

TITLE: OVERTIME – FLSA COMPLIANCE

1. General. This policy is intended to ensure that overtime/compensatory time for non-exempt employees is paid in compliance with the provisions of the Fair Labor Standards Act (FLSA), regulations of the U.S. Department of Labor, Wage and Hour Division, and all applicable state statutes and regulations related to the compensation of non-exempt full-time and part-time employees.

2. Definitions.

2.1 Exempt Employees: Those employees exempt from all but the record keeping provisions of the Fair Labor Standards Act. These employees are not required by law to receive overtime compensation and are considered as “salaried.”

2.2 Non-Exempt Employees: Those employees whose work is regulated by the Fair Labor Standards Act minimum wage, overtime and record keeping provisions.

2.2.1 These employees are entitled to overtime compensation for all hours worked in excess of 40 in the workweek.

2.2.2 The FLSA requires employers to pay non-exempt employees a rate at least equal to the federal minimum wage and an overtime rate of one-and-one-half times the employees’ regular rates for time worked in excess of 40 hours in a workweek.

2.3 Non-Exempt Salaried Employees: Those who are not exempted from the FLSA minimum wage and overtime provisions, but who are compensated on a per annum basis. For the purpose of calculating a premium pay hourly rate, the base annual salary (including annual increment payment) is divided by the 2,080 work hours of the year (40 hours per week times 52 weeks per year) and multiplied by 1.5.

2.4 Gap Time: The difference between the work hours, which are less than 40 hours, that an employee normally works and the 40-hour point beyond which the FLSA requires overtime to be paid. For example, if an employee’s normal work week is 35, 37½, or 38 hours, the “gap time” would be those hours between 35, 37½, or 38 hours, respectively, and 40 hours.

2.5 Overtime: The FLSA requires that covered, non-exempt employees receive not less than one-and-one-half times their regular rates of pay for hours worked in excess of 40 during a workweek. A workweek consists of 7 consecutive 24-hour periods, i.e., 168 consecutive hours, designated by the employer. However, the Board provides compensatory time off in lieu of monetary overtime compensation.

2.6 Compensatory Time: Compensatory time received by an employee in lieu of cash must be at the rate of not less than one-and-one-half hours of compensatory time for each hour of overtime work, just as the monetary rate for overtime is calculated at the rate of not less than one-and-one-half times the regular rate of pay. An agreement or understanding between the Board and employee, relative to the compensatory time option, must exist prior to the performance of work.

2.7 On-Call Time: An employee who is required to remain on call on the District's premises or so close thereto that he or she cannot use the time effectively for his or her own purposes is working while "on call." An employee who is not required to remain on the employer's premises but is merely required to leave word at his or her home or with company officials where he or she may be reached is not working while on call.

2.8 Rest Periods: Rest periods of short duration, running from five minutes to about 20 minutes, are common. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time.

2.9 Meal Periods:

2.9.1 Bona fide meal periods are not work time as long as:

2.9.1.1 The employee is completely relieved from duty (uninterrupted). The employee is not relieved if he or she is required to perform any duties, active or inactive (subject to interruption);

2.9.1.2 The period is long enough to allow the employee to use it for eating a meal. A 30 minute, duty-free lunch is long enough to qualify as a bona fide meal period; and

2.9.1.3 The period occurs at a scheduled hour or within a specified period at a time of day suitable for a normal meal period.

2.9.2 Bona fide meal periods do not include coffee breaks or time for snacks.

2.9.2.1 These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals.

2.9.2.2 The employee is not relieved if he or she is required to perform any duties, whether active or inactive, while eating.

2.9.2.3 It is not necessary that an employee be permitted to leave the premises if he or she is otherwise completely freed from duties during the meal period. Unless the Board advises employees that meal periods are subject to interruption, paid meal periods are not authorized.

2.9.3 Sleeping Time: If an employee's tour of duty is less than 24 hours, periods during which he or she is permitted to sleep are compensable working time, as long as he or she is on duty and must work when required. Allowing employees to sleep when they are not busy does not render the time "sleep time," nor does the furnishing of facilities to sleep as long as the employee is still on duty.

2.9.4 Travel Time

2.9.4.1 The Portal-to-Portal Act (29 U.S.C. §254(a)(1)) specifically excludes from compensation time spent "walking, riding or traveling to and from the actual place of performance of the principal activity" of an employee and time spent in "activities which are preliminary or post-liminary" to the principal activity. Travel time at the beginning or end of the workday, therefore, is not compensable.

2.9.4.2 Excluding normal commuting time, the general rule is that employees should be compensated for all travel unless it is overnight, outside of regular working hours OR on a common carrier, where no work is done. Travel as a passenger outside of normal work hours is, generally, not working time. Of course, special rules can apply to special situations. Travel during normal working hours is considered as work time.

2.9.5 Training Programs, Lectures, and Meetings: The compensability of employee time spent in training programs, lectures, labor-management committee meetings, and safety meetings is addressed in the regulations (29 C.F.R. §785.27, §785.28, & §785.29). All of the following 4 general principles must be met for the activity not to be counted as working time:

2.9.5.1 Attendance must occur outside the employee's regular working hours; and

2.9.5.2 Attendance is, in fact, voluntary; and

2.9.5.3 The employee must do no productive work while attending;
and

2.9.5.4 The program, lecture or meeting should not be directly related to the employee's job if it aids the employee in handling his or her present job better, as distinguished from teaching the employee another job or a new or additional job skill.

2.9.6 Unauthorized Work: Employees who, with the knowledge or acquiescence of the District, continue to work after their shift is over, albeit voluntarily, are engaged in compensable working time. The reason for the work is immaterial; as long as the District "suffers or permits" employees to work on its behalf, proper compensation must be paid.

