

# FAIR LABOR STANDARDS ACT

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Particular “Opportunities” for School Boards

Alabama Association of School  
Business Officials

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# The Fair Labor Standards Act (FLSA)

## A little context . . .

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Federal Law enacted by Congress in 1938

When enacted, did not apply to state and local government

1986 – U.S. Supreme Court ruled that it applied to state and local government

# FLSA Basics

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- Provides for minimum wage and overtime payments
- Overtime is paid at 1½ times employee's hourly rate
- Earn overtime for all hours worked in a workweek over 40
- Requires that time records be kept
- Not required to pay to everyone
  - Non-exempt – have to pay overtime
  - Exempt – do not have to pay overtime

# Topics to Discuss

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- Minimum Wage
- Computation of Overtime
- How to Determine Hours Worked
- Record Keeping
- Exemptions
- Compensatory Time

# An Overview of the FLSA

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# MINIMUM WAGE

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# Minimum Wage

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- Current federal minimum wage is \$7.25 per hour.
- Covered non-exempt employees must be paid not less than minimum wage for all hours worked
- Measure by week – divide compensation by number of hours worked in week
- There is no state minimum wage in Alabama.

# Minimum Wage and Schools

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- Most Board employees are paid salary – we don't often pay much attention to minimum wage
- Can creep up, especially as minimum wage creeps up
- Caution: Employees paid a salary and also paid a lump sum for tasks
- Review substitute pay schedules, pay rates for field trips, “shuttle pay,” and supplements (for support personnel)

# COMPUTATION OF OVERTIME

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# Overtime

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- The most familiar part of the FLSA
- Overtime Generally :
  - 1 ½ times the regular rate of pay for all hours worked over 40 hours in a work week
  - Paid as cash or compensatory time off – both are at 1 ½ rate
  - Regular rate of pay includes shift differential, bonuses, and on-call pay if applicable
- For salaried employees, may be “overtime premium”

# Overtime Pay

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Overtime calculated using the employee's regular rate of pay

- It is a rate per hour
- Calculated by dividing total earnings for week by total hours worked
- Cannot be less than minimum wage
- If employee is salaried, have to calculate

# Calculating the Regular Rate

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School boards are accustomed to couching in terms of “Daily Rate of Pay”

FLSA standard measure is the week

Divide salary by number of work weeks intended to cover /  
can use days and multiply by 5

Divide weekly salary by number of hours salary intended to  
cover

If salary designed to cover fluctuating hours, or if pay is for  
salary and other payments, take total remuneration and  
divide by hours worked

# Calculating the Regular Rate Complicating Factors

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Salary is monthly, contract is in terms of days

Multiple positions

Supplements

Salary Schedules

Extra Work – lump sum payments

Timekeeping limitations/practices

# Calculating the Regular Rate Practical Tips

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Get a good formula in place and stick with it

Use technology

Remember the fundamentals

All Compensation Earned	= Regular Rate
All Time Worked	

# Is Overtime Due ?

## Calculating Hours Worked

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- Overtime only has to be paid if more than 40 hours are worked in a work week
  - Work Week – Sunday - Saturday
- Only count compensable hours
- Compensable work hours do NOT include holidays, vacation or sick leave
- Work hours can NOT be averaged across two or more weeks to avoid overtime:
  - It is NOT acceptable to average work hours at the end of the month
  - It is NOT acceptable to work over 40 hours in one week and take the time off, hour for hour, the next week
- Overtime does NOT accrue simply because an employee works beyond his/her regular schedule on a given day

# HOURS WORKED & RECORD KEEPING

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# Keeping Time

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Can use timesheets or electronic means

Either way, must have ability to record all time worked

- Bus drivers
- Weekend Work
- Special projects
- Start time and end times for work

Sign in and out for lunch/breaks

# Compensable Work Hours

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All hours an employee is required to work, including idle and certain on-call times

Waiting time is work time if period of waiting is :

- Unpredictable
- Short duration
- Employee unable to use time effectively for own purposes

Engaged to wait=work time

Waiting to be engaged=Not work time

# On Call Time

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Whether “on call” time is payable or not depends on whether or not the employee is effectively allowed to use time for his or her own purposes.

Employees who have to remain on the employer’s site are still “at work” while on call.

Employees who may go home or leave a message where they may be reached are *usually* not considered working.

