

Fair Labor Standards Act

KASBO Fall Convention 2023

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Fair Labor Standards Act (FLSA)

- FLSA is a federal employment law
 - Establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.
 - Applies to public school districts





**What we
will cover:**

Types of employees

Timekeeping

Scenarios for
Avoiding Liability

First Rule of the FLSA

- Forget “hourly” v. “salaried” classifications!!!
 - How an individual is paid, i.e. by the hour or salaried, does not matter in terms of the FLSA.
- Instead ask –
 - Is the employee...
 - Exempt or Nonexempt

Types of Employees

Exempt v. Nonexempt Employees

Exempt Employees

- FLSA's minimum wage and overtime provisions do not apply to these employees.
- Exempt employees include bona fide executive, administrative, professional and outside sales employees and certain computer employees.
- Job titles do not determine exempt status.

Nonexempt Employees

- Everyone else - Most employees are going to be nonexempt.



Executive Employee

Paid not less than \$684 per week (\$35,568 per year)?	Y	N
Paid on a salary basis?	Y	N
Primary duty managing the school district or a customarily recognized department or subdivision of the school district?	Y	N
Regularly and customarily supervises two or more employees in the department the executive is managing?	Y	N
Suggestions and recommendations about hiring, firing, advancement, promotion or any other tangible employment action with regard to other employees are given particular weight?	Y	N



Administrative Employee

Paid not less than \$684 per week?	Y	N
Paid on a salary basis?	Y	N
Primary duty consists of the performance of office or non-manual work directly related to the management or general business operations of the school district?	Y	N
Primary duty requires the exercise of discretion and independent judgment with regard to matters of significance?	Y	N



Professional Employee

Paid not less than \$684 per week? (Not Required for Teachers)	Y	N
Paid on a salary basis? (Not Required for Teachers)	Y	N
Does the employee's primary duty consist of the performance of work that requires knowledge of an advanced type in a field of science or learning customarily acquired?	Y	N



Computer Professional

Is the employee paid at least \$684 per week on a salary basis or paid on an hourly basis, at a rate not less than \$27.63 an hour?	Y	N
Paid on a salary basis (unless hourly)?	Y	N
Is the employee employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below?	Y	N
Does the employee's primary duty consist of: The application of systems analysis techniques and procedures to determine hardware, software or system functional specifications; ■ The design, development, documentation, analysis, creation, testing or modification of computer systems or programs based on and related to user or system design specifications; ■ The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or ■ A combination of the above.	Y	N



Avoiding Liability

Update Job Descriptions

- Review job descriptions and include language to reflect performance of exempt duties.
 - For instance, the job description of an exempt executive employee should indicate the individual evaluates and/or makes employment recommendations about the employees he or she supervises.

Tips for handling misclassification of employees

- Verify the facts
- Communicate precisely and effectively
 - Explain the exemption changes and why they are being made to the employee
- Consider the employee's viewpoint
- Decide whether to pay back overtime

Potential Problem Positions

- Technology related employees
- Executive or Administrative Assistants
- Director of Food Service
- Director of Transportation
- Head Custodian



Rule 10 Coaches



- Rule 10 coaches cannot be volunteers. (KSHSAA rules)
- Rule 10 coaches are not exempt employees. (FLSA)
- Rule 10 coaches are subject to minimum wage and overtime requirements. (FLSA)
- Wage & hour opinion letter, but only applies to those not employed in other positions or dual employment.
- Be careful to recognize joint employment problems that may arise.

Joint Employment

- Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees; or
- Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or
- Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.



Timekeeping

Timekeeping

- Have a good timesheet or other method of timekeeping.
- Whatever timekeeping system the school uses, it should contain the following components:
 - An accurate listing of the time work begins and ends;
 - A signed acknowledgement by the employee that the timesheet accurately represents all of the hours the employee has worked for the school in the work week;
 - A signed certification by the supervisor that the timesheet accurately reflects the hours the employee worked during the work week.

