SO, YOU THINK YOU KNOW THE FAIR LABOR STANDARDS ACT

by

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GLOSSARY OF TERMS UNDER THE FLSA

FLSA - The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201 *et seq*.

Minimum Wage - the lowest wage an employer can pay an employee under the FLSA.

Overtime Wage - the rate an employer must pay an employee who works in excess of 40 hours in a workweek. The rate paid for overtime must be at least one and one half times the employee's regular rate of pay.

Workweek - any time period of 168 consecutive hours (7 x 24) an employer uses for computing wages paid to an employee. The workweek can start on any day, at any time. The workweek can change, but not in a manner that denies employees overtime wages they would have earned, but for the change of the workweek.

Exempt employees - employees who are not covered by the overtime provisions of the FLSA. Generally, exempt employees are paid on a salary basis and perform work of a supervisory, managerial, or professional type. Exempt employees who work more than 40 hours in a workweek do not receive overtime.

Non-exempt employees - employees who are paid by the hour and are not exempt from the overtime provisions of the FLSA. Non-exempt employees who work more than 40 hours in a workweek do receive overtime pay.

Hours worked - time spent by an employee performing any type of service for the benefit of the employer.

Compensable time - time spent for the benefit of the employer and used to calculate wages owed to an employee even though no work may be performed.

Compensatory time - for public employers only, paid time off may be given to employees in lieu of overtime wages. The time off given to the employee is one and one half times the number of hours worked in excess of 40 hours in a workweek. An employee who works 50 hours in a workweek is entitled to 10 hours of overtime (regular rate of pay x 1.5) or 15 hours of paid leave (10 overtime hours x 1.5). The paid leave is at the employee's regular rate of pay.

FLSA REGULATIONS
WHO IS EXEMPT AND WHO IS NOT?

The Fair Labor Standards Act ("FLSA") is the federal law regulating issues such as overtime, minimum wage, child labor laws, equal pay and age discrimination. One issue addressed in the FLSA is which employees are "exempt" from receiving overtime pay and which employees are covered by the overtime regulations (called "non-exempt"). The original regulations governing the job duties necessary for an employee to receive exempt status have not been updated since **1949!** Additionally, the minimum weekly salary for achieving exempt status consideration was last adjusted in 1975. That amount, $155.00 per week, is less than current minimum wage.

After numerous stops and starts, Congress passed new regulations in 2006 for determining which employees should not be paid overtime and which should be paid on an hourly basis and receive overtime pay for working in excess of 40

hours in a workweek. As a part of your employer's payroll system, you need to be familiar with the regulations and tests for determining exempt status.

The tests to determine exempt status under the FLSA now include:

EXECUTIVE EXEMPTION

- The employee must be compensated on a salary basis at a rate not less than $455.00 per week.
- The employee's primary duty must be managing the enterprise or managing a customarily recognized department or subdivision.
- The employee must customarily and regularly direct the work of at least two or more full-time employees or their equivalent.
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

ADMINISTRATIVE EXEMPTION

- The employee must be compensated on a salary or fee basis at a rate not less than $455.00 per week.

- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or employer's customers.
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

PROFESSIONAL EXEMPTION

- The employee must be compensated on a salary or fee basis at a rate not less than $455.00 per week.
- The employee's duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring consistent exercise of discretion and judgment.
- The advanced knowledge must be in a field of science or learning.
- The advanced knowledge must me customarily acquired by a prolonged course of specialized intellectual instruction.

There are also tests for Computer Employees and Outside Sales. While your school system already has designations of who is or is not exempt, it is always a good time to reevaluate the job duties of the employees who you now consider to

be exempt from overtime pay to make certain that employees you believe to be exempt, actually are exempt. Additionally, whenever a new position is created in your school system, a discussion of the exempt status should be made and documented.

FLSA I.Q. TEST

1. A full-time hourly (non-exempt) employee of your school system takes a 15 minute break in the morning and another one in the afternoon. These breaks are compensable time under the FLSA. (29 C.F.R. §785.18.)

Agree _____ *Disagree* _____

2. Your superintendent, who was just recently hired by the school board, decides that allowing office employees 45 minutes for lunch is too long and is non-productive. The superintendent decides 25 minutes is long enough for anyone to eat lunch. This violates the FLSA because full-time employees are allowed at least 30 minute lunch periods when working an 8 hour shift. (29 C.F.R. §785.18 and §785.19.)