# Calculating Time – Lunch Breaks

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Lunch breaks – bona fide lunch breaks of more than 20 minutes

- If on duty, have to pay
- If interrupted, have to pay
- Good idea to have employee sign out for lunch

Other breaks – If less than 20 minutes, compensable

Remember, overtime is by week, not by day

# Calculating Time - Substitutes

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Need a time sheet for substitutes

Conventional method is to have sub sign in on employee's time sheet

Cannot track time (no place to put it), much less number of days worked

Complication – when employee (bus driver, etc.) substitutes, no centralized way to track hours worked until it is too late

# Meeting and Training Time

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- Mandatory meeting/training time is work time
- Voluntary training during work hours is work time, IF:
  - Approved by appointing authority
  - Directly related to employee's job
  - Designed to enhance employee's performance
- Voluntary training after hours to gain additional skill or knowledge is NOT work time, even if job related

# Travel Time

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Ordinary travel to and from work is NOT work time

Travel from work site to work site is work time

When required to travel substantial distance to perform a job away from regular work site, travel is work time

Overnight travel is work time during the employee's normal work day.  
Travel during non-working hours as a passenger is not work time.

# Timekeeping Practical Tips

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Get a good substitute tracking system in place

Establish a self audit practice – once a week, have principals look at time sheets to identify anomalies or too much consistency

Communicate expectations to employees

Be vigilant in following up when expectations are not met

Think about an electronic system, and use it!

# THE FLSA & EDUCATION

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# We Just Aren't Set Up for This...

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Payroll practices evolved for many years without FLSA influence

Decline in number of hourly employees

Prevalence of salaries for both professional and support employees

Salaries usually expressed in terms of days

Work limited number of days but receive yearly salaries

Supplements, lump sums, mandatory pay raises

# Policies & Procedures

## What should we say about the FLSA?

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Function of policies is to establish our “position” on the FLSA and to lay out our expectations

Can also serve as an “understanding” with Some ideas:

- What work hours are
- How to complete time records
- That time records have to show actual times worked
- Time has to be accurate
- What signing a time sheet means
- How to address inaccuracies

# Policies & Procedures

## What should we say about the FLSA?

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### Some ideas:

- ✓ What work hours are
- ✓ How to complete time records
- ✓ That time records have to show actual times worked
- ✓ Time has to be accurate
- ✓ What signing a time sheet means
- ✓ How to address inaccuracies
- ✓ When overtime may be worked
- ✓ Overtime approval process
- ✓ Lunch and breaks – sign in and out
- ✓ If lunch missed, how to handle
- ✓ Time records – contemporaneous
- ✓ Process for reporting request to violate policy on overtime
- ✓ Compensatory time
- ✓ What happens when the “rules” are violated

# Policies & Procedures

## What should we NOT say...

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- ✓ Overtime will not be paid if...
  - ✓ Express things in terms of “clocking in and out” instead of when employees are “working”
  - ✓ Employees will not be paid for lunch...
  - ✓ No overtime shall be worked without the knowledge of your supervisor.
  - ✓ Each supervisor is responsible for managing overtime.
  - ✓ Supervisors are responsible for certifying the accuracy and truthfulness of time sheets
  - ✓ Employees shall not sign in (clock in) until their scheduled times

# Policies & Procedures

## How to get the word out - Training

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Who? Conduct training for the following categories:

- a. Employees subject to overtime
- b. Employees who supervise employees subject to overtime
- c. Employees who assist employees who supervise employees subject to overtime
- d. Policy makers – those who design or implement the rules and procedures
- e. Record keepers – those who deal with the records

# Training

## A Simple Plan

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What do we train on?

- a. Depends on the “Who” being trained
- b. Overtime principles, system procedures, expectations
- c. Specific processes
- d. What to do if something goes wrong
- e. Do’s and Don’ts (be careful with this)
- f. Areas of concern – red flags to look for
- g. System philosophy – the “party line”

# Training

## A Simple Plan

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When do we train?

- a. Hiring
- b. Before school starts/beginning of year
- c. At intervals during year
- d. When problems arise
- e. No perfect answer
  - Depends on how many employees you have and what your system's needs are

# Training

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How? How you train is every bit as important as what you train on . . .

- Speech
- Power Point
- Always have handouts
- In a classroom? Auditorium?

Focus should be on effective communication of message to target audience – will be different to different groups

If you have no record of when it occurred, what was discussed, and who was there, it won't help if you are sued.

