  
1620 Eye Street, N.W.  
Washington, D.C. 20006

**SUBJECT:** Fair Labor Standards Act

Dear Mr. Pritchard:

In response to your letter of August 22, 1974, the following information regarding the Fair Labor Standards Act Amendments, and the impact upon Salt Lake City, is submitted to assist the National League of Cities in their contemplated litigation.

Compensatory time off is probably the number one problem Salt Lake City has with the Fair Labor Standards Act Amendments at this time. However, new scheduling in both the Police and Fire Departments could also be a major problem under the new law. Prior to the adoption of the Amendments to this act, we permitted department heads the option of allowing compensatory time off in lieu of paying time and one-half overtime pay. Our employees appreciated this option, and the majority

took the time off. Last year in our Department of Streets and Public Improvements alone, employees accumulated 7,000 hours of overtime in snow removal. The majority of this time was utilized as compensatory time off.

This new law has forced us to amend our city ordinances. We have eliminated an ordinance which provided for overtime pay after eight hours per day or after 40 hours per week. The ordinance now provides for overtime premium pay only after 40 hours per week. This allows some flexibility in giving compensatory time off during the week, and in adjusting schedules. At the same time, we are giving at least 24-hours notice to the employee, whenever possible, when we must adjust his work schedule. The week following overtime worked, a cash payment must be made. Many employees are disgruntled with this new law because they can no longer trade shifts or build up comp time for use at a later date. It has created a serious morale problem, and I am sure has cost considerable loss in productivity.

Scheduling: We have established work weeks now throughout Salt Lake City, and have had to change many schedules for employees involved in 24-hour operations. Some of our old schedules were back to back, permitting employees longer periods of time off than what we can now permit under the new law.

Volunteers: School Crossing Guards were formerly paid \$135.00 per month. Effective May 1, 1974 we increased their salary to \$150.00 per month to meet the new minimum wage requirement of \$1.90 per hour. They work approximately 2-1/2 to 3 hours per day during the months when school is in session.

**Seasonal Peaks and Valleys:** In our Department of Parks and Public Property, the minimum wage was raised from \$1.25 per hour for summer students, to \$1.90 per hour because the students rotate from one park to another cutting grass and trimming. No student exemption was allowed because of the rotation. Salt Lake City hires approximately 300 students during the summer months, which necessitated a sizeable increase in next year's budget. We did receive an exemption from both the minimum wage and overtime provisions for our cemetery, inasmuch as the Department of Labor classified it as a retail establishment with net earnings under \$250,000.00 per year.

I mentioned previously our road maintenance and snow removal problems, and the serious impact this will have on Salt Lake City. After a careful review of our budget problems, and consideration of the impact of the Fair Labor Standards Act, we are cutting back 100 employees by attrition. Beginning October 1, 1974, we will not replace terminating employees unless the new hires receive special approval by the Personnel Director, City Auditor, and Board of City Commissioners.

**Training:** In the past, we have utilized interns from the University of Utah, and have paid them less than the minimum wage. The new law has eliminated this, and now we must pay them \$1.90 per hour. The internship programs are beneficial to the students, inasmuch as they receive course credit, as well as to the City, which benefits from their education and enthusiasm.

**Incentives:** We do have an incentive system, wherein refuse collectors are assigned a particular route. When they complete the route, they can go home. We have not looked at all the implications with regards to overtime

with this particular group as yet, but a recent legal opinion issued by our City Attorney's Office indicates that we would have to pay them overtime when a holiday falls during the week, because our ordinances state that "All holidays shall be considered as days worked in the computation of overtime."

Compensatory Time: As I explained earlier, this is our biggest problem area. It appears at this point that additional overtime will be necessary to pay for former comp time, as it will be impossible to follow the Fair Labor Standards Act and not pay time and one-half premium pay. This will result in greatly increased overtime cost to the City. It would be impossible to give you an accurate figure at this time, but I estimate the cost to be near \$500,000.00 per year. It will also result in a diminuation of service in several areas to pay the overtime, even at this rate.

Joint Employment: At present, this has not resulted in a serious problem. However, after January 1 when the overtime provisions apply to the Police and Fire Departments, we could have a serious problem, as many police personnel serve as special security officers at the Salt Lake City International Airport, at \$5.00 per hour. When an officer works his regular shift, then puts in over 20 hours per week at the airport, we will be in an overtime situation. Each year the reduction in hours will create higher overtime payments. We had been considering a constant manning in the Fire Department effective July 1, 1974, but dropped the idea when the Fair Labor Standards Act was passed, until we can get a clarification of "Tour of Duty," "Sleep Time," "Meal Periods," etc.

Social Services: Under our Comprehensive Employment and Training Act (CETA), it was necessary to pay all the disadvantaged students \$2.00 per hour in accordance with a Department of Labor directive, inasmuch as these programs were previously covered by the 1967 provisions of the Act. This created an inequity for those who are not disadvantaged. Someone could file a suit for "Equal Pay for Equal Work," and win the same pay.

Leave: Our ordinance allows only time worked in the event of a holiday, not sick leave, vacation, etc. This could create a problem on holidays, however, in the computation of wage-hour overtime.

Changing Pay from Annual or Monthly to Hourly: We are considering changing our pay periods to a bi-weekly schedule, effective January 1, 1975, in order to more closely relate the computer to work weeks. We are also giving consideration to changing operations and maintenance employees to an hourly salary for simplification of payroll reporting. However, this could create a serious morale problem with employees, and we want to study it very carefully before making a decision.

Police and Fire: Our main concern at this time is what effect the new guidelines will have on hours worked in the Police and Fire Service when the hours in the Fire Service are reduced below our present 56 hours per week, as in 1977 to 54 hours per week. This will start costing us more money, and if it ever hits 40 hours, it will cost an estimated \$3,000,000.00 per year. Trading of shifts will be another problem.

We now pay an employee who must appear in court on his day off two hours for a misdemeanor and four hours for a felony. If this results in overtime pay, it will be

costly. Training time could also have a serious effect. Educational incentive pay, if figured into the base salary, could result in thousands of dollars each month.

Health Maintenance Programs: As I understand this, if we have a Health Maintenance Organization in operation in our area, we must give them first opportunity to bid on our health and accident insurance plan under the Fair Labor Standards Act requirements.

