

***DEPARTMENT OF
HUMAN RESOURCES***



**FAIR LABOR
STANDARDS ACT
(FLSA)
GUIDELINES**

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The information contained in this publication provides guidelines for complying with the Fair Labor Standards Act (FLSA).

1. DEFINITION AND GENERAL PROVISIONS OF FLSA

The Fair Labor Standards Act (FLSA) requires employers to compensate all covered employees, or non-exempt employees, for all hours worked, and require overtime payments for hours worked beyond 40 hours per work week. The law also requires non-exempt employees to be paid at least the federal minimum wage. In addition, the act sets guidelines for employment of minors, and includes wage and hour record keeping requirements.

FLSA compliance is very important because the school system can be held liable for violations of the law. It is also important to note that employees of public agencies may also be held individually liable for violations.

The Fair Labor Standards Act is enforced by the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL).

2. EFFECT OF BARGAINING UNIT AGREEMENTS

The information in this guide describes the requirements of the law. Should bargaining unit agreements provide benefits beyond the law, the agreements will prevail. Most, if not all, represented positions are eligible for overtime within the parameters of the bargaining agreement(s).

3. NON-EXEMPT EMPLOYEES DEFINITION

The FLSA identifies two types of employees based on duties and compensation: non-exempt employees and exempt employees.

Non-exempt employees (sometimes referred to as hourly employees) are required to be paid an overtime premium of time-and-one-half for actual time worked in excess of 40 hours per week under the FLSA.

Refer to Section 4, Exempt Employees' Definition and General Information, for information on exempt employees.

Questions regarding the FLSA status of a position should be directed to the Classification and Compensation, 206-252-0221.

4. EXEMPT EMPLOYEES DEFINITION and GENERAL INFORMATION

Exempt employees are salaried employees and as such are required to fulfill the duties of their positions regardless of the number of hours worked. In 2004, the U.S. Department of Labor (DOL) enacted changes to its regulations regarding exempt employees. Briefly, the DOL issued language which more clearly defined which employees in an organization are not subject to the overtime, minimum wage, and timekeeping provisions of the law. Employees who meet a salary test, a salary basis test and a duties basis test are identified as exempt.

There are three defined exempt categories of jobs: executive, administrative, and professional. Computer professional jobs are also, under certain circumstances, exempt from the provisions of the FLSA (exempt from overtime).

Teachers are specifically identified by the Department of Labor as being exempt from the provisions of the FLSA (exempt from overtime). However, there are provisions for teachers to earn extra compensation for time worked beyond the duty day. Teachers should report extra time on an SPS timesheet.

5. DETERMINATION OF EXEMPT OR NON-EXEMPT EMPLOYEE STATUS

The classification analyst in the Department of Human Resources, in consultation with appropriate stakeholders, determines the FLSA status of positions that have not already been clearly established by law.

If you are unsure if you or an employee you supervise is an exempt or non-exempt employee, check with your supervisor or call Classification and Compensation at 206-252-0221.

If you believe the FLSA status for a position should be different, you can request a classification review by completing appropriate documentation about the role. In addition, the classification analyst may schedule an interview to gather additional information to be used in determining classification and FLSA status.

6. OVERTIME COMPENSATION

a. OVERTIME

Under the FLSA, hours worked over 40 hours in a work week are considered overtime. Any non-exempt employee who works beyond 40 hours per work week must be compensated at a rate of time and one half. Non-exempt employees may not “volunteer” to work without compensation.

Overtime must be pre-approved by a supervisor, and the form of compensation, either paid time or compensatory time off, must be agreed upon prior to the work being performed. The compensatory time off must be taken within the same pay period the work is performed.

An employee, with supervisory approval, may adjust his/her schedule during the work week to offset extended work days. If an employee needs to work into the evening (e.g., three hours later than normal hours), it is possible to have the employee come into work three hours later as long as the change does not disrupt the business operations of the school or office or cause a hardship on the employee. The adjustment must occur in the *same work week* since each work week stands alone.

If the employee works without authorization or prior permission, he/she must be compensated in accordance with the law. It is the duty of management to exercise control to see that work is not performed beyond scheduled hours without prior approval. It is the role of the administrator to counsel the employee and initiate action if the process has not been followed.