# Training Some Tips

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Don't use a “train the trainer” method

- Please don't train your administrators and leave training employees up to them

Use visuals, handouts

Document attendance and make it mandatory

Partner with employee organizations

Other ideas?

# Policies & Procedures

## Managing & Enforcing Overtime Rules

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Function of policies is to establish our “position” on the FLSA and to lay out our expectations

A failure to follow policy also has consequences – how do we get to the bottom of it and what do we do when we find problems?

# Managing Overtime

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Perhaps the most difficult role – how do you help manage “overtime problems”?

- Establish effective channels of communication between departments and with local schools
- Know when to consult HR or local school management (not the bookkeeper):

Examples:

1. Failure to document
2. Time sheet problems
3. Sign in and out not lining up with schedule
4. Any report of overtime worked and not paid for
5. “Informal” comp time plan
6. Schedule variation

# Best Management Practices

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## Time clock or electronic time-keeping system

- Employee controls input and corrections
- Should require deliberate action/conscious choices
  - Punch in
  - Swipe a card
  - Scan a fingerprint
  - Sign a sheet
- “Time clock” in an area where can be supervised

# Best Management Practices

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## Time clock or electronic time-keeping system

- A timekeeping system where other Board employees (secretaries and payroll clerks) or supervisors complete time records for employees will lead to problems
- Develop a system where employees tell the Board when they actually worked NOT the other way around
- Has to reflect actual time worked NOT scheduled time
- Be cautious about assumptions . . . Including whether or not lunch or breaks taken

# Best Management Practices

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## Review and Monitoring

- Time sheets/records should be reviewed (and maybe even certified) weekly, regardless of payroll period
  - Shorter time period promotes accuracy
  - Better chance of remembering
  - Identify problems sooner
  - Eliminate the “hurry up to get paid factor”
  - Can manage time more effectively

# Best Management Practices

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## Review and Monitoring

- Timesheets should be reviewed regularly by a “specialist/administrative level” employee
  - Erratic work habits
    - Too much consistency
    - Missed entries
    - Leave issues
    - Lots of overtime
- Look at service reports
  - Staff write all sorts of things on service reports

# Best Management Practices

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## Review and Monitoring

- Visit schools during week
  - Use schedule. Are people where they are supposed to be?
  - Lunch being taken?
  - Everyone signed/clocked in?
  - Talk to employees – not just principal
  - Focus on lunchroom workers and custodians
  - Are posters up? Notices?

# Best Practices

## Handling Complaints and Problems

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Develop a process for reporting issues

- Should be comfortable for employees
- Should be outside the “chain of command”
- Administration – up to speed on overtime

If you don't know there is a problem, you can't fix it!

If the Principal doesn't recognize the problem, she can't fix it!

Even if the Principal knows about the problem, safe bet it won't be fixed right.

# IDEAS

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- Appoint someone to handle – be the “overtime guru”
- Develop a reporting form, an e-mail box, a hotline, or other way to report
- Make reporting easy and non-confrontational
- Tell employees about it
- Posters, e-mails, memos, newsletters
- Tell Uniserve directors

# Discipline

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If an employer suffers or permits overtime to be worked, must pay for it

Suffer or permit – If the employer knew or should have known the work is being performed, must either exercise authority to *prohibit* the work or pay for it

Can't suffer or permit the work and then just not pay for it  
In other words, the discipline cannot be not to pay for the overtime

THE BURDEN IS ON YOU!

# Discipline

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What do I do if an employee does not follow the rules or works unauthorized overtime?

1. Pay the employee
2. Talk to the employee – be specific and find out what the problem is – there is usually more to the story
3. Follow up on conversation with written communication
  - a. Describe reason for conversation
  - b. Nature of discussion
  - c. Understanding reached
  - d. Plan moving forward, including ramifications

Monitor situation – Flag it.

- If there is a problem, it will surface again

# Problem Solving

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This is why you should take an active role in overtime administration

We are dealing with people – problems are going to come up

- Time sheets will come in unsigned
- Will miss some overtime
- Employees will stop following schedule
- Principals will come up with own rules

Problem solving rarely involves simple resolution of the issue at hand. May have to mediate between departments. May have to revise policies, guidelines, training.

