

Compensation Laws

Fair Labor Standards Act (FLSA)

There are four (4) major provisions of the FLSA: Minimum Wage, Overtime Pay, Child Labor and Recordkeeping. Unless exempt, covered employees must be paid at least the minimum wage and not less than one and one-half times their regular rates of pay for overtime hours worked.

Positions considered exempt for FLSA purposes must meet one of the following exemptions:

- Executive
- Administrative
- Professional*
- Computer Employees
- Highly Compensated Employees

*The Department of Labor has determined that substitute teachers whose primary responsibility is teaching the same subjects as the everyday teacher for whom they substitute are exempt under the FLSA.

Effective January 1, 2020 the Fair Labor Standards Act (FLSA) new rule sets the minimum salary for exempt employees at \$35,568 per year or \$684 per work week.

Positions typically considered non-exempt for the purposes of the FLSA are noted below:

- Paraprofessional staff (clerical, aides and technical staff)
- Auxiliary (custodial, maintenance, food service, transportation, security/police, etc.)
- Substitute staff for paraprofessionals and auxiliary staff

The district has determined the exempt status of each position and recorded the status on a Job Description. Every employee is required to sign a job description each school year. The job description serves the function of notifying the employee of their respective job duties and responsibilities, but also their status under the FLSA.

The FLSA requires employers to:

- pay all covered nonexempt employees, for *all* hours worked, at least the Federal Minimum Wage of \$7.25 per hour effective July 1, 2019;
- pay at least one and one-half times the employees' regular rates of pay for all hours worked over 40 in the workweek;
- comply with the youth employment standards; and
- comply with the recordkeeping requirements

Hours Worked

Covered employees must be paid for *all* hours worked in a workweek. In general, compensable hours worked include all time an employee is on duty or at a prescribed place of work and any time that an employee is suffered or permitted to work. This would generally include work performed at home, travel time, waiting time, training, and probationary periods.

The district has established the following workweek for all non-exempt staff:

12:00 a.m. Sunday until 11:59 p.m. Saturday

Specific FLSA guidelines include the following [*excerpts from FLSA Fact Sheet #22 are denoted in italics*]:

Suffered or Permitted to Work: *Work not requested but suffered or permitted to be performed is work time that must be paid by the district. For example, an employee may voluntarily continue to work at the end of a shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable.*

If the supervisor allows or permits the employee to perform the work, the hours are compensable. If the employee is not authorized to work, but performs the work anyway, the employee shall be paid for compensable work hours, but shall be subject to disciplinary action for failure to follow an administrative directive.

Waiting Time: *Whether waiting time is hours worked under the Act depends upon the particular circumstances. The facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was waiting to be engaged (which is not work time).*

If an employee is engaged to wait, such as a bus driver at a field trip, the waiting time shall be compensable. The District shall compensate the bus driver at his/her regular rate of pay for all driving and wait time hours.

Rest and Meal Periods: *Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid for as working time. These short periods must be counted as hours worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.*

If a non-exempt employee is not completely relieved from duty [during a non-paid lunch break], he/she shall be compensated for the meal period. It shall be the employee's responsibility to notify his/her immediate supervisor in the event that a meal has been missed or they were not completely relieved of duty during a meal period. The compensable meal period shall be added to the employee's work hours in the district timekeeping system.

Sleeping Time: *An employee who is required to be on duty for less than 24 hours is working even though he/she is permitted to sleep or engage in other personal activities when not busy. An employee required to be on duty for 24 hours or more may agree with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than 8 hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. No reduction is permitted unless at least 5 hours of sleep is taken.*

Although rare, in the event that a non-exempt employee is on duty for more than 24 hours, such as a bus driver to an overnight field trip, the employee shall be provided with sleep facilities and at least five (5) hours of uninterrupted sleep time. A total of eight (8) sleep hours shall be excluded from the employee's work hours, unless the employee was granted less than eight (8) hours. In that event, the actual number of sleep hours shall be excluded from the compensable hours.