Agree _____ *Disagree* _____

3. Each weekend during the school year, a non-exempt maintenance employee is required to carry a "pager" with him/her. This pager is for situations in which an emergency occurs at a school building that would require the employee to go to the building to take care of the situation. Because the employee must show up at the school building within **45 minutes** of being paged (which limits his/her ability to travel more than thirty miles from the school district and prevents the employee from consuming alcoholic beverages), the FLSA requires that the employee should be compensated for each hour he/she is "on-call" (carries the pager). (29 C.F.R. §785.17.)

Agree _____ *Disagree* _____

4. Unless the school system has offered employees a form of a "stop smoking" program or pays for the initial costs of setting up a medical program of smoking inhibitors ("patches" or nicotine gum or electronic smoking devices), under the FLSA and in conjunction with the **Drug Free Workplace Act**, employees who smoke are allowed 2 fifteen minute breaks (above any other breaks allowed all employees) per eight hour shift which allows these employees to smoke outside of the school building.

Agree _____ *Disagree* _____

5. In your school system, all full-time administrative employees accrue vacation/annual leave days. A long term employee of the system who has worked in the accounting department announces on February 1, 2016 that she is quitting her job effective July 1, 2016. This employee has accumulated 94 hours of vacation/annual leave. **Assuming the school system does not have a policy regarding accrued but unused leave time**, under the FLSA, this employee is entitled to receive at the time of her leaving employment, payment for:

A. 80 hours of vacation/annual leave (a two workweek maximum).

Agree _____ *Disagree* _____

B. 40 hours of vacation/annual leave (a one workweek maximum).

Agree _____ *Disagree* _____

C. 94 hours of vacation/annual leave, because the employee gave a two week notice before quitting.

Agree _____ *Disagree* _____

D. 94 hours of vacation/annual leave, regardless of giving a two week notice or not.

Agree _____ *Disagree* _____

E. No payment for accrued but unused vacation/annual leave.

Agree _____ *Disagree* _____

6. A non-exempt employee in your board office elects to eat her lunch at her desk every work day. The board allows employees a 30 minute lunch break. While at her desk eating lunch, the office telephone will occasionally ring. On some occasions, the employee will answer the telephone and take care of school business. **These calls usually last less than 5 minutes.** Under the FLSA, the employee should be compensated only for the time she spends on the telephone conducting school business while she is on her lunch break. (29 C.F.R. §785.79(a).)

Agree _____ *Disagree* _____

7. Non-exempt employees in the maintenance department are required to wear uniforms while on duty. These uniforms are paid for by the school system. Employees must leave the uniforms at the maintenance building each day, where a locker room is provided for employees to change. A uniform cleaning service picks up the uniforms once a week and returns clean uniforms for the employees. **Because the cost of the uniforms and the cleaning services are paid for by the**

school system, the time it takes employees to change in and out of the uniforms is NOT compensable time under the FLSA. (29 C.F.R. §785.24(c).)

Agree _____ *Disagree* _____

8. Your school system has a workday for office employees that starts at 8:00 a.m. and ends at 4:00 p.m. Non-exempt employees punch a time clock when they start and end their workday. Employees do not have to punch out for breaks, including their lunch breaks. Employees are allowed up to an hour lunch break which is paid by the employer and treated as compensable time. This paid lunch break give the employees an 8 hour work day. Employees do not always take an hour lunch break. Employees sometimes take the entire hour lunch break, sometimes they take 30 minutes and sometimes they take even less in order to complete their job duties. Employees receive compensatory time instead of overtime when they work in excess of 40 hours in a workweek. An employee, Mary, is retiring and requests to be paid her accrued compensatory time. Mary had worked on average 42 hours each week for the past year (this is the only compensatory time Mary had earned). Mary claims she is due to be paid 100 hours of compensatory time (she had taken two weeks of vacation). Mary has taken into account the weeks that had holidays when she did not work over 40

hours. Mary is entitled to be paid: (29 C.F.R. §785.320.)

A. 100 hours of compensatory time.

Agree _____ *Disagree* _____

B. No compensatory time because even though the lunch break is paid, employees do not actually work 40 hours and you can only get overtime for working in excess of 40 hours.

Agree _____ *Disagree* _____

C. 50 hours of compensatory time because that seems a fair resolution of the problem.

Agree _____ *Disagree* _____

9. There is **bad weather** in your school district. As a result, some employees cannot get to your office which is open for business. Hourly employees are not paid unless they report to work, clock in and perform duties for their employer. Exempt employees, however, are paid on a salary basis. Three exempt employees have problems getting to work due to the weather. Employee A misses the entire workday. Employee B is able to make it in at lunch time.