# Problem Solving

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May weigh risk and determine the best approach is to leave things as they are

Be proactive – solve your problems before they become problems

# EXEMPTIONS

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# Exemptions

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- Certain positions meet exemption criteria from FLSA regulations based on the nature of work performed and the amount and type of pay received
- Positions “exempt” under the FLSA are not entitled to overtime compensation regardless of the number of hours worked
- There are detailed tests for exemption
- Exemption tests are complicated – decisions should not be made by local administrators

# New Rule

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This year, we will see a major update to FLSA regulations

Changes concern exemptions

Exemptions commonly referred to as “EAP” exemption

E = Executive

A = Administrative

P = Professional

# Result of Rule

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Expand overtime protections to certain “white collar” employees

Salary threshold goes up substantially

Automatic increase for salary threshold every three years

# Effective Date

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January 1, 2020

# Application of Exemption Tests

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Job titles alone are insufficient to establish exemption

Job descriptions alone are also insufficient to establish exemption

Have to look at salary and duties performed

# Exemption Categories Commonly Seen in Education

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- Executive
- Administrative – regular and academic
- Professional
  - Learned Professional – doctors, lawyers, teachers
  - Creative Professional – artists, musicians, creative writers
  - Computer Employee

“EAP”

# Executive Exemption

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1. Salary of at least **\$684.00** per week (**\$35,568.00 per year**); AND
2. Primary duty must be management; AND
3. Customarily and regularly direct the work of at least two or more other full time employees or the equivalent; AND
4. Authority to hire or fire, or the suggestions and recommendations as to hiring, firing, advancement, promotion or other change in status must be given particular weight

# Executive Exemption

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*What is "management"?*

Regulations provide examples :

- Personnel administration (hiring, training, setting work hours, evaluating, handling problems, discipline)
- Resource allocation, whether organizational or departmental (purchase, allocation of materials, making work assignment, equipment decisions)
- Oversight/control of the organization/ department (budget implementation, site control, legal compliance)

## Executive Exemption

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*What does “particular weight” mean and how much influence does an executive have to possess in order to meet the exemption?*

No precise definition - does not mean final decision-making authority, or even the authority to make a final recommendation

Based on totality of the circumstances by weighing factors such as the employee’s job duties, the regularity of the employee’s suggestions regarding employment and how often those suggestions are followed or relied upon.

# Professional Exemption

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Learned Professional Test

&

Creative Professional Test

# Learned Professional Test

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1. Salary of at least **\$684.00** per week (**\$35,568.00 per year**); AND
2. Primary duty is performance of work requiring advanced knowledge; AND
3. The advanced knowledge must be in a field of science or learning; AND
4. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction

# Learned Professional Test

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*What is work requiring advanced knowledge?*

Work predominately intellectual in character and which requires consistent exercise of discretion and judgment -- advanced knowledge used to analyze, interpret or make deductions from varying facts or circumstances

*What is a field of science or learning?*

Law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, sciences, and other areas that have associated professional characters – NOT including mechanical arts or skilled trades where knowledge may be advanced but not in a field of science or learning

# Learned Professional Test

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*What is a prolonged course of specialized intellectual instruction?*

The type and level of training necessary to get into a chosen profession such as by acquiring an appropriate academic degree - not “on-the-job training” or available for occupations in which most employees acquire skills by experience rather than through specialized intellectual instruction. It is NOT a high school education.

*Is the degree an absolute requirement?*

Apparently not – “customarily” means the exemption may be available to employees in such professions if employees have achieved substantially the same knowledge level and perform substantially the same work as the degreed employees but who have attained the advanced knowledge through a combination of work experience and intellectual instruction.

# Creative Professional Test

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- (a) Salary of at least \$455.00 per week (\$23,660.00 per year); AND
- (b) Primary duty is performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor

*What type of work qualifies for the creative exemption?*

Work requiring invention, imagination, originality or talent as determined on a case-by-case basis -- actors, musicians, composers, soloists, certain painters (“artists”), writers, cartoonists, essayists, and novelists. The focus is on the extent of the invention, imagination, originality and talent exercised by and allowed of the employee.

*What are the recognized fields of artistic or creative endeavors?*

Music, writing, acting, graphic arts or others, as determined on a case-by-case basis.