Age Discrimination: The protective group between the ages of 40 and 65 is creating serious problems in our Police and Fire Department requirements. Heretofore, they have limited these particular occupations to 21 through 29 years of age. The Civil Service Commission is presently reviewing these requirements for possible change, but it looks as if some serious modification will have to take place.

This law has created more morale problems for City employees than any law passed in the eight years in which I have been Personnel Director for Salt Lake City. The employees blame Salt Lake City for the law, and not the Federal Government.

If you need additional information, please do not hesitate to call on us.

Yours truly,

/s/ Lynn J. Marsh  
LYNN J. MARSH  
Personnel Director

**Defendant's Exhibit No. 12**

DEPARTMENT OF LAW  
OFFICE OF THE  
ATTORNEY GENERAL  
STATE CAPITOL  
PHOENIX, ARIZONA 85007

December 4, 1974

Mr. Bacigalupo  
Rhyne & Rhyne  
400 Hill Building  
Washington, D.C. 20006

Dear Mr. Bacigalupo:

This is to confirm my telephone conversation with you of November 26 regarding the data which I gave you on the financial impact that the Fair Labor Standards Act is having on the State of Arizona.

Based on budget requests for the 1975-76 fiscal year, the State of Arizona will be required to spend an additional \$2,000,000 for overtime salary payment which was not authorized under state budget restrictions prior to the 1974 FLSA amendments. In addition to this amount, employee related expenses are approximately \$300,000. This amount does not include the additional amounts which are required to be spent for the extra half-time on highway construction overtime. Based on our 1974-75 expenditures through October, we project that the financial impact on additional highway construction overtime will be \$250,000, including

467

employee related expenses. This brings our estimate of the impact of the FLSA on the State of Arizona to a total sum of \$2,550,000 per year.

As I indicated to you, this does not include the impact which the amendments will have on the various counties and cities. I have requested that the League of Cities and Towns and Associated County Governments provide me with impact data for their member subdivisions. As soon as it is provided to me, I will transmit it to you.

If you have any further questions or I can be of any further assistance to you in this matter, please contact me.

Very truly yours,

N. WARNER LEE  
The Attorney General

/s/ Peter C. Gulatto  
**PETER C. GULATTO**  
Assistant Attorney General

**Defendant's Exhibit No. 13**

November 25, 1974

MEMO TO: Rick J. Bacigalupo, Rhyne & Rhyne, 400  
Hill Building, Washington, D. C. 20006

FROM: Battalion Chief Michael T. Mitchell,  
Commander, Planning Section, Los Angeles  
City Fire Department

SUBJECT: FAIR LABOR STANDARDS ACT LAW  
SUIT

Listed below are responses to questions set forth in Mr. Rhyne's letter to Mr. Carpenter, dated October 11, 1974.

1. Uniformed Fire and Police Personnel – 1974-75  
Budget

Police – 7,389

Fire – 2,996

2. 1974-75 Budget – Estimated Salary Expenditures

Police – \$133,396,833

Fire – \$ 63,886,805

3. Estimated increase in cost for FLSA – *Fire* – Fiscal  
Year 1975-76

Estimated \$2,590,454

plus an additional expense to the City for pension costs  
which would not appear on the Fire Department's Budget

Low estimate of \$160,070 to a

high estimate of \$432,624

depending upon the accounting system used to compile  
the figures.

The cost would increase over the years as maximum hours decrease pursuant to the FLSA.

**Police Department**

The Police Department estimates no immediate increase in salary accounts due to the FLSA. This is based on their proposal to use the difference in hours between 160 hours to 240 hours in a 28-day period (deployment) as compensatory time to offset overtime.

However, in 1978, if the Police Department is required to go to a 40-hour week or 160 hours in a 28-day period, estimated overtime costs would be somewhere between 4 to 6 million dollars annually.

4. Increased cost to the Fire Department would come about as a result of paying time and one half overtime for some overtime, and hiring 122 additional uniformed personnel for vacation and sick relief time to minimize the time and one half impact.

Police Department overtime estimate for 1978 would come about due to paying time and one half for hours worked over the 160 hours maximum.

5. The increased cost will not produce lesser service; but, on the other hand, it will not increase service, i.e., it will merely maintain the status quo.

Another possibility is that additional funds to meet these additional financial obligations might not be approved in future budgets due to a shortage of revenue or other allocations of available resources. Lack of sufficient funds to handle the overtime liability would then result in a reduction in manning in both the Fire and Police Departments, with a resulting reduction in service.

MICHAEL T. MITCHELL  
Commander  
Planning Section

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**Defendant's Exhibit No. 14**

**CITY OF SACRAMENTO**

November 22, 1974

Mr. Charles S. Rhyne  
Rhyne and Rhyne  
Attorneys at Law  
839 – 17th Street, N.W.  
Washington, D. C. 20006

Dear Mr. Rhyne:

As requested by Mr. Richard Carpenter, General Counsel, League of California Cities, and as I discussed with Mr. Bacicalupo in Washington on November 18, this letter is to provide a statement of the impact of the Fair Labor Standards Act on the City of Sacramento Fire Department and Police Department.

The Fair Labor Standards Act was signed by President Nixon on April 8, 1974, with effective date of May 1, 1974, for all provisions of the Act except those relating to police and fire overtime under Section 7(k) and Section 13(b) (20) regarding police and fire departments. As a member of the National League of Cities' Task Force, I had the advantage of being familiar with the provisions of the Act which enabled my city, unlike most, to take some action prior to the effective date on May 1, 1974, which would mitigate certain problems caused by the new law.

On April 25, 1974, the Sacramento City Council passed City Ordinance No. 3395, Fourth Series (copy

enclosed), which contained several provisions necessary to anticipate the effective date of the Fair Labor Standards Act:

1. To raise the pay rates of three part-time classifications to comply with minimum wage provisions of the law;
2. To amend the definition of management employees to more closely fit the identification of professional, administrative and executive exemptions under Part 541 of the Code of Federal Regulations (29 CFR 541) by amending Section 2.98 of the Sacramento City Code;
3. To repeal Section 2.108 of the Sacramento City Code on overtime compensation which provided for the payment of overtime to employees at one and one-half times the applicable hourly rate or the allowance of time off at time and one-half for compensatory time. (A copy of the repealed Section 2.108 is enclosed.) The repeal of the City's Code section on overtime was deemed not to affect overtime provisions negotiated under a memorandum of understanding with a recognized employee organization.

