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**K12 HR Solutions**

**Quick Guide to the Fair Labor Standards Act (FLSA)**

*(This information is provided as a guideline and should not be interpreted as legal advice)*

**LIST OF EXEMPT AND NON-EXEMPT POSITIONS:**

The Fair Labor Standards Act (FLSA) designates some employees who are exempt from the overtime and minimum wage requirements of the FLSA.

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|  | A. | There are four (4) main types of FLSA exemptions: executive, administrative, professional employees and "highly compensated" employees (29 Code of Federal Regulations (C.F.R.) part 541) |
|  | B. | Exempt employees generally must be paid on a "salaried" or fee basis, earn at least $455 per week, and meet one of the "duties" tests below. The salary and salary basis requirements of the FLSA, however, do not apply to bona fide teachers. |
|  |  | For computer employees to qualify as exempt employees, they must be compensated either on a salary or fee basis at a rate not less than $455 per week, if compensated on a weekly basis, or at a rate not less than $27.63 per hour, if compensated on an hourly basis. |
|  | C. | Employees who are exempt under the executive, administrative or professional exceptions must "primarily" perform executive, administrative or professional duties (i.e., generally at least fifty percent (50%) of the employee's time). (29 C.F.R. Part 541) "Highly compensated" employees must perform at least one (1) of these duties and meet the salary requirements as indicated below. |

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|  |  | 1. | Executive employee: Must be paid on a salary or fee basis and primary duty must include: (a) managing the enterprise in which s/he is employed or managing a recognized subdivision or department of the enterprise; AND (b) customary regular direction of two (2) or more other employees AND (c) authority to hire and fire other employees or have hiring and firing recommendations carry significant weight. Superintendents, assistant superintendents, Treasurers/chief school business officials and most directors generally are covered by this exemption. |
|  |  | 2. | Administrative employee: In addition to salary requirements, primary duty must include: (a) either performing office or non-manual work directly related to management policies or general operations of the employer OR performing functions in the administration of a school system (or department or subdivision) in work directly related to the academic instruction or training AND (b) work requiring the exercise of discretion and independent judgment with respect to matters of significance. Principals, assistant principals, coordinators, and supervisors generally are covered by this exemption. |
|  |  | 3. | Professional employee: In addition to salary requirements, primary duty must include (1) either work requiring knowledge of an advanced type customarily acquired by a long course of specialized study (work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion) OR work requiring invention, imagination or talent in a recognized field or artistic endeavor OR teaching in a school system/educational institution OR work requiring highly specialized computer knowledge (primary duty consist of apply in designing systems, hardware or software.) "Learned professions" such as teaching, psychology, nursing (at the level of R.N. and above), counseling and accounting generally are covered by this exemption. |
|  |  | 4. | "Highly Compensated" employee: Employee's salary is more than $100,000 annually AND employee regularly performs one (1) or more of the exempt duties of an executive, administrative or professional employee AND primary duty is non-manual office work. |

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|  | D. | If an employee primarily performs non-exempt work, overtime and minimum wage requirements may apply. For example, if the director of maintenance spends most of his/her time doing hands-on maintenance, then s/he is most likely a "non-exempt" employee. |
|  | E. | Exempt employees are not covered by FLSA minimum wage and overtime provisions; however, they are covered by equal pay and record-keeping provisions. |
|  | F. | FLSA provisions do not apply to the following "non-covered" persons: independent contractors, bona fide volunteers and trainees, such as student teachers. |

The following list represents some of the common categories of school district employees under the exemptions as well as a list of common categories of non-exempt employees. Certain positions, such as superintendent, may qualify under more that one (1) category, but are listed under the following categories below to be consistent with school districts in other states.

**Executive Exemption:**

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| Superintendent |  |
| Associate/Assistant Superintendent |  |
| Directors, Coordinators |  |
| Treasurer/CSBO |  |

**Administrative Exemption:**

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| Principals |
| Assistant Principals |
| Head Teacher |
| Curriculum Specialist |
| Attendance Director |
| Director/Coordinator of Services |
| Supervisor of Maintenance |
| Supervisor of Transportation |
| Food Services Supervisor |

These positions may appear to be exempt administrative employees; however, under these conditions would be classified as non-exempt: "administrative assistants" (such as the secretary to the Superintendent) who primarily spend their time doing secretarial work, not managerial work; maintenance, transportation, or child nutrition supervisors who primarily perform manual or non-office work.