# Administrative Exemption

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1. Salary of at least **\$684.00** per week (**\$35,568.00 per year**); AND
2. Primary duty is performance of office or non-manual work directly related to the management or general business operations of the employer; AND
3. Primary duty includes the exercise of discretion and independent judgment about matters of significance

# Administrative Exemption

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*What does discretion and independent judgment mean?*

Employee has authority to make independent choices about important matters in his or her job, free from immediate direction or supervision

Numerous factors to consider, but ultimately prescribes a case-by-case analysis

# Administrative Exemption School Board Employees

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Section 541.204 specifically addresses application of administrative exemption to educational establishments and prescribes a special test:

1. Salary of at least \$684.00 per week or starting salary for teacher; AND
2. Primary duty is performing administrative functions directly related to academic instruction or training

# Administrative Exemption School Board Employees

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New rule raises the salary threshold

BUT

Alternative salary threshold – starting salary for teachers (for FY2019, this is \$39,301.00 for 187 day contract)

Question – Do we have to convert this salary to account for a longer contract (i.e. 12 months)?

Answer – Most likely. The tests use a weekly salary amount to meet the threshold and DOL guidance indicates that the “comparator” is the weekly salary.

# Administrative Exemption - School Board Employees

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## Administrative functions

- “Work related to the academic operations and functions in a school rather than to business along the lines of general business operations”

# Administrative Exemption School Board Employees

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Remember, the salary test is only the first part

2<sup>nd</sup> part of test → Have to be *Academic* Administrative Personnel

According to DOL, includes:

- Superintendent
- Principals and vice-principals
- Department heads in higher *learning*
- Academic counselors and advisors
- Other employees with similar responsibilities

Does NOT include:

- General business operations
- Building management or maintenance
- Health of students and staff
- Lunchroom managers

## Administrative Exemption – School Board Employees Non-Exclusive Application

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- Test not exclusive.
- Employees may be subject to exemption provided by the general test for administrative exemption or by tests provided by the other exemptions.
- Some positions that *could* be subject to general administrative exemption are office managers, employees in finance departments, some human resource department employees, and other like employees - solely depends on specific duties performed by employee and level of responsibility afforded to the employee.

# Salary for 9, 10 and 11 Month Employees

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What about the salary threshold for employees who work less than 12 months?

Have employees who are paid over 12 months but work less.

Is it \$684.00 per week over 12 months or less?

DOL guidance explains that an annual salary covering a duty period of less than a year, when paid over 12 months can be lower than the threshold and the exemption would still apply

The measure is whether the salary over the duty period worked meets the required minimum amounts

# What about teachers?

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Teachers are “Professional” employees = Professional Exemption

Some salaries might not meet the threshold of \$684/week

Special Rule for “bona fide teachers” – do not have to meet the salary threshold

New rule does not affect “bona fide teachers”

# Bona Fide Teachers

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Primary duty – teaching, tutoring, instructing, lecturing in activity of imparting knowledge

Employed and engaged as a teacher in an educational establishment

Includes classroom teachers, career tech teachers (“skilled and semi-skilled trades and occupations), preschool teachers, kindergarten teachers, coaches

## SO, WHO IS EXEMPT?

- ❖ Teachers
- ❖ Certificated personnel
- ❖ Principals
- ❖ Directors
- ❖ Executive Level Employees
- ❖ Superintendent
- ❖ CSFO
- ❖ Other Directors
- ❖ Administrative Employees
- ❖ Nurses (R.N.'s)
- ❖ Accountants

## AND WHO IS NOT?

- ❖ Bookkeepers
- ❖ Administrative Aides
- ❖ Custodians
- ❖ Maintenance Crews
- ❖ Bus Drivers
- ❖ LPN's and other nurses with two year degree or less
- ❖ CNP Personnel

# Exempt Positions

## A few things to remember . . .

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- NOT eligible for overtime compensation
- Can still be required to complete time records
- Board can still schedule work hours

Exempt employee pay NOT subject to hourly pay deductions, except for:

- Major workplace rule violation
- Unapproved leave of absence
- Exhaustion of accrued leave or FMLA
- Mandatory furlough for budgetary reasons

Exempt employees may be required to use accrued leave to cover work absences

- Improper pay reductions can render employee non-exempt

# About Job Descriptions and Exemption

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Helpful to have “exempt status” in job description

Exemption depends on what employees do - not what the job description says

Review job descriptions BUT ALSO review what employees actually do

An audit is a good idea, even if informal (has ancillary benefits too)

# Practical Tips

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Do not decide on exemptions “as the need arises”

Put “exempt status” in job descriptions

Coordinate job descriptions with counsel, finance department, and local administrators

Review from time to time, as law and interpretation of law changes

# Exempt Positions

## A few things to remember . . .

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- NOT eligible for overtime compensation
- Can still be required to complete time records
- Board can still schedule work hours
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# COMPENSATORY TIME