Travel time: *Attendance at lectures, meetings, training programs and similar activities need not be counted as working time only if four criteria are met, namely: it is outside normal hours, it is voluntary, not job related, and no other work is concurrently performed.*

Home to work travel: *An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.*

Home to Work on a Special One Day Assignment in Another City: *An employee who regularly works at a fixed location in one city is given a special one-day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.*

Travel That is All in a Day's Work: *Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.*

Travel Away from Home Community: *Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal*

working hours but also during corresponding hours on nonworking days. As an enforcement policy the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

Generally, non-exempt employees shall be compensated for hours at training, workshops, etc. if the training is job-related. An exception shall be for training to maintain a license or certification required to maintain their position, such as bus driver certification. Hours while traveling away from the home community for training shall be compensable during the employee's normal work schedule (Monday-Friday) and during the same work schedule on Saturday and Sunday, regardless of the mode of transportation. Other hours while traveling shall be compensable if the employee is driving as opposed to a passenger.

FLSA Fact Sheet #22 – Hours Worked

Overtime

Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. The regular rate of pay includes all remuneration for employment except certain payments excluded by the Act itself.

Nonexempt employees are paid on either an Annualized Salary Method or Direct Hourly Method. All non-exempt employees shall be paid based on the *actual number of hours* worked per workweek. Employees paid on an annualized salary method are generally paid for a 40-hour workweek and do not earn additional pay unless they work more than 40 hours.

Employees paid on an Annualized Salary Method include:

Paraprofessional staff (aides, clerical and technical)

Employees paid on a Direct Hourly Method include:

Bus Drivers and Bus Aides
Custodial
Food Service
Maintenance
Substitute auxiliary staff
Temporary and seasonal staff

Employees paid on an Annualized Salary Method

The total hours worked per workweek will be reviewed to determine if the employee exceeded their normal, annualized work hours. In the event that the employee exceeded their normal,

annualized work hours, he/she shall be compensated for the additional hours in compensatory time (default) or paid time, as approved by the immediate supervisor. In the event that the employee did not work their normal, annualized work hours, he/she shall apply paid leave hour or be docked their regular rate of pay for the missed hours.

Employees paid on a Direct Hourly Method

The total hours worked per workweek will be submitted via the automated timekeeping system and extracted from the automated timekeeping system and imported to the payroll system. The Payroll staff will verify that all hours worked collected through both systems match. Employees are encouraged to track their work hours to verify the total hours paid on their paycheck match their actual hours worked.

The FLSA provides that where State or local government employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime liability under the Act. (CFR 553.30)

The district has *opted* to provide compensation time (time and ½) for overtime work. In some cases, the district may pay overtime hours at the employee's overtime rate of pay.

The FLSA states that where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs.

Overtime pay for a single type of work [with a single hourly rate] shall be paid at 1 ½ times the regular hourly rate.

Overtime pay for multiple hourly rates shall be paid at 1 ½ times the **weighted average of the pay rates**. **For example**, if a maintenance employee works 40 hours at his/her regular hourly rate of \$12.00 and an additional 10 hours at an hourly rate of \$18.00, he/she would be paid at the weighted average of the hourly rates (\$13.20). Illustration below:

Weighted or Blending Overtime Calculation Sample				
Position	# Hours	Hourly Rate	OT Rate	Total
Maintenance	40	\$ 12.00	\$ 18.00	\$ 480.00
Bus Driver	10	\$ 18.00	\$ 27.00	\$ 180.00
Totals Hours	50			\$ 660.00
Overtime Hours	10			
Blended Rate (weighted rate)			\$ 13.20	
1/2 time Blended Rate			\$ 6.60	
Add'l Pay (10 Hours @ 1/2 Blended Rate)				\$ 66.00
Total Gross Pay				\$ 726.00

FLSA Fact Sheet #23 - Overtime

Child Labor

The FLSA restricts the work hours and types of occupations for workers between the ages of 14 and 17. The most restrictive limitations are for workers between the ages of 14 and 15. The limitations include the following:

- outside school hours;
- no more than 3 hours on a school day, including Fridays;
- no more than 8 hours on a non-school day;
- no more than 18 hours during a week when school is in session;
- no more than 40 hours during a week when school is not in session;
- between 7 a.m. and 7 p.m.—except between June 1 and Labor day (extended to 9 p.m.)

