

Legal Issues in Employment Salary Schedules, Overtime, and Students First Act

(Plus a Whole Lot More)

Alabama Association of School Board Officials
Annual Conference, Orange Beach, Alabama
May 6, 2014

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Salary Schedules

- Typically contain job titles and chart of salaries
- Most often salaries reflected as annual rate
- Schedules must meet (or exceed) state matrix for some employees
- Schedules must have “steps”
- Typically “x axis” is degree, qualification, or responsibility related
- Typically “y axis” is experience-based
- Some are quite detailed – some are quite simple

Salary Schedules

We have some things to think about . . .

- The Salary schedule itself
- Overtime
- Policy/handbook conflicts
- Other fundamental or structural issues

Salary Schedules

- In addition to charts of numbers, most schedules have some terms and conditions which impact salary, such as:
 - Number of days salary covers (e.g., 187)
 - Number of hours each day that salary covers (e.g., 7.5, 8)
 - Holidays, vacations, sick days
 - Formulas for overtime, salary reduction
 - Supplement information
 - “Conversion” data
 - How to apply data
 - Expectations for earning salary

Salary Schedules

- Much litigation over salary schedules
 - Placement, conversion, form
 - Equal protection
- Establishes “expectations” related to pay
- Changing salary schedules always needs to be carefully considered – changes have a “ripple” effect
- “Contractual” language
- If changed in any way to raise compensation, very difficult to lower it back down

Overtime

- Adding hours to days can also have overtime implications – depending on when you do it
- Can be confusing – Board is paying for the base hour as part of salary – really only owe an overtime premium if extra hours are in salary.
- Will result in extra cost though
- The obvious solution of just letting someone go home early to avoid overtime means employee won't work obligated time
BUT
- Working obligated time will result in overtime

Salary Schedules

- Adding days or hours to work week has overtime implications
- For most full time employees, could result in overtime
- If add Saturdays, can just pay for the day – if structured right, the “day” will be built into salary and will only have to pay 1/2 time for the overtime (“overtime premium”)
- If not thought through, can change formula for “daily” rate (and thus the hourly rate)

Overtime

- Typical problems with overtime will be magnified
- Could result in some liability
- More detailed discussion on overtime in a while
...

Policy/Handbook Conflicts

- Board materials matter – employees, students, parents, and community rely on them
- If the work day or work period changes, there is much to modify – work schedules, class schedules, bus schedules, etc.
- Provisions are in memos, letters, handbooks
- Policies and handbooks sometimes include specific definitions of work week, school day, work day, hours of work, etc. – have to resolve conflicts

Managing Resources

- Overtime
- Strategies for dealing with overtime, and the people who are eligible for it
- Evaluating and managing work force needs
- Students First

Scheduling

- Logistical issues
- If add to day, add morning or afternoon? – weigh staffing consequences
- Extracurricular activities
- Opening and closing building – who will take care of?
- Has to be consistent and clear

Overtime

- FLSA compliance still an issue in some schools
- Overtime has to be managed
- How you manage is extremely important
- Mistakes can have exponential costs
- Overtime will continue to be part of the dialogue in schools from a fiscal responsibility standpoint

Overtime Basics

- 1 ½ times regular rate of pay
- Only for more than 40 hours in week
- Paid as cash or time off (compensatory time)
- Regular rate includes all pay

Is Overtime Due ? Calculating Hours Worked

- Overtime must only be paid if more than 40 hours are worked in a work week (usually Sunday – Saturday)
- Only count compensable hours, NOT including 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

Calculating the Regular Rate Practical Tips

- Get a good formula in place and stick with it
- Use technology
- Remember the fundamentals

$$\frac{\text{All Compensation Earned}}{\text{All Time Worked}} = \text{Regular Rate}$$

- Don't assume anything when it comes to time worked
- The variables that go into the formula are based on “contractual principles” and understandings
- A salary can be based on more than 40 hours in a week—in that case, only pay overtime premium of 1/2 time

Exemptions

- Only non-exempt employees can earn overtime
- 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
- You need to make exemption decisions before work is performed