The previous overtime policy of the City of Sacramento, as expressed in the repealed Section 2.108, permitted the granting of compensatory time off or time and one-half pay for any work performed in excess of the regular daily work shift or for any work performed on scheduled days off, except for sworn police officers and uniformed firefighters assigned to fire suppression. The City's overtime policy had been developed over the course of many years and was well liked by employees and City management alike. The sudden cut-off of the compensatory time usage for employees, other than police officers and firefighters, is estimated to have

resulted in additional costs in the current 1974-75 budget approximating at least \$350,000. The City's prior policy of paying overtime on a daily basis is now more restrictive under the Fair Labor Standards Act requirement to compute overtime on a work-period (work week) basis. Where this had not been a hardship on the City when compensatory time off was available, the sudden imposition of overtime at time and one-half pay on a weekly and daily basis has been. It has required many significant changes in scheduling of hours in many City operations.

In the Sacramento Zoo, for example, the scheduling of hours previously had been on a nine-day cycle in which the employees would be scheduled to work six consecutive days and be off three. To avoid the unnecessary overtime payments imposed by the Fair Labor Standards Act, it has been necessary to adopt a work assignment schedule which is less desirable both to the employees and to the Zoo management, as follows:

O O X X X X X  
X X O O X X X

Under the new schedule, the Zoo employee actually works seven consecutive days, but, as these include five days back-to-back with two days in the succeeding work week, this is permissible under the law. It is difficult to write about the effect and the impact of the Fair Labor Standards Act on the Police Department and the Fire Department operations as we still do not know at this late date what the federal regulations will be with regard to overtime. The Department of Labor, on November 1, 1974, issued a proposed new regulation, 29 CFR 553. It

is not known when the final regulation will be issued. The Department of Labor held hearings commencing November 18 and has held open the record until December 2, therefore, the earliest date at which time the final regulation will be issued will be December 3, 1974. As the effective date of the overtime provisions of the Fair Labor Standards Act under Section 7(k) will be January 1, 1975, cities, counties and other public agencies throughout the United States are placed, again, in the extremely difficult position of guessing as to what the law will be while being subject to the full penalties of the law.

At this time, the Sacramento Fire Department has 441 fire suppression personnel. The approximate annual salary expenditure for these 441 positions is \$8,275,000. Sacramento fire suppression personnel are assigned to be on duty for 24-hour fire duty periods which commence at 8:00 a.m. and end at 8:00 a.m. the following day. During a tour of duty a Sacramento firefighter is scheduled to perform about six hours of work-related activities and to be on standby for the remaining 18 hours. Throughout the entire 24-hour tour of duty, a Sacramento fire suppression employee is on call to respond to any alarm.

The fire duty cycle of the Sacramento Fire Department at present consists of a 12-day cycle in which the employee is scheduled to be on duty four 24-hour periods in every 12 days and eight 24-hour periods off duty:

X O X O O X O X O O O O

X = 24-hour scheduled tour of duty.

O = 24 hours off duty.

A Sacramento firefighter assigned to fire suppression has a gross annual schedule of 3,049 hours. From the gross schedule hours are subtracted 129 hours for 11 holidays, leaving a net schedule to be performed of 2,920 hours of duty per year. Therefore, a Sacramento firefighter is scheduled to be on duty 121.67 twenty-four hour shifts per year on the average. With vacation and sick leave taken out, a Sacramento firefighter, on the average, is on duty 111 twenty-four hour periods per year.

At this time, the Sacramento Fire Department staffs to man, on a continuous basis, 147 positions at various fire houses located throughout the City. An enclosure detailing the numbers of positions which are manned on a continuous, fixed postmanning basis is enclosed.

We presently have a Memorandum of Understanding negotiated with Local 522, IAFF, which will expire June 30, 1975. We will be required to negotiate in the spring of 1975 with the firefighters regarding wages and hours and other terms and conditions of employment for the fiscal year 1975-76 and possibly for a longer term agreement. It will be necessary, in our negotiations with the firefighters, to negotiate conditions where we do not yet know what the law will be. For example, on January 1, 1978, a new regulation will come into effect through the determination of the Secretary of Labor which will identify that we will be required to pay overtime over 54 hours or less for firefighters. The number of hours over which overtime will be required is to be based upon a survey made in 1976 by the Department of Labor of fire hours in effect in 1975. The method of the survey to be conducted and the interpretation of the results by the Secretary of Labor are unknown at this time. It is entirely possible that the Secretary of Labor could

determine that the hours over which overtime must be paid firefighters commencing January 1, 1978, might be 48 hours. It is possible that we may wish to enter into a three-year agreement with the firefighters next spring. If we do, we must speculate as to what the new overtime regulations will be and act accordingly in determining our negotiating position.

At this time, for the Fire Department, we are attempting to determine the work period which the City of Sacramento will declare for "employees engaged in fire protection activities." Section 7(k) of the Act provides that we have the option of declaring a work period of from seven to 28 days. Section 7(k) requires payment of overtime at time and one-half for hours worked over 60 within the work period on a seven-day basis; over 240 hours for a 28-day work period; or any proportionate number of hours to days. Each of these alternatives presents significant difficulties.

We are also conscious of the fact that, starting January 1, 1976, the number of hours will decline to 58 per week over which overtime must be paid and to 54 per week commencing January 1, 1977. We know definitely that we will need to change the fire duty cycle and possibly the work period declaration commencing January 1, 1977. At that time, it would be necessary, in order to achieve a 54-hour duty schedule, to place firefighters assigned to fire suppression on a 28-day fire duty cycle in which nine 24-hour periods would be scheduled, which is a change from the existing twelve-day cycle. To do otherwise would result in unnecessary fire overtime costs.

In the remaining days of 1974, if the City of Sacramento declares a work period of 12 days or 24 days, in order to schedule the same number of fire duty hours

within each work period, the work periods will not coincide in any convenient manner with the pay period, presenting other kinds of administrative problems.

