Overtime Policies: Managing to Control Cost

October 2012

Fair Labor Standards Act (FLSA) Requirements

• Schools are public entities and as such are subject to FLSA.

• A work week is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It may begin on any day and at any hour.

Fair Labor Standards Act (FLSA) Requirements

The Fair Labor Standards Act (FLSA) requires school district employers to:

• Pay all covered nonexempt employees for all hours at least the Federal minimum wage of $7.25 per hour.

• There is no limit in FLSA on the number of hours employees may work in any workweek.

FLSA Rules for Overtime Pay

• The definition of "hours worked" according to Department of Labor (DOL) includes all time employee must be on duty or on the premises and any additional time the employee is "permitted" to work.

FLSA Rules for Overtime Pay

• Employee covered by FLSA must receive overtime pay for hours worked in excess of 40 in a work week at a rate not less than time and one-half their regular rates of pay.
**FLSA Rules for Overtime Pay**

- Overtime must be computed on the basis of the average hourly rate derived from earnings.
- Overtime pay may not be waived by agreement between the employer and employee.

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**FLSA Cautions**

- A policy adopted by the district that no overtime work will be permitted or that overtime will not be paid unless authorized in advance will not remove the employee's right to compensation if the overtime hours were worked.

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**FLSA Cautions**

- Allowing or permitting the work to occur creates a liability for the district.
- A lump sum payment for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as overtime pay even if the amount paid in the lump sum is equal to or greater than the sum owed for overtime.

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**FLSA Cautions**

- DOL requires that employees be paid for all breaks of less than 30 minutes. An employee cannot be docked for lunch breaks unless employer requires those breaks to be 30 minutes long.
  
  If employee is required to remain on premises during break, the employee must be completely relieved of performing any work duties.

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**FLSA Cautions**

- Normal home-to-work travel time is not compensable.
- A district who requires or permits an employee to work overtime is required to pay the employee for such overtime worked.

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**Compensatory Time**

- Employers may give compensatory time off in lieu of overtime pay at a rate not less than one and one half hours for each overtime hour worked instead of overtime pay.
- School employees may accrue a total of 240 hours of compensatory time.
Workweek at Two Jobs With Different Rates of Pay

- When an employee in a single workweek works at two jobs for which different rates are paid, the regular rate for that week is the weighted average of the rates.

Calculation of Regular Rate From Two Jobs

1. Earnings from two rates are added together.
2. Total is divided by the total number of hours worked at both jobs to establish the regular rate.

(See Handout A - Blended Overtime Rate Worksheet.)

Recordkeeping Requirements for FLSA

- District must post an official FLSA poster in a prominent place in the district outlining the provisions of FLSA.

Poster is available at:

Recordkeeping Requirements for FLSA

- There is no specific form for the records required, but records must include employee information and data about hours worked and wages earned.

Recordkeeping Requirements for FLSA

- Required Information
  1. Employees full name and SS
  2. Address, including zip code
  3. Birth date
  4. Sex and occupation
  5. Time and day of week when employee’s workweek begins
  6. Hours worked each day

Recordkeeping Requirements for FLSA

- Total hours worked each week
- Basis on how wages are paid
- Regular hourly pay rate
- Total daily or weekly earnings for regular time
- Total overtime earnings per workweek
- All additions to or deductions from the employee’s wages
- Total wages per pay period
- Date of payment and pay period covered by payment
Recordkeeping Requirements for FLSA

• FLSA records should be retained for at least three years.
• Records should be maintained in the central records office.
• Any timekeeping method is acceptable as long as it is complete and accurate.
• Statute of Limitations on overtime violation is two years. If willful, an employee has three years to sue.

FLSA Exemptions

• FLSA Section 13(a)(1) provides an exemption from both minimum wage and overtime pay for executive, administrative, or professional employees.
• Section 13(a)(17) also exempts certain computer employees.

FLSA Exemptions

FLSA exemptions apply to employees that:
• Are paid no less than $455 per week
• Work in management or
• Work in general business operations or
• Are required to have specialized academic learning or
• Are in the computer field or
• Are recognized for artistic or creative endeavors.

How Is Exemption Determined?

