

SECTION G: PERSONNEL

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FAIR LABOR STANDARDS ACT (FLSA) SAFE HARBOR POLICY

PURPOSE:

The United States Department of Labor (DOL) administers and enforces the Fair Labor Standards Act (FLSA), which governs federal minimum wage, overtime and recordkeeping for individuals working in both the private and public sectors. A provision in the law found at 29 CFR § 541.603 allows an employer to avoid the loss of an overtime exemption for an entire class of employees in instances where an improper deduction was made from the salary of one employee in the class. To avoid application to the entire class, the employer must adopt a policy that sets forth the employer's intention to comply with the law and establishes a procedure for employees alleging improper deductions to file a complaint. This policy sets out to comply with the above referenced overtime exemption provision as well as to establish expectations of FLSA compliance for non-exempt employee overtime.

Definitions:

Non-exempt Employees: Non-exempt employees are usually paid an hourly wage or earn a salary that's less than the minimum amount to qualify for exempt status as determined by the DOL. If employees are non-exempt, it means they are entitled to minimum wage and overtime pay when they work more than 40 hours per week.

Exempt Employees: Employees exempt from the FLSA typically must be paid a salary above a certain level and work in an administrative, professional, executive, computer or outside sales role and meet the requirements of the DOL's duties test. Employers are not required to pay overtime to employees who are properly classified as exempt.

Duty of Employee:

The PSD makes every effort to ensure that our employees are accurately compensated; however, inadvertent errors can happen. Anytime such an error is brought to our attention, we will promptly investigate and make any corrections that may be necessary. Employees are responsible for reviewing their pay stubs for accuracy, and for reporting any concerns using the reporting procedure outlined below.

NON-EXEMPT EMPLOYEES:

Non-exempt employees who have been pre-approved for overtime (with the exception of emergencies) and/or who are eligible for overtime pay under the FLSA, applicable collective bargaining agreement and/or established overtime procedures must maintain a record of the

overtime hours. These hours must be accurately recorded on a timesheet that will be provided to the employee and processed in accordance with the PSD's established overtime procedures.

No Unauthorized Work. Even when it is with the best of intentions, non-exempt employees should not work any hours that are not authorized. Employees are prohibited from performing any "off-the-clock" work. Off-the-clock work means work that is related to one's job and is performed outside of the employee's regular workday that has not been approved and has not been recorded on a timesheet. Any employee who fails to report or inaccurately reports hours worked will be subject to disciplinary action, up to and including termination.

Falsification of TimeSheet. It is a violation of this policy for any employee to falsify a timesheet, or to alter another employee's timesheet. It is also a violation of this policy for any employee or supervisor to instruct another employee to do the same.

EXEMPT EMPLOYEES:

Exempt salaried employees receive a salary which is intended to compensate them for all hours worked. The salary will be established at the time of hire or when an employee becomes classified as an exempt employee. Salaries may be subject to review and modification from time to time, such as during annual review or contract renewals; however, the salary will be a predetermined amount that will not be subject to deductions for variations in the quantity or quality of work performed.

Possible Deductions from Salary. Exempt employees will receive their full salary for any workweek in which work is performed. Under federal and state law, an exempt employee's salary is subject to certain deductions. For example, absent contrary state law requirements or applicable contract requirements the salary can be reduced for the following reasons:

Deductions from pay are permissible when an exempt employee: Is absent from work for one or more full days for personal reasons other than sickness or disability; for absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness; to offset amounts employees receive as jury or witness fees, or for military pay; for penalties imposed in good faith for infractions of safety rules of major significance; or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions. Also, an employer is not required to pay the full salary in the initial or terminal week of employment or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.

REPORTING CONCERNS:

Employees who have knowledge of any violations of this policy or who believe that they have been subject to any improper deductions from their pay or that their pay does not accurately reflect their hours worked should immediately report the matter to Human Resources who will work with the payroll department to address the issue.

INVESTIGATION/DISCIPLINE/NO RETALIATION:

Every report will be fully investigated and corrective action will be taken where appropriate, up to and including discharge for any employee who violates this policy. In addition, the PSD will not allow any form of retaliation against individuals who report alleged violations of this policy or who cooperates in any investigation of such reports. Retaliation is unacceptable, and any form of retaliation in violation with this policy should be reported to Human Resources and may result in disciplinary action, up to and including termination.

OTHER LAWS, CONTRACTS AND COLLECTIVE BARGAINING AGREEMENTS:

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage. While collective bargaining agreements cannot waive or reduce the Act's protections, nothing in the Act or the regulations relieves employers from their contractual obligations and collective bargaining agreements.

Policy Adopted: 5/9/23

First Read: 04/03/2023

Portsmouth School Department
Portsmouth, Rhode Island

Legal References:

Title 29 CFR - Labor

[§ 541.603 Effect of improper deductions from salary.](#)

[§ 541.4 Other laws and collective bargaining agreements.](#)