

Summary of Federal Payroll Laws and Regulations

Topics for discussion

- ▶ FLSA (Fair Labor Standards Act)
- ▶ ACA (Affordable Care Act, also known as 'Obamacare')
- ▶ US Department of Labor

Fair Labor Standards Act (FLSA)

- ▶ Wage and Hour Division
 - ▶ Minimum Wage
 - ▶ Exempt Employee vs. Non-Exempt Employee
 - ▶ Record Keeping Requirements
 - ▶ Non-Exempt Compensable Time
 - ▶ Overtime for Non-Exempt Employees
 - ▶ Garnishments
 - ▶ FMLA
- ▶ Website: <https://www.dol.gov/whd/>
- ▶ Lots of good information that's a very easy read on their website.

Fair Labor Standards Act (FLSA) Minimum Wage

- ▶ The Federal minimum wage hourly rate of pay is \$7.25/hour.
- ▶ This rate was last increased in July 2009.
- ▶ States are allowed to implement their own minimum wage law, provided it exceeds the Federal rate, and the employee would receive the higher rate.
- ▶ The state of Alabama has not adopted a minimum wage law, so it adheres to the Federal mandate of \$7.25/hour.

Fair Labor Standards Act (FLSA) Exempt Employee vs. Non-Exempt Employee

▶ Exempt Employees

- ▶ Exempt Employee's are not subject to overtime or minimum wage, provided they meet certain criteria to be classified by the Department of Labor as 'exempt'.
- ▶ Criteria includes, but not limited to:
 - ▶ Be paid at least \$684/week, which equates to \$35,568/year (starting 1/1/2020).
 - ▶ Employed as *bona fide* executive, administrative, professional, outside sales employees, or certain computer employees.
 - ▶ Job Title alone can NOT qualify an employee as 'exempt'. (i.e. Lunchroom Manager, Computer Technician, etc.)
 - ▶ Additional areas of qualification include (but doesn't have to include all) the employee having the right (or suggesting and recommending) to hire, fire, advancement, promotion, the 'primary job duty includes the exercise of discretion and independent judgment with respect to matters of significance', highly compensated employees (if they meet at least one other requirement) and/or are considered 'white-collar' employees, *etc.*

Fair Labor Standards Act (FLSA) Exempt Employee vs. Non-Exempt Employee

▶ Exempt Employees, cont.

- ▶ Teachers, including substitute teachers are considered exempt employees IF...
- ▶ *...primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed."* 29 C.F.R. § 541.303(a). *Having a primary duty of teaching "includes, by its very nature, exercising discretion and judgment."* Wage and Hour Division Fact Sheet #17D. *The duties of the substitute teachers qualify them for the exemption if their primary duty is teaching and imparting knowledge in an educational establishment. Substitute teachers whose primary duties are not related to teaching students—for example, performing general clerical or administrative tasks for the school unrelated to teaching their assigned students, or manual labor—do not qualify for the teaching professional exemption.* -FLSA 2005-39
- ▶ Teachers and substitute teachers are not subject to the weekly salary requirement, assuming they meet the criteria above. -Fact Sheet #17G

Fair Labor Standards Act (FLSA) Exempt Employee vs. Non-Exempt Employee

▶ Non-Exempt Employees

- ▶ Non-Exempt Employees are subject to minimum wage standards as well as overtime.
- ▶ Non-Exempt Employees must be paid a minimum of \$7.25 for each hour worked.
 - ▶ Since most school systems pay their employee 1/12th of their annual salary, you must ensure that any additional hours worked are compensated. Additionally, any additional hours worked over 40 hours in your district's defined weekly period, must be paid at a rate of 1.5 times their hourly rate of pay.
- ▶ If an employee records hours worked that exceeds their normal daily hours paid, and/or the employee goes over 40 hours in a workweek, they must be compensated the additional hours, regardless if they were instructed to stay within a certain amount of hours.

