

**Fair Labor Standards Act
(FLSA)**

As it Applies to West Virginia
School Districts

Presenter

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What Is The FLSA?

- Fair Labor Standards Act of 1938
- Defines hours worked
- Describes required recordkeeping
- Prescribes minimum wage
- Prescribes overtime pay
- Sets standards for youth employment
- Provides mechanism for enforcement both by DOL and via private actions

Exempt Employees

- The FLSA provides an exemption from both minimum wages and overtime pay for certain employees (white collar exemptions)
 - ◆ Executives
 - ◆ Administrative personnel
 - ◆ Professional personnel (Teachers)
 - ◆ Outside sales employees

Non-Exempt Employees

- For school systems, basically includes most school service personnel (Some exceptions)

Agreements

Employers and employees may NOT enter into an agreement that sets aside the employee's right to overtime pay

U.S. Department of Labor

- The U.S. Department of Labor, Wage & Hour Division can:
 - 1) Help a school district determine its status of compliance
 - 2) Provide assistance in achieving compliance
 - 3) Provide options if there is a back wage liability

Minimum Wage

- The FLSA requires that all nonexempt employees be paid at least minimum wage for every hour worked during a workweek
- West Virginia Code 18A-4-8©, however, requires that service personnel employed beyond the minimum 200 day employment term be paid at the same daily rate as paid during the 200 day term

Overtime Compensation

- The FLSA requires that all nonexempt employees be compensated at one and one-half times their regular rate of pay for all actual hours worked in excess of 40 hours during a workweek.

Overtime Compensation

- For governmental agencies, overtime compensation can be in the form of pay, or compensatory time off from work
- Compensatory time off:
 - ◆ Must be at 1 ½ hours off from work for each hour worked in excess of 40
 - ◆ Must have agreement with employee before work is performed

State Pay Requirements

- State:
 - ◆ Extra-duty assignments – 1/7 of daily rate
 - ◆ Extra-curricular assignment – no minimum rate specified – mutual agreement
 - ◆ Interrupted work schedule for certain employees – 1/8 of total salary
 - ◆ Employee called out on a weekend to be paid:
 - ◆ At least for ½ day of work, and
 - ◆ If worked more than 3 ½ hours – paid for full day

State Pay Requirements

- State (Continued):
 - ◆ Shift differential pay – If daily shift is between 6:00 pm – 5:00 am - \$10/mo.
 - ◆ Legal holiday – 1 ½ times daily rate
 - ◆ Excess of normal working day in any week in which a legal holiday falls – 1 ½ times daily rate for any additional hours worked

Workweek

- Workweek:
 - comprised of 7 consecutive 24 hour periods (168 hours)
 - need not coincide with the calendar week
 - each workweek stands alone
 - workweeks cannot be averaged
 - once established is a fixed workweek

Hours Worked

- "Suffer or Permit"
 - ◆ Work not requested but suffered or permitted is work time
 - ◆ The reason the employee works extra time, requested or not, is immaterial
 - ◆ Work an employee "voluntarily" performs before or after his/her scheduled shift is hours worked
 - ◆ Place work performed is immaterial

Hours Worked

- Work Hours:
 - ◆ Time that an employee must be on duty
 - ◆ Time that an employee must be on premises
 - ◆ Time that an employee must be at any other prescribed place of work
 - ◆ Any additional time that an employee is allowed (suffer or permit) to work

Hours Worked

- In other words, for non-exempt employees, all work performed for the benefit of the employer (except volunteer services) must be included in hours worked and compensated
- Includes:
 - ◆ Work as a coach
 - ◆ Work as a club sponsor
 - ◆ Work taken home
 - ◆ Job shadowing
 - ◆ Attendance at workshops related to work

Hours Worked

- Lunch Period
 - ◆ Under the FLSA, hours worked does not normally include the lunch period - provided
 - ◆ Period is 30 minutes or more
 - ◆ Employee is completely relieved of duty
 - ◆ WVC 18A-4-14, however, requires that all full-time teachers and service personnel be provided a daily lunch period of at least 30 minutes and that it be included in hours worked

Hours Worked

- Breaks
 - ◆ Employer not required to provide breaks
 - ◆ Breaks, however, promote efficiency
 - ◆ If provided, breaks less than 30 minutes are considered hours worked

Hours Worked

Meetings, Lectures, and Training Programs
(There is an exception for this general rule for State and local government employees)

Training is not required to be compensable work time if:

- ◆ Attendance is outside of regular working hours
- ◆ Specialized or follow-up training
- ◆ Training is required by law or a higher jurisdiction for certification

Hours Worked

On Duty

- The employee's time belongs to and is controlled by the employer

Off Duty

- The employee is completely relieved from duty for periods of time long enough to enable employee to use the time effectively for own purposes

Hours Worked

■ On Duty:

- ◆ Periods of time when an employee is performing duties for the benefit of his/her employer, on or off premises
- ◆ May include periods of inactivity, such as reading a newspaper while waiting for a maintenance call or a ballgame to end
- ◆ In this case, employee is "engaged to wait"

Hours Worked

- Off Duty:
 - ◆ Employee is completely relieved of all duties:
 - ◆ Must be told in advance of each "tour of duty" that:
 - He or she is relieved of all duties,
 - May leave the job site, and
 - Will not have to commence work until a definitely specified time