Employee C shows up for work at 4:45 (the office closes at 5:00). Under the FLSA, deductions of pay of exempt employees may be made for "personal reasons" (reasons unrelated to sickness or disability) and not violate the "salary basis" of pay required for exempt status. You take the following actions: (29 C.F.R. §541.602(a); Opinion Letter FLSA2005-41.)

A. For Employee A, you deduct a full days' pay because failing to report to work due to weather is a "personal reason" under the FLSA. This does not violate the FLSA.

Agree _____ *Disagree* _____

B. For Employee B, you deduct a half days' pay because the employee did not report to work until half of the work day had gone by before the employee reported to work. This does not violate the FLSA.

Agree _____ *Disagree* _____

C. For Employee C, you deduct a full days' pay because the employee came to work for only 15 minutes at the end of the work day. This is allowed under the FLSA.

Agree _____ *Disagree* _____

D. You are not allowed to make any deductions from A, B or C because weather related absences are not "personal reasons" but are considered "Acts of God" which are not subject to the allowance of deductions of pay of exempt employees.

Agree _____ *Disagree* _____

10. A former employee of the school board sues the board for unpaid overtime. While employed by the board, the employee was supposed to sign a time sheet each day when the employee came to work in the morning, took a lunch break and when leaving for the day. This employee, and several other employees, were not very good at doing this and generally just worked it out to work 40 hours a week. This employee now claims to have worked at least 50 hours a week. Under the FLSA, it is the employee's burden to prove the number of hours worked each week because the board had a **written policy** that required the employee to keep a record of hours worked and the employee violated the policy. (29 C.F.R. §516.1.)

Agree _____ *Disagree* _____

11. A full-time hourly (non-exempt) employee of your school system takes

a 20 minute break in the morning and another one in the afternoon. These breaks must be compensable time under the FLSA. (29 C.F.R. §785.18.)

Agree _____ *Disagree* _____

12. Deductions from the salary of an exempt employee can only be made in increments of one full day without violating the FLSA. (29 C.F.R. §541.602(b).)

Agree _____ *Disagree* _____

VOLUNTEERS

13. Your school system recently lost an assistant soccer coach to another system. This coach was compensated at your school system at the annual rate of $17,500 per school year, which is typical compensation for assistant soccer coaches in the area. The system has had difficulty finding a replacement for this coach. A non-exempt custodial employee of the school system, Bubba, volunteers to work as the assistant coach. The school system wants to provide a STIPEND to Bubba for his volunteering his time to help the team. This assistant coach is expected to attend away games, but does not receive any additional pay for his travel expenses. (29 C.F.R. §553.101, §553.103, and §553.106; Opinion Letter FLSA2004-6.)

A. Bubba receives a stipend of $4,000.00 per year regardless of the number of hours he has to work or how the team performs.

This arrangement is allowed under FLSA regulations for nominal pay for volunteer activities for public purposes.

Agree _____ *Disagree* _____

B. Bubba receives a stipend of $3,000.00 per year, but receives an additional payment if he has to work a total of more than 150 hours during the soccer season (approximately 3 months), not including travel or games. This payment is limited to $8.00 per hour for each hour worked in excess of 150 hours.

This arrangement is allowed under FLSA regulations for nominal pay for volunteer activities for public purposes.

Agree _____ *Disagree* _____

C. Bubba receives a stipend of $3,000.00 per year, but receives an additional payment if the team makes the playoffs. If the team wins the division, Bubba gets and extra $100. If the team wins the region, Bubba gets an additional $150. If the team wins the State championship, Bubba gets an extra $300.

This arrangement is allowed under FLSA regulations for nominal pay

for volunteer activities for public purposes.

Agree _____ *Disagree* _____

D. Bubba receives a stipend of $3,000.00 per year, but receives an additional payment for travel expenses. Because the team has to travel a great deal during the season, the total for the travel expenses for Bubba end up being $838.67. This includes travel associated with the team making the playoffs.

This arrangement is allowed under FLSA regulations for nominal pay for volunteer activities for public purposes.

Agree _____ *Disagree* _____

E. Rather than paying Bubba a stipend, Bubba is paid $8.00 per hour for each hour worked as assistant soccer coach. Bubba's rate of pay as custodian is $17.25 per hour. Bubba's payment as an assistant soccer coach is less than half of his regular rate of pay. Bubba is entitled to receive overtime pay if his duties as assistant soccer coach require him to work more than 40 hours in a workweek

This arrangement is allowed under FLSA regulations for nominal pay for volunteer activities for public purposes.