Fair Labor Standards Act (FLSA) Record Keeping Requirements

- ▶ There are several record keeping requirements within the Department of Labor. Today, we will focus on records in regards to keeping time for non-exempt employees.
 - ▶ Timekeeping records for non-exempt employees - Employers must keep 2 years worth the records for documents used in keeping time and wage computations.
 - ▶ Records should be available and open for inspection if asked to be provided.
 - ▶ *Employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate. Fact Sheet #21*

Fair Labor Standards Act (FLSA)

Non-Exempt Compensable Time

- ▶ It is important to note what time is considered 'on the clock', 'work time', or 'compensable time'.
- ▶ Definitions of compensable time vary depending on what type of work is being performed, if it involves 'travel time', and other required situations (i.e. 'on-call time', 'waiting time', etc.)
- ▶ *By statutory definition the term "employ" includes "to suffer or permit to work." The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place. "Workday", in general, means the period between the time on any particular day when such employee commences his/her "principal activity" and the time on that day at which he/she ceases such principal activity or activities. The workday may therefore be longer than the employee's scheduled shift, hours, tour of duty, or production line time. - Fact Sheet #22*

Fair Labor Standards Act (FLSA)

Non-Exempt Compensable Time

- ▶ Breaks and Lunches
 - ▶ Breaks, usually 20 minutes or less, are considered compensable.
 - ▶ Lunches, typically 30 minutes or more, are NOT considered compensable IF employee is *completely relieved from duty*.
 - ▶ If employee eats at desk and answers phone, email, greets visitors, that time should be considered compensable work time.
 - ▶ There is no regulation on required breaks or lunches for any scheduled work day.
- ▶ Waiting Time
 - ▶ Employee's time where the employee is *engaged to wait* is considered compensable. (i.e. Board secretary waiting on Board members to arrive to start recording minutes of meeting).
- ▶ On-Call Time
 - ▶ If the employee is required to be at a certain place in anticipation of work activities starting, they should be compensated for that time.
 - ▶ If the employee is on-call, but allowed to be at home, do their own thing as long as they are available should something come up, are generally not compensated for that time. Situations and additional constraints on the employee's freedom could require that time to be compensated.

Fair Labor Standards Act (FLSA) Non-Exempt Compensable Time

- ▶ Travel Time
 - ▶ Ordinary work-day travel from home to work and from work back home is not compensable.
 - ▶ Travel to a different location other than the normal work location, can be considered work time, but the employer can deduct the time normally spent travelling to work to their normal location.
 - ▶ Travel from work site to work site throughout the day is considered compensable time.
 - ▶ Travel during the normal work hours on work days or even non-work days is considered work time. However, travel outside the normal working hours as a passenger of any form of transportation is not enforced as work time.

Fair Labor Standards Act (FLSA) Overtime for Non-Exempt Employees

- ▶ Overtime is time worked that exceeds 40 hours in your district's defined work week (most generally Sunday through Saturday, but could be different).
- ▶ Overtime should be compensated to the employee at a rate of 1.5 times their normally hourly rate.
- ▶ Non-exempt employees with multiple jobs, each paid at different rates of pay, must have their overtime calculated using the 'blended rate' method.
- ▶ Time used toward the 40 hour threshold is actual time worked and does not include holiday time, vacation or other leave time, etc. It consists of time spent physically working.

Fair Labor Standards Act (FLSA) Compensatory Time (Comp Time) for Non-Exempt Employees

- ▶ Comp time in lieu of overtime is available to public sector employees.
- ▶ Comp time is earned at the same rate as overtime (i.e. 1.5 comp hours for every hour worked over 40 hours).
- ▶ Comp time can be used as paid time off.
- ▶ Any remaining comp time balance must be paid at the end of an employee's tenure with each employer.
- ▶ Employers have certain rights that they can enforce regarding the earning of comp time, the use of comp time accrued, when it's paid, etc.
- ▶ When comp time is paid, it must be paid at the employee's current rate of pay, which may be different than their rate of pay at the time it was earned.