Looking ahead to January 1, 1977, if the City of Sacramento will continue to provide the same level of fire protection service as it now does, it will be necessary, in order to avoid unnecessary time and one-half overtime payment to firefighters, to reduce the average hours on duty per week from the present 58.6 gross/56 net to a net scheduled hours of 54 hours per week. This would result in additional costs of about \$310,000 in fire protection, requiring the employment of an additional 16 or 17 firefighters, or the reduction in fire protection service of a like amount. As in all likelihood, salaries in 1977 will have increased, the \$310,000 cost to move to a 54-hour average week is very conservative.

Commencing January 1, 1978, if the Secretary of Labor would require that overtime be paid firefighters at the rate of time and one-half over an average of 52 hours per week, the estimated cost would be \$636,000; over an average of 50 hours per week, \$993,000; and over an average of 48 hours per week, \$1,379,000. Again, as all of the calculations are based upon present salary rates and present staffing patterns, these estimates are conservative.

Prior to May 1, 1974, civilian fire dispatcher clerks in the Fire Department were employed on a rotating schedule which changed every six days. The City of Sacramento gambled that the definition of "employees engaged in fire protection activities" would not include civilian dispatchers at the Fire Department and, therefore, would be required to be placed on a seven-day work week for purpose of computation of overtime and

be required to be paid time and one-half over 40 hours within the work week. This decision reached in late April 1974 required the very sudden reassignment of civilian dispatchers in the Fire Department from their long-established traditional work schedule to a new schedule designed to accommodate the seven-day work period. As in the case of the zoo attendants, neither the civilian fire dispatchers nor the Fire Department management feel that the changes required by the Fair Labor Standards Act in scheduline have enhanced Fire Department dispatching operations. Further, the loss of compensatory time off for overtime has complicated the scheduling of the civilian fire dispatchers.

With regard to the Police Department, the greatest impact that the Fair Labor Standards Act has had so far has been that compensatory time off no longer may be utilized. At this time, the Sacramento Police Department has a policy of paying time and one-half for police officers who work over 40 hours per week and time and one-half over a regular work shift, which, for most police officers, is eight hours. (A few City employees are assigned to a four-day, ten-hour work shift, in which case they are paid time and one-half over ten hours.)

It will be necessary to declare a work period pursuant to Section 7(k) for employees engaged in law enforcement activities within the Sacramento Police Department. This decision has not yet been made. Probably, the decision will be to declare a work period of 28 days in order to obtain the utility afforded by the four-week work period. One disadvantage of a 28-day work period for police employees will be the postponement of payment of overtime bi-weekly to payment of overtime every second pay period if this option is selected.

We now face the problem of determining for both the Police Department and the Fire Department which positions are subject to the Act and which positions under Part 541 are entitled to the administrative, professional or executive exemption. At the November 18, 1974, Department of Labor hearing on 29 CFR 553, in representing the National League of Cities and other public interest groups, I stated that the understanding which we had was that the proposed identification of titles in Section 553.3(a) and 553.4(a) were not intended to abrogate or modify the provisions of Part 541. Department of Labor panel members, in the question-and-answer period following my testimony, indicated that our interpretation is correct and that the regular tests for determination of administrative, professional and executive exemptions are not affected by the proposed language in 553.3(a) or 553.4(a). Therefore, we now can begin to attempt to identify which positions and which ranks are entitled to be excluded from the Act. This work has not yet been completed. We do not yet know whether our first-line supervisors of Fire Captain or Police Sergeant will be exempted or not exempted from the provisions of the Act. This determination will affect operations of the Police Department in particular and to a lesser degree the Fire Department.

The proposed Section 553.8 relating to joint employment, together with the provisions set forth in 29 CFR Part 791, present many problems for the Sacramento Police Department and also for the Fire Department. It has been the practice of the Sacramento Police Department to permit, under certain conditions, police officers to work for other public or private

employers to perform law enforcement duties. The previous and proposed requirements relating to joint employment have substantial impact on the outside employment procedures of both the Police and Fire Departments and will require substantial revision and curtailment of outside employment. It is particularly difficult in the Police Department and the Fire Department to make estimates of this kind when the change in overtime policy in the final year of 1978 cannot be known until, probably, September or October 1977.

It is almost certain that the Secretary of Labor, effective January 1, 1978, will require time and one-half over 40 hours for law enforcement personnel. It seems likely that the Secretary of Labor may require time and one-half over a number of hours fewer than 54 for firefighters.

With the many unknowns, it becomes necessary for the City of Sacramento to give serious consideration to substantial change in the form of fire suppression activities, including the abandonment of the long-standing 24-hour fire duty period (which includes eight hours of sleeping time and at least three hours of meal time) to be replaced by an eight-hour work day in which sleeping time would not be permitted and meal time would be substantially restricted.

The whole concept of the Fair Labor Standards Act is directed at paying covered employees on an hourly-rate basis. At this time, almost all City of Sacramento employees, including all police and fire employees, are paid on a bi-weekly basis.

The Act will force the conversion of all employees covered, within a relatively short period of time, from a

salaried bi-weekly basis to an hourly-rate basis. One effect this could have on fire suppression personnel who would work varying numbers of hours within a work period would be a variation in amounts of money per pay check.

I regret that it is not possible to be more definitive and specific concerning the total financial impact and effect on City services that this Act has caused will cause. I believe that, probably, it will take us another year to fully understand and appreciate all of the costs and problems that the mandate of the Fair Labor Standards Act has imposed.

Sincerely yours,

/s/ William F. Danielson  
William F. Danielson  
Director of Personnel

Enclosures:

City of Sacramento  
Ordinance No. 3395, Fourth Series.  
Sacramento Fire Department  
Fire Suppression Staffing Assignment.  
Repealed Section 2.108,  
Overtime compensation.

Sacramento City Ordinance  
No. 3395 – Fourth Series

**ORDINANCE NO. 3395 FOURTH SERIES**

An Ordinance Amending Division 2 of Article VI of  
Chapter 2 of the City Code  
Relating To Rates of Salary and Hours of Work and  
Declaring Said Ordinance To Be An Emergency  
Measure To Take Effect May 1, 1974.