Application of Exemption Tests The Ground Rules

- 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

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

Practical Tips

- 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

Executive Exemption

1. Salary of at least \$455.00 per week (\$23,660.00 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

Administrative Exemption

1. Salary of at least \$455.00 per week (\$23,660.00 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

Learned Professional Test

1. Salary of at least \$455.00 per week (\$23,660.00 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

Administrative Exemption School Board Employees

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

1. Salary of at least \$455.00 per week or starting salary for teacher; AND
2. Primary duty is performing administrative functions directly related to academic instruction or training

Creative Professional Test

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

Exempt

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

Not Exempt

- Paraprofessionals
- Administrative Aides
- Bookkeepers
- Custodians
- Maintenance Crews
- Bus Drivers
- LPN's and other nurses with two year degree or less
- CNP personnel
- School Secretaries

Dual Employees

- Two jobs – can result in more than 40 hours
- Don't calculate based on the job which "caused the overtime"
- Use a blended rate, have to custom calculate
- Salary schedule/agreements become important
- Instead, establish hourly rate and pay overtime

Exempt Positions

A few things to remember . . .

- 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

Volunteers

- Use caution!
- General rule: A classified employee cannot work for free as a volunteer
- Cannot waive overtime
- Cannot volunteer for same type of services which employee is employed to perform
- Department of Labor construes this broadly
- This is tricky and has to be carefully analyzed

Substitutes

- Avoid using employees as substitutes
- Think of it as two jobs
- Can cause recordkeeping problems

Examples

- Paying CNP workers \$25.00 to cook pregame meal
- Paying custodian \$50.00 to cut the grass or \$100.00 to wax floors on weekend
- Paying secretary \$30.00 to take up tickets at ballgame
- Paying bus driver \$50.00 per field trip

Lump Sum Payments

- Lump sum payment counts as additional base compensation
- If results in overtime, have to pay overtime on the lump sum
- Lump sum cannot serve as the overtime compensation
- Can substantially raise the hourly rate

Strategies

- Pay for the hours worked at hourly rate – do not use lump sum payments
- Keep accurate records of work even if lump sum is used
- Watch minimum wage

Supplements for Non-Exempt Employees

- Not typical- Supplements are usually for exempt employees
- Examples:
 - Coaching supplements
 - Band instructors
 - Club or activity sponsors

An Additional Complication

- Third parties paying the supplement
- Make sure there is a clear (in writing) arrangement
- Assume that an employee always works for you

So What is the Problem With Supplements?

- Accustomed to exempt personnel obtaining supplements
- Do not keep good records
- Can cause minimum wage issues
- Often not factored into hourly rate
- Cannot count as overtime compensation

Keep Good Records

- 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

- 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

Meeting and Training Time

- 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

Calculating Time - Substitutes

- 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

Travel Time

- 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
- Answering alarm calls-special situation

Time Clock or Time Sheets?

- Think about electronic or even old fashioned time clocks
 - Put it in the office
- Why?
 - Records actual time
- Time sheets – up to employee to put down correct time

Calculating Time – Lunch Breaks

- Lunch breaks – bona fide lunch breaks of more than 30 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
- Cannot count two 15-minute breaks as “lunch break”
- Breaks are not required by FLSA
- Remember, overtime is by week, not by day
 - Don't automatically get overtime for missing lunch

If you simply *must* use Time Sheets

- Instruct employees how to complete, and provide something in writing
 - Record actual time
 - Record all time
 - If forget to record contemporaneously, have entry “approved” by supervisor
- Have employee sign the “instructions” or memo
- Have employee certify time sheets
- Have supervisors certify time sheets

Compensatory Time

- 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

- “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

If You Want to Use Comp Time

- 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 and School Boards

- 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

Comp Time - Practical Tips

- 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

Managing Overtime Starts with Monitoring Overtime

Monitor Time Entry

- 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

Self Audit

- Coordinate a self audit practice
- 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

Substitutes

- Get a good substitute tracking system in place
- Watch for employees substituting – especially bus drivers
- Watch for substituting at different schools

