

# Feds Left Schools Alive?

## Assessing Implementation of New FLSA Regulations

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### Proposed Overtime Regulations

- Increase salary threshold for overtime exempt positions from \$455 to \$913 per week (\$47,476 annually)
- Effective December 1, 2016
- Blocked by nationwide court injunction before Thanksgiving
- Appeal pending
- New secretary of labor confirmation hearings this month

## What now?

- 1) Be prepared for some compromise increase in salary threshold
- 2) Switch back?
  - a. HR concerns
  - b. Payment of Wages Act notice
- 3) Keep going with exemption review/audits with duties test

## Executive Exemption

- **\$455/week**, salary basis
- Primary duty – management
- 2 or more full time subordinates or equivalent
- Hiring/firing input
- No “percentage” test

## Executive Exemption Examples

- Transportation supervisor, food service supervisor, maintenance supervisor, CFO, department heads, building management (principal, assistant principal)
- Potentially – working supervisors like cafeteria managers, custodial supervisors

## Administrative Exemption

- **\$455/week**, salary basis
- 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 the employer's customers
- Exercise of discretion and independent judgment with respect to matters of significance
- No "percentage" test

## Administrative Exemption Examples

- Directors who don't supervise 2 or more, guidance counselors, literacy/math coach
- Often attempted, usually unsuccessful
  - Board secretary
  - Principal's secretary
  - Bookkeeper
  - Non-MSW social workers
  - Non-certified "peacekeepers" at school level
  - Computer technicians who don't supervise, write code, budget or purchase

## Professional Exemption

- TEACHERS ARE EXEMPT
- Non-teaching professionals
  - **At least \$455/week**/salary basis
  - Primary duty = work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the:
    - Consistent exercise of discretion and judgment;
    - Advanced knowledge in a field of science or learning; and
    - Advanced knowledge normally acquired by a prolonged course of specialized intellectual instruction.

## Professional Exemption Examples

- CATE teachers
- RN school nurses
- Staff accountant CPAs who don't supervise or run the department
- Guidance counselors
- MSW/LMSW caseworkers
- **BUT NOT**
  - Teacher's aides
  - ISS/study hall aides
  - Positions requiring a bachelor's degree (case worker, parent liaison)

## FLSA FAQ

## How do we Deal with Employees Who have Multiple Jobs?

- Example: teacher's aide/bus driver
- Must add all hours worked in each job each week
- Time and a half over 40 hours per week
- Pay overtime based on weighted average

## Can We Treat Certain Work as "Volunteer" Time?

- Bona fide volunteer rule
  - No coercion
  - No more than nominal compensation
  - Can't "volunteer" to do your regular job without pay
- Exception – child or family member benefitted

## Can We Treat Coaches as Volunteers?

- Applies to classified and “community” coaches
- Not a concern if coach is already exempt
- Coaches can “volunteer” if it’s truly voluntary and not a job requirement
- Stipend or other compensation can’t be more than “nominal” compensation
- What’s “nominal”?

## What if a Classified Employee Works in an After-School Program?

- Facts to consider
  - Who’s running the program
  - Who’s paying the employee for the time
  - What is the relationship between school district and after-school provider
- If school district is running the program, see “multiple jobs” slide
- If another entity controls, you don’t have to add those hours to regular work

## Do We have to Pay Employees for Unauthorized Work Outside Regular Work Hours?

- Early risers/late finishers
- Texters and emailers
- Homeworkers
- Must pay for work “suffered or permitted”
- Address with policy and progressive discipline to prevent unwanted overtime

## How Does Compensatory Time Work?

- If requirements are met:
  - 1.5 hours of comp time for each hour worked
  - Up to 240 hours (less by policy)
- Can cash out any time
- Have to allow employees to take comp time unless undue hardship
- Can require use of comp time under some circumstances