

# **Section 8**

## **CLASSIFIED PERSONNEL POLICIES**

Board Approved June 12, 2018

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## **8.1—CLASSIFIED PERSONNEL SALARY SCHEDULE**

Enter your District's salary schedule for this policy which must accurately reflect your district's actual pay practices and is not required by law to include step increases for additional years of experience.<sup>1</sup> State law requires each District to include its classified employee's salary schedule in its written personnel policies unless the District recognizes a classified employees' union in its policies for, among other things, the negotiation of salaries. Your district is required to have a salary schedule for at least the following five categories of classified personnel: 1) Maintenance and Operations; 2) Transportation; 3) Food Service; 4) Secretarial and Clerical; and 5) Aids and Paraprofessionals. The District is required to post the salary schedule, on its website by September 15 of each year and should place an obvious hyperlink, button, or menu item on the website's homepage that links directly to the current year classified policies and salary schedule.

For the purposes of this policy, an employee must work two thirds ( $2/3$ ) of the number of their regularly assigned annual work days to qualify for a step increase.<sup>2</sup>

The superintendent has the authority, when recommending an applicant and his/her placement on the District's salary schedule to the Board for its approval, to consider the applicant's previous work experience with similar duties, responsibilities, and skill sets to those job duties and responsibilities the applicant would assume for the District.<sup>3</sup>

	MAINT	IT ASST	DIST SEC	BOOKKEEPER	CUST SUPV	CUSTODIAN	BUS MECHANIC
	240 DAY	240 DAY	240 DAY	240 DAY	240 DAY	240 DAY	205 DAY
STEP DWN	296	296	280	400	194	194	296
0	25169	25169	19752	23754	19262	18293	19157
1	25465	25465	20032	24154	19456	18487	19453
2	25761	25761	20312	24554	19650	18681	19749
3	26057	26057	20592	24954	19844	18875	20045
4	26353	26353	20872	25354	20038	19069	20341
5	26649	26649	21152	25754	20232	19263	20637
6	26945	26945	21432	28154	20426	19457	20933
7	27241	27241	21712	30554	20620	19651	21229
8	27537	27537	21992	32954	20814	19845	21525
9	27833	27833	22272	33354	21008	20039	21821
10	28129	28129	22552	33754	21202	20233	22117
11	28425	28425	22832	34154	21396	20427	22413
12	28721	28721	23112	34554	21590	20621	22709
13	29017	29017	23392	34954	21784	20815	23005
14	29313	29313	23672	35354	21978	21009	23301
15	29609	29609	23952	35754	22172	21203	23597
16	29905	29905	24232	36154	22366	21397	23893
17	30201	30201	24512	36554	22560	21591	24189
18	30497	30497	24792	36954	22754	21785	24485
19	30793	30793	25072	37354	22948	21979	24781
20	31089	31089	25352	37754	23142	22173	25077
21	31385	31385	25632	38154	23336	22367	25373

HS/E SEC	TECH COOR	CAFT SUP	AA TEA AIDE	TEA AIDE	NURSE	RN	BUS DR	HEAD COOK	COOK	21st cdc Dir
205 DAY	240 DAY	185 DAY	185 DAY	180 DAY	180 DAY	185 DAY	180 DAY	180 DAY	179 DAY	240 DAY
245	580	210	306	194	306	306	123	179	148	0
16822	40613	16167	20078	13521	20078	24245	9271	14098	11905	25000
17067	41193	16377	20384	13715	20384	24551	9394	14277	12053	25000
17312	41773	16587	20690	13909	20690	24857	9517	14456	12201	25000
17557	42353	16797	20996	14103	20996	25163	9640	14635	12349	25000
17802	42933	17007	21302	14297	21302	25469	9763	14814	12497	25000
18047	43513	17217	21608	14491	21608	25775	9886	14993	12645	25000
18292	44093	17427	21914	14685	21914	26081	10009	15172	12793	25000
18537	44673	17637	22220	14879	22220	26387	10132	15351	12941	25000
18782	45253	17847	22526	15073	22526	26693	10255	15530	13089	25000
19027	45833	18057	22832	15267	22832	26999	10378	15709	13237	25000
19272	46413	18267	23138	15461	23138	27305	10501	15888	13385	25000
19517	46993	18477	23444	15655	23444	27611	10624	16067	13533	25000
19762	47573	18687	23750	15849	23750	27917	10747	16246	13681	25000
20007	48153	18897	24056	16043	24056	28223	10870	16425	13829	25000
20252	48733	19107	24362	16237	24362	28529	10993	16604	13977	25000
20497	49313	19317	24668	16431	24668	28835	11116	16783	14125	25000
20742	49893	19527	24974	16625	24974	29141	11239	16962	14273	25000
20987	50473	19737	25280	16819	25280	29447	11362	17141	14421	25000
21232	51053	19947	25586	17013	25586	29753	11485	17320	14569	25000
21477	51633	20157	25892	17207	25892	30059	11608	17499	14717	25000
21722	52213	20367	26198	17401	26198	30365	11731	17678	14865	25000
21967	52793	20577	26504	17595	26504	30671	11854	17857	15013	25000

**Notes:** The salary schedule does not have to, but certainly may, contain steps, nor does it have to be listed specifically, i.e. John Doe = \$9.25 per hour, Jane Doe = \$9.55 per hour. You may list the spread in salaries per category. For example, Janitors = \$ 8.75 to \$11.00 per hour, Bus drivers = \$9.75 to \$12.00 per hour, etc.

Act 1120 (codified at A.C.A. § 6-13-635) requires the Board to adopt a resolution that it has reviewed and adopted all salary increases of 5% or more, but most of the Act's listing of reasons are statutorily required raises and are paid by the state and not district funds. The Act's language requires the resolution even for an employee who moves from one position to

another higher paying position such as going from teaching to administration. None-the-less, the resolution is required. Policy 1.9 directs the Board to review the salaries when adopting changes to this policy.

We recommend the following language for the Board's resolution:

*Whereas, the superintendent has identified all changes from last school-year's published salary schedule, and has identified and presented the Board of Directors with each employee's salary increase of 5% or more as required under A.C.A. § 6-13-635 and created a spreadsheet explaining each;*

*Therefore, the Westside School District Board of Directors approves and resolves that the spread sheet including those explanations are a factual representation of the raises given for the **insert date** school-year.*

<sup>2</sup> Include this sentence only if your district has step increases built into its classified salary schedule. Two thirds (2/3) is merely offered as a suggestion.

<sup>3</sup> This is optional language, but can be useful when trying to attract employees from the private work sector.

Cross Reference: Policy 1.9—POLICY FORMULATION

Legal Reference: A.C.A. § 6-17-2203  
A.C.A. § 6-17-2301

ADE Rules Governing School District Requirements for Personnel  
Policies, Salary Schedules, Minimum Salaries, and Documents Posted  
to District Websites

Date Adopted: 6/6/13  
Last Revised: 6/03/2014  
Last Revised: 6/13/2017  
Last Revised: 6/10/2019



## **8.2— CLASSIFIED PERSONNEL EVALUATIONS**

Classified personnel may be periodically evaluated.

Any forms, procedures or other methods of evaluation, including criteria, are to be developed by the Superintendent and or his designee(s), but shall not be part of the personnel policies of the District.

Note: If you have a waiver to employ individuals as unlicensed teachers or administrators, add the following language to the policy:

*Individuals employed under the District's waiver as unlicensed teachers and administrators shall be evaluated under Policy 3.2—LICENSED PERSONNEL EVALUATIONS.*

Cross Reference: 3.2—LICENSED PERSONNEL EVALUATIONS

Legal Reference: A.C.A. § 6-17-2301

Date Adopted: 8/26/04

Last Revised: 6/13/2017

### **8.3—EVALUATION OF CLASSIFIED PERSONNEL BY RELATIVES**

No person shall be employed in, or assigned to, a position which would require that he be evaluated by any relative, by blood or marriage, including spouse, parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, nephew, or first cousin.

Date Adopted: 8/26/04

Last Revised:

## **8.4— CLASSIFIED EMPLOYEES DRUG TESTING**

### **Scope of Policy**

Each person hired for a position that allows or requires the employee operate a school bus shall meet the following requirements:

1. The employee shall possess a current commercial vehicle drivers license for driving a school bus;
2. Have undergone a physical examination, which shall include a drug test,<sup>1</sup> by a licensed physician or advanced practice nurse within the past two years; and
3. A current valid certificate of school bus driver in service training.<sup>2</sup>

Each person's initial employment for a job entailing a safety sensitive function is conditioned upon the district receiving a negative drug test result for that employee.<sup>3</sup> The offer of employment is also conditioned upon the employee's signing an authorization for the request for information by the district from the Commercial Driver Alcohol and Drug Testing Database.<sup>34</sup>

### **Methods of Testing**

The collection, testing methods and standards shall be determined by the agency or other medical organizations chosen by the School Board to conduct the collection and testing of samples. The drug and alcohol testing is to be conducted by a laboratory certified pursuant to the most recent guidelines issued by the United States Department of Health and Human Services for such facilities. ("Mandatory Guidelines for Federal Workplace Drug Testing Programs").