Tests for Exemption:
1. Salary Level
2. Salary Basis
3. Job Duties
   a) Executive
   b) Administrative
   c) Learned Professional
   d) Creative Professional

Salary Level Test

1. Salary Level Test
   a) The minimum salary level required for exemption is $455 per week.

Salary Basis Test

2. Salary Basis Test
   a) Regularly receives a predetermined amount of salary each pay period.
   b) The salary cannot be reduced because of variations in the quality or quantity of the work performed.
Salary Basis Test

c) Must be paid the full salary for any week in which the employee performs any work.

d) Need not be paid for any workweek when no work is performed.

No Salary Requirements

• The salary level and salary basis tests do not apply to:
  – Outside Sales Employees
  – Doctors
  – Lawyers
  – Teachers
  – Certain computer-related occupations paid at least $27.63 per hour

Executive Job Duties Test

3. Job Duties Test-Executive
   a) Primary duty is management of a department or subdivision of the school organization.
   b) Customarily and regularly directs the work of two or more other employees; and
   c) Suggestions and recommendations as to hiring, firing, advancement, promotion, or other change of status of other employees are given particular weight.

Executive Job Duties Test

Primary Duty is the principal, main, major, or most important duty the employee performs.

Factors to consider include, but are not limited to:
  – Relative importance of exempt duties;
  – Amount of time spent performing exempt work; and
  – Relative freedom from direct supervision:

Executive Job Duties Test

• Employees who spend more than 50% of their time performing exempt work will generally satisfy the primary duty requirement.

• The regulations do not require that exempt employees spend more than 50% of time performing exempt work.

Executive Job Duties

• Interviewing, selecting, and training employees
• Setting and adjusting pay and work hours
• Maintaining production or sales records
• Appraising employee productivity and efficiency
Executive Job Duties
• Handling employee complaints and grievances
• Planning and apportioning work among employees
• Determining techniques to be used; type of materials, supplies, machinery, equipment or tools to be used; or the merchandise to be bought.

Executive Job Duties
• Disciplining employees
• Providing for the safety and security of employees or property
• Planning and controlling the budget
• Monitoring and implementing legal compliance measures

Required Supervision
• Must be done on a regular basis.
• A frequency that must be greater than occasional but which may be less than constant.
• Includes work normally and recurrently performed every workweek.
• Does not include isolated or one-time tasks.

Required Supervision
• With regard to required supervision, the phrase “two or more other employees” means two full-time employees or the equivalent.
• Full-time generally means 40 hours per week.
• The supervision of the same employees can be distributed among two or more exempt employees, but the hours worked by an employee cannot be counted more than once.

FLSA Exemption for Executive Employees
Primary duty must be management activities—interviewing, selecting, training, setting rates of pay, directing the work, maintaining records, evaluating employees, handling employee grievances, disciplining employees, planning the work, assigning the work, selecting methods and materials to be used, providing for safety and security of the employees, planning and controlling the department-budget, and monitoring compliance issues.

FLSA Exemption for Executive Employees
The unit or department must be a permanent, specific group with a specified function.
“Customarily” means regularly done as a normal part of the role.
FLSA Exemption for Executive Employees

Recommendations as to hiring, firing, promotions, and advancement must be seriously considered. They are a regular part of the management role. However, the recommendations may be merely suggestions and are not required to be the ultimate decision as to the employee’s status or changes in status.

Exemptions are based on each specific employment situation.

Job titles do not determine status.

Specific job duties performed and compensation received determines the status.

Job Duties Test - Administrative

• Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and

• Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Management or General Business Operations

• Refers to the type of work performed by the employee.

• Work must be directly related to assisting with the running or servicing of the business.

Management or General Business Operations

• Tax
• Finance
• Accounting
• Budgeting
• Auditing
• Insurance
• Quality Control
• Purchasing
• Advertising
• Marketing

• Research
• Safety and Health
• Human Resources
• Employee Benefits
• Labor Relations
• Public and Government Relations
• Legal and Regulatory Compliance
• Computer Network, Internet, and Database Administration

Discretion and Independent Judgment

• The comparison and evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered.

• Must be exercised with respect to “matters of significance,” which refers to the level of importance or consequence of the work performed.

• Decisions and recommendations may be reviewed at a higher level and, upon occasion, revised or reversed.
Discretion and Independent Judgment

Factors include, but are not limited to:

- Whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices.
- Whether the employee carries out major assignments in conducting the operations of the business.

Discretion and Independent Judgment

- Whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular department of the business.
- Whether the employee has authority to waive or deviate from established policies and procedures without prior approval.

