

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2008-151
SENATE BILL 963**

AN ACT RELATING TO THE HOURS OF LABOR AND OVERTIME
COMPENSATION OF MEMBERS OF MUNICIPAL FIRE DEPARTMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding a new Article to read:

"Article 14A.

"Municipal Firefighters.

"§ 160A-295. Definitions.

As used in this Article, the following terms mean:

- (1) Compensatory time. – Time off with regular compensation in lieu of immediate overtime premium pay when a fire department, under certain conditions, compensates the firefighter for overtime hours worked.
- (2) Firefighter. – A full-time, paid employee of an employer, maintaining a fire department certified by the North Carolina Department of Insurance, who is actively serving in a position with assigned primary duties and responsibilities for the prevention, detection, and suppression of fire.
- (3) Supervisory personnel. – An individual employed by a public safety employer who (i) has the authority in the interest of the employer to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove public safety officers, or to adjust their grievances or effectively recommend an adjustment, provided that the exercise of the authority is not merely routine or clerical in nature, but requires consistent exercise of independent judgment; and (ii) devotes a majority of time at work exercising that authority.
- (4) Trade time. – The time one individual substitutes for another during scheduled work hours in performance of work in the same capacity when two individuals are employed in any occupation by the same fire department, as agreed to solely at the individual's option and with the approval of the management of the fire department. The hours worked are excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under this Article. Where one employee substitutes for another, the employee being substituted for is credited as if he or she had worked his or her normal work schedule for that shift.

"§ 160A-295.1. Municipal firefighters; hours of labor; overtime pay.

(a) A firefighter or a member of a fire department who provides emergency medical services, other than supervisory personnel, and who is required or permitted to work, on average, more than 53 hours in a seven-day work period or up to the number of hours that bears the same ratio to 212 hours as the number of days in the work period bears to 28 days is considered to have worked overtime. A person included under this subsection is entitled to be compensated for the overtime as provided by subsection (d) of this section.

(b) A member of a fire department, other than supervisory personnel, who does not fight fires or provide emergency medical services, including a mechanic, clerk, investigator, inspector, fire marshal, fire alarm dispatcher, or maintenance worker, and who is required or permitted to average more hours in a week than the number of hours in a normal workweek of the majority of the employees of the municipality other than firefighters, emergency medical service personnel, and police officers, is considered to have worked overtime. A person included under this subsection is entitled to be compensated for the overtime as provided by subsection (d) of this section.

(c) In computing the hours worked in a workweek or the average number of hours worked in a workweek during a work cycle of a firefighter or other member of a fire department covered by this section, all hours are counted during which the firefighter or other member of a fire department is required to remain on call on the employer's premises or so close to the employer's premises that the person cannot use those hours effectively for that person's own purposes. Hours in which the firefighter or other member of a fire department is required only to leave a telephone number at which that person may be reached or to remain accessible by radio or pager are not to be used in computing the hours worked. In computing the hours in a workweek or the average number of hours in a workweek during a work cycle of a firefighter or a member of a fire department who provides emergency medical services, vacation, sick time, holidays, time in lieu of holidays, compensatory time, or trade time may be excluded as hours worked.

(d) A firefighter or other member of a fire department may be required or permitted to work overtime. A firefighter, other than supervisory personnel, who is required or permitted to work overtime as provided by subsection (a) of this section is entitled to be paid overtime for the excess hours worked without regard to the number of hours worked in any one week of the work cycle. Overtime hours as computed under this Article are to be paid at a rate equal to one and one-half times the compensation paid to the firefighter or member of the fire department for regular hours. To the extent that the municipality complies with the requirements of section 7(o) of the Fair Labor Standards Act (29 U.S.C. § 207(o)), it may compensate firefighters for their overtime hours with compensatory time in lieu of pay. A member of a fire department included under subsection (b) of this section shall be paid overtime in the same manner as other employees of the municipality entitled to overtime pay, excluding firefighters.

"§ 160A-295.2. Authority of Department of Labor.

The Department of Labor shall have the authority to enforce the provisions of this Article to the extent that these provisions are not subject to enforcement under the Fair Labor Standards Act (29 U.S.C. § 207).

"§ 160A-295.3. Applicability.

This Article applies only to full-time paid firefighters and other full-time paid members of a fire department of a municipality that employs five or more employees in fire protection during the workweek."

SECTION 2. This act becomes effective when 29 U.S.C. § 207(k) is repealed or is no longer enforceable.

In the General Assembly read three times and ratified this the 17th day of July, 2008.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 8:36 p.m. this 2nd day of August, 2008