### **Definitions**

Safety sensitive function includes:

- a. All time spent inspecting, servicing, and/or preparing the vehicle;
- b. All time spent driving the vehicle;
- c. All time spent loading or unloading the vehicle or supervising the loading or unloading of the vehicle; and
- d. All time spent repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

"School Bus" is a motorized vehicle that meets the following requirements:

1. Is designed to carry more than ten (10) passengers;
2. Is privately owned and operated for compensation, or which is owned, leased or otherwise operated by, or for the benefit of the District; and
3. Is operated for the transportation of students from home to school, from school to home, or to and from school events.<sup>5</sup>

## **Requirements**

Employees shall be drug and alcohol free from the time the employee is required to be ready to work until the employee is relieved from the responsibility for performing work and/or any time they are performing a safety-sensitive function. In addition to the testing required as an initial condition of employment, employees shall submit to subsequent drug tests as required by law and/or regulation. Subsequent testing includes, and/or is triggered by, but is not limited to:

1. Random tests;
2. Testing in conjunction with an accident;
3. Receiving a citation for a moving traffic violation; and
4. Reasonable suspicion.

## **Prohibitions**

- A. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater;
- B. No driver shall use alcohol while performing safety-sensitive functions;
- C. No driver shall perform safety-sensitive functions within four (4) hours after using alcohol; No driver required to take a post-accident alcohol test under #2 above shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first;
- D. No driver shall refuse to submit to an alcohol or drug test in conjunction with # 1, 2, and/or 4 above;
- E. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when using any controlled substance, except when used pursuant to the instructions of a licensed medical practitioner who, with knowledge of the driver's job responsibilities, has advised the driver that the substance will not adversely affect the driver's ability to safely operate his/her vehicle. It is the employee's responsibility to inform his/her supervisor of the employee's use of such medication;
- F. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive or has adulterated or substituted a test specimen for controlled substances.

Violation of any of these prohibitions may lead to disciplinary action being taken against the employee, which could include termination or non-renewal.

## **Testing for Cause**

Drivers involved in an accident in which there is a loss of another person's life shall be tested for alcohol and controlled substances as soon as practicable following the accident. Drivers shall also be tested for alcohol within eight (8) hours and for controlled substances within thirty two (32) hours following an accident for which they receive a citation for a moving traffic violation if the accident involved: 1) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or 2) one or more motor vehicles incurs disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

## **Refusal to Submit**

Refusal to submit to an alcohol or controlled substance test means that the driver

- Failed to appear for any test within a reasonable period of time as determined by the employer consistent with applicable Department of Transportation agency regulation;
- Failed to remain at the testing site until the testing process was completed;
- Failed to provide a urine specimen for any required drug test;
- Failed to provide a sufficient amount of urine without an adequate medical reason for the failure;
- Failed to undergo a medical examination as directed by the Medical Review Officer as part of the verification process for the previous listed reason;
- Failed or declined to submit to a second test that the employer or collector has directed the driver to take;
- Failed to cooperate with any of the testing process; and/or
- Adulterated or substituted a test result as reported by the Medical Review Officer.

School bus drivers should be aware that refusal to submit to a drug test when the test is requested based on a reasonable suspicion can constitute grounds for criminal prosecution.

### **Consequences for Violations**

Drivers who engage in any conduct prohibited by this policy, who refuse to take a required drug or alcohol test, or who exceed the acceptable limits for the respective tests shall no longer be allowed to perform safety-sensitive functions. Actions regarding their continued employment shall be taken in relation to their inability to perform these functions and could include termination or non-renewal of their contract of employment.<sup>2</sup>

Drivers who exhibit signs of violating the prohibitions of this policy relating to alcohol or controlled substances shall not be allowed to perform or continue to perform safety-sensitive functions if they exhibit those signs during, just preceding, or just after the period of the work day that the driver is required to be in compliance with the provisions of this policy. This action shall be based on specific, contemporaneous, articulatable observations concerning the behavior, speech, or body odors of the driver. The Superintendent or his/her designee shall require the driver to submit to “reasonable suspicion” tests for alcohol and controlled substances. The direction to submit to such tests must be made just before, just after, or during the time the driver is performing safety-sensitive functions. If circumstances prohibit the testing of the driver the Superintendent or his/her designee shall remove the driver from reporting for, or remaining on, duty for a minimum of 24 hours from the time the observation was made triggering the driver’s removal from duty.

If the results for an alcohol test administered to a driver is equal to or greater than 0.02, but less than 0.04, the driver shall be prohibited from performing safety-sensitive functions for a period not less than 24 hours from the time the test was administered. Unless the loss of duty time triggers other employment consequence policies, no further other action against the driver is authorized by this policy for test results showing an alcohol concentration of less than 0.04.

**Notes:** You are required to give drivers a copy of the procedures that will be used in the testing for drugs and alcohol. If you are following your own policy in this regard, give your drivers a copy of that policy; if you're using a drug testing company to administer the tests, give your drivers a copy of the test administration procedures.

You are required to provide your drivers the name of the person you have designated to answer your drivers' questions about the materials you give them regarding drug and alcohol testing.

You are also required to give your employees "information pertaining to the effects of alcohol and controlled substance use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management."

Give a copy of this policy to your drivers.

Have your drivers sign an acknowledgement that they have received all of the information contained in this policy and these footnotes.

<sup>1</sup> You have the option of also requiring an alcohol test, but you may not selectively require it, i.e. if you require it for one prospective employee you must require it for all prospective employees.

<sup>2</sup> A.C.A. § 6-19-108(f) requires extracurricular trips be made only by certified bus drivers who have a valid in service training certificate.

<sup>3</sup> While A.C.A. § 6-19-108(e) permits a district to hire a non-certified bus driver in an emergency situation, 49CFR382.301 forbids a first time driver (employee) from performing any safety sensitive functions prior to the district receiving a negative drug test for the employee. Therefore, ASBA advises not hiring a bus driver under A.C.A. § 6-19-108(e) until he/she has had a negative drug/alcohol test.

<sup>34</sup> While the provisions for fines contained in 27-23-209 do not apply to school districts, school districts are still required to comply with this law. It is for this reason, along with simple prudence in not hiring a person who receives a positive drug/alcohol test, that this language is included. The request for information required by the state is in addition to the federal requirement (49CFR40.25(a)(b)) that you request drug and alcohol test results from any U.S. Department of Transportation regulated employers who have employed the employee during any period during the two years prior to the date of the employee's application.

<sup>5</sup> Students are not required to be transported on a school bus as long as the transporting vehicle is not scheduled for a regularly occurring route or takes a route that contains frequent stops to pick up or drop off students.

<sup>6</sup> Employers are required to report to the Office of Driver Services of the Revenue Division of the Department of Finance and Administration within three (3) business days the results of an alcohol test if it was performed due to cause or as part of random testing and the results were positive or the employee refused to provide a specimen for testing.

<sup>7</sup> The drivers required to have a teaching license as a prerequisite for their job are covered by Policy 3.7. Federal law requires you to remove them from safety-sensitive functions when a drug or alcohol related problem exists, but does not enter into the realm of dismissing them from their teaching duties. Bus drivers who are not also teaching licensed personnel are covered under this policy and may be dealt with given the specific provisions of their employment. ASBA recommends that licensed employees who are hired for driving a bus in addition to their teaching responsibilities be hired under separate contracts for each position.

This policy is similar to Policy 3.7. If you change this policy, review 3.7 at the same time to ensure applicable consistency between the two.

Legal References: A.C.A. § 6-19-108

A.C.A. § 6-19-119

A.C.A. § 27-23-201 et seq.

49 C.F.R. § 382.101 – 605

49 C.F.R. § part 40

49 C.F.R. § 390.5

Arkansas Division of Academic Facilities and Transportation Rules Governing Maintenance and Operations of Arkansas Public School Buses and Physical Examinations of School Bus Drivers

Date Adopted: 8/26/04

Last Revised: 5/13/2014

Last Revised: 5/12/15

Last Revised: 4/10/2018

## **8.5— CLASSIFIED EMPLOYEES SICK LEAVE**

### **Definitions**

1. “Employee” is an employee of the District working 20 or more hours per week who is not required to have a teaching license as a condition of his employment.
2. “Sick Leave” is absence from work due to illness, whether by the employee or a member of the employee’s immediate family, or due to a death in the family. The principal shall determine whether sick leave will be approved on the basis of a death outside the immediate family of the employee.
3. “Current Sick Leave” means those days of sick leave for the current contract year, which leave is granted at the rate of one day of sick leave per month worked, or major part thereof.<sup>1</sup>
4. “Accumulated Sick Leave” is the total of unused sick leave, up to a maximum of one hundred twenty days (120) accrued from previous contract, but not used. Accumulated sick leave also includes the sick leave transferred from an employee’s previous public school employment.<sup>2</sup>
5. “Immediate family” means an employee’s spouse, child, parent, or any other relative provided the other relative lives in the same household as the employee.