Communication

- Communicate expectations to employees
- Document those expectations
- Be vigilant in following up when expectations are not met

Personnel 102

Tips, Tricks, and Guidance for School Business Officials

Electronic Timekeeping System

- Automated reporting function
- Interface with payroll
- Allows centralized monitoring

Impediments to Proper Management (Overtime, Leave and other Issues)

- Local management
- Casual school environment
- "Professional" culture
- Lack of training
- Lack of resources
- Lack of communication
- Incompatibility & lack of coordination
- Differences in Departmental Culture

Departmental Cultures Human Resources v. Finance

- In Finance
 - Things are more black and white, rules based
 - Question everything
 - Job to take care of money
 - Regimented
- In Human Resources
 - Worry more about employees
 - Avoid issues
 - Deference to local management
 - "Don't rock the boat" mentality

Key Concepts in Managing Overtime (as well as Personnel Cost)

- Planning
- Communicating
- Training
- Managing
- Discipline
- Problem solving

Overtime has been left up to Finance Departments to deal with

- Finance
 - Good at detecting it
 - By then, it is too late
- Not so good at managing it
- Why? . . . Not been trusted to do so.

Resource Planning Take Inventory

- Who works for the Board?
- Categories? Job duties? Responsibilities?
- Is a job exempt or non-exempt?
- Supplements
- Third party payments
- Salary schedules and notices
- Hours, schedules

Planning - Keys

- Need to catalog resources
 - How many custodians? CNP? Aides? Bus Drivers? Office Workers?
- Identify needs
 - Someone to cut grass, buff floors, take money to bank, answer burglar alarms, open or close school
- Match resources with needs?

CAN YOU MEET NEEDS WITH CURRENT RESOURCES IF NO EMPLOYEE WORKS OVER 40 HOURS IN WEEK?

Planning Keys

- Define responsibilities for jobs
- Duties for jobs
- What type of duties should be handled by classified employees?
 - Handle money?
 - Make own schedule?
 - Direct other employees?
 - Bus duty?
 - Coaching?
 - After hours work?
 - Timekeeping duties? Manage overtime?

Planning Keys

- How do you structure work force? Contract out services?
- Stagger schedules?
- What are expected work hours
 - 40 per week? 37.5 per week? How many days?

TIP: MOST OF THE TIME, THE TAIL WAGS THE DOG . . .
WE GO WITH WHAT WE KNOW OR ARE USED TO,
NOT WHAT WE NEED . . .
WE DEFINE JOBS BY THE PEOPLE WHO HOLD THEM . . .
DON'T

Planning Keys

- Split jobs, multiple locations, dual jobs
 - Remember obligation to pay overtime for classified employees
 - May still meet system's needs if employees are difficult to find or skill sets are specified
- Rules of substitute employment, filling in for others, working over

Planning Keys - Payments

- Decide how to pay for extra work when you need it?
 - Supplement?
 - Lump Sum?
 - Basic Hourly Rate?
 - Blended Rate?
- How will you handle third party payments?
 - PTA
 - Booster Club
 - Community Education Program
 - Support Organizations

Planning Keys - Schedules

- Ideally, don't schedule at times when there is no supervision (early morning, night)
- The "honor system" doesn't work
- Break times and lunch have to be 20 minutes or they count as paid time
- Break time and lunch should be scheduled
 - (That does not mean take it when you can)

Planning Keys - Schedules

- Work hours (both number and specific hours to be worked) should be clear and documented
- Schedule (what employee does during day) should be established
- Lunch needs to be at a set time and staggered for employees doing like duties
 - (Please don't schedule all custodians to eat at the same time)

Communicating Expectations

- How we communicate with employees is essential to FLSA compliance
 - Poster – Law requires we post
 - Reaching "understanding" with employees
- Communications can also make (or ruin) your attorney's day

Essential Communication Areas

- 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
- Leave issues
- Medical Issues

Careful Communications

- Words matter
 - “Overtime will not be paid unless it is approved in advance by the Superintendent”
 - vs.
 - “All overtime has to be approved in advance by the Superintendent. No employee shall work overtime without such specific approval.”
- SEE THE DIFFERENCE?