Employee Timecard

DATE	IN	OUT	HOURS
04/20/08	08:30	17:00	8.5
04/21/08	08:30	16:15	7.5
04/24/08	08:45	17:00	8.5
04/25/08	08:30	17:00	8.5
04/26/08	08:30	17:00	8.5
04/27/08			
04/28/08			
04/29/08			
04/30/08			
Total			

John A. Doe
Office Department
Access: Class 1
ID# MGA-002125



Avoiding Liability

- Have supervisory, payroll and finance staffs monitor weekly time records for accuracy and completeness.
 - Report all overtime worked by nonexempt staff to the business office to ensure the employees are paid overtime or credited with compensatory time.
 - If the school has concerns about information being recorded properly or staff being paid properly, determine if an audit of employee records is needed.

Scenarios

Potential Problem Areas

- **Paying bus drivers for only scheduled hours or the route time.**



- If a bus breaks down or traffic causes a delay in the completion of the route, the additional time spent must be counted as hours worked.
- If a bus driver is required to do safety checks on the bus before driving begins or to take steps to secure the bus after the driving is completed, the time spent doing these tasks must be included in the hours worked.

Potential Problem Areas

Deducting meal period from the calculation of work time for teacher aids or paraprofessionals.



- If paraprofessionals or aides are required to eat with the students they work with, the meal period cannot be deducted.
- If they are not required to eat with the students and are relieved of all duties for a period of 30 minutes or more, the lunch period can be deducted.

Potential Problem Areas

Employees who work through lunch and/or eat at their desk.



- Employees should be completely relieved of duty if the time is not to be counted as work time.
- An employee eating at his or her desk should not be answering telephones, responding to work-related inquiries or doing any work-related tasks during the lunch period.

Potential Problem Areas

Employees who work multiple jobs for one school district.



- Even though an employee may be paid separately for each job, the total hours worked must be combined to determine if the employee worked overtime in any given work week.
- Generally, overtime pay must be calculated using a blended rate.

Potential Problem Areas

Cafeteria managers, maintenance supervisors, transportation supervisors and janitorial supervisors who spend much of their time doing the same type of work as the people they supervise.



- These employees are often misclassified as exempt employees.
- To be exempt, the employee must meet the salary basis, salary level and executive (primary duty management) or administrative (primary duty office or non-manual work) duties tests.

Potential Problem Areas

Maintenance employees who are paid on a per-call basis and receive a flat fee when they have to work in the event of an emergency.



- Schools can pay workers at a different rate than the regular rate when they have to work on an emergency basis.
- Hours spent working on an emergency basis should be calculated and added to the regular hours to determine if the employee has worked overtime.

Potential Problem Areas

Non-exempt employees who serve as volunteers, or who "volunteer" to assist with school programs or functions.



- An employee cannot volunteer to do the same type of work he or she is paid to do.
- A bona fide volunteer must offer his or her services freely, without coercion or pressure, direct or implied.
- If an employee's child is participating in the program, the Department of Labor will not assert a violation of FLSA. However, it does not preclude the employee from later asserting a claim of an FLSA violation.

Potential Problem Areas

Office staff who stay after scheduled hours to perform school related work such as taking tickets at athletic events, working at an open house, going to staff meetings, or setting up for functions, etc.



- Unless such activities are truly occasional and sporadic, the hours spent doing these tasks must be compensated and the hours must be added to the employee's regular work hours for overtime purposes.
- If the activity is occasional and sporadic, the hours do not need to be added to the employee's regular work hours for overtime purposes. An activity is occasional and sporadic if it is:
 - not a regular assignment;
 - solely at the employee's option (no coercion, implied or explicit); and
 - in a different capacity than the employee's regular work.

Potential Problem Areas

Non-exempt staff who attend training sessions or staff meetings during the summer or on weekends for which they are not paid.



- If attendance at the training session or staff meeting is required as part of the job, the employee must be paid for the hours spent at the training or the meeting.

Potential Problem Areas

Employees who come to work early or stay late.



- If employees are being allowed to work during these times, they must be compensated for the time.
- Insignificant amounts of time do not need to be compensated.
- Do not allow employees to perform any work before they have clocked in or after they have clocked out.

Potential Problem Areas

Employees who work in after school programs at school for students.