Agree _____ *Disagree* _____

14. An employee of the school system volunteers to drive the basketball team to away games. This employee is not compensated for this activity.

A. This employee of the school system is a full-time bus driver for the school system.

This arrangement is allowed under FLSA regulations for volunteer activities for public purposes.

Agree _____ *Disagree* _____

B. This employee of the school system is a full-time custodian at the high school.

This arrangement is allowed under FLSA regulations for volunteer activities for public purposes.

Agree _____ *Disagree* _____

C. This employee is a sixth grade teacher at the system's elementary school.

This arrangement is allowed under FLSA regulations for volunteer activities for public purposes.

Agree _____ *Disagree* _____

D. This employee is a full-time bus driver for the school system who also has a son on the basketball team.

This arrangement is allowed under FLSA regulations for volunteer activities for public purposes.

Agree _____ *Disagree* _____

15. A full-time bus driver for the school system volunteers to be the assistant basketball coach for the high school boys' basketball team. Occasionally, the employee has to drive the team bus to get the team to away games.

A. The employee receives a stipend to be the assistant coach in the amount of $3,600.00 per school year and nothing more. A full-time assistant coach would be paid approximately $18,000.00 per year.

This arrangement is allowed under FLSA regulations for volunteer activities for public purposes.

Agree _____ *Disagree* _____

B. The employee is not compensated for anything he does as the assistant coach.

This arrangement is allowed under FLSA regulations for volunteer activities for public purposes.

Agree _____ *Disagree* _____

C. The employee receives a stipend to be the assistant coach in the amount of $3,600.00 per school year. A full-time assistant coach would be paid approximately $20,000.00 per year. The employee volunteers as the assistant coach for the season which lasts 15 weeks. Because the employee drives the bus occasionally to transport the team to away games, he must be compensated in the following manner:

1. The stipend covers all of the compensation the employee should receive because he only occasionally drives a bus and is a volunteer.

Agree _____ *Disagree* _____

2. In the weeks the employee drives the bus for the team, the number of hours he spends as a volunteer assistant coach that workweek (approximately 20 hours) are divided by the total of the pay per week he receives as part of his stipend ($3,600 divided by 15 weeks = $240 per week) equaling $12.00 per hour. For each hour worked by the employee driving the bus, the employee receives an extra $12.00 per hour above the stipend.

Agree _____ *Disagree* _____

3. In the weeks the employee drives the bus, he is paid for the time he drives the bus at the same rate of pay he receives for driving the bus

during the school week. This payment is above his stipend. The employee does not receive overtime because the driving of the team is a volunteer activity outside of his normally scheduled workweek.

Agree _____ *Disagree* _____

4. In the weeks the employee drives the bus, he is paid for the time he drives the bus the same rate of pay he receives for driving the bus during the school week. This payment is above the stipend. If the hours worked by the employee during that workweek as a full-time bus driver plus the hours worked driving the bus for the team total more than 40 hours in that workweek, the employee must receive overtime pay for each hour worked in excess of 40 hours.

Agree _____ *Disagree* _____

16. A non-exempt school secretary/bookkeeper volunteers to keep the books for the school's football booster club. The employee is not paid for the bookkeeping services she provides the booster club.

This arrangement does not violate FLSA regulations.

Agree _____ *Disagree* _____

COMPENSATORY TIME

17. A cafeteria worker at the high school of your school system has a forty hour workweek. This employee is paid $10.00 per hour as her regular rate of pay. Occasionally, the employee works in excess of 40 hours in a workweek. Rather than pay the employee overtime, the policy at this school system allows the system to provide employees with compensatory time off in lieu of overtime at the option of the employer. If this employee worked 50 hours in one workweek, he/she would be entitled to receive: (29 C.F.R. §553.27; §778.108 and §778.109.)

A. $400.00 (gross pay)

Agree _____ *Disagree* _____

B. $500.00 (gross pay)

Agree _____ *Disagree* _____

C. $550.00 (gross pay)

Agree _____ *Disagree* _____

D. $400.00 (gross pay) and 10 hours of paid leave.

Agree _____ *Disagree* _____

E. $400.00 (gross pay) and 15 hours of paid leave.

Agree _____ *Disagree* _____

F. $500.00 (gross pay) and 10 hours of paid leave.

Agree _____ *Disagree* _____

18. A teacher's assistant at your school system (a non-exempt position) is scheduled to work 20 hours per week, making $12.00 per hour. Occasionally, the employee works more than 20 hours per week. Rather than paying overtime, the policy of the school system is to give the employee paid leave time instead of overtime pay when a part-time employee works in excess of his/her regular work schedule. The employee is given one hour of paid leave for every hour of work the employee performs in excess of the 20 scheduled hours each workweek. (29 C.F.R. §553.20 and §555.21.)