**Professional Exemption:**

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| Librarian |
| Remedial Specialist |
| Counselor |
| Teacher |
| Dentist |
| Professional Accountant |
| Physician |
| Psychiatrist |
| Psychologist |
| Registered Nurse |
| School Nurse |
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| Social Worker |
| Physical/Occupational Therapist |
| Dental Hygienist |
| Audiologist |
| Psychometrist |

Theses positions may appear to be exempt professional employees; however, under these conditions would be classified as non-exempt: computer personnel who do not (a) perform work requiring highly specialized knowledge in systems analysis, programming, or software engineering; (b) work as a systems analyst, computer programmer, software engineer or similarly skilled worker; and (c) consistently exercise discretion and judgment; or social workers (a) whose college degree is not in social work and (b) who do not perform work that is predominantly intellectual in character and requires the consistent exercise of discretion and judgment.

**Non-Exempt Employees:**

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| Aide |
| Paraprofessionals |
| Autism Mentor |
| Accountant/Auditor |
| Buyer |
| Braille or Sign Language Specialist |
| Clerk |
| Secretary |
| Receptionist |
| Computer Technicians |
| Draftsman |
| Media Worker |
| Inventory Supervisor |
| Accounts Payable Supervisor |
| Payroll Supervisor |
| Audio Visual Technician |
| Maintenance Worker |
| School Bus Operator/Truck Driver |
| Heavy Equipment Operator |
| Cafeteria Worker |
| Custodians |
| Groundsman/Watchman |
| Sanitation Plant Operator |

An employee's "primary duty" is critical in determining whether the employee is exempt from the requirements of the FLSA. In most cases, the primary duty consumes the majority (over fifty percent (50%) of the employee’s time. All employees who are determined to be non-exempt must be compensated for all hours worked on behalf of the employer at the Federal minimum wage, and compensated for all hours worked beyond forty (40) in a workweek at time and a half (1 1/2) of their regular rate of pay for that workweek.

Consequently, all hours worked by non-exempt service personnel on behalf of the school system must normally be included in the computation, including the attendance of meetings and workshops, travel between work assignments, extra-curricular and extra-duty assignments, such as extra bus runs, working in an after school program, or coaching, and taking work home in the evenings or on weekends. The employer is responsible for maintaining a weekly record (timesheet) of ALL hours worked by non-exempt employees to ensure that the requirements of the FLSA are followed.

On the other hand, employees who are determined to be exempt from the FLSA, such as teachers, are exempt from all requirements, including minimum wage and overtime, and the employer is not required to maintain a record (timesheet) of hours worked.

In making the determination as to which employees are exempt from the FLSA, one should always keep in mind that FLSA exemptions are subject to the rule of strict construction and are narrowly construed against an employer, which has the burden of proving an exemption. Courts focus on the actual activities of employees in determining their exempt status under the FLSA, and need not rely on resumes and position descriptions that maybe vague or contradictory to the employees' testimony concerning their day-to-day job activities.

Personnel who are employed by a school district on a temporary, part-time basis and whose "primary duty" for the District meets the "white-collar" exemption tests, such as a certified coach, may be considered to be exempt, since coaches are considered teachers. The salary and salary basis requirements of the FLSA do not apply to bona fide teachers.

Personnel employed on a temporary, part-time basis as athletic trainers, however, are not considered teachers and, therefore, may not meet the "white-collar" exemption tests. The salary and salary basis requirements do apply to athletic trainers, as well as all exempt personnel other than teachers. Currently, as of June of 2015, to be exempt, an employee must be compensated on a salary or fee basis at a rate not less than $455 per week and must meet the other tests described in Section C.3. for a learned professional.

Similar to other positions where there may be a question, if a school district considers temporary part-time coaches or athletic trainers as exempt, the positions should be listed as such in the local board's policy and the District should obtain written acknowledgement from the employees employed in those positions.

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