Discretion and Independent Judgment

- Whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular department of the business.
- Whether the employee has authority to negotiate and bind the company on significant matters.
- Whether the employee provides consultation or expert advice to management.

Discretion and Independent Judgment

- Whether the employee is involved in planning long- or short-term business objectives.
- Whether the employee investigates and resolves matters of significance on behalf of management.
- Whether the employee represents the company in handling complaints, arbitrating disputes, or resolving grievances.

Discretion and Independent Judgment

- Discretion and independent judgment does not include:
  - Applying well-established techniques, procedures, or specific standards described in manuals or other sources.
  - Clerical or secretarial work.
  - Recording or tabulating data.
  - Performing mechanical, repetitive, recurrent, or routine work.

Sample Exempt Positions

- An employee who leads a team of other employees assigned to complete major projects.
- Executive assistant or administrative assistant who has been delegated authority regarding matters of significance.
- Management consultants who study the operations of a business and propose changes in organization.
Non-exempt Positions

• Ordinary inspection work involving well-established techniques and procedures.
• Cafeteria workers who prepare food based on set instructions.
• Custodians who clean specified school buildings based on a routine schedule.

Exempt Professional Employees

There are two types of professional employees that may be exempt from FLSA overtime requirements:
• Learned professionals and
• Creative professionals

Learned Professional Exemptions

Must meet the following requirements:
• Must be compensated on a salary or fee basis at a rate not less than $455 per week.
• Primary duty must be the performance of work requiring advanced knowledge, intellectual in nature, and includes work requiring consistent exercise of discretion and judgment.

Learned Professional Exemptions

• Advanced knowledge must be in a field of science or learning.
• Advanced knowledge must be acquired by a prolonged course of specialized college/training.

Learned Professional Exemptions

Professional work is distinguished from work involving routine, mental, manual, mechanical, or physical work. Advanced knowledge cannot be attained at the high school level.

Learned Professional Exemptions

Fields of science and/or learning include law, medicine, theology, accounting, actuarial computation, engineering, teaching, physical, chemical and biological sciences.
**Advanced Knowledge**

- Predominantly intellectual in character
- Includes work requiring the consistent exercise of discretion and judgment
- The advanced knowledge is generally used to analyze, interpret, or make deductions from varying facts or circumstances
- Not work involving routine mental, manual, mechanical, or physical work
- Cannot be obtained at the high school level, requires advanced degree/training.

**Field of Science or Learning**

- Occupations with recognized professional status, as distinguished from the mechanical arts or skilled trades
  - Law
  - Teaching
  - Accounting
  - Physical Science
  - Medicine
  - Chemical Science
  - Architecture
  - Biological Science
  - Engineering

**Learned Professional Exemptions**

In some cases the knowledge level and skills could be obtained through a combination of work experience and intellectual instruction. This exemption does not apply to occupations in which employees acquire their skill by experience rather than advanced specialized instruction or training.

**Exempt Professions**

- Teachers
- Doctors
- Lawyers
- Nurses (RNs)
- Accountants
- Engineers
- Athletic Trainers
- Educational Administrators

**Non-exempt Learned Professionals**

- Exemption does not apply to occupations in which most employees acquire skill by experience.
- Licensed practical nurses (LPNs)
- Cooks who perform predominantly routine mental, manual, mechanical or physical work

**Creative Professional Exemption**

- Employee must be compensated on a salary or fee basis at a rate not less than $455 per week.
- Primary duty must be work requiring invention, imagination, originality, or talent in a field of artistic or creative endeavor.
Creative Professional Exemption

• Exemption requirements generally met by musicians, composers, and writers.
• Content fields are music, writing, and the graphic arts.

Creative Professional Duties

• The employee's primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

Creative Professional Duties

• Music
  – Musicians, composers, conductors, soloists
• Writing
  – Essayists, novelists, play writers
• Acting
• Graphic Arts

Employees Occupational Index

Source: FLSA Overtime Security Advisor

• Accountant
• Accounting Clerk
• Assistant Manager
• Auditor
• Athletic Trainer
• Bookkeeping Clerk
• Carpenter
• Computer Operator
• Food Service Manager
• Database Administrator
• Education Administrator
• Executive Assistant
• Human Resources
• Manager
• Maintenance Worker
• Mechanic
• Personnel Clerk

Resources

• U. S. Department of Labor FLSA website:
• Wage and Hour Toll Free Telephone:
  1-800-487-9243

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