Essential Communication Areas

- 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

Careful Communications

- Words matter
 - “All employees shall clock in and out for lunch or all employees shall take a lunch.”
 - vs.
 - “Your schedule shows a period for you to eat lunch. The lunch period is 30 minutes and is ‘duty free,’ meaning you are completely free of work during that time. You should clock or sign in and out for lunch each day. If you are specifically asked to perform any work during your lunch period, you should write ‘No LUNCH’ on your timesheet.”
- SEE THE DIFFERENCE?

Careful Communications

- **Words matter**
 - “In order to be paid, each employee and his or her supervisor shall certify the accuracy of the time sheet and shall submit it to payroll for processing.”
 - vs.
 - To Employees – “Time sheets must be accurate to ensure that proper payment is made to you. Time sheets should be reviewed carefully, any corrections or additions should be made and the timesheets need to be signed. Signing the timesheet means that you have reviewed it thoroughly and that it is correct and accurate.”

SEE THE DIFFERENCE?

Careful Communications

- **Words matter**
 - “Each supervisor is ultimately responsible for managing overtime and for ensuring that each department’s overtime budget is not exceeded. Supervisors are also responsible for certifying the accuracy and truthfulness of time sheets.”
 - vs.
 - “The Board has established procedures for the approval of overtime. Those procedures have been explained to employees. You also have a role in managing overtime through the implementation of those procedures.”

SEE THE DIFFERENCE?

Careful Communications

- **Words matter**
 - “No overtime shall be worked without the approval or knowledge of your supervisor.”
 - vs.
 - “No employee may work overtime without specific approval.”

SEE THE DIFFERENCE?

Careful Communications

- **Words matter**
 - “Employees shall not sign in (clock in) until their scheduled times.”
 - vs.
 - “Employees shall not begin work until their scheduled times and shall not work beyond their scheduled work hours. Employees are required to sign in when work is begun each day and sign out when work is completed for the day.”

SEE THE DIFFERENCE?

Communication Methods

- One-on-one discussions
- Group discussions
- Faculty meetings
- In-service or summer institute
- Mandatory system-wide meetings
- Written agendas
- Written policies
- Memoranda
- Letters
- Power Points
- Multi-media

MEMORANDUM

TO : Custodial Staff
FROM : Tim Savage, Superintendent
DATE : November 10, 2008
RE : Overtime

Before the new school year gets too far underway, I wanted to provide you with some information about salaries and overtime so that we will all have a better understanding concerning pay issues.

You work as a maid or a janitor for the school system and are paid a salary for that work. It is not necessary for you to work overtime to fulfill the duties of your position and you should not work over forty hours in any given workweek.

The Fair Labor Standards Act requires that overtime be paid for hours worked over forty in a work week. Sick days, vacation days, personal days, holidays, or other days that you might be paid for but you are not working do not count toward the forty hour threshold. So, you are entitled to overtime for all the hours you actually work over forty. For all those hours, you will be paid your hourly rate plus an overtime premium of one half your hourly rate, commonly referred to as "time and one half." For overtime purposes, your hourly rate is calculated as follows:

All Compensation Received in Week
All Hours Worked in Week = Hourly Rate

Your salary is paid annually so, to convert it to a weekly salary, we have to divide it by the number of contract days and then multiply by five. We then add any other pay received before dividing.

MEMORANDUM

TO : Teacher Aide/Bus Drivers (Dual Positions)
FROM : Tim Savage, Superintendent
DATE : November 10, 2008
RE : Overtime

Before the new school year gets too far underway, I wanted to provide you with some information about salaries and overtime so that we will all have a better understanding concerning pay issues.

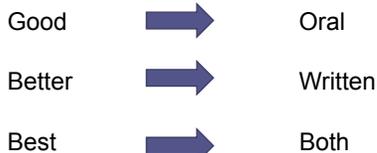
You work in a dual job position, with a bus driving component and a full-time aide component. The hours necessary to fulfill the duties of both "jobs" result in the payment of overtime in many weeks. Overtime is paid in any workweek that more than forty hours are actually worked.