**BE IT ENACTED BY THE COUNCIL OF THE CITY OF  
SACRAMENTO:**

**SECTION 1.**

Section 2.91 of Chapter 2 of the Sacramento City Code is  
amended by adjusting the salaries of cashier, locker  
attendant and public service aide to read as follows:

Code	No.	Class Title	Pay Per Hour			
	25110	Cashier .....	\$2.08	\$2.18	\$2.29	
	25050	Locker Attendant .....	\$2.03	\$2.13	\$2.24	
	25068	Public Service Aide .....		\$2.01	\$2.11	

**SECTION 2.**

Section 2.98 of the Sacramento City Code is hereby  
amended to read as follows:

**Sec. 2.98. Provisions Inapplicable To  
Management Employees.**

The provisions of this division relating to hours and  
days of employment shall not apply to persons defined

as "management" by the City's Employer-Employee Relations Policy, it being the intention of the city council that such persons shall devote as much time to their employment as may be necessary for the efficient operation of the city government.

**SECTION 3.**

Section 2.108 of the Sacramento City Code is hereby repealed.

**SECTION 4.**

The repeal of Section 2.108 of the Sacramento City Code shall not affect any memorandum of understanding previously adopted by the Council, nor the right of any employee covered by a memorandum of understanding to continue to receive overtime as previously provided for in Section 2.108 and the memorandum of understanding covering the employee.

**SECTION 5.**

Section 2.111-3 of the Sacramento City Code is hereby repealed.

**SECTION 6.**

This ordinance is hereby declared to be an emergency measure to become effective May 1, 1974, in order that the changes contained herein become effective concurrent with the effective date of the Fair Labor Standard Act Amendments of 1974.

**SECTION 7.**

This ordinance shall be published once within ten days after enactment in the official newspaper of the City of Sacramento.

PASSED: April 25, 1974

EFFECTIVE: May 1, 1974

MICHAEL S. SANDS  
Vice Mayor

ATTEST:

HUBERT F. ROGERS

Chief Deputy City Clerk

**SACRAMENTO FIRE DEPARTMENT  
FIRE SUPPRESSION STAFFING ASSIGNMENTS**

Average number of positions manned per 24-hour duty period, using 441 fire suppression personnel, who average 111 twenty-four periods on duty per year

First Battalion	Positions
Battalion Fire Chief	1
#1 Engine Company	5
#2 Engine Company	5
#2 Truck Company	6
#3 Engine Company	6
#5 Engine Company	6
#5 Truck Company	6

484

#11 Engine Company	4
#13 Engine Company	4
#13 Truck Company	5
#16 Engine Company	4
#16 Truck Company	5

57

Second Battalion	Positions
------------------	-----------

Battalion Fire Chief	1
#4 Engine Company	5
#4 Truck Company	5
#6 Engine Company	4
#6 Truck Company	5
#7 Engine Company	5
#8 Engine Company	4
#9 Engine Company	4
#10 Engine Company	5
#10 Truck Company	5
#12 Engine Company	4
#21 Engine Company	5

52

Third Battalion	Positions
-----------------	-----------

Battalion Fire Chief	1
#14 Engine Company	6
#15 Engine Company	4
#17 Engine Company	4

485

#17 Truck Company	5
#18 Engine Company	4
#19 Engine Company	4
#20 Engine Company	5
#20 Truck Company	5

38

Average total fire suppression positions manned 24 hours per day:

First Battalion	57
Second Battalion	52
Third Battalion	38

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November 1974

§ 2.108

## ADMINISTRATION

§ 2.108

<i>Holiday</i>	<i>Date</i>
Independence Day	July 4, but if it falls on Sunday, then the following Monday is a holiday.
Labor Day	First Monday in September.
Admission Day	September 9, but if it falls on Sunday, then the following Monday is a holiday.
Columbus Day	Second Monday in October.
Veterans' Day	Fourth Monday in October.
Thanksgiving Day	Fourth Thursday in November.
Christmas Day	December 25, but if it falls on Sunday, then the following Monday is a holiday.
Statewide Election Days	
Good Friday (4 hours)	Friday before Easter Sunday.

The provisions of this section shall apply to employees paid on a monthly salary and such employees shall receive full compensation for holidays on which they are not required to work. Compensation for employees paid on hourly rates shall be only for actual time worked and while on earned vacation, earned sick leave, or disability in line of duty. (Ord. No. 2339 (4th Series), § 2; Ord. No. 3021 (4th Series); Ord. No. 3154 (4th Series), § 1.)

Sec. 2.108. Overtime compensation.<sup>4</sup>

It shall be the policy of the city that overtime work is to be discouraged. However, in case of emergency or whenever the public interest demands, an employee may be required to perform overtime work by the department head or his authorized representative.

It shall be the policy of the city to compensate employees required to perform overtime work either by (1) pay at one and one-half times the applicable hourly rate, or by (2) allowance of time off from employment with pay on the basis of one and one-half hours off for each hour of overtime worked. Overtime work shall be defined as:

- a. Any work performed in excess of a regular daily work shift;
- b. Any work performed on scheduled days off; or
- c. Any work performed on recognized holidays as designated in section 2.107 of this Code, except by employees regularly assigned to other than a five-day work week and safety member employees of the police department.

In any department where employees may be allowed to make up time lost through inclement weather, irregular operational hours or other reasons, and time is made up by working on regular scheduled time off, such make-up time shall not be considered overtime, and shall be credited to the employee on a straight time basis.

<sup>4</sup>For charter provisions as to hours of duty, see Char., § 166.

As to maximum hours of work per week for firemen, see § 15.3 of this code.

When time off from employment is allowed as compensation for overtime, such time off shall be granted within one year from the date overtime was performed, and at the convenience of the department head. Upon separation from service, any employee having unused time off to his credit as compensation for overtime shall receive cash compensation for such unused time off.

The determination of additional pay or time off for overtime compensation shall be made by the department head, with the approval of the city manager.

Each department or division head shall submit to the city manager for his approval an outline of the overtime policies to be followed in his department or division to carry out the intent of these overtime provisions. Once approved, no changes shall be made in any department overtime policy without the consent of the city manager.

Accurate records of all overtime performed shall be kept by each department or division, and periodical reports as may be requested shall be submitted to the city manager relating to authorized overtime. (Ord. No. 2737 (4th Series), § 4; Ord. No. 3155 (4th Series), § 1.)

Sec. 2.109. Night shift premium pay.