### **Sick Leave**

**One (1) leave day will be granted per contract month as follows:**

**190 day contract=10 Days + 1 Benevolence Day**

**191-239 day contract=11 Days + 1 Benevolence Day**

**240 Day Contract=12 Days + 1 Benevolence Day**

The principal has the discretion to approve sick leave for an employee to attend the funeral of a person who is not related to the employee, under circumstances deemed appropriate by the principal.

**Each employee exceeding their number of days will be charged one half (50%) of their daily rate of pay the first five days. After this five day period a full day’s pay will be deducted from the employee’s pay.**

Employees who are adopting or seeking to adopt a minor child or minor children may use up to fifteen (15) sick leave days in any school year for absences relating to the adoption, including time needed for travel, time needed for home visits, time needed for document translation, submission or preparation, time spent with legal or adoption agency representatives, time spent in court and bonding time. See also, 8.23—CLASSIFIED



PERSONNEL FAMILY MEDICAL LEAVE, which also applies. Except for bonding time, documentation shall be provided by the employee upon request.<sup>3</sup>

Pay for sick leave shall be at the employee's daily rate of pay, which is that employee's hourly rate of pay times the number of hours normally worked per day. Absences for illness in excess of the employee's accumulated and current sick leave shall result in a deduction from the employee's pay at the daily rate as defined above.

At the discretion of the principal (or Superintendent), and, if FMLA is applicable, subject to the certification or recertification provisions contained in policy 8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE the District may require a written statement from the employee's physician documenting the employee's illness. Failure to provide such documentation of illness may result in sick leave not being paid, or in discipline up to and including termination.

If the employee's absences are not subject to the FMLA or are in excess of what is protected under the FMLA, absenteeism, to the extent that the employee is not carrying out his/her assigned duties to the degree that the education of students or the efficient operation of a school or the district is substantially adversely affected (at the determination of the principal or Superintendent) may result in termination.

## **BENEVOLENCE LEAVE**

Each employee may use one (1) day each year to attend a funeral or memorial service by notifying their building principal one day in advance of their absence. This will not affect the number of sick or personal days an employee receives or has accumulated. The Benevolence Day may not be carried forward or transferred to sick or personal days. Employees may choose to use two ½ days rather than 1 full day. No other fractions of a day will be recorded (example: three 1/3 days or four ¼ days)

## **Retirement**

**The district will pay an eligible retiree for accumulated sick leave up to a maximum of one hundred twenty (120) days at .33% of their daily rate of pay, or classified sub pay, whichever is higher. The maximum an employee can receive is \$100 a day for their unused sick days.**

**The retiree must have been employed for a minimum of twenty (20) years in a public elementary or secondary school. This condition will be waived if the employee has filed and met the criteria with the teacher retirement system. The retiree must have been employed and be presently employed in the Westside Schools for a minimum of ten (10) years.**

**Sick Leave and Family Medical Leave Act (FMLA) Leave**

When an employee takes sick leave, the District shall determine if the employee is eligible for FMLA leave and if the leave qualifies for FMLA leave. The District may request additional information from the employee to help make the applicability<sup>4</sup> determination. If the employee is eligible for FMLA leave and if the leave qualifies under the FMLA, the District will notify the employee in writing, of the decision within five (5) workdays. If the circumstances for the leave as defined in policy 8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE don't change, the District is only required to notify the employee once of the determination regarding the applicability of sick leave and/or FMLA leave within any applicable twelve (12) month period. To the extent the employee has accumulated sick leave, any sick leave taken that qualifies for FMLA leave shall be paid leave and charged against the employee's accumulated leave including, once an employee exhausts his/her accrued sick leave, vacation or personal leave. See 8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE.

### **Sick Leave and Outside Employment**

Sick leave related absence from work (e.g. sick leave for personal or family illness or accident, Workers Comp, and FMLA) inherently means the employee is also incapable of working at any source of outside employment. Except as provided in policy 8.36, if an employee who works a non-district job while taking district sick leave for personal or family illness or accident, Workers Comp, or FMLA shall be subject to discipline up to and including termination.

**Notes:** This policy is similar to Policy 3.8. If you change this policy, review 3.8 at the same time to ensure applicable consistency between the two.

<sup>1</sup> For classified employees your district has the choice of crediting sick leave days up front as is done for licensed employees, or of crediting sick leave at the rate of one day per month worked. Choose your method and delete the portion of this sentence that doesn't reflect your choice.

<sup>2</sup> A.C.A. § 6-17-1206(b)(2) requires that leave transferred from prior public school employment be used first. In addition, 1206(b)(3) requires that the leave, if any remains, be included in the total count of accumulated sick leave if the district pays out unused sick leave upon retirement. While the statute only applies to licensed employees, we have included the language here for consistency.

<sup>3</sup> This paragraph is optional. Leave for adoption is protected by FMLA, but FMLA leave is unpaid unless otherwise provided for in policy. By including this paragraph, you would allow the employee to receive sick leave pay for the days missed during the adoption process. If you choose to include it, select the number of days of sick leave an employee may use annually for the adoption/bonding process (15 is not a required number of days).

<sup>4</sup> As used in this policy, "applicable" is a very important word. Some leave taken under FMLA also applies to sick leave and therefore, the employee will get paid for the leave to the extent the employee has accumulated sick leave. Other leave taken under FMLA is not applicable to sick leave and therefore the

FMLA leave is unpaid unless vacation or personal leave is available. For instance, "applicable leave" in terms of time taken under FMLA due to the birth of a child will vary

depending on the language in your district's policy on sick leave. For instance, if sick leave may be taken "for reason of personal illness or illness in the immediate family" (based on the statutory definition in 6-17-1302, and an employee gives birth to a child, she may take sick leave for the amount of time that her personal physician deems it necessary for her to physically recover from childbirth. Once the medically necessary time has passed, sick leave is no longer appropriate and cannot be used. While under the FMLA, the employee could take additional time off work, she would need to take unpaid FMLA leave for this purpose, unless she had personal days or vacation days available. However, if your district has a much more liberal

definition of sick leave in district policy, the results could be entirely different and all birth related leave might be applicable. Another example would be the potential for overlap between pregnancy

complications that arise to the level of a "serious health condition." For instance, pregnancy complications that rose to the level of a "serious health condition" would qualify for both, while missing work for a dentist's appointment would qualify for sick leave, but would not qualify for FMLA leave. Consult policy 8.23— CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE when making the determination of what sick leave qualifies under both policies. It may also be helpful to consult 29 CFR 825.113, 114, and 115 which are available by calling the ASBA office.

Cross Reference: 8.12—CLASSIFIED PERSONNEL OUTSIDE EMPLOYMENT  
8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE  
8.36—CLASSIFIED PERSONNEL WORKPLACE INJURIES AND WORKERS' COMPENSATION

Legal References: A.C.A. § 6-17-1301 et seq.  
29 USC §§ 2601 et seq.  
29 CFR 825.100 et seq.

Date Adopted: 5/13/2008

Last Revised: 6/19/2012

Last Revised: 5/12/15

Last Revised: 4/12/16

Last Revised: 7/18/2017

## **8.6—SICK LEAVE BANK — CLASSIFIED EMPLOYEES**

A sick leave bank is established for the purpose of permitting employees (certified and classified), upon approval, to obtain sick leave in excess of accumulated and current sick leave when the employee has exhausted all such leave.

### **Contributions**

Each employee who wishes to will donate one day of their sick leave to the bank within his/her first contract month. Additional days will only be donated if the bank runs out of days. Days contributed will not be returned. Only those employees who contribute to the sick leave bank shall be eligible to withdraw from the sick leave bank.

The Certified and Classified PPC committees will meet together to handle all sick leave bank requests. The committees shall meet as necessary for the purpose of reviewing requests for withdrawal from the bank. The determination of the committees shall be final.

### **Withdrawals**

The committees may grant sick leave up to any amount of days per contract year for serious personal or family illness, disabilities or accidents (not including accidents for which the employee is receiving Workers' Compensation), which cause the employee to be absent from work and when the employee has exhausted all accumulated and current sick leave as well as exhausted the ten (10) days of sub pay as described in section 3.8.