Your situation is somewhat unique, in that your salary is designed to cover up to fifty-five hours of work in a given week - up to thirty-five hours as an aide and up to twenty hours as a bus driver. Your salary provides compensation for your basic hourly rate ("straight time") for all fifty-five hours. The Fair Labor Standards Act requires that overtime be paid for hours over forty in a work week. Sick days, vacation days, personal days, holidays, or other days that you might be paid for but you are not working do not count toward the forty hour threshold. So, you are entitled to overtime for all the hours you actually work over forty and, because your salary already covers your straight time for hours up to fifty-five, that overtime is paid as an overtime premium of one-half your hourly rate. For overtime purposes, your hourly rate is calculated as follows:

All Compensation Received in Week
All Hours Worked in Week = Hourly Rate

[PLEASE SEE MEMORANDA INCLUDED IN HANDOUT]

Communication Methods



Examples of Communications

PLEASE SHARE WITH ALL EMPLOYEES

March 21, 2009

TIMESHEET REMINDERS

Employees must submit a record of actual time worked on their provided timesheets.

Employees must submit timesheets in a timely manner for every pay period. These timesheets are used to determine the actual time worked. Employees should submit timesheets to the appropriate supervisor in a timely manner. The supervisor will review the timesheet and submit it to the appropriate personnel. The supervisor will also submit the timesheet to the appropriate personnel. The supervisor will also submit the timesheet to the appropriate personnel.

A supervisor must sign and submit the timesheet to the appropriate personnel. The supervisor must also submit the timesheet to the appropriate personnel. The supervisor must also submit the timesheet to the appropriate personnel.

The supervisor must also submit the timesheet to the appropriate personnel. The supervisor must also submit the timesheet to the appropriate personnel. The supervisor must also submit the timesheet to the appropriate personnel.

If you have any questions please contact your payroll staff account.



JEF-ED
Jefferson County Board of Education
1000 10th Street
Harrisburg, Kentucky 40301-2801
Telephone: 606/779-1000

October 11, 2008

MEMORANDUM

TO : Support/Classroom Employees

FROM : [Signature]

RE : Time Clock Reminder

It is the employee's responsibility for checking into time or being in time out if you are absent and to be sure you will be returned to the appropriate position.

The support/Classroom employees are to be in time out by 7:00 A.M. or 3:30 P.M. Please see the HRD for more information.

cc: Dr. Tracy Hinton

[Signature]

[Signature]

[PLEASE SEE MEMORANDA INCLUDED IN HANDOUT]

Training

- Ties in closely with communication
 - Use your communication methods in training
- Let's talk about some common training mistakes so we can decide the right way to do it

Training Some Recommendations

- Establish the purpose for the training
 - Is it designed to teach or orient?
 - Is it a follow up or refresher?
 - Is it to demonstrate compliance?
- Once you know your purpose, the rest should fall into place

Training Mistakes

- We train the wrong people
- We train on the wrong subjects
- We train at the wrong times
- We use the wrong methods
- We don't train everyone

Training A Simple Plan

- 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
 - f. Processors – payroll mostly

Training A Simple Plan

- 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

- 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 A Simple Plan

- 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 Some Tips

- 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?

Managing Overtime

- Perhaps the most difficult role – how do you help manage “overtime problems”?
- Establish effective channels of communication with finance
- Develop a checklist of items that should involve others at the Central office (use others’ talents):
 - 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 Practices

- 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
 - Timesheets should be reviewed by someone other than the payroll clerk regularly-look for...
 - 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 Practices

- 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
 - 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 Practices

- 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

- 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.

Discipline

- 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!

IDEAS

- Appoint someone (Maybe you!) 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

- 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

Discipline

- The action to be taken relates directly to planning, training, and communication
- Mistakes v. Misdirection v. Dishonesty
 - May call for different approaches
- Your department needs to have “skin in the overtime game,” and be confident in acting
- If monitoring, training, etc., has been delegated, need to make sure proper foundation for disciplinary action is there
- Be clear about expectations and consequences if something happens (applies not only to principals but supervisors)

Problem Solving

- May weigh risk and determine the best approach is to leave things as they are
- Be proactive – solve your problems before they become problems

Problem Solving

- 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.

