

Current Issues for Leave and Supplemental Pay

AASBO Certificate Program

February 2021

Dennis Heard

Alabama Department of Education

Family and Medical Leave Act (FMLA)

- Generally, FMLA guidance for school boards is not provided by the Alabama Department of Education.
- Other professional organizations have provided some guidance to Alabama school boards on the Emergency FMLA (Covid-19) Leave requirements under the Family and Medical Leave Act.
- The U.S. Department of Labor guidance on FMLA can be accessed on our website.



Alabama State Department of Education

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Chief of Staff

Internal Audit

Strategic Initiatives

General Counsel

External Affairs Division

Assistant State Superintendent

Agency Coordination
Stakeholder Engagement

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ALSDE Organizational Chart

Career and Technical Education/Workforce Development Division Deputy State Superintendent

Career and Technical Education
Workforce Development

Administration and Financial Support Division Deputy State Superintendent

Disability Determination Service

Human Resources

Office of Departmental Support

Budget
Operations
SDE Accounting

Office of LEA Support

CNP - Child Nutrition Programs
LEA Accounting
LEA Fiscal Accountability
Pupil Transportation
School Architect

Teaching and Learning Improvement Division Chief Academic Officer / Deputy State Superintendent

Office of Student Learning

AMSTI - AL Math, Science, and
Technology Initiatives
ARI - AL Reading Initiative
Counseling and Guidance
Educational Technology
Federal Programs
Instructional Services
Professional Learning Gateway
Special Education Services

Office of Evaluation and Innovation

Accountability
Charter Schools and Flexibility
Compliance Monitoring
Educator Effectiveness
Grants and External Funding
Information Systems
Prevention and Support Services
Research and Development
Student Assessment

Office of Teaching and Leading

Educator Assessment
Educator Certification
Educator Preparation
Educator Recruitment and
Placement

▲ CSFO and Fiscal Accountability	Local Schools	Bid Law and Purchasing	State and Local Funding	Additional Resources
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Alabama Association of School Business Officials



Related Links



CSFO Contact Information



Access to Federal Employment Guidance

- Information at the bottom of the U.S. Department of Labor home page includes:
 - Wage & Hour Guidance
 - Family Medical Leave

Quick Links

[How Do I File for Unemployment Insurance?](#)

[Unemployment Insurance Relief During COVID-19](#)

[Outbreak](#)

[Apprenticeship Finder](#)

[Worker.gov](#)

[Employer.gov](#)

[Family and Medical Leave Act \(FMLA\)](#)



[Fair Labor Standards Act \(FLSA\)](#)

[Workplace Posters](#)

[Minimum Wage](#)

[Guidance for Visitors to DOL National Office](#)

Family Medical Leave Act (FMLA)

- **FMLA Compliance Guide**

- ***“The Employer’s Guide to the Family and Medical Leave Act”***

- ***Page 17:***

- Only the time actually worked, including overtime hours worked, is counted. Time not actually worked, including vacation, personal leave, sick leave, holidays, and any other form of paid time off (PTO) is not counted towards the 1,250 hours of service. Unpaid leave of any kind or periods of layoff also are not counted.*

- An employer has the burden of showing that the employee has not met the hours of service requirement even if it is not required to maintain time records for that employee. This may be the case with certain employees, such as school teachers, who may work additional time outside of the classroom or at home.*

Family Medical Leave Act (FMLA) - continued

- **FMLA Compliance Guide**

- ***“The Employer’s Guide to the Family and Medical Leave Act”***

- ***Page 54:***

- Leave taken by an instructional employee for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation, when the employee would not have been required to report for duty, is not counted against an employee’s FMLA leave entitlement.*

- ***Page 55:***

- Time that an employee is not scheduled to report for work may not be counted as FMLA leave. Only the amount of leave actually taken may be counted against the employee’s leave entitlement... When a holiday falls during a week in which an employee is taking the full week of FMLA leave, the entire week is counted as FMLA leave. However, when a holiday falls during a week when an employee is taking less than the full week of FMLA leave, the holiday is not counted as FMLA leave, unless the employee was scheduled and expected to work on the holiday and used FMLA leave for that day.*

Quick Links

[How Do I File for Unemployment Insurance?](#)

[Unemployment Insurance Relief During COVID-19](#)

[Outbreak](#)

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[Workplace Posters](#)

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Fair Labor Standards Act

- **Wage and Hour Guidance**

- Overtime Pay (on left side of screen)

- Fact Sheets

- Executive, Administrative, and Professional Fact Sheets

- Recordkeeping and Reporting (on left side of screen)

- Fact Sheet on Recordkeeping Requirements Under the Fair Labor Standards Act

- Official Poster



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Search...