A. This policy does violate the FLSA because part-time employees

are not eligible for compensatory time.

Agree _____ *Disagree* _____

B. The employee should be paid overtime ($18.00 per hour) for each hour worked in excess of 20 hours per workweek because her regular schedule is to only work 20 hours per week.

Agree _____ *Disagree* _____

C. This policy does not violate the FLSA regulations for compensatory time.

Agree _____ *Disagree* _____

19. An non-exempt employee at your high school who has always worked in the cafeteria has been with the school system for over thirty years. During her employment, this employee, Alice, has earned compensatory time and has used it at various times during her employment as paid leave. Compensatory time not used as paid leave has been "banked" by this employee. Currently, the employee has 180 hours of compensatory time (she is eligible to take 180 hours paid leave for having worked 120 hours of overtime). Alice has earned all of this unused compensatory time in the last three years (April 1, 2013 to April 1, 2015). From April 1, 2015 to March 31, 2016, Alice was the supervisor of the cafeteria (a non-exempt position) and was paid $15.00 per hour. During this time, she worked 100

hours of overtime. However, Alice was demoted on April 1, 2015 because she failed a drug test. Because of the demotion, Alice's pay was reduced to $10.00 per hour. Alice was involuntarily terminated (that means "fired") for failing a second drug test on April 1, 2016. Alice asks to be paid money for her accrued, but unused compensatory time. (29 C.F.R. §778.106.)

A. Alice is due $1,800.00 for her compensatory time because she was earning $10.00 per hour at the time she was involuntarily terminated. This complies with the FLSA regulations for payment of compensatory time for terminated employees.

Agree _____ *Disagree* _____

B. Alice is due $2,550.00 for her compensatory time because she was earning $15.00 per hour at the time earned 100 hours of overtime ($2,250.00) and she earned $10.00 per hour when she earned 20 hours of overtime ($300.00). This complies with the FLSA regulations for payment of compensatory time for terminated employees.

Agree _____ *Disagree* _____

C. Alice is due $2,400.00 for her compensatory time because she was earning $15.00 per hour for two of the last three years of employment and $10.00 per hour for the other year making her average pay $13.33 for the last three years

of employment. Alice's average overtime rate is $20.00 per hour times 120 hours of overtime. This complies with the FLSA regulations for payment of compensatory time for terminated employees.

Agree _____ *Disagree* _____

D. Alice is not due any overtime pay because she was terminated for cause. This complies with the FLSA regulations for payment of compensatory time for terminated employees.

Agree _____ *Disagree* _____

E. Alice is due whatever overtime she is owed on the date of her termination. Failure to pay a terminated employee the wages he/she is owed on the date of termination is a violation of the FLSA.

Agree _____ *Disagree* _____

20. A long-term, non-exempt employee has accrued compensatory time over her years of employment with the school system. When she retires, an audit of her payroll records shows that she has accrued 600 hours of compensatory time (400 hours of overtime). The school system should pay her: (29 C.F.R. §553.21.)

A. 160 hours of overtime because the FLSA limits the amount of compensatory time an employee can accrue to 240 hours, which is 160 hours of overtime worked.

Agree _____ *Disagree* _____

B. 160 hours of overtime and 240 hours of straight time.

Agree _____ *Disagree* _____

C. 400 hours of overtime.

Agree _____ *Disagree* _____

21. A non-exempt employee working at the high school in your school system has accrued 100 hours in compensatory time in lieu of overtime pay. In January, the employee puts in a written request to use a week of her accrued compensatory time off for the week following the system's spring break. According to the high school principal, it would be inconvenient for that employee to be on leave that week. The system can deny the employee's request to use her compensatory time off because employers have complete discretion in when

employees can used compensatory time off. (29 C.F.R. §553.25.)

Agree _____ *Disagree* _____

22. Your school system requires that non-exempt employees keep a record of their own compensatory time and inform the payroll department when the amount of overtime hours worked reaches 100 hours. This policy is consistent with the FLSA regulations regarding recording compensatory time. (29 C.F.R. §516.1.)