Absence from work due to normal pregnancy or elective surgery will not make the employee eligible to withdraw from the sick leave bank.

Requests for withdrawal from the sick leave bank must state the reason(s) for the requests and the number of days requested and must be accompanied by a detailed statement from an attending physician of the nature of the malady and the expected duration thereof.

If the information provided to the committees is deemed by a majority of the committees to be insufficient, the committees may require additional information or deny the employee's request, at its discretion.

The committees shall have the authority to grant, reduce or deny any request. However, the committees may grant no request, or any granted time may be withdrawn, when the employee accepts retirement; is eligible for Social Security Disability; or other disability insurance

Legal Reference: A.C.A. § 6-17-1208

Date Adopted: 8/26/04

Last Revised: 10/14/08

## **8.7—CLASSIFIED PERSONNEL PERSONAL AND PROFESSIONAL LEAVE**

For the district to function efficiently and have the necessary personnel present to effect a high achieving learning environment, employee absences need to be kept to a minimum. The district acknowledges that there are times during the school year when employees have personal business that needs to be addressed during the school day. Each full-time employee shall receive one (1)<sup>1</sup> days of personal leave per contract year. The leave may be taken in increments of no less than ½ day.<sup>2</sup> Personal leave will be granted based on discretion of the principal.

Employees shall take personal leave or leave without pay for those absences which are not due to attendance at school functions which are related to their job duties and do not qualify for other types of leave (for sick leave see Policy 8.5, for professional leave see below).

School functions, for the purposes of this policy, means:

1. Athletic or academic events related to a public school district; and
2. Meetings and conferences related to education.

The determination of what activities meet the definition of a school function shall be made by the employee's immediate supervisor or designee. In no instance shall paid leave in excess of allotted vacation days and/or personal days be granted to an employee who is absent from work while receiving remuneration from another source as compensation for the reason for their absence.

Any employee desiring to take personal leave may do so by making a written request to his supervisor at least twenty-four (24) hours prior to the time of the requested leave. The twenty-four hour requirement may be waived by the supervisor when the supervisor deems it appropriate.

Employees who fail to report to work when their request for a personal day has been denied or who have exhausted their allotted personal days, shall lose their daily rate of pay for the day(s) missed (leave without pay). While there are instances where personal circumstances necessitate an employee's absence beyond the allotted days of sick and/or personal leave, any employee who requires leave without pay must receive advance permission (except in medical emergencies and/or as permitted by policy 8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE)) from their immediate supervisor. Failure to report to work without having received permission to be absent is grounds for discipline, up to and including termination.

Personal leave may not be taken the day before or the day after a holiday.<sup>4</sup>

## **Professional Leave**

“Professional Leave” is leave granted for the purpose of enabling an employee to participate in professional activities (e.g., workshops or serving on professional committees) which can serve to improve the school District’s instructional program or enhances the employee’s ability to perform his duties. Professional leave will also be granted when a school District employee is subpoenaed for a matter arising out of the employee’s employment with the school District. Any employee seeking professional leave must make a written request to his immediate supervisor, setting forth the information necessary for the supervisor to make an informed decision. The supervisor’s decision is subject to review and overruling by the superintendent. Budgeting concerns and the potential benefit for the district’s students will be taken into consideration in reviewing a request for professional leave.

Applications for professional leave should be made as soon as possible following the employee’s discerning a need for such leave, but, in any case, no less than two (2) weeks before the requested leave is to begin, if possible.

If the employee does not receive or does not accept remuneration for his/her participation in the professional leave activity and a substitute is needed for the employee, the district shall pay the full cost of the substitute. If the employee receives and accepts remuneration for his/her participation in the professional leave activity, the employee shall forfeit his/her daily rate of pay from the district for the time the employee misses. The cost of a substitute, if one is needed, shall be paid by the employee/district<sup>5</sup>.

Notes: While you are not required to provide employees with personal days, you are required to have a policy that requires employees who are absent from the district to take either personal days or leave without pay.

Please note that the provisions of A.C.A. § 21-4-216, which gives state employees eight (8) hours of paid leave to attend their children’s school educational activities, do **NOT** apply to public school employees.

<sup>1</sup>If your district gives personal days, insert the number of days given.

<sup>2</sup>Choose the number of hours or portion of a work day that is the minimum that may be taken at any one time.

<sup>3</sup> This sentence is optional.

<sup>4</sup> This sentence is optional.

<sup>5</sup> Choose whether the employee or the district will pay the cost of the employee.

Legal Reference: A.C.A. § 6-17-211

Date Adopted: 5/13/08

Last Revised: 12/9/08

Last Revised: 4/6/16

## **8.8—CLASSIFIED PERSONNEL RESPONSIBILITIES IN DEALING WITH SEX OFFENDERS ON CAMPUS**

Individuals who have been convicted of certain sex crimes must register with law enforcement as sex offenders. Arkansas law places restrictions on sex offenders with a Level 1 sex offender having the least restrictions (lowest likelihood of committing another sex crime), and Level 4 sex offenders having the most restrictions (highest likelihood of committing another sex crime).

While Levels 1 and 2 place no restrictions prohibiting the individual's presence on a school campus, Levels 3 and 4 have specific prohibitions. These are specified in Policy 6.10—SEX OFFENDERS ON CAMPUS (MEGAN'S LAW) and it is the responsibility of district staff to know and understand the policy and, to the extent requested aid school administrators in enforcing the restrictions placed on campus access to Level 3 and Level 4 sex offenders.

It is the intention of the board of directors that district staff not stigmatize students whose parents or guardians are sex offenders while taking necessary steps to safeguard the school community and comply with state law. Each school's administration should establish procedures so attention is not drawn to the accommodations necessary for registered sex offender parents or guardians.<sup>1</sup>

Cross Reference: **6.10—SEX OFFENDERS ON CAMPUS (MEGAN'S LAW)**

Notes: This policy is similar to Policy 3.12. If you change this policy, review 3.12 at the same time to ensure applicable consistency between the two.

<sup>1</sup> For example, if a sex offender parent will arrive for conferences at the same time as other parents, staff should escort additional parents to their student's classroom, not just the sex offender parent. All principals, designees, and school employees who will or may have contact with the sex offender parents shall be required to keep confidential both the sex offender status and sex offender accommodations made for a parent.

Legal Reference: A.C.A. § 12-12-913 (g) (2)  
Arkansas Department of Education Guidelines for "Megan's Law"  
A.C.A. § 5-14 132

Date Adopted: 5/13/2008

Last Revised:

## **8.9—PUBLIC OFFICE – CLASSIFIED PERSONNEL**

An employee of the District who is elected to the Arkansas General Assembly or any elective or appointive public office (not legally constitutionally inconsistent with employment by a public school district) shall not be discharged or demoted as a result of such service.

No leave will be granted for the employee's participation in such public office. The employee may take personal leave or vacation (if applicable), if approved in advance by the Superintendent, during his absence.

Prior to taking leave, and as soon as possible after the need for such leave is discerned by the employee, he must make written request for leave to the Superintendent, setting out, to the degree possible, the dates such leave is needed.

An employee who fraudulently requests sick leave for the purpose of taking leave to serve in public office may be subject to nonrenewal or termination of his employment contract.

**Note:** This policy similar to Policy 3.13. If you change this policy, review 3.13 at the same time to ensure applicable consistency between the two.

Cross Reference: Policy # 8.17—CLASSIFIED Personnel Political Activity

Legal Reference: A.C.A. § 6-17-115, 116

Date Adopted: 8/26/04

Last Revised: 4/12/16



## **8.10—JURY DUTY – CLASSIFIED PERSONNEL**

Employees are not subject to discharge, loss of sick leave, loss of vacation time or any other penalty due to absence from work for jury duty, upon giving reasonable notice to the District through the employee's immediate supervisor.

The employee must present the original (not a copy) of the summons to jury duty to his supervisor in order to confirm the reason for the requested absence.

Employees shall receive their regular pay from the district while serving jury duty, and shall reimburse the district from the stipend they receive for jury duty, up to, but not to exceed, the cost of the substitute hired to replace the employee in his/her absence.<sup>1</sup>

**Note:** This policy is similar to Policy 3.14. If you change this policy, review 3.14 at the same time to ensure applicable consistency between the two.

<sup>1</sup> This sentence is totally optional. Please note that public employees are exempt by law from jury duty recovery fees. Since school employees are not state employees, the law does not apply, but you may be asked about it by an employee.

