

Fair Labor Standards Act (FLSA) “Things to Know”

What is the Fair Labor Standards Act?

- ▶ **The Fair Labor Standards Act (FLSA) was enacted by Congress in 1938 as a means of economic recovery from the Great Depression. The Act:**
 - ▶ Established regular working hours.
 - ▶ Established a minimum hourly wage.
 - ▶ Required an overtime pay premium for certain employees.
 - ▶ Prohibited use of minors in oppressive occupations.
 - ▶ Has been amended many times, most recently in 2004.

- ▶ **Why is compliance with FLSA important?**
 - ▶ The School District can be held liable for violations.
 - ▶ Employees (supervisors) of the School District can also be held individually liable for violations.
 - ▶ If the School District is sued by an employee or audited by the Department of Labor, the District has the burden of proving the hours actually worked by covered hourly (non-exempt) employees.

- ▶ **What are ‘Non-Exempt’ & ‘Exempt’ employees?**
 - ▶ The FLSA identifies two (2) types of employees based on duties and compensation: ‘non-exempt’ employees and ‘exempt’ employees.
 - ▶ Non-exempt employees are required by the Act to be paid an overtime premium of one and one-half times their regular rate of pay for all hours worked in excess of forty (40) in a workweek.
 - ▶ Exempt employees are salaried employees and, as such, are required to fulfill the duties of their positions regardless of the number of hours worked in a given workweek. (No overtime pay.)

▶ **Who determines a position's FLSA status?**

▶ Human Resources, in collaboration with the Legal Department, administers specific tests to ensure that only jobs that meet exemption criteria are classified as exempt from overtime. The District utilizes four (4) primary exemption tests. Any position of the District that is classified as 'Exempt' has met the criteria for one (1) or more of the following FLSA exemption tests.

- ▶ Executive Employee
- ▶ Administrative Employee
- ▶ Professional Employee
- ▶ Computer Employee

▶ **Who Does Not Earn Overtime?**

Exempt Employees; examples listed below

- ▶ **Executive Employees** – such as Senior Management, Directors, Managers, Supervisors, Business Owners
- ▶ **Administrative Employees** – primarily Staff engaged in managing the employer's general business operations
- ▶ **Professional Employees** – such as Teachers, Lawyers, Doctors, Actors, Writers, Chefs, Actuaries
- ▶ **Computer Employees** – such as Systems Analysts and Designers, Software Developers, Network Administrators

▶ **What are the rules for paying overtime?**

- ▶ All overtime that is worked by hourly employees, whether authorized or unauthorized, **MUST** be either:
 - ▶ Paid at one and one-half (1.5) times the regular rate of pay OR
 - ▶ Used as 'comp' time off during the workweek (also earned at 1.5)
- ▶ Employees cannot have their pay "docked" in any subsequent payroll for working unauthorized overtime.
- ▶ Employees that work unauthorized overtime may be subject to disciplinary action. They must, however, still be paid for the overtime worked regardless of approval.

▶ **How does the District comply with FLSA?**

- ▶ Compliance is determined by the workweek.
- ▶ Each workweek stands alone and is treated separately from all other workweeks in the year.
- ▶ A workweek consists of 7 consecutive 24 hour periods. The School District's workweek begins Saturday at 12:00 AM and goes through Friday until 11:59 PM.
- ▶ Only hours that are worked in excess of forty (40) within a given workweek are considered overtime.

▶ **What Counts as Hours 'Worked'?**

- ▶ All work that is permitted or suffered (*experienced*)
- ▶ Breaks / Rest Periods (*Employees are provided a 15 minute break for each 4 hours worked per day.*)
- ▶ Travel between work sites during the regular work day (*Ordinary 'home to work' – 'work to home' travel is not work time.*)
- ▶ Training time (under certain conditions)
- ▶ Waiting time (under certain conditions)
- ▶ On-Call time (under certain conditions)

▶ **Training Time**

Time employees spend in meetings, lectures, or training counts as hours worked unless:

- ▶ Attendance is outside regular working hours
- ▶ Attendance is voluntary (not required by employer)
- ▶ The course, lecture, or meeting is not job related
- ▶ No productive work is performed during attendance

▶ **Waiting Time**

Counts as hours worked when:

- ▶ Time is controlled by the employer
- ▶ Employee is unable to use the time effectively for his or her own purposes

Hours not worked when:

- ▶ Employee is completely relieved from duties
- ▶ Time is long enough to enable employee to effectively use the time for his or her own purposes

▶ **On-Call Time**

Counts as hours worked when employee is:

- ▶ Required to stay on the employer's premises
- ▶ Unable to use the time effectively for own purposes

Hours not worked when employee is:

- ▶ Required to carry a pager / cellular telephone*

**Certain employees are paid for 'Stand-By' or 'Call Back' time.*

▶ **Lunch Breaks**

- ▶ Hourly employees are required to clock out and in for their unpaid meal breaks.
- ▶ During a meal break, the employee must be completely relieved from duty and not performing any work for the employer whatsoever.
- ▶ Certain employees are permitted, in accordance with their labor contract, to take their unpaid lunch break at the end of the day. These employees may continue to do so.

▶ **Can an employee volunteer to work "after hours" to complete work and not be compensated?**

- ▶ Employees may not work "off the clock". An employee cannot volunteer to work beyond their regular workday without compensation.
- ▶ An employee's good intention in performing additional work for the employer is still considered compensable under FLSA.
- ▶ Employees may not volunteer to perform any work that benefits the employer without being compensated.

▶ **Time Collection Devices (TCDs)**

- ▶ The District implemented time clocks to ensure accurate record keeping for FLSA compliance.
- ▶ A centralized, electronic record is critical to meet the burden of proof when reporting time worked by employees.

● **Common Pitfalls to Avoid**

▶ **Assuming a salaried employee is not eligible for overtime**

Salary basis and salary level are part of the determining criteria for overtime exemption. The job duties of the position, however, are the primary factors that are used in determining a job's eligibility for overtime under FLSA.

Human Resources, in collaboration with the District's Legal Department, administers specific tests to ensure that only jobs that meet exemption criteria are classified as FLSA overtime exempt.

▶ **Improper application of an FLSA exemption**

Specific testing must be conducted prior to applying any exemption from overtime. Advisement on exemption status for any District job must originate from Human Resources.

▶ **Failing to pay for all hours "suffered or permitted" to work**

Whether authorized or unauthorized, employees must be compensated for all hours worked. For hourly employees, time and one-half or compensatory time must be paid or earned for all hours worked over forty (40) in a workweek.

▶ **Limiting the number of hours employees can record**

All hours "suffered or permitted" to work must be accurately recorded. For this reason, time clocks were implemented to ensure accurate record keeping.

▶ **Failing to add all hours worked in separate areas for the same employer when calculating overtime that is due**

The District must ensure all hours an employee works are recorded regardless of their job assignments and locations throughout the District. Implementing time clocks helps ensure the District's compliance.

Both civil penalties and criminal penalties may be levied against an employer and individuals for violations of the Fair Labor Standards Act.