If an employee regularly requests authorization to work beyond scheduled work hours, or states that he/she cannot take off, an assessment of the situation needs to occur.

Questions and/or issues to consider include:

- Are there tasks that are no longer necessary or could be performed more efficiently?
- Can the work be prioritized more effectively and lower priority tasks performed at non-peak times?
- Are there other staff members that can assist with tasks?
- Is the employee working efficiently or are there constant interruptions, socializing, or other distractions occurring?
- Does the employee have the necessary skills/resources to perform the duties?
- Has consultation with other schools/offices occurred to discuss alternate strategies for addressing work load?

Strategies to address the situation will vary based upon the assessment. Consultation with Human Resources may be helpful.

b. GAP TIME

For non-exempt employees whose work week is less than 40 hours, the time worked beyond the normal work week up to 40 is considered “gap time” (e.g., if an employee’s normal workweek is 37.5 hours, and he/she works 39 hours, he/she has worked 1.5 hours of gap time). Gap time is compensable at the regular hourly rate, not at time and a half.

Gap time needs to be pre-approved and the form of compensation, either paid time or compensatory time, needs to be agreed upon prior to the work being performed.

c. APPROVAL FOR OVERTIME/COMPENSATORY (COMP) TIME

Overtime must be pre-approved by a supervisor, and the form of compensation, either paid time or comp time, must be agreed upon prior to the work being performed. Exempt employees are not eligible for overtime or compensatory time.

d. REPORTING PROCEDURES

Non-exempt employees must have prior authorization to work beyond their normally scheduled hours.

7. COMPENSABLE ACTIVITIES/TIME - NON-EXEMPT EMPLOYEES

a. PROFESSIONAL DEVELOPMENT/TRAINING ACTIVITIES

In order for a training or meeting to *not* be considered compensable work time, *all* of the following four (4) criteria must be met:

- 1) Attendance must occur outside the employee's work hours
- 2) Attendance must be voluntary
- 3) The employee must do no productive work while attending (productive to the employer)
- 4) The training or meeting should not be directly related to the employee's job

If *any* of the above conditions are *not* met, the time is compensable.

b. COMMUTING TIME

Basic commuting time to and from work is not compensable time but if the employee makes any work-related stops along the way, those stops are compensable time.

c. WORK AT HOME

Any work related to a non-exempt employee's job that is done at home or on any off-site premises is compensable. This includes answering work-related e-mail messages using any personal computing device (i.e., PC, smart phone, tablet).

d. ELECTRONIC COMMUNICATIONS

Non-exempt employees who choose to access their SPS e-mail accounts through personal computing devices such as smart phones may not do so during non-working hours without prior approval from an appropriate supervisor. Any time spent accessing, reading and/or responding to work-related e-mail or working on other electronic work materials is compensable under the FLSA.

It is the responsibility of the supervisor to ensure that all non-exempt employees understand that they are not to read and respond to work-related e-mails during non-working hours without prior approval.

e. NON-EXEMPT EMPLOYEES WORKING A SECOND JOB AT SPS

Occasionally, non-exempt employees are hired for a second, temporary or contractual position in the system (e.g., an office secretary in a school obtains a position as an evening high school secretary). Whenever this occurs, the employee's compensation will be reviewed and determined at the time of hire into the second position.

8. BREAKS AND LUNCH – NON-EXEMPT EMPLOYEES

The FLSA does not require payment for time not worked such as meals, rest periods (breaks), holidays or vacations. Federal law states that if employees are provided a break of 20 minutes or less the employer must continue to pay them. If a meal break is provided of 30 minutes or more then no pay is due, even if the employee stays at his/her workstation, as long as the employee is *completely relieved* of his/her work duties. This means answering phones, working while eating and responding to work requests are not permitted. If work is performed, the employee must be compensated.

If a non-exempt employee is expected to eat with students, the time is compensable and the employee must be paid.

If an employee works through his/her breaks no additional compensation is due since the employee is already paid for breaks.

9. NURSING MOTHERS

Under the FLSA, nursing mothers must be given “reasonable break time to express breast milk for her nursing child for one year after the child’s birth each time such employee has the need to express the milk.”

The law also requires the employer provide a private area, out of view and free from intrusion, other than a restroom, for the nursing mother to use to express milk. If a dedicated area is not available, the space provided must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a private area is acceptable as long as it is shielded from view and free from intrusion from co-workers or the public.