Legal Reference:       A.C.A. § 16-31-106

Date Adopted: 8/26/04  
Last Revised: 4/13/2010

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

The Westside 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 work weeks 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 off<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,D</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>2</sup> and shall be expressed as an hourly rate.<sup>F</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>65</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>76</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>87</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>98</sup>

The District shall display minimum wage posters where employees can readily observe them.<sup>109</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 four hundred fifty-five dollars (\$455) a week or \$23,666 annually to be exempt. While DOL regulations required that starting on December 1, 2016, an employee must have received nine hundred thirteen dollars (\$913) a week or \$47,476 annually to be exempt, the Federal court has prohibited the regulations from going into effect for the time being. In

addition to the increase from December 1, 2016, the regulations would have increased the minimum amount automatically every three (3) years; should the regulations go into effect, the DOL will release the new minimum amount at least one hundred fifty (150) days prior to it becoming effective. The next increase would become effective on January 1, 2020 and is anticipated to be approximately nine hundred eighty-four dollars (\$984) a week or \$51,168 annually.

<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>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 X 0.5 = \$4.48. \$4.48 X 10 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: A.C.A. § 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)

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: A.C.A. § 6-17-2205 and 2207
- L: 29 CFR §§ 785.19

Date Adopted: 8/26/04  
Last Revised: 5/12/15  
Last Revised: 6/14/16  
Last Revised: 6/13/2017



## **8.12— CLASSIFIED PERSONNEL OUTSIDE EMPLOYMENT**

An employee of the District may not be employed in any other capacity during regular working hours.

An employee may not accept employment outside of his district employment which will interfere, or otherwise be incompatible with the District employment, including normal duties outside the regular work day; nor shall an employee accept other employment which is inappropriate for an employee of a public school.

The Superintendent, or his designee(s), shall be responsible for determining whether outside employment is incompatible, conflicting, or inappropriate.

When a classified employee is additionally employed by the District by a contract for a second classified position or to perform supplementary duties for a stipend or multiplier, the duties, expectations, and obligations of the primary position employment contract shall prevail over all other employment duties unless the needs of the district dictate otherwise. If there is a conflict between the expectations of the primary position and any other contracted position, the employee shall notify the employee's building principal as far in advance as is practicable. The Building principal shall verify the existence of the conflict by contacting the supervisor of the secondary contracted position. The building principal shall determine the needs of the district on a case-by-case basis and rule accordingly. The principal's decision is final with no appeal to the Superintendent or the School Board. Frequent conflicts or scheduling problems could lead to the non-renewal or termination of the conflicting contract of employment or the contract to perform the supplementary duties.

For employees who work two or more jobs for the District, the superintendent or designee shall specify which is the employee's primary job. If circumstances change, the determination can be changed to reflect the current needs of the District. Furthermore, if on any given day, one of the employee's jobs requires more hours worked than is customary, the District reserves the right to lessen the number of hours the employee may work in his/her other job such that the employee does not exceed forty (40) hours worked in that week.<sup>1</sup>

### **Sick Leave and Outside Employment**

Sick leave related absence from work (e.g. sick leave for personal or family illness or accident, Workers Comp, and FMLA) inherently means the employee is also incapable of working at any source of outside employment. Except as provided in policy 8.26, if an employee who works a non-district job while taking district sick leave for personal or family illness or accident, Workers Comp, or FMLA shall be subject to discipline up to and including termination.

**Notes:** This policy is similar to Policy 3.18. If you change this policy, review 3.18 at the same time to ensure applicable consistency between the two.

<sup>1</sup> The fact that a district may reduce an employee's hours for one job due to extra hours being worked in the employee's second job does NOT permit the district to require the same duties in the reduced hours job, but merely pay for it to be done in fewer hours. Please also note that districts are obligated under the Fair Labor Standards Law (FLSA) (see policy 8.11) to pay every hourly employee (other than those

few classified employees who meet FLSA's definition of "supervisor") for every minute worked. Classified employees' wages have to be based on an hourly wage even if paid as a salary; there are methods for determining the "blended" rate for employees working more than 40 hours in a week who are paid on the basis of more than one hourly wage. These requirements also apply to the calculation of stipends.

Cross References:       8.5—CLASSIFIED EMPLOYEES SICK LEAVE  
8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE  
8.36—CLASSIFIED PERSONNEL WORKPLACE INJURIES AND WORKERS'  
COMPENSATION

Legal Reference:       A.C.A. § 6-24-106, 107, 111

Date Adopted: 8/26/04  
Last Revised: 5/13/2014

## **8.13— CLASSIFIED PERSONNEL EMPLOYMENT**

All prospective employees must fill out an application form provided by the District, in addition to any resume provided; all of the information provided is to be placed in the personnel file of those employed.

If the employee provides false or misleading information, or if he/she withholds information to the same effect, it may be grounds for dismissal. In particular, it will be considered a material misrepresentation and grounds for termination of contract of employment if an employee's application information is discovered to be other than as was represented by the employee, either in writing on application materials or in the form of representations made to the school district.

It is grounds for termination of contract of employment if an employee fails a criminal background check or receives a true report on the Child Maltreatment Central Registry check.<sup>1</sup>

An employee who receives notification of a failure to pass a criminal background check or a true result on the Child Maltreatment Central Registry check shall have thirty (30) days following the notification to submit to the superintendent, or designee, a written request for a hearing before the Board to request a waiver. The written request should include any documentation, such as police reports, or other materials that are related to the event giving rise to the failed background check or true result on the Child Maltreatment Registry as well as information supporting your request for the waiver. Employees requesting a board hearing to request a waiver should be aware that this hearing is subject to the Arkansas Freedom of Information Act and it must be fully open to the public as a result.

For unlicensed individuals employed as teachers or administrators under a waiver, all teachers who begin employment in the 2021-2022 school year and each school year thereafter shall demonstrate proficiency or awareness in knowledge and practices in scientific reading instruction as is applicable to their teaching position by completing the prescribed proficiency or awareness in knowledge and practices of the scientific reading instruction credential either as a condition of licensure or within one (1) year for teachers who are already licensed or employed as a teacher under a waiver from licensure.<sup>2</sup>

Before the superintendent may make a recommendation to the Board that an individual be hired by the District, the superintendent shall check the Arkansas Educator Licensure System to determine if the individual has a currently suspended or revoked teaching license or a current Level 3 or Level 4 public notification of ethics violation. An individual with a currently suspended license or whose license has been revoked by the State Board of Education is not eligible to be employed by the District; this prohibition includes employment as a substitute teacher, whether directly employed by the District or providing substitute teaching services under contract with an outside entity. An individual with a current Level 3 or Level 4 public notification of ethics violation shall not be recommended for employment by the District.

The District is an equal opportunity employer and shall not discriminate on the grounds of race, color, religion, national origin, sex, pregnancy, sexual orientation, gender identity, age, disability, or genetic information.<sup>3</sup>

Inquiries on non-discrimination may be directed to the elementary principal<sup>4</sup>, who may be reached at 479.497.1088; 193 School Street; Hartman, AR 72840<sup>5</sup>.

For further information on notice of non-discrimination or to file a complaint, visit <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>; for the address and phone number of the office that serves your area, or call 1-800-421-3481.

In accordance with Arkansas law<sup>6</sup>, the District provides a veteran preference to applicants who qualify for one of the following categories:

1. a veteran without a service-connected disability;
2. a veteran with a service-connected disability; and
3. a deceased veteran's spouse who is unmarried throughout the hiring process.

For purposes of this policy, "veteran" is defined as:

- a. A person honorably discharged from a tour of active duty, other than active duty for training only, with the armed forces of the United States; or
- b. Any person who has served honorably in the National Guard or reserve forces of the United States for a period of at least six (6) years, whether or not the person has retired or been discharged.

In order for an applicant to receive the veteran's preference, the applicant must be a citizen and resident of Arkansas, be substantially equally qualified as other applicants and do all of the following:

1. Indicate on the employment application the category the applicant qualifies for;
2. Attach the following documentation, **as applicable**, to the employment application:
  - Form DD-214 indicating honorable discharge;
  - A letter dated within the last six months from the applicant's command indicating years of service in the National Guard or Reserve Forces as well as the applicant's current status;
  - Marriage license;
  - Death certificate;
  - Disability letter from the Veteran's Administration (in the case of an applicant with a service-related disability).

Failure of the applicant to comply with the above requirements shall result in the applicant not receiving the veteran preference; in addition, meeting the qualifications of a veteran or spousal category does not guarantee either an interview or being hired.

Notes: This policy is similar to Policy 3.19. If you change this policy, review 3.19 at the same time to ensure applicable consistency between the two.

<sup>1</sup> An expunged, sealed, or pardoned conviction shall not disqualify a person from employment if the conviction is ten (10) or more years old and does not involve the physical or sexual injury, mistreatment, or abuse of another.

<sup>2</sup> If you do not have a waiver to employ individuals as teachers or administrators without a license, remove this paragraph.