3. Principles of Operation – General.

3.1 All employees of the Board are expected to work an 8-hour day/40-hour workweek each week.

3.2 Gap time. Board employees may regularly and routinely be scheduled to work less than a 40-hour workweek; however, the Board retains the right to request an employee to perform his/her regular duties up to 40 hours during a workweek without additional compensation.

3.3 The length of the school day for licensed and professional staff will be a minimum of 8 hours and will continue until professional responsibilities to students are completed. Administrative meetings, curriculum development, pupil supervision, assigned duties, parent conferences, group or individual planning and extra-curricular activities may require hours beyond the stated minimum.

3.4 Work schedules for all other employees will be defined by the superintendent, or his/her designee, and will be consistent with the Fair Labor Standards Act, West Virginia statutes and provisions of this policy.

3.5 All employees are expected to be present during their scheduled working hours. Absence without prior approval, chronic absences, habitual tardiness or abuses of designated working hours are all considered willful neglect of duty and will result in disciplinary action, up to and including employment termination, unless otherwise prohibited by state or federal law.

3.6 Non-exempt employees who have not been granted prior approval by appropriate authority to work overtime may not arrive at their workstations or begin working earlier than their scheduled starting time and must leave their workstations and stop working at their scheduled ending time. Taking work home without prior approval shall not be permitted. Failure to comply with these requirements may result in disciplinary actions, up to and including dismissal.

4. Principles of Operation – Overtime. For purposes of the FLSA, the workweek for all employees of the Board is defined as beginning at 12:00 a.m. Monday and ending at 11:59 p.m. Sunday.

4.1 In emergencies declared by the Superintendent or his designee, employees may be required to work overtime.

4.2 Non-exempt employees, on paid or unpaid leave, will not be paid at the overtime rate unless and until hours actually worked exceed 40 hours during the workweek. They shall receive their regular hourly rate until they have actually worked in excess of 40 hours during the week. Any hours they work over 40 will be compensated at one-and-one-half their regular rate of pay.

4.3 Every employee classified as non-exempt service personnel is required to complete a timesheet for each week worked during the employee's employment term, reflecting the actual starting and ending times for each day worked and the total time worked. This timesheet shall include the employee's verification that the time sheet is an accurate statement of hours worked. The employee and the employee's immediate supervisor will each sign the timesheet prior to its submittal in a timely manner to the payroll office.

4.4 This policy is subject to West Virginia Code §18A-4-8a, which states (1) that any service employee required to work on any legal school holiday will be paid at a rate one-and-one-half times their usual hourly rate for hours worked on the legal school holiday; and (2) any full-time service employee required to work in excess of their normal working day during any week that contains a school holiday for which they are paid shall be paid for the additional hours worked at a rate of one-and-one-half times their usual hourly rate.

5. Compensatory Time – Principles of Operation. Non-exempt (hourly) employees who work in excess of 40 hours in a workweek may choose to earn compensatory time at a rate of one-and-one-half hours for each hour worked in excess of 40 during the workweek in lieu of receiving overtime pay. For record keeping purposes, employees shall be required to make a request in writing to earn compensatory time in lieu of receiving overtime pay. The employee's timesheet must list all compensatory time earned on the date of accrual and all compensatory time used on the date it was used. A running total of compensatory time must be maintained on the timesheet.

5.1 No non-exempt employee shall be permitted to accrue compensatory time in excess of 120 hours. If an employee's accrued compensatory time reaches 120 hours, no such additional time shall accrue unless and until his/her accrued compensatory time is reduced to less than 120 hours. All compensatory time must be used within the same fiscal year in which it was accrued.

5.2 Non-exempt employees are permitted to use accrued compensatory time as paid time off at such times as may be approved in advance by their supervisor. Approval of such requests is subject to scheduling, operations, whether other employees are taking time off and work demands. Non-exempt employees may be required to make requests to use accrued compensatory time in writing.

5.3 Non-exempt employees who have not been granted prior written approval by appropriate authority to work overtime may not arrive at their workstations earlier than their scheduled starting time and must leave their workstations at their scheduled ending time.

5.4 At such time as a non-exempt employee resigns or is discharged from employment with the Board, any accrued and unused compensatory time shall be paid at a rate not less than (a) the average regular rate received by such employee during the last 3 years of the employee's employment, or (b) the final regular rate received by the employee, whichever is higher.

5.5 Substitute personnel are not authorized for compensatory time-off situations.

6. Miscellaneous. Non-exempt substitute employees are required to sign in at each school/work location site. The sign-in information must include the name, the work date and the times the substitute began and ended their duties. The substitute is not permitted to work beyond the regular workday for that classification without prior approval from the appropriate individual(s). If permission is granted to work beyond the regular work day, a separate timesheet must be completed, listing the additional hours worked beyond the regular day. In addition, school officials and department heads are responsible for maintaining site sign-in records for three years.

6.1 Non-exempt employees who perform extracurricular coaching contracts shall be deemed to engage in services different from those he/she is normally employed to perform. Such extracurricular work is exempt from the FLSA, and the non-exempt may not count hours worked in the capacity of coach so long as the compensation received under the extracurricular contract is considered nominal when compared to the non-exempt employee's daily rate of pay.

6.2 Non-exempt employees are not permitted to volunteer to perform services for or on behalf of the school system if the volunteer duties involve the same types of duties that the employees normally perform as a part of their regular duties for the school district.

6.3 Any employee that fails to follow this policy may be subject to disciplinary action, up to and including termination.

6.4 If any provision of this policy or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this policy.

7. Review Schedule. This policy shall be reviewed in accordance with the Policy Review Schedule published by the Superintendent.

Legal Authority: Fair Labor Standards Act, 29 U.S.C. §§ 201-219

Board Adoption: July 21, 2014