Why all this matters . . .

- 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

- 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

Liquidated Damages

- 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

Willfulness

- 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

Costs and Attorneys’ Fees

- The problem with FLSA litigation
- Attorneys’ fees always eclipse damages
- Attorneys have little incentive to settle

The Attorney's Perspective-Things That Make My Job Harder

- Lack of time records
- Overtime shown, but not paid
- Testimony that principal told employee not to report overtime or that it was not "in the budget"
- 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

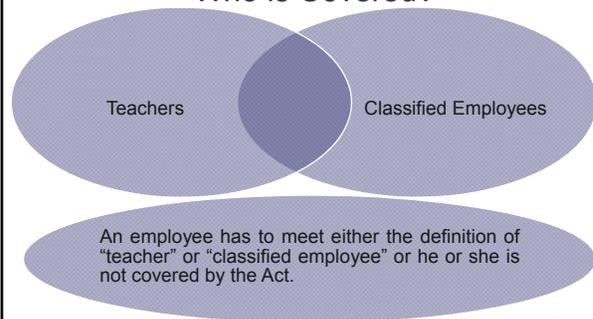
Students First

- The "tenure" law is always part of the conversation when it comes to managing resources
- Establishing work hours
- Changing work hours
- Changing days worked
- Salary Modifications
- New law provides more flexibility BUT only if we plan ahead

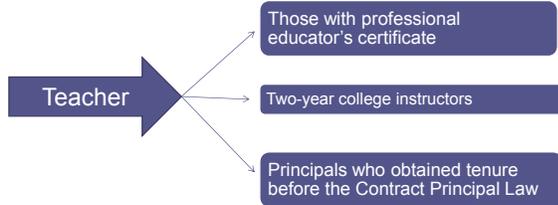
Things That Make My Job Easier

- 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

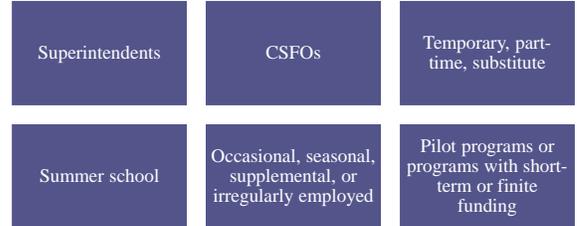
Students First Act Who is Covered?



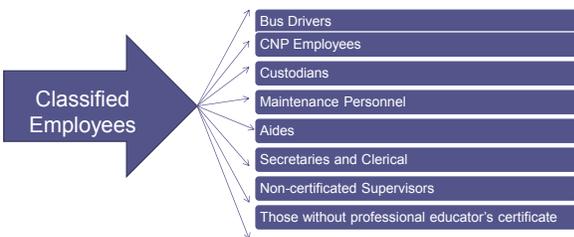
Students First Act Who is Covered?



Students First Act Who is not Covered?



Students First Act Who is Covered?



Students First Act *Practical Tip*

Documenting Status

- Memorialize it if you know a position is not covered
- Think about an employee acknowledgment
- If it is temporary, put end date on Personnel Action AND put that position is not covered
- If funding is limited, identify that criteria
- Less may not be more – make sure the situation is clear

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Students First Act

Earning “Tenure” & “Nonprobationary Status”

- Three consecutive complete school years
- Complete school year is anytime before October 1st through end of year
 - If hired after October 1st, that year doesn't count
- Earn it unless written notice is given :
 - For teachers, on or before last day of third consecutive school year
 - For classified employees, on or before June 15th following that third year (except for 1st year of legislative quadrennium, then June 30th).