- Even though programs may be run by other groups, like the YMCA, the Department of Labor considers this to be joint employment unless the school and the other group are entirely independent of each other and are completely disassociated with respect to the employment of the employee.

Potential Problem Areas

School employees working special functions to be held at the school, but sponsored by others (PTA, Booster Club, etc.)



- Assume the school will be required to count this time as hours worked.
- If a rental fee for use of the facility is collected, include an amount equal to the employee's overtime rate for the expected hours in the rental fee.

Potential Problem Areas

Secretary calling substitutes from home or other employees doing work at home.



- Hours for such work must be recorded and compensated.
- If an employee performs work at home in violation of school policy, the employee generally must be paid for the hours worked but can be disciplined for violations of policy.

Potential Problem Areas

Assuming salaried means an employee is exempt.



- The fact an employee is paid on a salary basis does not make the employee exempt. The employee must also meet the duties test and qualify as either an executive, professional, administrative or computer employee.

Potential Problem Areas

Treating an employee as an independent contractor.

Independent Contractor



Or Employee

- A school district cannot deem employees to be independent contractors to avoid paying overtime.
- The Department of Labor will examine a number of factors to determine if an individual is an independent contractor or an employee.
- If the work is controlled or directed by the school in day-to-day operations, the person must be treated as an employee for FLSA purposes.

Avoiding Liability - Timekeeping

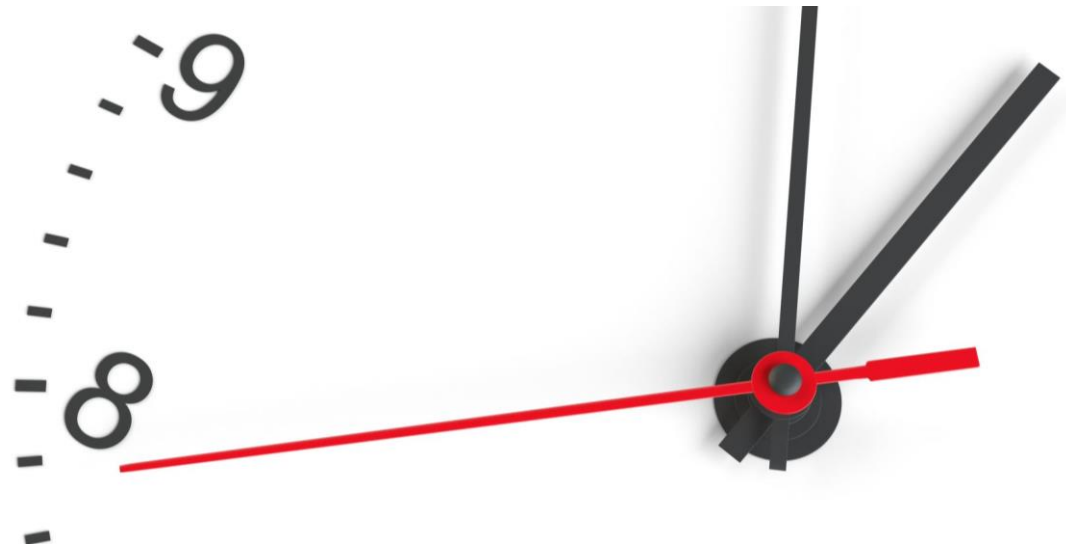
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Trouble Spots - Clock Management

Maintenance Mike shows up to work every day, and he is unfailingly cheerful. Unfortunately, he has a habit of arriving late and disappearing early. On six of the ten workdays in the past pay period, he forgot to either clock in, clock out, or both.

- Can the payroll clerk dock Mike's pay for the days he did not clock in or out properly?



FLSA Warning!

August 30, 2023 Notice of Proposed Rulemaking (NPRM)

- Proposes raising weekly salary from \$684 to \$1,059 per week (\$35,568 to \$55,068 per year)
- Proposes raising “highly compensated” threshold from \$107,432 to \$143,988
- Seeks a mechanism that would automatically update earnings thresholds every three years
- Final rule will likely be smaller increases. Could be effective as early as July 2024.

Wage Hike ahead?





Questions?

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