Agree _____ *Disagree* _____

RECORD KEEPING

23. The FLSA requires records be kept in paper format so the records can be easily accessible during an investigation. (29 C.F.R. §516.1.)

Agree _____ *Disagree* _____

24. The FLSA requires employers to keep records of its non-exempt employees that include the employee's name, home address, time of day and day of week the employee's workweek begins, and the employee's regular rate of pay.

The FLSA does not require the employer to maintain a record of the employee's date of birth because records that establish the age of an employee violates the Age Discrimination in Employment Act ("ADEA"). (29 C.F.R. §516.2(a)(3).)

Agree _____ *Disagree* _____

25. The FLSA requires employers to keep records of its non-exempt employees that include the employee's name, home address, time of day and day of week the employee's workweek begins, and the employee's regular rate of pay. The FLSA does not require the employer to maintain a record of the employee's gender because records that establish the gender of an employee violate Title VII of the Civil Rights Act of 1964. (29 C.F.R. §516.2(a)(4).)

Agree _____ *Disagree* _____

26. The FLSA requires employers to maintain records of the amount of straight or regular time paid to each employee, the amount of overtime paid to each employee, the hours worked by the employee each workday and the total wages paid to each employee. These records must be maintained for a minimum of 2 years. (29 C.F.R. §516.5 and §516.6.)

Agree _____ *Disagree* _____

27. Pursuant to FLSA regulations, once an inspector requests to seek payroll records as part of a Wage and Hour investigation, the employer has 48 hours to produce the requested records. (29 C.F.R. §516.7.)

Agree _____ *Disagree* _____

28. Because exempt employees are paid on a salary basis, no payroll records of exempt employees is required to be kept by employers under the FLSA. (29 C.F.R. §516.3.)

Agree _____ *Disagree* _____

29. FLSA regulations require mechanical or electronic (such as a time clock) time keeping records for the number of hours worked by non-exempt employees. (29 C.F.R. §516.1(a).)

Agree _____ *Disagree* _____

ONE EMPLOYEE, TWO JOBS

30. The school system employs several full-time bus drivers. The school system does not use compensatory time for its employees. The system pays these drivers $12.00 per hour when they drive their regular routes (before and after school). By agreement, when the bus drivers are used for field trips, they are paid $8.00 per hour and when the bus drivers run special routes, for example, taking home children after extended day programs, they are paid $10.00 per hour.

Joe, a bus driver, in one workweek, drives his regular route for 36 hours. During that week, Joe also drives the bus for two field trips, totaling 6 hours worked. Additionally, that week Joe drove 4 routes for extended day children, totaling 8 hours of work. You, the regular payroll clerk, is on vacation. Sally, who is employed as a secretary at the high school volunteers to do payroll this week because she says, "**Payroll is easy**." According to Sally, Joe's total compensation for that workweek was: (29 C.F.R. §778.115; 29 C.F.R. §553.30; Opinion Letter FLSA2006-22NA.)

36 hours at $12.00 per hour, for a total of –	$432.00
6 hours at $8.00 per hour, for a total of –	$ 48.00
8 hours at $10.00 per hour, for a total of –	$ 80.00

Joe's total for this workweek is – $560.00

Sally issues a check to Joe for $560.00.

Joe claims he is due more money. When you return from vacation, the superintendent tells you to figure out if Joe is owed more money and, if so, how much he should be paid. The superintendent tells you that if you do not comply with the FLSA in reaching your conclusion, you will be terminated and be forced to work in Mississippi.

You decide to make the following recommendation:

A. Joe is not entitled to any more pay. The jobs of driving a bus for field trips and special routes is different than his regular job of driving regular routes picking up and delivering school children before and after school. Therefore, he did not work more than 40 hours in a workweek on the same job. Accordingly, Joe is not owed overtime.

Agree _____ *Disagree* _____

B. Under the FLSA regulations, Joe is entitled to receive 10 hours of overtime pay for the 50 hours he worked. Since Joe's regular rate of pay for his primary job is $12.00 per hour, all of the overtime he is entitled to receive should be based on this amount as his regular rate of pay. For 10 hours of overtime, Joe should receive $180.00 (10 x $12.00 x 1.5) in overtime pay. Joe received $560.00,

with 2 hours of the extra pay being for driving field trips (2 x $8.00) and 8 hours of extra pay at $10.00 per hour (8 x $10.00), for a total of $88.00 in extra pay. Subtract the extra pay ($88.00) from the total owed for overtime ($180.00) and you determine Joe is owed an extra $92.00.