<sup>3</sup> A copy of the non-discrimination statement should be included in all district publications unless the publication is intended only for students and parents. Publications intended only for students and parents should include the nondiscrimination clause in Policy 4.11—EQUAL EDUCATIONAL OPPORTUNITY.

<sup>4</sup> Insert the position(s) designated to be contacted on discrimination inquiries. If you have different positions designated to answer questions on disability discrimination (504 coordinator) and sex discrimination (Title IX coordinator), then you will need to include the position responsible for each area. Do not include the name(s) of the person(s) to be contacted in the policy; changing the name of the person (due to a staffing change) would necessitate amending the policy, which would require it to go through the entire adoption process.

<sup>5</sup> Insert the office address, phone number, and email address to be used to contact the designated position. If you have more than one position designated as set forth in footnote 3, you will need to include a contact number, email address, and office address for each position. The contact number and office address may be the school/district address and phone number. We recommend making the email address specific to the position, such as [titleix@districtdomain.org](mailto:titleix@districtdomain.org), and having the emails sent to the coordinator's inbox to prevent having to amend the policy due to staff changes.

<sup>6</sup> A.C.A. § 21-3-301 et seq. includes public schools in the list of employers required to provide a preference to applicants who qualify for a veteran or a deceased veteran's spouse category when selecting interview candidates, during the interview process, and in selecting a new employee.

A.C.A. § 21-3-302 covers the requirements for giving a veteran preference during the application, interview, and hiring processes. The statute does not require districts to use a particular scoring method to demonstrate giving a preference and districts can continue using the system they have previously been using. However, A.C.A. § 21-3-302 and A.C.A. § 21-3-303 require districts be able to demonstrate that any qualifying applicant was given a preference during the entire application, interview, and hiring processes.

If a veteran who is not hired requests, the district must provide the veteran with his/her base score, adjusted score, and the successful candidate's score. While there is no statutorily required method, ASBA suggests districts use a numerical scoring rubric for the entire hiring process. The use of such a rubric makes it easy to

demonstrate a preference was given as you can point to where qualifying applicants received additional points. Districts that don't use a numerical scoring method are required, upon a veteran's request, to provide all documentation allowed to be released under FOIA to the veteran to demonstrate how the preference was used to develop the list of qualified candidates to be interviewed and to select the person actually hired.

Legal References:     Arkansas Department of Education Rules Governing Background Checks

Arkansas Department of Education Rules Governing the Code of Ethics for Arkansas Educators

A.C.A. § 6-17-301  
A.C.A. § 6-17-414  
A.C.A. § 6-17-428  
A.C.A. § 6-17-429  
A.C.A. § 21-3-302  
A.C.A. § 21-3-303  
A.C.A. § 25-19-101 et seq.  
28 C.F.R. § 35.106  
29 C.F.R. part 1635  
34 C.F.R. § 100.6  
34 C.F.R. § 104.8  
34 C.F.R. § 106.9  
34 C.F.R. § 108.9  
34 C.F.R. § 110.25

Date Adopted: 8/26/04  
Last Revised: 5/13/2014  
Last Revised: 5/12/15  
Last Revised: 6/13/2017  
Last Revised: 3/13/2018

## **8.14 —EXPENSE REIMBURSEMENT**

The requirements of this policy shall govern reimbursement for expenses related to travel and/or attendance at conferences and professional development activities incurred by district employees and/or members of the Board of Directors on behalf of the district. Employees are only eligible for reimbursement for travel expenses for travel which has been approved in advance. Original receipts must accompany all requests for reimbursement to the extent that such receipts are customarily available. For a receipt to be valid it should contain the name of the issuing company, the date, and the amount. No cash advances shall be made for travel. Mileage, lodging, and meal expenses will not be reimbursed when incurred for the personal convenience of the employee and not required by the reason for the travel.<sup>1</sup> Reimbursement for travel shall be for the lesser of the cost between travel by air or by car with some consideration allowed for length of time of the method of travel.

To the extent practicable, employees shall have the district pay initial conference and professional development registration fees and associated necessary and materials. In the occasional circumstances where this is not practical, the district shall reimburse the employee for such fees if they were authorized in advance and are supported with proper receipts.

The district will not reimburse expenses of any non-school board member or non-employee who accompanies the school board member or employee during his/her school related travel.

### **Reimbursable Expenses**

Mileage that is driven for a district sanctioned purpose in an employee's personal vehicle shall be reimbursed provided appropriate documentation is submitted establishing the date and time, place, and purpose of the travel. Mileage shall be reimbursed at the rate of \$.43 cents per mile and shall be based on the shortest, most reasonable, route available.

Meals may be reimbursed for travel which necessitates an overnight stay when submitted according to the dictates of this policy. Reimbursement shall be prorated based on the percent of a day the employee is away on travel. For example, if an employee returns from his/her travel in the afternoon, he/she is only eligible for reimbursement for breakfast and lunch expenditures. Meals shall be reimbursed for the actual expense to the extent that they are not lavish and are reasonable based on circumstances.<sup>3</sup> Except as otherwise specified by this policy, meals are only reimbursable in conjunction with travel requiring an overnight stay.

Meal expenses incurred by the superintendent or other administrators as necessary, in the performance of their duties when meeting with state officials or consultants may be reimbursed on a prorated, per person basis in line with the mandates of this policy. Such expenses shall only be reimbursed when the expenditure is likely to result in a tangible benefit to the district.

Travel necessitating overnight lodging shall be reimbursed to the extent that it is not lavish and is reasonable based on circumstances of the expenditure. Proper documentation establishing the date and time, place, and purpose of the travel must be submitted along with a receipt for the overnight accommodations. To the extent practicable, employees shall receive assistance from administrators or their designee in arranging travel plans to help keep expenses to a minimum.

MEALS: Receipts are required. Listed prices are the maximum per meal. Meals will be reimbursed at a per diem of \$40/day. Receipts are not required.

TRAVEL: \$0.50 per mile

### **Expenses not covered**

The district shall not reimburse the following items/categories of expenses.

- e. Alcoholic beverages;
- f. Entertainment expenses – including sports or sporting events; pay per view or game expenses at motels;
- g. Replacement due to loss or theft;
- h. Discretionary expenses for items such as clothing or gifts;
- i. Medical expenses incurred while on route to or from or at the destination of the reason for the travel;
- j. Optional or supplementary insurance obtained by the employee for the period covered during the travel; and
- k. Tips, other than those required by the source of the expense, e.g. a restaurant which adds a tip to the bill for all groups of six or more.<sup>4</sup>

### **Credit Cards**

Only those employees specifically issued credit cards to be used in the performance of their jobs to purchase goods, services, or supplies on behalf of the district shall be allowed to use such cards. Employees who incur reimbursable expenses as defined in this policy are expected to pay for them initially by any means they choose and then submit their request for reimbursement. The district assumes no responsibility for the payment of any personal credit card charges incurred by a district employee.

### **Airport Associated Expenses**

Receipts for airport associated expenses are required for reimbursement. All airline flights shall be by coach/economy class. Upon arrival at their destination, employees are expected to take the less expensive option between a taxi and an airport shuttle service to his/her hotel or meeting site. When circumstances dictate that a rental car is necessary and/or the most economical approach to the travel requirements, the least expensive car that will accomplish the job should be rented. The district shall not reimburse for any kind of rental car supplemental insurance.

**Notes:** The following IRS publications were used in the development of this policy.

15-A, 15-B, 463, 535, 1542, and the Fringe Benefit Training Guide

<sup>1</sup> If the Board wishes to list any stipulations on reimbursement for travel made by the superintendent or other administrative personnel, specify the stipulations in this policy. Examples could be that administrators would be reimbursed for reasonable expenses incurred in the performance of their jobs which benefit the district and that had been pre-approved by their immediate supervisor(s).

Superintendents could be contractually pre-cleared for reimbursement for specified travel purposes (actions required in the performance of their role as district leader and/or spokesperson and which



benefit the district), mileage for their personal vehicle driven on district business, etc. If they felt the need, the Board could also periodically review the reimbursement records regarding the Superintendent to verify that they are in line with its intentions. Keep in mind that reimbursable expenses must not be lavish but reasonable based on the circumstances of the expenditure. Reimbursed expenses which exceed this threshold are considered income and must be reported as such to the IRS.

<sup>2</sup> Insert the rate your district chooses. It should be no more than \$.485, which is the current rate, recognized by the IRS. State employees currently receive \$.42 per mile.

