

## 8.11—OVERTIME, COMPTIME, and COMPLYING WITH FLSA

The Paris School District shall comply with those portions of the Fair Labor Standards Act (FLSA) that relate to the operation of public schools. The FLSA requires that covered employees receive compensation for each hour worked at greater than or equal to the applicable minimum wage for workweeks of less than or equal to forty (40) hours.<sup>A</sup> It also requires that employees be compensated for workweeks of greater than forty (40) hours at one and a half (1 ½) times their regular hourly rate of pay either monetarily<sup>B</sup> or through compensatory time<sup>C</sup>.

### Definitions

“Covered Employees” (also defined as non-exempt employees) are those employees who are not exempt, generally termed classified, and include bus drivers, clerical workers, maintenance personnel, custodians, transportation workers, receptionists, paraprofessionals, food service workers, secretaries, and bookkeepers.

“Exempt Employees” are those employees who are not covered under the FLSA because the employee’s:<sup>1, F</sup>

A. Primary job duties are considered to be exempt eligible due to being administrative or professional in nature. Examples include teachers, counselors, registered nurses, and supervisors; and

B. Salary meets or exceeds a minimum weekly/annual amount.

Any employee who is unsure of their coverage status should consult with the District’s Administration.

“Overtime” is hours worked in excess of forty (40) per workweek. Compensation given for hours **not** worked such as for holidays or sick days do **not** count in determining hours worked per workweek.<sup>E</sup>

“Regular Rate of Pay” includes all forms of remuneration for employment<sup>3</sup> and shall be expressed as an hourly rate.<sup>G</sup> For those employees previously paid on a salary basis, the salary shall be converted to an hourly equivalent. Employees shall be paid for each and every hour worked.

“Straight time pay” is the amount of hourly compensation an employee receives for each hour worked during that week.

“Workweek” is the seven day consecutive period of time from 12:00AM on Sunday to midnight on the following Saturday.<sup>3</sup> Each workweek is independent of every other workweek for the purpose of determining the number of hours worked and the remuneration entitled to by the employee for that week.<sup>G</sup>

### Employment Relationships

The District does not have an employment relationship in the following instances.:

1. Between the District and student teachers;
2. Between the District and its students; and
3. Between the District and individuals who as a public service volunteer or donate their time to the District without expectation or promise of compensation.

The District does not have a joint employment relationship in the following instances:

- a. Between the District and off-duty policemen or deputies who are hired on a part-time basis for security purposes or crowd control. The District is separate from and acts independently of other governmental entities.
- b. Between the District and any agency contracted with to provide transportation services, security services, substitute teachers or other temporary employees, or other services.

## **Hours Worked**

Employees shall be compensated for all the time they are required to be on duty<sup>H</sup> and shall be paid for all hours worked each workweek. Employees shall accurately record the hours they work each week.<sup>I</sup>

The District shall determine the manner to be used by employees to accurately record the hours they work. Each employee shall record the exact time they commence and cease work including meal breaks. Employees arriving early may socialize with fellow workers who are off the clock, but shall not commence working without first recording their starting time.<sup>J</sup>

Employees shall sign in/clock in where they start work and sign out/clock out at the site where they cease working. Employees who do not start and end their workday at the same site shall carry a time card or sheet with them to accurately record their times. They shall turn in their time sheets or cards to their immediate supervisor no later than the following Monday morning after reviewing them to be sure that they accurately reflect their hours worked for that week.<sup>4</sup>

Each employee is to personally record his or her own times. Any employee who signs in or out (or who punches a time clock) for another employee or who asks another employee to do so for him or her will be dismissed.

Employees whose normal workweek is less than forty (40) hours and who work more than their normal number of hours in a given workweek may, at the District's option, be given compensatory time for the hours they worked in excess of their normal workweek in lieu of their regular rate pay. Compensatory time given in this manner shall be subject to the same conditions regarding accumulation and use as compensatory time given in lieu of overtime pay.

## **Breaks and Meals**

Each employee working more than twenty (20) hours per week shall be provided two (2), paid, fifteen(15) minute duty free breaks per workday.<sup>K</sup>

Meal periods that are less than thirty (30) minutes in length or in which the employee is not relieved of duty are compensable.<sup>L</sup> Employees with a bona fide meal period shall be completely relieved of their duty to allow them to eat their meal, which they may do away from their work site, in the school cafeteria, or in a break area.

The employee shall not engage in any work for the District during meal breaks except in rare and infrequent emergencies.