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# Compensatory Time

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Boards may offer compensatory time in lieu of cash payments

Comp time is NOT leave, but a form of compensation:

- Entitled to use time as if using cash compensation
- Must be able to use for personal use
- Appointing authority may require use of comp time but cannot cause employee to forfeit annual leave at end of fiscal year

# Compensatory Time

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- “Paid” at 1.5 times
  - Get 1.5 hours comp time for every hour of overtime
- Employee is to use for personal use
- Cannot say no to use, unless the absence would unduly disrupt business
- Can require comp time to be used

# Comp Time and School Boards

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- Common practice to have informal “comp time” plan
- Usually not comp time as referred to in FLSA
- Usually consists of trading days or hours – one for one
- Time records are informal and cannot cash out
- Informal comp time plans are fine *IF* employee does not work overtime
- Should not refer to as comp time and should not mix (maybe call flex time or just discretionary scheduling)
- Remember, cannot set off time across work weeks without paying overtime – perfectly fine to do it within work week

# If You Want to Use Comp Time

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- Agreement with employee *in advance* (before the overtime is worked)
- Can be policy
- Keep solid records
- Make sure calculated correctly – 1.5 hours for every overtime hour worked

CAN BE A GREAT TOOL IF MANAGED CORRECTLY

# Comp Time - Practical Tips

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- Establish a policy/procedure or rule for comp time plan
  - Use standard form
  - Standard tracking system
  - Make clear expectations concerning working overtime, use of comp time, pay downs or pay offs, required use of comp time, recordkeeping, etc.
- Educate, educate, educate – managers and administrators tend to think of this as a freebie – overtime for no pay
  - Merely a deferral of an obligation (with “interest” – pay raises)
- Plan as if you were paying the overtime – need to have the money on hand
- Communicate – make sure employees understand the plan

# OTHER SPECIAL ISSUES

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# Special Issues Dual Employees

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If two jobs, have to use blended rate, calculations get messy

Salary schedule/agreements become important

Think about just establishing an hourly rate and paying overtime

# Special Issues Volunteers

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Use caution!

Cannot waive overtime

Cannot volunteer for same type of services which employee is employed to perform

Department of Labor construes this broadly

# Special Issues Interns & Student Workers

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## ❖ Interns – Can be unpaid

### ❖ Special Test

- ❖ Training/internship similar to training in an educational environment
- ❖ Cannot displace employees
- ❖ Employer doesn't get any immediate advantage from activities
- ❖ Training for the benefit of the intern
- ❖ Intern not entitled to job at the end
- ❖ Intern understands that it will not be paid

## ❖ Student Workers

### ❖ Employees

# Special Issues Student Workers

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## ❖ Volunteers

- ❖ Bona fide student volunteers do not have to be paid

## ❖ Analysis

- ❖ How school system benefits
- ❖ Time spent in activity (less than full time)
- ❖ Services of type normally associated with volunteers
- ❖ No expectation of pay

# Special Issues

## Lump Sum Payments

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If to an employee, will not get credit toward overtime obligations.

Keep track of time – not an exemption from recordkeeping

Minimum wage issues – as minimum wage goes up, this becomes an issue

# PRACTICAL APPLICATION

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# Common Problems

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- ❖ Casual timekeeping system
  - ❖ Educational culture – “we are all professionals”
  - ❖ We trust each other
  - ❖ Doing it right is hard
- ❖ Good Timekeeping System but we don't use it
  - ❖ The inputs are erroneous or inconsistent
    - ❖ That means the outputs are too by the way
  - ❖ Bypass procedures
  - ❖ Interference with timekeeping process
    - ❖ Changing time for an employee
    - ❖ Entering time for an employee
    - ❖ Deductions as procedure (i.e. lunch)

# Common Problems

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## ❖ Holes in the system

- ❖ Bus drivers - “they only work 20 hours a week anyway”
- ❖ Substitutes
- ❖ Part time workers

## ❖ Delegation

- ❖ Bookkeeper or other non-administrator is “in charge”
  - ❖ That means the outputs are too by the way

## ❖ Failure to Train

- ❖ Administrators
- ❖ Those in charge of process
- ❖ Employees

# Common Problems

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- ❖ The Good Ole' Boy or Gal Approach