10. INCLEMENT WEATHER

Twelve month employees are expected to report to work if the schools and/or central offices remain open. If the employee does not report, he/she must use approved leave. When applicable, employees should report the absence in My SPS. Absences for inclement weather are considered absences for personal reasons under the FLSA. If the schools *and* offices are closed, no time is charged. 12 month employees are allowed to use personal business, comp time or accrued vacation when schools are closed to students.

For exempt employees who have no remaining personal business or vacation leave available, and are absent for a full day or work a partial day, contact Payroll for direction on appropriate payroll coding.

11. VOLUNTEERING

An employee cannot volunteer to work “off the clock” in most cases and is not permitted to waive their rights under the FLSA.

An employee may be considered a volunteer if they are not performing the same or similar service they are employed to perform. The key to allowing an employee to volunteer is that the volunteer services and the employment services are substantially different.

There are a few specific circumstances in which a non-exempt employee may volunteer. In order to do so, all of the following criteria must be met:

- The services provided for charitable or civic reasons must be done without promise, expectation or receipt of compensation.
- The services must be offered freely and without direct or indirect coercion or pressure from the employer.
- The services performed are different from those they are employed to perform.

Questions to consider include:

- Are the activities those typically associated with volunteer work?
- Do the activities involve activities replacing regular employees?
- Do the activities tend to occur at times convenient for the individual?
- Are the activities subject to only minimal control by the receiver of the person's efforts?

a. PARENT EMPLOYEE

For an employee who is also a parent of a child in the school, the wage and hour division will not cite FLSA violations for time spent by the parents or a person who stands *in loco parentis* of a child in the school even if some of the volunteer services they provide are the same as those they provide as an employee. The volunteer parent must perform the services without any expectation of compensation, coercion, or pressure from the employer.

b. SPORT/SPECIAL EVENTS

A parent who volunteers to work at sports or special school-related events in which their child is participating does not have to be compensated as long as they:

- offer their services freely, without coercion or pressure, direct or implied, and
- do not perform the same types of services which they are employed to do.

c. PTA VOLUNTEERS

Employees may volunteer for the PTA if it is a non-profit organization with its own governing board of director's independent from the school system. The PTA is not considered the same public agency as the school system in this instance. Secretarial or clerical employees can perform volunteer services for the PTA even though they provide the same services to the school.

12. SUBSTITUTE TEACHERS

The DOL has reiterated its position that substitute teachers may qualify as exempt under the FLSA if their primary duty is teaching and imparting knowledge in an elementary or secondary school. This is true whether or not they have an advanced degree so long as teaching is their primary duty.

13. Responsibilities Checklist for Administrators/Supervisors

- ✓ Monitor time of non-exempt employees and ensure that employees do not perform work during lunch breaks, begin work prior to defined work hours, continue work after the end of defined work hours without prior approval, or complete work at home or on non-work time without obtaining prior approval of administrator/supervisor.
- ✓ Review requests for work that extends beyond the employee's normal work hours for all non-exempt employees.
- ✓ Determine if an employee's schedule can be adjusted within a work week in order to complete the work that needs to be done and make appropriate adjustments instead of granting overtime pay when possible.
- ✓ Ensure the appropriate reporting of overtime in the electronic time and attendance system.
- ✓ Counsel and/or provide disciplinary action (warning letter, letter of reprimand) to employees who do not comply with overtime pay or comp time procedures. **Please note:** the employee must be compensated for time worked in excess of their regularly scheduled hours per week even if approval was not obtained but appropriate disciplinary action must be taken.

14. Responsibilities Checklist for Non-Exempt Employees

- ✓ Perform work duties only during designated work hours.
- ✓ Do not perform any work duties during lunch, or before or after the start of the work day, without prior approval and authorization from a supervisor.
- ✓ Do not access electronic work materials and do not read or respond to SPS email outside of designated work hours without prior approval from a supervisor.

Resources:

United States Department of Labor, Wage and Hour Division
<https://www.dol.gov/whd/flsa/>

Seattle Public Schools, Classification and Compensation
HRCompensation@SeattleSchools.org

Seattle Public Schools, Human Resources Department
HR@SeattleSchools.org

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Adapted from Baltimore County Public Schools.