Fair Labor Standards Act (FLSA) Garnishments

- ▶ Garnishments are typically court-ordered withholding notices requiring employers to withhold certain amounts of monies from each check that has to be forwarded to the courts for payment towards an employee debt.
- ▶ Garnishments may also be IRS or state tax levies against the employee or unpaid taxes/debts owed to the federal government.
- ▶ Employers cannot fire or negatively impact an employee as a result of a garnishment. - Title III of the CCPA
- ▶ There are limitations on garnishments, and they typically use the 'disposable income' calculation to take a percentage of the employee's earnings.
- ▶ State and Federal Tax Levies are typically a straight percentage off the employee's gross.
- ▶ There are things excluded from normal garnishment's calculation including child support, taxes, previous garnishments, etc.

Fair Labor Standards Act (FLSA)

FMLA

- ▶ FMLA entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons. Understand, FMLA leave is not a guarantee of pay, it's a guarantee of job protection during that leave.
- ▶ Requirements
 - ▶ Worked for employer for at least 12 months
 - ▶ Has at least 1,250 hours of service within the last 12 months prior to going on leave
- ▶ Eligible employees may take up to 12 workweeks of leave for:
 - ▶ The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care;
 - ▶ To care for a spouse, son, daughter, or parent who has a serious health condition;
 - ▶ For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
 - ▶ For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

Fair Labor Standards Act (FLSA)

FMLA

- ▶ Certification of FMLA leave - Employers may require certification that supports the FMLA request. If desired, the employer may request a 2nd or 3rd medical opinion at the cost of the employer. Additionally, at the employer's cost, they may require recertification during that time.
- ▶ Benefits while on FMLA:
 - ▶ Employers are required to provide health benefits as if the employee was working.
 - ▶ Employers cannot fault or count against an employee on FMLA for attendance purposes.
 - ▶ Education Employees are granted certain access to intermittent FMLA or reduced schedule FMLA leave.

Affordable Care Act (ACA)

- ▶ The ACA's primary goals are (as defined by www.healthcare.gov):
 - ▶ Make affordable health insurance available to more people. The law provides consumers with subsidies ("premium tax credits") that lower costs for households with incomes between 100% and 400% of the federal poverty level.
 - ▶ Expand the Medicaid program to cover all adults with income below 138% of the federal poverty level. (Not all states have expanded their Medicaid programs.)
 - ▶ Support innovative medical care delivery methods designed to lower the costs of health care generally..
- ▶ The law requires ALE (Applicable Large Employers) of at least 50 full time employees to provide affordable insurance to at least 95% of their employees.
- ▶ Failure to provide affordable insurance can result in heavy penalties to the employer.
- ▶ Despite some general misconception, the ACA law and the employers responsibility is still in full effect.
- ▶ Recent changes have reduced or absolved the employee penalties, but the law remains intact, especially as it relates to the employer.

Affordable Care Act (ACA)

- ▶ ACA defines a full-time employee as an employee who averages 30 hours per week.
 - ▶ This differs from some definitions in regards to PEEHIP insurance, such as bus drivers (typically defined as 20 hours per week, and possibly others in your district).
 - ▶ You must be able to define actual hours worked on employees that may be questionable if they qualify.
- ▶ Other ACA requirements to employers:
 - ▶ Provide W2 reporting of value of health insurance
 - ▶ Provide 1095-C form defining if an offer of coverage was given (regardless if you took the insurance or not)
 - ▶ 1095-B form (provided by PEEHIP) shows what actual coverage was taken and by whom, if any
 - ▶ Failure to offer 'affordable coverage' to at least 95% of your 'full time' employees could result in heavy fines to your district
 - ▶ If any employee is not offered affordable coverage and is deemed 'full time', your district could be fined for that individual regardless if your offered coverage to at least 95%

US Department of Labor Employment Posters/Notices

- ▶ Employers are required to post certain notices or employment posters at each location that detail information pertaining to their employees.
- ▶ Some examples are:
 - ▶ FLSA (Fair Labor Standards Act)
 - ▶ FMLA (Family Medical Leave Act)
 - ▶ EEOC (Equal Employment Opportunity Commission), etc.
- ▶ The Department of Labor has a helpful questionnaire on their website that will guide you to make sure you have all necessary posters and notices as it relates to your district. Also, many of the notices and posters can be downloaded or ordered from their site.
- ▶ While there are requirements in regards to these postings, don't be 'fooled' by third party requests to try and get you to buy their products by sending you documentation that looks official or threatening.

Questions?

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