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ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201
January 10, 1986

(501) 371-2007

OPINION NO. 86-6

Mr. Edwin E. Waddell
State Forester
Arkansas Forestry Commission
P.O. Box 4523
Little Rock, AR 72204

Dear Mr. Waddell:

This is in response to your request for an Opinion on the following questions:

1. Does the Uniform Attendance and Leave Act of 1975 provide a status for sending State employees on assignment under the Cooperative Fire Control Agreement in which they will receive no loss of pay from the State?
2. Will State Worker's Compensation coordinate benefits with Federal Worker's Compensation for employees on such an assignment?
3. May a State employee use a prorated amount of sick leave or annual leave to equal his or her full state salary while drawing Federal Worker's Compensation benefits?

The response to your first question is no. The Uniform Attendance and Leave Policy Act found at Ark. Stat. Ann. §12-2364 - 12-2372 does not provide a status for State employees on assignment under the Cooperative Fire Control Agreement. However, it is possible that they may retain their status as State employees if such assignment is for the benefit of the Arkansas Forestry Commission. A reading of the agreement indicates that one of its purposes is to mutually benefit each party.

I recommend that you consult the Arkansas Worker's Compensation Commission for an Opinion on your second inquiry. Section III(c)(6), of the agreement reads as follows:

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When State personnel are fighting fires on lands for which the Forest Service is responsible and at such time when they are specifically assigned to the direct supervision of the Forest Service, such State personnel, although not Federal employees for any other purposes, will be considered as Federal employees for the purpose of the Federal Employees Compensation Act in the Federal Tort Act in consequence of performance under this section of this agreement.

Arkansas Worker's Compensation Commission will probably contend that this statement absolves it from any responsibility in this regard. I suggest that the State employer notify the Arkansas Worker's Compensation Commission in the event of injury to a State employee in order for the Commission to make a determination as to the status of such employee.

The answer to your third question depends upon applicable Federal laws relating to Worker's Compensation benefits. I have contacted the Arkansas Worker's Compensation Commission which informed me that it has not been confronted with this question before. It is the Arkansas Worker's Compensation Commission's position that since the Cooperative Fire Control Agreement reclassifies State employees as Federal employees for purposes of the Federal Employees Compensation Act and the Federal Tort Claims Act, it no longer has jurisdiction over the employee.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General E. Jeffery Story.

Sincerely,

Steve Clark
STEVE CLARK
Attorney General
by RB Fred Lander

SC/EJS/ljm