

**Fahey Schultz
Burzych Rhodes**

EXPERT COUNSEL  REAL SOLUTIONS

Special Considerations in Public Safety Employment

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Disclaimer

- This presentation, and the materials associated with it, are comprised of general information and not intended as legal advice related to specific questions of attorney-client privilege.
- Please contact an attorney if you need assistance related to a specific legal issue.



AGENDA

- **Defining Public Safety Employees**
- **Wage and Hour Considerations**
- **Off Duty Conduct and First Amendment Protections from Discipline**
- **Loudermill, Garrity, and the Veterans Preference Act**
- **Hiring and Keeping Your Employees**

Who are your public safety employees?

- Firefighters
- Medical Personnel
- Police
- Dispatch
- Public Safety Officers



Collective Bargaining



Duty to Bargain:

- Not Necessarily Dependent on Presence of a Union

The Bargaining Process

- Prepare for and participate at the Table... but if you don't get a deal:
 - Mediation
 - Act 312 Proceedings

Right to Work



Paying for Hours Worked

- Compensable hours worked include:
 - all time the employee was required to be on duty or at a prescribed workplace **and**
 - all time the employee was “suffered” or permitted to work, whether or not required to do so.



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Principal Activity

Activity is performed during workday or where the employer knows or should know of it

Performed outside the workday, contrary to employer's instructions and without employer knowledge

Preparatory and Concluding Activities (e.g. changing clothes or washing up)

Integral to principal activity; Mandated by contract, custom or practice; or required by employer or law

If performed for primary benefit of employee or for his convenience



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Waiting Time

Employee is “engaged to wait”. Usually compensable if employee is on duty during wait of short duration.

Employee is “waiting to be engaged”. Not paid if employee is relieved of duties.

“On Call” Time

Freedom is more than slightly restricted
**stay near the premises

Freedom is only minimally restricted
** leave a telephone number



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Sleeping Time

Less than 24-hour duty
or, if duty period is 24 hours or more,
where less sleep is obtained or where
sleep is interrupted on a regular basis

By agreement for up to 8 hours if:

- work period is 24 hours or more +
- at least 5 hours sleep is obtained +
- sleeping facilities are furnished

Rest Periods (Breaks)

Rest periods of 20 minutes or less

Longer than 20 minutes and liberty is not
restricted

IOW: not required to perform duties



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Meal Periods

Meal periods where employee is not freed from post or time is too short (less than 30 minutes) to be useful to employee

Meal periods where employee is freed from duties and period is reasonably long (30 minutes or more)

Travel Time

Traveling between work sites or out-of-town during working hours

Travel time between home and job and overnight trips during nonworking hours (except when actually working)



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Training Time

Training to increase efficiency or as required by employer

Training or school time where employee attends independent school after hours on own initiative

Leave Time

Leave time for processing grievances or attending labor-management meetings, unless excluded by contract

Absences including:

- Sick leave
- Holidays
- Vacations
- Funerals
- Jury Duty





Trade Time

- Under certain conditions, public agency employees may trade shifts for each other without impacting hours worked for overtime purposes. This requires:
 - Some approval mechanism and
 - That the trade is voluntary
- *“Where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.” 29 CFR §553.31.*



A Word About Volunteering



Overtime Compensation and Exceptions

- Employees must be paid 1 ½ times their regular rate of pay for all hours worked over 40 in a ***workweek***.
 - Do not “balance” the hours across a pay period to determine overtime compensation eligibility.
- There are relevant *limited exceptions to this*.





When Overtime Pay is Due Can Change!

- **Never Due**: Employees of law enforcement or fire protection departments are exempt from overtime pay *if fewer than 5 employees* are employed by the department.
- **Higher Hour Threshold**: A partial exemption from overtime exists if employees in fire protection or law enforcement have a work period of between 7 and 28 consecutive days.
 - Fire protection - 212 hours in 28-day period (or a related ratio!)
 - Law enforcement - 171 hours in 28-day period (or a related ratio!)



Comp Time in Lieu of Overtime Pay

- May permit accumulating time off at a rate of 1.5 hours per hour of OT worked, if you have a proper comp time program before performance of the work.
- Requests to use comp time must be granted within reasonable time, unless it would unduly disrupt operations.
- May freely substitute cash for time off without prejudicing ability to grant time off in future.
- Must pay out unused compensatory time upon separation.
- Maximum comp time banks:
 - General employees: 240 hours of comp time (for 160 hours of OT worked).
 - Public safety or emergency response personnel: 480 hours of comp time (for 320 OT hours worked).
 - Public safety includes law enforcement and firefighting activities.
 - Emergency response includes dispatching emergency vehicles and personnel, rescue work and ambulance services.



Off Duty Conduct and First Amendment Protections from Discipline

- “But I’m off duty!”
 - Look for that Nexus
- First Amendment Rules to Live By



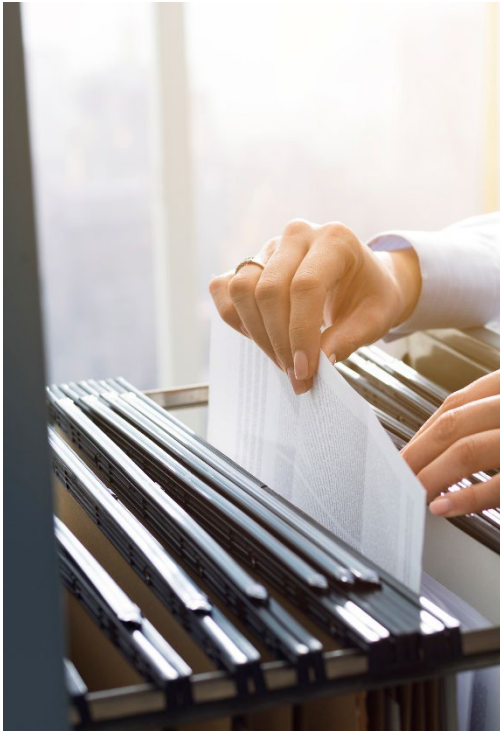
3 Critical Procedural Elements to Remember When in Discipline Mode



- *Loudermill*
- *Garrity*
- The Veterans Preference Act



Hiring and Keeping Public Safety



- Remember to Check Former Law Enforcement Employers' Files when Hiring Police
- Recruitment & Retention Strategies —Stay on Your Toes!

Human Fatigue in 24/7 Operations: Law Enforcement Considerations and Strategies for Improved Performance

**It's Not Just a Police Problem,
Americans Are Opting Out of
Government Jobs**

Data shows declines in public-sector employment, even as the private job market has rebounded.





Questions

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