Hours Worked

- Off Duty (Continued):
 - ◆ Time relieved from duty must be long enough for employee to use the time effectively for own use
 - ◆ At least 30 minutes
 - ◆ If all requirements are met, employee is "waiting to be engaged" – time is not work time

Hours Worked

On call time:

- If employee is required to be on the employer's premises or so close thereto that employee cannot use time for employee's own purposes, considered work time
- If employee is merely required to carry a "beeper or cell phone" or leave word at home or with employer where employee can be reached, considered non-work time

Bus Operators

- Hours worked:
 - ◆ Pre-trip/post-trip inspections (Employer may established time limits for performing tasks)
 - ◆ Fueling/cleaning
 - ◆ Waiting on bus inspections/oil changes
 - ◆ Time taking physicals
 - ◆ Time taking CDL licensing test
 - ◆ Waiting to transport students, unless informed in advance that time would be off duty

Travel

Travel all in a day's work

- travel between job sites during the normal work day is work time

Travel for one day assignment

- non-overnight travel away from usual fixed work location, outside regular work hours, to location in another city is work time

(Examples of work time:

- school to school travel during work day
- travel in the evening from a meeting in Charleston

Travel

- Travel away from home community:
 - travel that keeps employee away from home overnight is work time when travel cuts across the regular work day
 - Travel at other times may be considered non-work time, unless employee is performing duties during travel - bus operator, aide

Record Keeping

Form of Records

- Every employer subject to the FLSA is required to maintain records of information and data required by the FLSA (time worked, etc.)
- No particular order or form of records is required (paper - time clocks - electronic)
- The legal burden to maintain an accurate record of hours worked is placed on the Employer

Record Keeping

- Covered employer must post a notice explaining the FLSA, as prescribed by the Wage and Hour division, in a conspicuous place, to permit employees to readily observe a copy
- Payroll records shall be preserved for 3 years
- Time card or other supplementary records shall be preserved for 2 years

Determining Overtime Pay

Regular rate of pay is determined by the way a person is paid for each job and the total hours worked in that job.

Employee Has One Job

Formula:
Annual contract salary ÷ annual contract # of days ÷ by # of hours per day salary is intended to cover = Regular Rate of Pay

Overtime Calculation

Contract calls for \$24,000.00/year for 200 work days. Contract or practice establish work day is 8 hours.

$\$24,000.00 \div 200 \text{ days} = \120.00
 $\$120.00 \div 8 \text{ hours} = \15 hour
\$15 = regular rate

Hours worked in excess of 40 are payable at time and a half.

$\$15 \times 1.5 = \22.50

Same Employee has more than one job and rate of pay

- Depending on what agreement or understanding the employer has with the employee
 - ◆ Weighted average method – Overtime can be paid at weighted average of the two or more rates of pay for the different jobs that an employee is performing during a workweek

- OR -

Same Employee has more than one job and rate of pay

- ◆ Separate rates method - Overtime can be paid at 1 ½ times the rate of pay for the job that the employee is performing when the hours worked exceed 40 hours in a workweek

Weighted average method

(1/2 time computation, i.e., straight time has been paid for all hour worked at both jobs/rate)

Weighted Average:

- Multiply first rate by hours worked at that rate
- Multiply next rate(s) by hours worked at that rate(s)
- Add together all earnings to get total straight time wages
- Divide by total hours worked = regular rate
- Divide in half
- Multiply by overtime hours worked

Separate Rates Method

- Similar to method used for one job, except overtime rate must be calculated at rate of pay for the work that is being performed when the 40 hour is exceeded during a workweek
- ◆ Rates of pay:
 - ◆ \$20.00 per hour
 - ◆ \$10.00 per hour

State and Local Government

SPECIAL RULES

State and Local Government

Compensatory Time :

Employees of state and local governments may receive compensatory time off (Comp Time) in lieu of cash payment for overtime hours worked in the amount of ONE AND ONE HALF paid hours off for each overtime hour worked, provided the following conditions are met:

State and Local Government

Compensatory Time - conditions

- Agreement or understanding with employee before start of work
- Employee may not accrue more that 240 hours (160 of actual hours worked) in non-public safety positions
- Employee may not accrue more than 480 hours (320 of actual hours worked) in public safety positions ...

State and Local Government

Volunteers -

- Individuals who are employees of state and local government may perform volunteer services for units of that government without such time being considered as employee work time, provided the following conditions are met:

State and Local Government

Volunteers - conditions

- Service must be for civic, charitable, or humanitarian reasons
- Service is performed without promise, expectation, or receipt of compensation*
- Service is not the same type the employee is employed to perform for agency
- Service is offered freely, without coercion of any kind

*Reimbursement of expenses, reasonable benefits, or nominal fee are OK

Occasional and Sporadic (Section 7 (p) (2))

One exception to the requirement of combining hours worked at two different jobs can be found in Section 7(p)(2) of the FLSA, provided the following criteria are met:

- State and 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

“Occasional and Sporadic”

- Defined:
 - ◆ Infrequent, irregular
 - or -
 - ◆ Occurring in scattered instances

Questions?
