

# Fair Labor Standards Act and K-9

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K-9 officers are often times engaged in a number of activities which are considered compensable under the Fair Labor Standards Act. Time spent performing the following duties may be considered compensable under the Fair Labor Standards Act if they are determined to be in the employer's benefit.

1. Time spent transporting the dogs to and from work.
2. Off-duty care and feeding of the dog when such activities are seen as necessary and beneficial to the employer.
3. Exercising the dog while off-duty.
4. Cleaning of the dog's kennels while off-duty.

In the briefs of cases addressing this issue, the Portal-to-Portal Act is discussed. This Act was passed in 1947 in response to persons seeking compensation for commuting to work. The law states that an employer must pay an employee for time performing an activity defined as a "principal activity" of the employer. They are not required to pay for activities described as "preliminary" or "postliminary." In the cases involving police K-9 dogs, it has been determined that officers are doing more than just giving their dogs a ride to work. To the contrary, they are responsible while transporting the dogs to perform the principal duties of their job. Canine officers must continue to do such things as care for the dogs and make sure that the dogs stay secured and safe and are restricted as to where they can go while en route to and from their workplace. These activities have been determined to be primarily for the benefit of the employer.

Officers who have volunteered for canine duty at police departments that require canine officers to house the dogs at their residence, to care and feed the dogs while off-duty and to transport the dogs to and from their work station, have sued and have been successful in having the time spent performing these duties declared to be hours worked for the purposes of the Fair Labor Standards Act. If you are contemplating such litigation, or suggesting such, remember that your case will be much stronger with good documentation. Have your officers keep logs over several months, carefully documenting the time spent in performing all of the duties required to care for their canine partners. The more detailed and accurate documentation you can produce the better.

Further, be prepared for your employer to play hardball. In one case where officers approached their employer seeking overtime for the off-duty care of their canine dogs, the employer threatened to require that the dogs be kept in the Department's central kennels where they would be cared for by paid staff. This move would be a legal remedy. The officers, however, did not wish to see their dogs kept in kennels. Instead of suing for the overtime pay, they negotiated for compensatory time instead. Make sure, if you are addressing this issue, that your members are fully advised of any such plans by your department and that they are comfortable with all the potential risks they may face--outcomes such as having their dogs put in a central kennel. Make sure you know what your members want and don't want.

## Relevant Case Law

### ***Graham v. City of Chicago, 828 F. Supp. 576 (N.D. Ill. 1993)***

Officers in the narcotics division and the Drug Administration task force were assigned canine duties. As part of those duties, they were required to board the dogs at their homes, as well as feed, exercise and

groom the dogs while off-duty. They were also required to transport the dogs to and from work and to drive directly to work and to home. The city provided a kennel for use at the officer's home, as well as food and medical care. The officers sued the city, demanding pay for the time spent transporting the dogs to and from work. The court declared that in this case transporting the dogs was more than just usual commuting. Transporting the dogs imposes additional responsibilities on the officer such as making sure the dog remains secure. These responsibilities are for the benefit of the employer and, therefore, are compensable under the FLSA.

***Reich v. New York City Transit Authority, 839 F. Supp. 171 (E.D.N.Y. 1993)***

The issue in this case was whether hours spent traveling from the officers' homes to work and back to their homes while transporting their canines are compensable. At trial, testimony was offered that officers considered their dogs as tools of their profession similar to their firearms. Some officers treated their dogs as pets when they were at home. Transferring the dogs did require effort on the part of the officers as the dogs needed care and attention during the travel time. Officers were required to report to a specific location each day. If an officer was sick, another officer came and picked up the dog. The relief officers were paid for transporting the canines. The court ruled that the concerns that officers must deal with while transporting their canines are the same as those they must address while on duty. These concerns are necessary, required and for the benefit of the employer. Off-duty transport of the canines was virtually the same as transporting them while on duty. Therefore, the court ordered that the officers be compensated for time spent transporting the canines.

***Truslow v. Spotsylvania County Sheriff, 783 F. Supp. 274 (E.D. Va. 1992)***

Deputy Sheriff Truslow volunteered for assignment to his department's canine section. As part of his duties, Truslow fed, groomed and exercised the dogs. He was required to clean the dog kennels and the dog's area of his police car. This work most often took place while Truslow was off-duty. In fact, Truslow was instructed by his supervisor to groom his canine before reporting for work. The dogs were kept at the officer's home and most of the required work was performed there. The officer filed suit to be paid for the time spent performing the duties required to care for his canine. The court noted that the FLSA did not require employers to compensate employees for activities that are "preliminary" or, in other words, performed before the "principal" activity for which the employee was hired to perform. Compensation is due for activities that are an "integral and indispensable" part of the employee's principal activity. The test for determining which activities are "preliminary" and which are "principal" is by checking whose interests are served by the activity in question. Principal activities are conducted to serve the interests of the employer; preliminary activities focus on the interests of the employee. As with other FLSA requirements, even if an activity is performed by an employee who volunteers for the duty, the hours spent performing the duty is still compensable. Truslow's activities were deemed to be integral and indispensable and in the interests of the sheriff's department. The decision noted that the Sheriff could have arranged for alternative ways of caring for the dogs. (Remember the discussion about putting the dogs in kennels and paying a caretaker.) The court ruled that off duty hours spent caring for the canine dogs was compensable.

***Harris v. City of Chicago, 789 F. Supp. 1438 (1992)***

This case was almost identical to the case of *Graham v. Chicago* described above. Apparently, Chicago administrators are a little slow. Again, the officers had volunteered to serve as canine officers. The city did not provide a central kennel; therefore, officers were required to take the dogs home at the end of their shift. The city did provide kennels for the officers' homes as well as food and veterinary care. The officers sued, demanding compensation for the off-duty time spent caring for the canines. The city contended that the activities were not compensable as they were "preliminary or postliminary" as described by the Portal-to-Portal Act. They further contended that the officers had volunteered for the duty, could go back to patrol at any time, and that they benefited from the dogs as pets. The judge in this case rejected the city's motion to render a judgment without a trial. He also called into question the merits of the city's case, noting that there was no support in law for the city's position. The city had paid for the dogs' care while the officers were on duty and that the care of the dogs was the same off duty. The officers may have

volunteered for their duty, but were still employees under the FLSA, not volunteers. Taking care of the dogs was for the benefit of the city.

## **Conclusion**

Care and transportation of canine dogs is one of the better defined activities for which the hours required to perform those activities have clearly been deemed to be compensable under the FLSA. The court cases dealing with the application of the Fair Labor Standards Act to hours worked in the care of canines also help illustrate the lines of analysis used in assessing some FLSA issues. Those lines of analysis include: First, one must question whether the activities being performed are an "integral and indispensable" part of the employee's principal activities. Secondly, it must be determined whether these activities are performed "preliminary" or "postliminary" to the employee's principal activities. Thirdly, it must be determined if the activities are primarily performed for the interest of the employee or the employer. When these issues can be decided, you can determine if the hours spent performing canine or other activities are compensable under the FLSA.