All employees of the City of Sacramento, excepting those herein excluded, who work five-eights or more of their regular shift in the

**Defendant's Exhibit No. 15**

**CITY OF PASADENA  
ONE HUNDRED NORTH GARFIELD AVENUE  
PASADENA, CALIFORNIA 91109**

December 13, 1974

Mr. William Rhyne  
Rhyne and Rhyne  
400 Hill Building  
Washington, D.C. 20006

Re: Fair Labor Standards Act Litigation

Dr. Mr. Rhyne:

Pursuant to our conversation of November 25, 1974, I am confirming the information as follows:

1. As of July 1, 1974, the City of Pasadena employed 144 fire suppression personnel.
2. For the calendar years 1975 and 1976, no increase in costs are estimated. For the calendar year 1977, increased costs are expected, however, they have not been estimated at this time. For the calendar year 1978, the increased costs for fire suppression personnel may amount to as much as \$1,477,000 per year depending on several variables.
3. The estimated increased costs of fire suppression personnel results if fire suppression personnel are to receive the same pay for approximately 42 hours (as they presently receive for 56 hours) plus 14 hours of overtime at a rate of time and one-half.

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4. Although increased costs are estimated, we do not know if the service will increase or decrease. It is possible that the Fire Department budget will not be increased and therefore there will be a lesser level of service.

It was a pleasure talking with you last month and I hope the information which I have communicated is helpful.

Justice Tobriner gave an excellent discussion of the right of cities to establish the level of service in *Firefighters Union v. City of Vallejo*, 12 Cal. 3d 608, 116 Cal. Rptr. 507 (1974). For your information, I am enclosing the report of Vallejo City Attorney John Powers on that decision and a memorandum of points and authorities which discusses that decision.

I would like to review a copy of your complaint and supporting memorandum of points in the action challenging the Fair Labor Standards Act. If it is convenient, would you please send our office copies of those pleadings.

Very truly yours,

Wendell R. Thompson  
City Attorney

/s/ James O. Kahan  
James O. Kahan  
Deputy City Attorney

**Defendant's Exhibit No. 16**

AFFIDAVIT OF EDWARD E. McCOMBS,  
CITY MANAGER, CITY OF  
SAN BUENAVENTURA, CALIFORNIA,  
STATING THE EFFECT OF THE 1974  
AMENDMENTS TO THE  
FAIR LABOR STANDARDS ACT ON SAID CITY  
STATE OF CALIFORNIA )  
ss.  
COUNTY OF VENTURA )

EDWARD E. McCOMBS, being first duly sworn,  
deposes and states:

1. I am the City Manager of the City of San Buenaventura, California, and have held such office continuously since March 1970. Previously, over an eleven year period, I have held equivalent offices in two other California cities.

2. As City Manager of San Buenaventura, under the provisions of its Charter, I am the administrative head of the City's government being directly responsible to the City Council for the management of the City's affairs, including the appointment and discharge of personnel in the City's fire and police departments and the preparation of the annual budget. In carrying out these duties, I have direct knowledge of present and future financial, service, and personnel requirements of the City, including the requirements of the City's fire and police departments.

3. I have read and am familiar with the content of the Fair Labor Standards Act of 1938, as amended by the Fair Labor Standards Amendments of 1974, which extends the Act's minimum wage, overtime, equal pay

and recordkeeping requirements to public agencies. With regard to those provisions that affect the computation of, and compensation for, overtime work performed by employees engaged in fire protection and law enforcement activities, I feel that their implementation will result in a pronounced and adverse financial impact upon the City of San Buenaventura.

4. The brunt of the impact will be felt by the City's fire department where personnel are currently scheduled on a calendar year basis, and where individuals work an average of 62.3 hours per each seven day work period. City staff has estimated the increased costs that must be borne by our taxpayers if we are to simply maintain current levels of fire-related services *and* comply with the overtime provisions of the Fair Labor Standards Amendments of 1974.

Calendar Year	Work Week	Estimated Cost
1975	60 hours	\$ 72,700
1976	58 hours	\$ 63,200
1977	54 hours	\$126,500
1978	54 hours or national average which-ever less	\$ 31,600 for each additional hour decreased

The current payroll for fire personnel affected by this enactment is approximately \$902,000 annually. Increased costs associated with the Amendments would bring this total to nearly \$1,164,400 by the end of 1977;

this represents a 29.1% increase in payroll costs without any corresponding increase in the level or quality of services delivered to our citizenry. It should also be noted that these estimated costs do not take into account increased salaries that will undoubtedly be granted to fire personnel during ensuing years; this will increase the heavy financial burden already imposed by the Amendments.

5. With the implementation of the Fair Labor Standards Amendments of 1974, the cost of providing public safety services to the citizens of the City of San Buenaventura will greatly increase. Service levels, at best, will remain the same provided that additional revenue is forthcoming to offset the increased costs; additional revenue, however, may not be available. Given statutory limitations upon our authority to increase the property tax rate, I am doubtful as to the City's ability to generate additional monies. This, then, would leave the City with two basic options. We could transfer the necessary funds from the operating budgets of other City departments, thus curtailing their activities correspondingly. On the other hand, we could reduce current manning levels in our public safety departments, thereby forcing our taxpayers to accept lesser levels of service for their same tax dollar. I am sure that both of these alternatives are entirely inconsistent with the intent of the Fair Labor Standards Amendments of 1974, and I urge the Court to enjoin its implementation so that associated cost impacts can be further explored.

Dated: November 21, 1974.

/s/ Edward E. Mc Combs  
EDWARD E. MC COMBS  
City Manager

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Subscribed and sworn to before me this 21st day of November, 1974.