LEA Fiscal Accountability

There are no items to show in this view of the "Announcements" list.

Superintendent Memoranda

Responsible for financial administrative and fiscal accountability requirements for school systems as mandated. Activities include: K-12 funding, local education agency audits, certification and training of school finance and administrative personnel, and technical assistance to local school systems and state offices.



Salary Schedules

Employee Leave Laws

State Board Rules

Forms

Guide to State
Allocations

Links

Warrant Information

LEA Fiscal Accountability > Links: State

NOTE: These links are provided for your benefit only. The inclusion of these links does not imply the endorsement by the SDE of the web sites or their sponsors.

State	Federal	Miscellaneous
Title	Description	Modified
Alabama Attorney General Attorney General Opinions	Opinions issued by the Alabama Attorney General provide legal guidance for compliance with Alabama laws.	12/10/2015
Alabama Department of Archives and History Record Retention	The Records Retention requirements for public records for schools and school board offices include designations as permanent records and length of time for maintaining non-permanent records. The record destruction guidelines are included in the record retention requirements.	12/10/2015
Alabama Department of Finance State Purchasing	The "State Bid List" includes competitive bid contracts that may be utilized by school boards to meet the requirements of the Alabama Competitive Bid Law.	12/10/2015
Alabama Legislative Information Service State Laws	Alabama laws may be accessed under the Code of Alabama and the Alabama Constitution. Most state laws for school boards are contained in Title 16 of the Code of Alabama.	12/10/2015
Ethics Commission Ethics Opinions	The Ethics Opinions provide guidance on numerous issues for public officials and public employees of Alabama school boards.	12/10/2015
Examiners of Public Accounts	The State Examiners website contains several resources that provide information and guidance for Alabama school boards including audits issued by the State Examiners of county school boards and a few city school boards.	12/10/2015

Bonuses and Retroactive Pay

- A school board cannot legally give a Christmas bonus although some do anyway.
- A school board can give a lump sum, one-time salary supplement “for prospective services to be rendered”. **[See AG Opinion 88-00264]**
- A school board cannot give retroactive payments to an employee for services rendered in the past where there was no expectation or agreement of payment for these services. **[See AG Opinion 99-00051]**
 - **WHY?** Section 68 of the Constitution of Alabama.

Granting Additional Paid Leave

- Additional Leave for Bereavement Purposes (AG Opinion 99-00020)
 - *“There is no authorization in section 16-8-26 for a school board to allow an employee to have additional days beyond the maximum of five days permitted by that section.”* [Personal leave.]
 - *“Leave for bereavement purposes for employees of county boards of education has been allowed by state law in the form of sick leave. In addition, there is no statutory authorization for a county board of education to adopt a policy of granting leave days for bereavement beyond that allowed by state law. A county board of education, therefore, cannot establish a policy inconsistent with state law by creating a category of bereavement leave.”* [Sick leave.]

Granting Additional Paid Leave - continued

- Additional Military Leave (AG Opinion 91-00141)
 - *“Code of Alabama 1975, §31-2-13(a) does not grant to any entity covered by that statute to pay more than 21 working days per calendar year of military leave to those persons who have been called into active federal service.”*
[NOTE: This law was amended to change 21 working days to 168 working hours.]
- Additional Pay for the War on Terrorism (Section 31-12-5)
 - *“The amount of compensation required to be paid to an employee called into active service under this section shall be paid for the duration of active military service, the length of which shall be determined by the Adjutant General of the Alabama National Guard, from the date of activation and shall be paid from funds appropriated to the employer.” [Military Leave Differential Pay]*

Independent Contractor

- U.S. Department of Labor final rule clarifying the standard for employee versus independent contractor status under the Fair Labor Standards Act (“FLSA”) is effective March 8, 2021.
- Does not change IRS rules on independent contractor vs. employee.
- Since it doesn’t change the IRS rules then it seems to deal with overtime and minimum wage requirements of the FLSA.

Independent Contractor-FLSA

- Independent contractors are workers who, as a matter of economic reality, are in business for themselves as opposed to being economically dependent on the school board for work.
- The new rule adds two “core factors” in determining the economic dependence of the worker:
 - The nature and degree of control over the work.
 - The worker’s opportunity for profit or loss based on initiative or investment.

New Independent Contractor-FLSA Rule

- The new rule adds three additional guideposts to consider when the two new core factors do not point to the same determination:
 - The amount of skill required for the work.
 - The degree of permanence of the working relationship between the worker and the school board.
 - Whether the work is part of an integrated unit of production.
- The actual working relationship is more important than the contract terms in determining the economic independence of the worker.

Contact Information

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