## **Overtime**

Covered employees shall be compensated at not less than one and a half (1.5) times his or her regular rate of pay for all hours worked over forty (40) in a workweek.<sup>M</sup> Overtime compensation shall be computed on the basis of the hours worked in each week and may not be waived by either the employee or the District. Overtime compensation shall be paid on the next regular payday for the period in which the overtime was earned.<sup>N</sup>

The rate of overtime pay for employees who work two (2) or more jobs for the District at different rates of pay shall be determined by creating a weighted average of the different rates (a.k.a. blended rate).<sup>o</sup> The weighted average will be calculated by multiplying the number of hours worked during that week for each position by the position's rate of pay, combining the resulting amounts for each position (straight time pay), and dividing the straight time pay by the total number of hours the employee worked in that week. The weighted average will then be multiplied by one half (0.5), which will then be multiplied by the number of hours the employee worked that week over forty (40).<sup>6</sup>

Provided the employee and the District have a written agreement or understanding before the work is performed,<sup>p</sup> compensatory time off may be awarded in lieu of overtime pay for hours worked over forty (40) in a workweek and shall be awarded on a one-and-one-half (1 1/2) time basis for each hour of overtime worked.<sup>q</sup> The District reserves the right to determine if it will award compensatory time in lieu of monetary pay for the overtime worked. The maximum number of compensatory hours an employee may accumulate at a time is twenty( 20).<sup>6</sup> The employee must be able to take the compensatory time off within a reasonable period of time that is not unduly disruptive to the District.

An employee whose employment is terminated with the District, whether by the District or the employee, shall receive monetary compensation for unused compensatory time. Of the following methods, the one that yields the greatest money for the employee shall be used.

1. The average regular rate received by the employee during the last 3 years of employment. Or
2. The final regular rate received by the employee.<sup>r</sup>

### **Overtime Authorization**

There will be instances where the district's needs necessitate an employee work overtime. It is the Board's desire to keep overtime worked to a minimum. To facilitate this, employees shall receive authorization from their supervisor in advance of working overtime except in the rare instance when it is unforeseen and unavoidable.

All overtime worked will be paid in accordance with the provisions of the FLSA, but unless the overtime was pre-approved or fit into the exceptions noted previously, disciplinary action shall be taken for failure to follow District policy. In extreme and repeated cases, disciplinary action could include the termination of the employee.

### **Leave Requests**

All covered employees shall submit a leave request form prior to taking the leave if possible. If a request for leave was not possible in advance due to unforeseen or emergency circumstances, the leave form shall be turned in the day the employee returns to work. Unless specifically granted by the Board for special circumstances, the reason necessitating the leave must fall within District policy.

Payment for leave could be delayed or not occur if an employee fails to turn in the required leave form. Leave may be taken in a minimum of four (4) hour increments.<sup>7</sup>

### **Record Keeping<sup>s</sup> and Postings<sup>t</sup>**

The District shall keep and maintain records as required by the FLSA for the period of time<sup>u</sup> required by the act.<sup>9</sup>

The District shall display minimum wage posters where employees can readily observe them.<sup>10</sup>

### **Cooperation with Enforcement Officials<sup>v</sup>**

All records relating to the FLSA shall be available for inspection by, and District employees shall cooperate fully with, officials from the Department of Labor( DOL) and/or its authorized representatives in the performance of their jobs relating to:

- a. Investigating and gathering data regarding the wages, hours, and other conditions and practices of employment;
- b. Entering, inspecting, and/or transcribing the premises and its records;
- c. Questioning employees and investigating such facts as the inspectors deem necessary to determine whether any person has violated any provision of the FLSA.

Notes: <sup>1</sup>Registered nurses fall under the “Learned Professional” exemption of the FLSA; however, this exemption does not apply to LPNs.

While the DOL removed the bright line rule that a supervisor may not spend more than twenty percent (20%) of work time in a week performing non-supervisory duties, a supervisor must still commit a majority of time to supervisory duties and the higher the percentage of time each week the better.

Except for teachers and other staff whose primary job duties requires the employee to have a valid teaching license, in order for an employee to be an exempt employee under this policy, the Wage and Hour Division of the DOL requires the employee to receive a minimum amount of gross income on a weekly or annual basis. Currently, an employee must receive a minimum of six hundred eighty-four dollars (\$684) a week or \$35,568 annually to be exempt.

<sup>2</sup> If you provide your employee a benefit in the form of goods or a facility, the reasonable cost or the fair value of the lodging (per week) must be added to the cash wages before the regular rate is determined.