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Students First Act

* Practical Tip *

Contracts

- The old teacher tenure act was based on a series of one-year contracts, with automatic renewals
- The contracts renewed unless they were “non-renewed” in the non-renewal window at the end of the year
- The contract/renewal/non-renewal language does not appear in the new act
- Be careful about using those terms and try to think about service on a continuum three year trial period

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Students First Act

Earning “Tenure” and “Nonprobationary Status”

- Only complete school years count
- Includes creditable leave time
- Tenure/nonprobationary status as teacher or classified employee separate and not transferrable or interchangeable between categories
- Not transferrable between boards, except for annexation, school district formation, consolidation, or a similar reorganization

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Students First Act

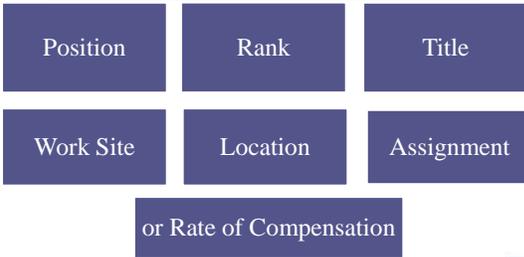
Service Credit & Already Attained Tenure

Employees who have attained tenured status or nonprobationary status shall be deemed tenured teachers under this Act. Current time in service shall be credited toward the attainment of tenure or nonprobationary status

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Students First Act Earning "Tenure" and "Nonprobationary Status"

Tenure is not earned in:



Students First Act Termination Non-tenured Teachers

- May be terminated any time upon written notice (after recommendation of Superintendent and vote of the Board) on or before June 15th unless it is the third year and then the deadline is the last day of the school year
- During school year, requires 30 days notice
 - Teacher can submit written statement to Board
- Decision not appealable

Students First Act Termination Probationary Classified Employees

- May be terminated any time upon written notice (recommendation by Superintendent, vote of Board) before nonprobationary status is earned
- If terminated, get 15 days pay and benefits from issuance of notice
- Decision not appealable

Students First Act Termination

Tenured and Nonprobationary Employees

- Reasons for Termination
 - Justifiable decrease in number of positions
 - Incompetency
 - Insubordination
 - Neglect of duty
 - Immorality
 - Failure to perform duties in a satisfactory manner
 - Other good and just cause
 - Cannot be for political or personal reasons

Students First Act

* Practical Tip *

Political or Personal

- Employment decisions cannot be made for political or personal reasons
- Have to make sure there are sound reasons for decisions and they are appropriately documented
- “I’m not required to have a reason” will eventually be problematic
- Need to know why every personnel action is being taken – just because a reason does not have to be specified does not mean that there does not have to be one.

Students First Act

Tenured and Nonprobationary Employees Termination Hearings

- Superintendent has burden of proof
- Employee can present testimony, evidence, and argument, and can cross examine witnesses
- Can have an attorney
- Court reporter paid by State
- Hearing can be private or public (employee choice)
- Subpoenas may be issued
- Board acts as a deliberative body

Students First Act Termination

Tenured and Nonprobationary Employees

1. Recommendation by Superintendent – written notice of proposed termination
 - Reason
 - Short and plain statement of facts
 - Statutory grounds for termination
 - Opportunity to request hearing within 15 days of notice
2. No hearing request, Board can go ahead and vote
3. If hearing requested, Board sets hearing between 30 and 60 days of issuance of notice of hearing (can be rescheduled by agreement or good cause)

Students First Act A Word About Hearings . . .

“Whenever this act affords an employee the right to be heard by the governing board . . . and such right to be heard is requested . . . the *merits* of the recommended employment action shall not be *deliberated* or *determined* by the governing board . . . before the hearing.”

Section 8, Act No. 2011-270

Students First Act Pay

- Employment decisions are effective immediately
- For tenured and non-probationary classified personnel, pay continues until the sooner of:
 - (1) 75 days
 - (2) When the hearing officer rules
- Termination based on moral turpitude, immorality, abandonment of job, incarceration, or neglect of duty – pay may cease immediately
- If employee wins appeal, can receive back pay