Compensatory Time

Employees may be compensated for overtime at time-and-a-half rate with compensatory time off (comp time) or in some select cases direct pay. The following applies to all nonexempt employees:

- Employees can accumulate up to 60 hours of comp time.
- Comp time must be used in the duty year that it is earned.
- Use of comp time may be at the employee's request with supervisor approval, as workload permits, or at the supervisor's direction.
- An employee shall be required to use comp time before using available paid leave (e.g., sick, personal, vacation).

- Any time not used by July 1 each year must be paid to the employee using the campus/department budget.

Recordkeeping (Timekeeping System)

Every covered employer must keep certain records for each non-exempt worker. The Act requires no particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate.

The district has implemented the Skyward Employee Access timekeeping system to collect *all* work hours for non-exempt employees. **All work hours for the regular job, extra-duty assignments, training, missed lunches, waiting time, etc. shall be entered in the Skyward Employee Access timekeeping system.**

Affordable Care Act purposes

The Payroll Supervisor shall extract all work hours from the Skyward Employee Access system and import to the Skyward Payroll system.

It shall be an employee's responsibility to ensure that all work hours are submitted in accordance with district pay cycles through the Skyward Employee Access timekeeping system.

The appropriate immediate supervisor shall verify and submit all time cards for non-exempt staff assigned to their campus or department according to the established payroll pay periods and deadlines. Refer to Pay Date Schedules.

Automated Timekeeping System

The Skyward Employee Access system allows an employee to —clock in and out by inserting a bar code identification badge into the scanner or logging into a computerized time clock terminal.

Time Clock Procedures:

The following procedures are to be used by all non-exempt and substitute staff for reporting all work hours through the Time Clock Plus system:

1. An employee may not report or be on a paid status until they swipe/punch in with their ID badge.
2. An employee may clock in up to seven (7) minutes prior to the official starting time.
3. An employee may clock in up to seven (7) minutes after the official starting time. This grace period will not be considered an excuse for tardiness.
4. An employee may clock out up to seven (7) minutes after the official departure time.
5. An employee may clock out up to seven (7) minutes prior to the official departure

time. This grace period will not be considered a reason for early departure from assigned schedule.

6. An employee must clock out when leaving their assigned work schedule or campus for personal reasons unrelated to assigned tasks.

Any time clock corrections shall be entered by the individual employee, and reviewed by their immediate supervisor for accuracy.

In addition, all leave and absences for non-exempt staff shall be entered in the Skyward Employee Access system by the respective campus or department after the absence has been submitted by the employee. All absences for non-exempt employees are extracted and reviewed by the Payroll staff to compare time worked and time off, thereby assuring that the correct payment is made for non-exempt employees.

Rounding Time Chart

According to the FLSA, an employer may disregard working time that is insubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes. These periods of time are referred to as de minimis. Employers should establish rounding rules. (CFR 785.47)

Minutes rounding rules:

- 0 – 7 minutes = 0
- 8 – 22 minutes = .25
- 23 - 27 minutes = .50
- 38 – 52 minutes = .75
- 53 – 60 minutes = 1.00

An employee is responsible for maintaining possession of his/her ID badge at all times for the purpose of clocking in/out. Employees must report lost badges or temporary misplacement of badges to their immediate supervisor. Failure or non-compliance with the district's timekeeping procedures shall be subject to appropriate disciplinary action.

An employee's due process for violation of the district's timekeeping procedures shall be as follows:

1. Oral warning/discussion
2. Written counseling document
3. Recommendation for suspension
4. Recommendation for termination

Falsifying timekeeping records or directing or coercing others to do is a violation of the *Educator Code of Ethics*. [Refer to Board Policy DH Legal, Local and Exhibit]

An employee who falsifies their timekeeping record or the timekeeping record of another employee shall be subject to immediate termination. Falsifying of time cards may include, but is not limited to: Punching in or out for another employee or having another employee punch in or out for them; fraudulent time entry, photo copying of one's own or someone else's badge.