/s/ Gayle E. Osborn  
Notary Public in and for said  
County and State

**Defendant's Exhibit No. 17**

**AFFIDAVIT**

STATE OF CALIFORNIA        )  
                                )  
                                ss.  
COUNTY OF ALAMEDA        )

RICHARD W. TURNLUND, being first duly sworn,  
deposes and says:

That he is the City Manager of the City of Newark;  
that as a part of his duties he is responsible for  
preparation of the City's annual budget; that as part of  
his duties he is further charged with the operation of the  
City's police and fire departments;

that the City of Newark police and fire departments  
will be adversely affected by the implementation of the  
Fair Labor Standards Act of the United States as  
amended;

that compliance with said Act is so onerous that it  
makes it impossible for the City to provide the necessary  
police and fire protection which is required; that  
compliance with this Act will require neglect of other  
municipal functions to protect the health, safety and  
welfare of the citizens of Newark;

that he bases his determination with respect to the police department on the following facts as they exist in the City of Newark:

1. Police Cadets. Police Cadets are college students in police science who are given part-time "internship employment". To restrict it to college students, the City requires enrollment for a minimum of nine units college credit during the fiscal year. This averages three hours of class work and approximately five hours of homework per week for each individual. In addition, there is approximately three hours travel time from place of residence to the school. The City will have to pay for school time under the new legislation. The pay rate is \$3 per hour. The calculation is as follows:

$$5 \text{ Cadets} \times 11 \text{ hours per week} \times 52 \text{ weeks} = 2,860 \text{ hours per year} \times \$3 \text{ per hour} = \$8,580.$$

2. Reserves. The Police Reserves are paid for contractual work in various security and traffic control activities for private enterprises. They are not paid for volunteer work in conjunction with normal police department activities. In addition, Reserves are paid a minimum of \$24 per year to qualify them under California Workmen's Compensation Law. The 1973-1974 fiscal year City cost for paying the Reserves under the Fair Labor Standards Act provisions for time they volunteered without pay would have been \$45,252. This is computed on the following basis:

Contractual hours paid to Reserves

$$2,821 \text{ hours} \times \$4 \text{ an hour} = \$11,284$$

Volunteer hours not paid Reserves

$$11,313 \text{ hours} \times \$4 \text{ an hour} = \$45,252$$

The number of hours contributed provides an index of the impact on police activities if this force is withdrawn.

3. Regular Officer Overtime. The elimination of compensatory time will increase overtime costs by \$3,006.80 based on utilization during the 1973-74 fiscal year. There were 5,171 hours of paid overtime at a time-and-one-half rate during that fiscal year and there were 286 hours of compensatory time granted to police officers and police sergeants during that period of time. The regular hourly rate for a police officer is \$7 and the overtime rate is \$10.50. The regular hourly rate for sergeants is \$8.13 and the overtime rate is \$12.20. Police officers took 212 hours of compensatory time  $\times \$10.50 = \$2,226$ . Sergeants took 64 hours compensatory time  $\times \$12.20 = \$780.80$ , total \$3,006.80.

4. Training Time. Police officers appear for a 15-minute briefing session prior to their normal 8-hour shift. The briefing time amounts to a total of 75 minutes for each 5-day workweek  $\times 29$  officers = 2,175 minutes.  $2,175 \text{ minutes} \div 60 = 36.25 \text{ hours} \times 52 \text{ weeks} = 1,885 \text{ hours} \times \$10.50 = \$19,792.50$ ;

5. Summary. The Fair Labor Standards Act of 1974 would have an increase financial impact of \$76,631.30 on the Police Department;

that with respect to the fire department he bases his determination of the impact on the City of Newark on the following studies:

1. Firefighter Apprentice. This position is a 40-hour per week position. As scheduled, the only imapct for the next few years would be overtime pay in those instances where the person is working overtime as a result of an emergency call at the end of his period of work on a given day.

2. Regular Personnel. During the years 1975 and 1976, the current manning level and schedule of the Fire Department personnel is adequate to meet the mandated hours.

In order to meet the 54-hour per week (216 hours in 28 days) period mandated for January, 1977, the Fire Department has two alternatives:

a. Pay each individual approximately 2 hours of overtime at 1-1/2 times per week at a cost of \$24,270.48 per year.

(1) Captain \$8.78 an hour = \$8,218.08

(2) Firefighter \$7.35 an hour = \$16,052.40

b. Hire one added person per shift to cover hours given shift personnel to bring in line with the mandated hours. Cost: \$45,780 Salary and City costs.

(1) One person per shift = Three personnel at approximately \$15,260. Total cost of \$45,780 (based on 1974 figures).

In order to meet subsequent changes in hours, a rough approximation is one man per shift to cover each two-hour per week decrease. Assuming a final average schedule of 48 hours per week (approximately 185 hours in 27 day period), the City of Newark would need an added 12 men at an additional cost of \$183,120. per year (based on 1974 figures).

3. Training Time – 1975. Most fire department training is performed on duty time in the stations. However, to attend those classes or seminars which are required or of importance to continuing operations at the current level of performance could cost approximately \$8,833.32.

a. Arson Seminar, Training Officers Seminar, Mechanics Seminar.

Travel Time      10 hours each =    30 hours

Class Time        40 hours each =    120 hours

Study Time       15 hours each =    45 hours

195 hours @ \$8.78  
= \$1,712.10

b. Training on State or Federal Mandated Programs.

(1) 832 PC = 26 hours per person \$6,067.62

(2) Monthly meetings = 130 hours at \$8.78 per hour \$1,053.60

4. Overtime – Manning, Staff Meetings, Call Back – 1975. The overtime necessary for the above conditions would remain approximately as budgeted in the 1974-75 Budget at \$6,008.

5. Overtime – Shift Change – 1975. The overtime necessary in order to properly exchange information at shift change hour, and to cover field relief on calls at this period of time would be approximately \$3,013.14.

a. Shift Change, Captains – 31 hours per year = \$2,449.62

b. Field Relief – 24 hours per year, 1 company at \$23.48 per hour = \$563.52

6. Summary. The Fair Labor Standards Act of 1974 would have immediate impact on the fire department in the areas of outside training and overtime at shift change, costing approximately \$11,846.46, in addition to the current \$6,008 of overtime to cover manning, call back, and staff meetings.

The costs of overtime and new personnel to meet hour requirements would range from \$24,270.48 in 1977 to approximately \$183,120 in 1978;

that the statements herein contained are made upon departmental statistics and studies existing in the City of Newark and are made upon information and belief resulting from these studies;

that the implementation of the Act will cause a financial disaster for the City of Newark.

/s/ Richard W. Turnlund  
**RICHARD W. TURNLUND**

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Subscribed and sworn to before me this 22nd day of November, 1974.

/s/ Anthony J. Garcia  
Notary Public in and for said  
County and State

**Defendant's Exhibit No. 18**

CITY OF NEWARK  
37101 NEWARK BLVD.  
NEWARK, CALIFORNIA 94560

September 20, 1974

Allen E. Pritchard, Jr., Executive Vice President  
National League of Cities  
1620 Eye Street, N.W.  
Washington, D.C. 20006

Dear Mr. Pritchard:

Don Benninghoven has requested that California cities submit instances of employment problems created by the Fair Labor Standards Act Amendments. The following is the impact to date on the City of Newark, population 31,000, San Francisco Bay Region.