Students First Act Tenured and Nonprobationary Employees Suspensions

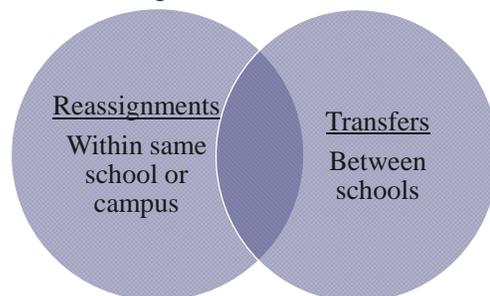
These provisions are a bit different and much simpler to follow:

- Can suspend for 20 work days without pay
- Notice has to be given and an opportunity to present evidence and argument to the Board
- If over 20 days, notice, hearing, and review process for terminations apply

Students First Act Tenured and Nonprobationary Employees Appeal of Board Decision

- Appeal is to State Superintendent
- Goes to hearing officer (retired judges trained in ADR)
- Notice of appeal contains grounds and served on Superintendent
- Superintendent will prepare record and send it
- Hearing officer holds hearing with deference to Board's decision and renders decision
- Can appeal that decision to Court of Civil Appeals

Students First Act Reassignments and Transfers



Students First Act Teachers Reassignments

Superintendent can reassign

- Within same school, campus, or facility
- By 20th calendar day after school begins
- Teacher must have certification
- Only once per year
- Without loss of compensation

No challenge or appeal

Remember this when looking at resources

Students First Act Transfer – Tenured Teacher

Conditions for transfers to another school

- Employee must hold appropriate certification
- No reduction in compensation
- First 20 calendar days of school
- Only once per school year
- Must be Board approved
- If within high school feeder pattern, meeting before vote
- If outside high school feeder pattern, hearing before vote
- If only one feeder pattern = only a meeting required

Students First Act * Practical Tip *

Reassignments

- Set up a reassignment process
- Don't need Board approval
- Superintendents reassign, not principals, not personnel departments not finance
- Make sure Superintendent is aware of the reasons for reassignment

Students First Act Transfer – Non-probationary Classified

- Can be transferred if no reduction in compensation, written notice is issued not less than 15 days before decision, and transfer is effective not less than 15 calendar days from decision
- If to a work site outside of high school feeder pattern, have opportunity to appeal in same manner as termination
- Only one transfer per year

Students First Act Transfer – Reduction-in-Pay

- Probationary and non-tenured employees
 - Can be transferred to position that pays less or shorter term if:
 1. Appropriate certificate
 2. Written notice is given with explanation of effect on compensation of employee
 3. Opportunity to object in writing before the vote
 - Transfer effective not less than 15 calendar days from vote
- Non-probationary and tenured employees
 - Transfers to positions with lower rate or shorter term may be challenged like a termination
 - Transfers in conjunction with RIFs or made in order to comply with state or federal law are not subject to challenge or review

Students First Act Paid Administrative Leave

Acknowledges and authorizes paid administrative leave

Paid administrative leave – Superintendent decides

Students First Act System Level Decisions

- The following are not considered terminations or transfers
 - Reduction or modification of compensation or benefits
 - Reduction or modification of work or school year
IF
 - Prospective
 - Recommended by Superintendent and approved by Board
 - Applied uniformly to similarly situated employees within system, division, department, or employment classification
 - Layoffs or RIFs due to decreased enrollment or shortage of revenues cannot be challenged as well

Notice Provisions

Notice by certified mail, next business day delivery (FedEx, UPS, DHL), or by physical delivery to the employee or the employee's last known address

Notice deemed received two business days after sent for mail and private delivery

The *employer* has the burden of proving service was effected, but the *employee* has the burden of proving that such service was not properly made.

Students First Act Legal Relief

If a tenured /nonprobationary employee has been denied a hearing before an employer subject to the requirement of this Act, he or she may appeal for relief directly to the Chief Administrative Law Judge of the Office of the Attorney General

The appeal shall state facts sufficient to allow the Judge to determine whether or not the employer has complied with this Act

QUESTIONS... ?

Students First Act * Practical Tip *

Policy Review

- Many policy manuals address tenure and non-probationary status, hearing rights, suspensions, and other matters
- Remember policy can be binding
- Review policies and make sure they don't conflict with the new act

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