<sup>3</sup>Per diem reimbursement rates are established by the IRS and for the purposes of this policy you may use them as either a guide or the gospel for meals, lodging, or both. We have chosen not to stipulate expenditures remain within the per diem rates because so many conferences are at hotels that simply do not fit IRS's rates. If you choose to limit meal reimbursement to the per diem rates, substitute the following sentence for the one included in the policy. "Meals shall be reimbursed for the actual expense up to the IRS per diem limits." You can further choose to specify that your reimbursement will be "x" percent per meal (breakfast, lunch and dinner) of the per diem rate. Please note that reimbursed expenditures which are lavish based on the circumstances of the expenditure are considered wages to the extent they are excessive. The following information is provided for your convenience if you choose to limit expenditures to the per diem rates.

Reimbursement rates vary and can be determined by going to [www.irs.gov](http://www.irs.gov) and downloading PDF file "Publication 1542." The per diem rates for all of Arkansas, except Hot Springs and Little Rock, are \$60.00 for motel and \$39.00 for food. The rates for Hot Springs are \$87.00 for motel and \$49.00 for food. Little Rock's rates are \$76.00 for motel and \$54.00 for food. Publication 1542 contains the rates for cities in states other than Arkansas. Rates are subject to change with the Federal fiscal year which runs from October 1 through September 30.

<sup>4</sup> Act 715 of 2007 allows state employees to be reimbursed for tips for amounts up to 15% of the bill. Page 5 of IRS Publication 463 specifies tips the IRS deems acceptable for certain expenses, but state law can be more restrictive than what IRS permits. Unless and until the potential discrepancy between the new law and the IRS rules is cleared up by an Attorney General's Opinion, we have chosen to write the policy in line with currently acceptable practice.

Cross References: **3.20—CERTIFIED PERSONNEL REIMBURSEMENT OF TRAVEL EXPENSES**

**The provision of policy 7.12-EXPENSE REIMBURSEMENT are incorporated by reference into this policy.**

Cross Reference: Policy 7.12 EXPENSE REIMBURSEMENT

Date Adopted: 9/8/03

Last Revised: 5/19/09

Last Revised: 3/8/2011

## **8.15—CLASSIFIED PERSONNEL TOBACCO USE \***

Smoking or use of tobacco or products containing tobacco in any form (including, but not limited to, cigarettes, cigars, chewing tobacco, and snuff) in or on any real property owned or leased by a District school, including school buses owned or leased by the District, or other school vehicles is prohibited.

With the exception of recognized tobacco cessation products, this policy's prohibition includes any tobacco or nicotine delivery system or product. Specifically, the prohibition includes any product that is manufactured, distributed, marketed, or sold as e-cigarettes, e-cigars, e-pips, or under any other name or descriptor.

Violation of this policy by employees shall be grounds for disciplinary action up to, and including, dismissal.

**Notes:** This policy is similar to Policy 3.21—LICENSED PERSONNEL TOBACCO USE. If you change this policy, review policy 3.21 at the same time to ensure applicable consistency between the two.

The statute requires posting the statute "...in a conspicuous location at every entrance to each building owned or leased by a public school district and every school bus used to transport students"

This model policy tracks the state law referenced below. It is not required to be in District policies, but it could be useful in informing employees of the statutory prohibition on all tobacco use.

Legal Reference: A.C.A. § 6-21-609

Date Adopted: 8/26/04

Last Revised: 6/6/13

## **8.16—DRESS OF CLASSIFIED EMPLOYEES**

Employees shall ensure that their dress and appearance are professional and appropriate to their positions.

Date Adopted: 8/26/04

Last Revised:

## **8.17— CLASSIFIED PERSONNEL POLITICAL ACTIVITY**

Employees are free to engage in political activity outside of work hours and to the extent that it does not affect the performance of their duties or adversely affect important working relationships.

It is specifically forbidden for employees to engage in political activities on the school grounds or during work hours. The following activities are forbidden on school property:

1. Using students for preparation or dissemination of campaign materials;
2. Distributing political materials;
3. Distributing or otherwise seeking signatures on petitions of any kind;
4. Posting political materials; and
5. Discussing political matters with students, in or out of the classroom, in other than circumstances appropriate to the employee's responsibilities to the students and where a legitimate pedagogical reason exists.

**Note:** This policy is similar to Policy 3.23. If you change this policy, review 3.23 at the same time to ensure applicable consistency between the two.

Date Adopted: 8/26/04

Last Revised:

## **8.18— CLASSIFIED PERSONNEL DEBTS**

All employees are expected to meet their financial obligations. If an employee writes “hot” checks or has his income garnished, dismissal may result.

An employee will not be dismissed for having been the subject of one (1) garnishment. However, a second or third garnishment may result in dismissal.

At the discretion of the Superintendent, he or his designee may meet with an employee who has received a second garnishment for the purpose of warning the employee that a third garnishment will result in a recommendation of dismissal to the School Board.

At the discretion of the Superintendent, a second garnishment may be used as a basis for a recommended dismissal. The Superintendent may take into consideration other factors in deciding whether to recommend dismissal based on a second garnishment. Those factors may include, but are not limited to, the amount of the debt, the time between the first and the second garnishment, and other financial problems which come to the attention of the District.

**Note:** This policy is similar to Policy 3.24. If you change this policy, review 3.24 at the same time to ensure applicable consistency between the two.

Date Adopted: 8/26/04

Last Revised:

## 8.19— CLASSIFIED PERSONNEL GRIEVANCES

The purpose of this policy is to provide an orderly process for employees to resolve, at the lowest possible level, their concerns related to the personnel policies or salary payments of this district.

### **Definitions**

Grievance: a claim or concern related to the interpretation, application, or claimed violation of the personnel policies, including salary schedules, federal or state laws and regulations, or terms or conditions of employment, raised by an individual employee of this school district. Other matters for which the means of resolution are provided or foreclosed by statute or administrative procedures shall not be considered grievances. Specifically, no grievance may be entertained against a supervisor for directing, instructing, reprimanding, or “writing up” an employee under his/her supervision. A group of employees who have the same grievance may file a group grievance.

Group Grievance: A grievance may be filed as a group grievance if it meets the following criteria: (meeting the criteria does not ensure that the subject of the grievance is, in fact, grievable)

1. More than one individual has interest in the matter; and
2. The group has a well-defined common interest in the facts and/or circumstances of the grievance; and
3. The group has designated an employee spokesperson to meet with administration and/or the board; and
4. All individuals within the group are requesting the same relief.

Employee: any person employed under a written contract by this school district.

Immediate Supervisor: the person immediately superior to an employee who directs and supervises the work of that employee.

Working day: Any weekday other than a holiday whether or not the employee under the provisions of their contract is scheduled to work or whether they are currently under contract.

### **Process**

Level One: An employee who believes that he/she has a grievance shall inform that employee’s immediate supervisor that the employee has a potential grievance and discuss the matter with the supervisor within five working days of the occurrence of the grievance. The supervisor shall offer the employee an opportunity to have a witness or representative who is not a member of the employee’s immediate family present at their conference. (The five-day requirement does not apply to grievances concerning back pay.) If the grievance is not advanced to Level Two within five working days following the conference, the matter will be considered resolved and the employee shall have no further right with respect to said grievance.

If the grievance cannot be resolved by the immediate supervisor, the employee can advance the grievance to Level Two. To do this, the employee must complete the top half of the Level Two Grievance Form within five working days of the discussion with the immediate supervisor, citing the manner in which the specific personnel policy was violated that has given rise to the grievance, and

submit the Grievance Form to his/her immediate supervisor. The supervisor will have ten working days to respond to the grievance using the bottom half of the Level Two Grievance Form which he/she will submit to the building principal or, in the event that the employee's immediate supervisor is the building principal, the superintendent.

Level Two (when appeal is to the building principal): Upon receipt of a Level Two Grievance Form, the building principal will have ten working days to schedule a conference with the employee filing the grievance. The principal shall offer the employee an opportunity to have a witness or representative who is not a member of the employee's immediate family present at their conference. After the conference, the principal will have ten working days in which to deliver a written response to the grievance to the employee. If the grievance is not advanced to Level Three within five working days the matter will be considered resolved and the employee shall have no further right with respect to said grievance.

Level Two (when appeal is to the superintendent): Upon receipt of a Level Two Grievance Form, the superintendent will have ten working days to schedule a conference with the employee filing the grievance. The superintendent shall offer the employee an opportunity to have a witness or representative who is not a member of the employee's immediate family present at their conference. After the conference, the superintendent will have ten working days in which to deliver a written response to the grievance to the employee.

Level Three: If the proper recipient of the Level Two Grievance was the building principal, and the employee remains unsatisfied with the written response to the grievance, the employee may advance the grievance to the superintendent by submitting a copy of the Level Two Grievance Form and the principal's reply to the superintendent within five working days of his/her receipt of the principal's reply. The superintendent will have ten working days to schedule a conference with the employee filing the grievance. The superintendent shall offer the employee an opportunity to have a witness or representative who is not a member of the employee's immediate family present at their conference. After the conference, the superintendent will have ten working days in which to deliver a written response to the grievance to the employee.