- ❖ Good employees would never sue us...
- ❖ She loves the school – wants to work extra (without getting paid)
- ❖ We are family
- ❖ I let things slip all the time – he owes me

- ❖ The “Caste” System in Schools

- ❖ Low folks on the totem pole get “KP duty”
  - ❖ Open the school
  - ❖ Close the school
  - ❖ Clean up after events
  - ❖ Answer alarms or after hours emergencies
  - ❖ Drive for extracurricular events
  - ❖ Meet shipments/drive trucks etc.
- ❖ These duties are often unpredictable in duration

# Common Problems

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- ❖ Employees taking work home
  - ❖ Our timekeeping system often not set up for this
  - ❖ Zero control
  - ❖ Accountability/bad idea anyway
- ❖ Non-exempt employees doing jobs structured for exempt employees
  - ❖ Coaching
  - ❖ Club sponsors
  - ❖ Activities
  - ❖ Committee members/Liaisons etc.
- ❖ Non-structured Lunches
  - ❖ Maintenance employees
  - ❖ Custodians & Office workers
  - ❖ Paraprofessionals

# Telework or the New Normal

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- ❖ Working from home has its own challenges
  - ❖ Some timekeeping setups not conducive to real time clocking in and out
  - ❖ No supervision
  - ❖ We aren't used to it
  - ❖ We are “always at work”
- ❖ Some suggestions
  - ❖ Get a schedule, stick to it and check up on it.
  - ❖ Be VERY clear as to when work may be performed (and check up on it)
  - ❖ Email policy – lay parameters for checking and responding (that also means no work email for personal business)
  - ❖ Train on work expectations/hours/duties/limitations
  - ❖ Don't assume that “they are at home so they get plenty of personal time”
  - ❖ Let your timekeeping software vendor help!

# Self Audit

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Coordinate a self audit practice with Central Office

Set up a practice at local schools for principals – once a week, review time sheets for

- Anomalies
- Too much consistency

Do during the week – if you catch it at payroll time, can be too late

# Monitor Time Entry

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Every so often, monitor time entry

- Either as time is entered or just afterward

Don't delegate this

- Have principal do it from time to time

Will deter fraudulent entry and provide basis for testimony, if needed

# Substitutes

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Get a good substitute tracking system in place

Watch for employees substituting – especially bus drivers

Watch for substituting at different schools

# Communication

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Communicate expectations to employees

Document those expectations

Be vigilant in following up when expectations are not met

# Electronic Timekeeping System

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Automated reporting function

Interface with payroll

Allows centralized monitoring

# Why all this matters . . .

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FLSA liability =

- Back pay for 2 years

or

- Back pay for 3 years if willfulness is shown

+

- Liquidated damages in amount equal to back pay

+

- Costs

+

- Attorneys fees

# Back Pay

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Two years of back pay is standard

Employee can get three years of back pay if willful violation is shown

Willfulness is not presumed – and employee must prove it.  
How?

- Overt willful behavior – “we don’t pay overtime”
- Repeat violations and failure to correct
- Systemic problems, pervasive
- Disregard for law

# Willfulness

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If you have planned, trained, reviewed, been proactive, and reasonably consistent and can demonstrate efforts to comply with Act, you should be safe

BUT

“Judge, I put up that poster in the office – I can’t help it if employees didn’t see it,” won’t cut it

# Liquidated Damages

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- Statutory penalty – fail to pay overtime, it is presumed that you double the damages
- There is a defense – good faith – to the imposition of liquidated damages
  - Good Faith = reliance on cases,
  - attorney's advice, an expert, Department
  - of Labor ruling, attempting to find the
  - answer and finding it's not clear.
- Diligent attempt to comply with Act can be good faith
- Clear, however, that mistakes or not knowing the rules, misapplication of the rules is not good faith

# Costs and Attorneys' Fees

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The problem with FLSA litigation

Attorneys' fees always eclipse damages

Attorneys have little incentive to settle

# Things That Make My Job Harder

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Lack of time records

Overtime shown, but not paid

Testimony that principal told employee not to report overtime

Cash or lump sum payments

Employees taking work home

No designated lunch

Breaks shorter than 20 minutes

Employees who open/close/work at night and weekends

# Things That Make My Job Easier

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Well defined and communicated procedure

Training

Solid and consistent work schedules, lunch schedules, break schedules

Signed and certified time sheets

Articulated review process

Well written reminders and memoranda

Quick action

Centralized controls

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QUESTIONS ?