Feds Left Schools Alive?
Assessing Implementation of New FLSA Regulations

Thomas K. Barlow
February 17, 2017

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