Agree _____ *Disagree* _____

C. Under the FLSA regulations, Joe is entitled to receive 10 hours of overtime pay for the 50 hours he worked. Since Joe's regular rate of pay for his primary job is $12.00 per hour, all of the overtime he is entitled to receive should be based on the rate he was paid when he earned the overtime. Joe would not have earned the overtime if not for him working of the extra routes. Joe should receive 2 hours of overtime pay being for driving field trips (2 x $8.00 x 1.5 = $24.00) and 8 hours of overtime for special trips at $10.00 per hour (8 x $10.00 x 1.5 = $120.00), for a total of $144.00 in overtime earned. Joe earned $464.00 in regular pay (36 x $12.00 plus 4 x $8.00 = $464.00) Subtract the regular pay from what Joe was paid to equal $96.00 ($560.00 - $464.00 = $96.00). Subtract the extra pay ($96.00) from the total owed for overtime ($144.00) and you determine Joe is owed an extra $48.00.

Agree _____ *Disagree* _____

D. Under the FLSA, you determine that the system cannot pay an employee different rates for doing the same job (driving a bus). Therefore, you assume that all of the hours worked by Joe must be paid at the same rate. Joe's primary job is driving the bus on regular routes at $12.00 per hour. Therefore, all of Joe's overtime should be determined by using this rate as his regular rate of pay. You determine that Joe worked 40 hours driving the bus, so he is entitled to receive $480.00 at regular pay (40 x $12.00). Joe also worked 10 hours of overtime. For that, Joe should be paid $180.00 (10 x $12.00 x 1.5). Joe's compensation for the week should be $660.00. Since Joe was paid $560.00, he is owed $100.00 more.

Agree _____ *Disagree* _____

E. Joe worked a total of 50 hours in the week. Joe's compensation (straight time) for the week was $560.00. Divide the amount he received by the number of hours worked to determine his regular rate of pay. This amount is $11.20 ($560.0 ÷ 50 = $11.20). Using this amount as Joe's regular rate of pay, Joe worked 10 hours of overtime making the amount he is due for overtime $168.00 (10 x $11.20 x 1.5 = $168.00). At $11.20 an hour, Joe should have received $448.00 for the first 40 hours he worked. Joe should also have received $168.00 in overtime

making his total compensation $616.00. Subtract what Joe was paid ($560.00) from what he owed ($616.00) and you determine Joe is owed $56.00.

Agree _____ *Disagree* _____

TRAVEL/TRAINING

31. The workday for your school system is from 8:30 a.m. to 5:00 p.m. A non-exempt employee, a human resources specialist named Linda, is required by the school system to attend a training seminar to be updated on the latest changes to the Family and Medical Leave Act ("FMLA"). The seminar is in Tuscaloosa and the fee for the seminar is paid for by school system. (29 C.F.R. §785.38 and §785.39.)

A. The seminar starts at 1:00 p.m and ends at 3:00. Linda works in a school system that is only about one hour from Tuscaloosa. Linda leaves work at 11:00 a.m. and after the seminar returns to the workplace at 4:30 p.m.

Under the FLSA, Linda should be compensated for all the time she traveled to and from the seminar and for attending the seminar.

Agree _____ *Disagree* _____

B. The seminar starts at 9:00 a.m and ends at 11:00. Linda works in a school system that is only about one hour from Tuscaloosa. Linda leaves her home at 7:30 a.m. in order to get to the seminar on time. After the seminar, she returns to the workplace.

Under the FLSA, Linda should be compensated for all the time she traveled to and from the seminar and for attending the seminar.

Agree _____ *Disagree* _____

C. The seminar starts at 9:00 a.m and ends at 4:30 p.m. Linda works in a school system that is only about one hour from Tuscaloosa. Linda leaves her home at 7:30 a.m. in order to get to the seminar on time. After the seminar, she returns home, getting home at 6:00 p.m.

Under the FLSA, Linda should be compensated for all the time she traveled to and from the seminar and for attending the seminar.

Agree _____ *Disagree* _____

D. The seminar starts at 9:00 a.m and ends at 4:30 p.m. Linda works in a school system that is about four hours from Tuscaloosa. Linda leaves work on the day before the seminar at 2:00 p.m. in order to drive to Tuscaloosa. This is

approved by Linda's supervisor. Linda stays at the conference center hotel which is paid for by the school system. Linda has free time to do as she pleases once she gets to Tuscaloosa. After the seminar, Linda returns home, getting home at 9:00 p.m.

