

## **INFORMATION PERTAINING TO THE FAIR LABOR STANDARDS ACT**

### **A. Generally**

The Fair Labor Standards Act applies to all employees not determined to be professional, managerial or executive by definition, outlined within the statute. Employee groups not covered by FLSA are referred to as 'exempt' employees, meaning they are exempt from the statute requirements. Some employee groups are identified as 'exempt' by name in the statute. For example, teachers are specifically identified as an employee group not covered by FLSA. Other professional, managerial and executive level positions are identified by comparing aspects of their work to the 'test' outlined in the FLSA regulations.

For the most part, exempt employees are teachers and administrators, social workers, psychologists, speech therapists and other professional personnel and are exempt from the law.

All employees not meeting the criteria for exemption are covered by the Fair Labor Standards Act and are referred to as 'non-exempt' employees. In the school -, the non-exempt employees include clerical personnel, instructional assistants, school bus drivers, trades, custodial, food service employees, as well as other non-supervisory support personnel, such as certain finance positions and computer technician positions.

### **B. Hourly Rate of Pay**

Compliance with the Fair Labor Standards Act requires (although an employer may pay employees using methods other than an hourly wage - such payment (by the day or mile for a bus driver) that an hourly rate must be computed to ensure compliance with the statute. Most school employees are paid an annual salary; nonetheless, an hourly rate must be established for all non-exempt employees.

### **C. Minimum Wage**

The FLSA requires the school to pay the minimum wage, currently \$7.25 per hour. Many states also have minimum wage laws. In cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher minimum wage. Virginia is currently \$12.00 per hour.

### **D. Time Sheets**

A time sheet for non-exempt employees is a log of hours actually worked each day during a 7-day week demonstrating regular hours and over-time hours worked at all assignments. Time worked beyond the normal hours per week is compensated at the

regular rate of pay for the hours worked up to 40. Beyond 40 hours worked, the employee is eligible for overtime pay at time and one-half.

Copies of all time sheets must be kept in a file at the work site and are subject to inspection by the Wage and Hour Division of the Department of Labor. It is important to remember that the law requires payment at 1 ½ rate only when the hours worked exceeds 40. If the employee uses paid leave time (sick, annual, compensatory or personal) during the workweek, those hours do not count toward 40.

For example: A maintenance worker takes two days of paid sick leave on Tuesday and Wednesday of the workweek. Because the project cannot be finished within the normal week, the workers are called in to work on Saturday for six hours. The worker will be paid at the normal hourly rate for the work performed on Saturday (or earn hour-for-hour overtime leave). The other workers, who did not use any paid leave time during the regular week are entitled to either 1 ½ times the regular rate of pay (or earn an hour-and-a-half for each hour worked) on Saturday.

#### E. Wait Time

Time spent by the employee while ‘waiting’ to work is paid time and hours worked. The most common example of this includes a bus driver waiting for children at a field trip or athletic event. Workers waiting at the loading dock for arrival of the delivery truck are likewise ‘on the clock.’

#### F. On the Clock Lunches and Breaks

Rest periods are not required, but may be allowed by the employer. Rest periods of 20 minutes or less are counted as time worked. The employee is not ‘off the clock’ for short work breaks during the day.

School employees normally have a lunch period of 30 minutes ‘on the clock’ because of the unique nature of the work within the building itself. In other words, the lunch break is considered paid time. Normally, school personnel are ‘on duty’ or ‘on call’ during lunch. Even when an employee is on lunch break, school personnel are normally available to handle unexpected situations. All personnel supervising students during lunch are ‘on the clock.’

#### G. ‘Off the Clock’ Lunches

A non-exempt employee who is free to leave the work area, and who is not ‘on call’ during lunch is not required to be paid for lunchtime.

## H. Managing the Work Week

One way commonly used to avoid overtime pay or compensatory leave is to rearrange the employee's work schedule. For example, if secretarial assistance is required in the evening for a special situation such as new student registration, the director may allow an equal number of hours off that same week, thus ensuring that the total number of hours worked is the normal 40. If the adjustment cannot take place the same week, the employee would be due overtime pay or compensatory leave at 1 ½ hour for each hour worked.

## I. Compensatory Time for Non-Exempt Employees

Compensatory time, in lieu of overtime payment, is not allowed.

## J. Authorization of Overtime

The appropriate supervisor must approve overtime in advance. administrators/supervisors must not allow employees to work overtime without authorization and shall inform employees that if they 'elect' to work overtime without authorization, they may be subject to disciplinary action. Additionally, the regulations are clear that an administrator or supervisor may not allow the worker to 'volunteer' to work additional hours without compensation.

## K. Basic Requirements

The Fair Labor Standards Act's (FLSA) basic requirements are:

1. Payment of the minimum wage;
2. Restrictions on the employment of children; and
3. Recordkeeping.

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Reg 5064

Staff Time Schedules

Reg 5065-R6

Compensatory Leave for Employees