<sup>3</sup> Select any consecutive one hundred sixty-eight (168) hours period (seven (7) days) that will work best for your district.

<sup>4</sup> Devise a system that will work for your district. The point is to have an accurate and verifiable record of the hours worked by each employee. While carrying time cards around can be a hassle, you don’t want to lose excessive work time from an employee having to walk excessively to and from their time sheet. Time clocks are obviously an accurate and verifiable record of hours worked, but they are not without drawbacks. First, they are not cheap to initially purchase and then to configure for your district as a whole. Second, employees can unintentionally take less than thirty (30) minute meal times (by forgetting the exact time they clock out), which makes that time compensable.

<sup>5</sup> A.C.A. § 6-17-2207 removed the statutory right for district employees who work more than thirty-five (35) hours to receive the two (2) fifteen (15) minute breaks; however, you can continue to provide the breaks for such employees if you wish. If you do, remove this paragraph.

<sup>6</sup> Example: Employee has two (2) jobs for the district that each pay a different rate: job A pays eight dollars (\$8) per hour and job B pays ten dollars (\$10) per hour. One week, Employee works fifty (50) hours: twenty-six (26) hours for job A and twenty-four (24) hours for job B. 26 hours at \$8 = \$208 and 24 hours at \$10 = 240.

$\$208 + \$240 = \$448$  (straight time pay).  $\$448$  divided by  $50 = \$8.96$  (weighted average).  $\$8.96 \times 0.5 = \$4.48$ .  $\$4.48 \times 10 \text{ hours} = \$44.80$ .  $\$448 + \$44.80 = \$492.80$ . Therefore, the employee will be paid four hundred ninety-two dollars and eighty cents (\$492.80) for the week.

The reason why it appears that a person who works two differently paid jobs receives such a small amount per hour for overtime pay is because the payment formula takes into account that you have already paid the person their standard rate of pay for the additional hours worked as part of the employee's straight time pay so you are only needing to determine the additional one half (0.5) the employee is eligible to receive for each hour of overtime. For more information visit [http://www.twc.state.tx.us/news/efte/i\\_employees\\_two\\_rates.html](http://www.twc.state.tx.us/news/efte/i_employees_two_rates.html).

<sup>76</sup> You may choose any number  $< 240$ . In determining the number to insert remember that you must permit the employee to use the comp time within a "reasonable" period of time so long as it does not "unduly disrupt" the district's operations. Comp time does not have to be offered to all employees, nor does the agreement have to be the same for all employees.

<sup>87</sup> The DOL does not recognize leave in the form of "days" for hourly employees even though that is how Arkansas law (A.C.A. § 6-17-1304) prescribes them. The DOL requires they be attributed in hourly allotments. You can choose the minimum amount of leave that may be used at one time.

<sup>98</sup> 29 CFR § 516.2 –516.9 and 29 CFR § 553.50 list the records that are required to be kept.

<sup>109</sup> The district must display minimum wage posters in "conspicuous places" (each work site). They can be downloaded from the DOL by going to <http://www.dol.gov/whd/regs/compliance/posters/flsa.htm>

#### Legal References:

- A: 29 USC § 206(a), ACA § 6-17-2203
- B: 29 USC § 207(a)(1), 29 CFR § 778.100
- C: 29 USC § 207(o), 29 CFR § 553.50
- D: 29 USC § 213(a), 29 CFR §§ 541 et seq
- E: 29 CFR § 778.218(a)
- F: 29 USC § 207(e), 29 CFR § 778.108
- G: 29 CFR § 778.105
- H: 29 CFR §§ 785.9, 785.16
- I: 29 CFR § 516.2(7)
- J: 29 CFR §§ 785.1 et seq.
- K: ACA § 6-17-2205 and 2207
- L: 29 CFR §§ 785.19
- M: 29 USC § 207(a), 29 CFR § 778.100, 29 USC § 207(o), 29 CFR §§ 553.20 – 553.32
- N: 29 CFR § 778.106
- O: 29 USC § 207(g)(2), 29 CFR § 778.115
- P: 29 USC § 207(o)(2)(A), 29 CFR § 553.23
- Q: 29 CFR § 553.20
- R: 29 USC § 207(o)(4), 29 CFR § 553.27
- S: 29 USC § 211(c), 29 CFR §§ 516.2, 516.3, 553.50
- T: 29 CFR § 516.4
- U: 29 CFR §§ 516.5, 516.6
- V: 29 USC § 211(a)(b)

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