Under the FLSA, Linda should be compensated for:

1. All the time she traveled to and from the seminar and for attending the seminar.

Agree _____ *Disagree* _____

2. All the time she traveled to and from the seminar and for attending the seminar. All the time from the point when she left to travel until she returned home the next night, including sleep time.

Agree _____ *Disagree* _____

3. Only the time she traveled to and from the seminar when the traveling took place during the regular workday hours of the office and for attending the seminar.

Agree _____ *Disagree* _____

32. The workday for your school system is from 8:30 a.m. to 5:00 p.m. A

non-exempt employee of the system working in the payroll department, Mary, elects to attend a program about being more efficient with your time. Attendance is voluntary and is not sponsored by the school system. The program is from 6:30 p.m. to 8:30 p.m. Mary claims that attending this seminar will make her more productive because she will be able to better manage her time.

Under the FLSA, the time Mary spent at the seminar should be treated as compensable time. (29 C.F.R. §785.27 through §785.32.)

Agree _____ *Disagree* _____

33. A not-for-profit organization which promotes excellence in the performance of employees working in the financial operations of school systems (Business Operations with Zero-errors Offered to Schools or "BOZOS") offers web-based training on various topics. School systems encourage employees to take some of these training courses, but **does not require it.** Usually, these course are offered and taken by school system employees during the work day. When employees take the web classes during the work day, the school system treats the time as compensable. However, some employees elect to take the web-based seminars (which are recorded) at home outside of working hours. These employees claim that they should be paid for the time they spend taking these

classes at home.

Under the FLSA, these employees should be compensated for the time they spend taking these classes at home. (29 C.F.R. 785.31.)

Agree _____ *Disagree* _____

34. Robert is a custodian at your school system making $10.00 per hour. Robert's normal work day is 8:30 a.m. to 5:00 p.m (deducting a 30 minute lunch break). The high school needs someone to drive a team bus for the high school basketball team to go to a tournament out of town. The trip is too far for the team to commute, so the team and the coaches will stay in a motel. Robert offers to drive the bus. Robert will also have to stay at the same motel as the team so he can shuttle the team to and from the gym where the tournament is being held. The school system pays for the meals and lodging for Robert. Robert has no responsibility for the players other than driving them to and from the games. Robert can use the bus to drive wherever he wants when he is not shuttling the team. The team leaves on Friday at 8:30 a.m. with Robert driving the bus. The bus arrives at the motel at 12:30 p.m. Everyone checks in and gets ready for the first game. Robert drives the team to the gym at 1:30 which takes him 15 minutes. The team plays the game and Robert picks the team up at 4:00 and returns them to

the motel. The team has to go back for a second game at 7:00 which takes Robert 15 minutes. Robert picks the team up at 9:30 and returns them to the motel, taking 15 minutes. Robert goes to his room and has no duties until he takes the team to a game at 10:00 a.m. the next morning (taking 15 minutes). Robert picks the team up at 1:00 and returns them to the motel, a 15 minute drive. The last game requires the bus to leave at 3:30 p.m for the 15 minute drive. After the game at 6:00 p.m., Robert drives the bus back to the high school, arriving at 9:30 p.m. Assuming no other agreement has been made with the school system,

under the FLSA, for driving the bus for the school system Robert should be paid: (29 C.F.R. §785.21 and §785.22; 29 C.F.R. §785.16.)

A. From Friday at 8:30 a.m. until Saturday at 9:30 p.m., a total of 37 hours – the entire time he was on the trip.

Agree _____ *Disagree* _____

B. From Friday at 8:30 a.m. until 5:00 p.m., the end of Robert's regular work day, plus, on Saturday from 8:30 to 5:00 p.m., the same as a regular workday, at total of 16 hours.

Agree _____ *Disagree* _____

C. From Friday at 8:30 until 12:30 when Robert arrives at the motel, plus 15 minutes for each trip to and from the gym, plus the 3 ½ hours for the drive back to school.

Agree _____ *Disagree* _____

D. From Friday at 8:30 until 5:00, plus 15 minutes for each trip to and from the gym, plus, the 3 ½ hours for the drive back to school.

Agree _____ *Disagree* _____

E. From Friday at 8:30 until 5:00, plus 15 minutes for each trip to and from the gym, plus, the 3 ½ hours for the drive back to school, plus 8 hours sleep time for Friday night.

Agree _____ *Disagree* _____