**Collective Bargaining Agreements**

Prior to enactment of the Fair Labor Standards Act Amendments, Newark had negotiated "education in-

centive pay" for police employees. Such "education incentive pay" amounts to 5% of base salary for accomplishment of the equivalent of an AA Degree and 7½% of base salary for the accomplishment of the equivalent of a BA Degree. The problem stems from much of the work being non-college courses. The California Peace Officer Standards and Training Institute provides a number of vocational training courses for its equivalency certifications. These are still raising some serious questions as to the strict reading of the Fair Labor Standards Act.

The problem became more complex when firemen and non-peace officer employees requested education incentive pay for work-related training. This was denied on the basis of the Fair Labor Standards Act implications and resulted in nearly hanging up negotiations for this year. The firemen have promised to "battle to the end" on the issue next year when the so-called regulations have been clarified. Here there is even less strict college work involved.

The education incentive pay has also been used as a means of recognizing those who are willing to put in more than the normal effort into equipping themselves for their employment. It is totally uneconomic if pay for attendance and study time is required.

### Training

The Fair Labor Standards Act provisions will serve to block the opportunity of city employees to effectively "share the cost" of certain specialized training which has a special individual interest. For instance, the Newark Fire Department has a man interested in specific areas of

arson investigation. These go way beyond Newark's routine need for arson work. The employee is willing to spend his time at a course, defray any expenses involved in transportation and housing if the city picks up the charge for the course. Employees have combined vacations, et cetera, with these kinds of training opportunities. This is no longer possible under the Fair Labor Standards Act.

The immediate return from much of this training is not directly to the City of Newark but to a particular vocational specialization. For instance, in the case of the fireman who was extremely interested in arson investigation, he may develop information or methods which may be valuable to the fire service as a whole because he considers this a very interesting avocation which just happens to be an offshoot of his regular employment. In private industry the man may realize some financial gain from these efforts. This is not nearly as likely in the public service.

#### Volunteers

The City has maintained a large reserve police force for a number of years. The force was increased from some 26 to 51 in 1972 under a LEAA grant. The intent of the increase was to permit interested citizens to donate time to specific police activities including investigation, communication, community information, and records system in addition to the usual patrol and traffic duties. We have withheld replacing any personnel during the last six months because of the unknown impact of the Fair Labor Standards Act. This has cut down the police department capability substantially since these part-time

people were contributing a good deal to the police effort as well as becoming acquainted with what the police department does.

The problem with the Fair Labor Standards Act is that police reserves are paid for some work and donate other time. The city has tried to control the police function, thus has required any private agency desiring special police help to pay money to the city which is reimbursed to the reserve officers working on that detail.

The cost of paying the police reserve unit for all time expended for the City at even the minimum wage would be so prohibitive that the reserve operation would have to be substantially curtailed. This will result in lengthened investigation periods, a serious drain on traffic control capabilities, diversion of regular police to traffic control and many other routine duties resulting in jobs not being done or service time being substantially protracted.

A further byproduct is the elimination of the opportunity for a lot of people to "try out" police work. This gives them a better comprehension of what the police department activity is and its part in the entire municipal operation. This information is valuable in merely exercising good citizenship. It further has strengthened the community-police ties.

#### Part-time Personnel

The Fair Labor Standards Act has severely hampered recreation department programs in hiring part-time employees. Several practices undertaken for both economic and social reasons have been withdrawn.

Many of the part-time recreation leader personnel are students attending local community colleges. These

students would like to maintain as flexible a work program as possible. This means that one week they may be available 20 hours whereas the next week they could be available 60 hours. Since the students are interested in earning money and it was much easier to permit this type of operation where overtime was not a factor, such employment was encouraged. With the advent of the Fair Labor Standards Act, the work time beyond 40 hours per week has been cut off. This meant a substantial initial jumble in scheduling and inability to provide incomes to students formerly available.

The Recreation Department had also set up a work program for young people to assist in meeting social problems in the community. This work program involves park maintenance, set up of chairs in community centers, and a variety of other tasks. The limitation of the Fair Labor Standards Act on child labor eliminated any potential for taking this program down to the 10-year old age bracket (our worst vandalism age) and curtailed the utilization of these people in the 14 to 19-year old category.

Many of the younger children were having work prepared for them which enabled them to take various recreation department excursions, et cetera, rather than receiving money. This, of course, is no longer possible under the Fair Labor Standards Act. It is not economic for the City to employ these young people at minimum wage.

#### Compensation Time

One of the biggest employee gripes resulting from the Fair Labor Standards Act is the elimination of

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compensation time. Compensation time permitted employees to build up a bank of time to be used for personal business without any ups and downs in their paycheck. Although the present system compensates them for overtime, there is no assurance that the money will be saved to offset the necessity to take off two hours for personal business a month later. Employees much prefer the opportunity to hold a stable monthly rate and vary hours as needed.

Hopefully, this is helpful to your preparation of the litigation.

Yours truly,

/s/ Richard W. Turnlund  
**RICHARD W. TURNLUND**  
City Manager

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**Defendant's Exhibit No. 19**

CITY OF MONTEBELLO  
1600 BEVERLY BOULEVARD  
MONTEBELLO, CALIF. 90640  
(213) 722-4100 • 685-7170

November 22, 1974

Mr. Charles Rhyne  
Rhyne & Rhyne  
400 Hill Building  
Washington, D.C. 20006

Dear Mr. Rhyne:

Pursuant to requests from the National League of Cities, this letter will attempt to specify some of the dollar impact of the Fair Labor Standards Act Amendments of 1974 on the City of Montebello.

Most of the additional costs to the City of Montebello, as a result of the FLSA, are difficult to estimate with any accuracy at this point in time. This is especially true of costs within the police department and the costs which relate to time and one-half provisions for general employees. In addition, it is almost impossible to accurately estimate the future costs caused by the elimination of compensatory time as a method of compensating employees.

Increased costs for providing fire suppression services, however, are not as difficult to estimate. This is due to the well defined manning requirements and the strict