Appeal to the Board of Directors: An employee who remains unsatisfied by the written response of the superintendent may appeal the superintendent's decision to the Board of Education within five working days of his/her receipt of the Superintendent's written response by submitting a written request for a board hearing to the superintendent<sup>1</sup>. If the grievance is not appealed to the Board of Directors within five working days of his/her receipt of the superintendent's response, the matter will be considered resolved and the employee shall have no further right with respect to said grievance.

The school board will address the grievance at the next regular meeting of the school board, unless the employee agrees in writing to an alternate date for the hearing. After reviewing the Level Two Grievance Form and the superintendent's reply, the board will decide if the grievance, on its face, is grievable under district policy. If the grievance is presented as a "group grievance," the Board shall first determine if the composition of the group meets the definition of a "group grievance." If the Board determines that it is a group grievance, the Board shall then determine whether the matter raised is grievable. If the Board rules the composition of the group does not meet the definition of a group grievance, or the grievance, whether group or individual, is not grievable, the matter shall be

considered closed. (Individuals within the disallowed group may choose to subsequently refile their grievance as an individual grievance beginning with Level One of the process.) If the Board rules the grievance not to be grievable, the matter shall be considered closed. If the Board rules the grievance to be grievable, they shall immediately commence a hearing on the grievance. All parties have the right to representation by a person of their own choosing who is not a member of the employee's immediate family at the appeal hearing before the Board of Directors. The employee shall have no less than 90 minutes to present his/her grievance. The hearing shall be open to the public unless the employee requests a private hearing. If the hearing is open, the parent or guardian of any student under the age of eighteen years who gives

testimony may elect to have the student's testimony given in closed session. At the conclusion of the hearing, if the hearing was closed, the Board of Directors may excuse all parties except board members and deliberate, by themselves, on the hearing. At the conclusion of an open hearing, board deliberations shall also be in open session unless the board is deliberating the employment, appointment, promotion, demotion, disciplining, or resignation of the employee. A decision on the grievance shall be announced no later than the next regular board meeting.

### **Records**

Records related to grievances will be filed separately and will not be kept in, or made part of, the personnel file of any employee.

### **Reprisals**

No reprisals of any kind will be taken or tolerated against any employee because he/she has filed or advanced a grievance under this policy.

**Note:** <sup>1</sup> It is suggested that you date stamp the request for a board hearing upon receipt.

This policy is similar to Policy 3.25. If you change this policy, review 3.25 at the same time to ensure applicable consistency between the two.

Legal Reference: ACA § 6-17-208

Date Adopted: 8/26/04

Last Revised:

## 8.19F—LEVEL TWO GRIEVANCE FORM - CLASSIFIED

Name: \_\_\_\_\_

Date submitted to supervisor: \_\_\_\_\_

CLASSIFIED Personnel Policy grievance is based upon:

\_\_\_\_\_

Grievance (be specific): \_\_\_\_\_

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What would resolve your grievance?

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Supervisor's Response

Date submitted to recipient: \_\_\_\_\_

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Date Adopted: 8/26/04

Last Revised:



## 8.20— CLASSIFIED PERSONNEL SEXUAL HARASSMENT

The Westside School District is committed to providing an academic and work environment that treats all students and employees with respect and dignity. Student achievement and amicable working relationships are best attained in an atmosphere of equal educational and employment opportunity that is free of discrimination. Sexual harassment is a form of discrimination that undermines the integrity of the educational and work environment and will not be tolerated.

The District believes the best policy to create an educational and work environment free from sexual harassment is prevention; therefore, the District shall provide informational materials and training to students, parents/legal guardians/other responsible adults, and employees on sexual harassment. The informational materials and training on sexual harassment shall be age appropriate and, when necessary, provided in a language other than English or in an accessible format. The informational materials and training shall include, but are not limited to: the nature of sexual harassment; the District's written grievance procedures for complaints of sexual harassment;<sup>1</sup> that the district does not tolerate sexual harassment; that students and employees can report inappropriate behavior of a sexual nature without fear of adverse consequences; the redress that is available to the victim of sexual harassment;<sup>2</sup> and the potential discipline for perpetrating sexual harassment.

"Sexual harassment" means conduct that is:

1. Of a sexual nature, including, but not limited to:
  - a. Sexual advances;
  - b. Requests for sexual favors;
  - c. Sexual violence; or
  - d. Other personally offensive verbal, visual, or physical conduct of a sexual nature;
2. Unwelcome; and
3. denies or limits a student's or employee's ability to participate in or benefit from any of the District's educational programs or activities or employment environment through any or all of the following methods:
  - a. Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's education or employment;
  - b. Submission to, or rejection of, such conduct by an individual is used as the basis for academic or employment decisions affecting that individual; and/or
  - c. Such conduct has the purpose or effect of substantially interfering with an individual's academic or work performance or creates an intimidating, hostile, or offensive academic environment.

The terms "intimidating," "hostile," and "offensive" include conduct of a sexual nature that has the effect of humiliation or embarrassment and is sufficiently severe, persistent, or

pervasive that it limits the student's or employees ability to participate in, or benefit from, an educational program or activity or employment environment.

Within the educational or work environment, sexual harassment is prohibited between any of the following: students; employees and students; non-employees and students; employees; employees and non-employees.

Actionable sexual harassment is generally established when an individual is exposed to a pattern of objectionable behaviors or when a single, serious act is committed. What is, or is not, sexual harassment will depend upon all of the surrounding circumstances and may occur regardless of the sex(es) of the individuals involved. Depending upon such circumstances, examples of sexual harassment include, but are not limited to:

- Making sexual propositions or pressuring for sexual activities;
- Unwelcome touching;
- Writing graffiti of a sexual nature;
- Displaying or distributing sexually explicit drawings, pictures, or written materials;
- Performing sexual gestures or touching oneself sexually in front of others;
- Telling sexual or crude jokes;
- Spreading rumors related to a person's alleged sexual activities;
- Discussions of sexual experiences;
- Rating other students as to sexual activity or performance;
- Circulating or showing e-mails or Web sites of a sexual nature;
- Intimidation by words, actions, insults, or name calling; and
- Teasing related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct or is homosexual, regardless of whether or not the student self-identifies as homosexual or transgender.

Employees who believe they have been subjected to sexual harassment are encouraged to file a complaint by contacting their immediate supervisor, an administrator, or the Title IX coordinator who will provide assistance on the complaint process. Under no circumstances shall an employee be required to first report allegations of sexual harassment to a school contact person if that person is the individual who is accused of the harassment.

Complaints will be treated in a confidential manner to the extent possible. Limited disclosure may be provided to: individuals who are responsible for handling the District's investigation to the extent necessary to complete a thorough investigation; the extent necessary to submit a report to the child maltreatment hotline; the Professional Licensure Standards Board for complaints alleging sexual harassment by an employee towards a student; or the extent necessary to provide the individual accused in the complaint due process during the investigation and disciplinary processes. Individuals who file a complaint have the right to request that the individual accused of sexual harassment not be informed of the name of the accuser; however, individuals should be aware that making such a request may substantially

limit the District's ability to investigate the complaint and may make it impossible for the District to discipline the accused.<sup>3</sup>

Employees who file a complaint of sexual harassment shall not be subjected to retaliation or reprisal in any form, including threats, intimidation, coercion, or discrimination. The District shall take steps to prevent retaliation and shall take immediate action if any form of retaliation occurs regardless of whether the retaliatory acts are by District officials, students, or third parties.

Following the completion of an investigation of a complaint, the District will inform the employee who filed the complaint:

- The final determination of the investigation;
- Remedies the District will make available to the employee; and
- The sanctions, if any, imposed on the alleged harasser relevant to the employee.

Following the completion of an investigation of a complaint, the District will inform the alleged perpetrator, or the parents/legal guardian/other responsible adult of the alleged perpetrator if the alleged perpetrator is under the age of eighteen (18):

- The final determination of the investigation; and
  - The sanctions, if any, the District intends to impose on the alleged perpetrator.

It shall be a violation of this policy for any student or employee to be subjected to, or to subject another person to, sexual harassment. Following an investigation, any employee who is found by the evidence to more likely than not have engaged in sexual harassment will be subject to disciplinary action up to, and including, termination.

Employees who knowingly fabricate allegations of sexual harassment shall be subject to disciplinary action up to and including termination.

Individuals who withhold information, purposely provide inaccurate facts, or otherwise hinder an investigation of sexual harassment shall be subject to disciplinary action up to and including termination.

Notes: This policy is similar to Policy 3.26. If you change this policy, review 3.26 at the same time to ensure applicable consistency between the two.

<sup>1</sup> The U.S. Department of Education Office of Civil Rights requires that there are separate written grievance procedures in addition to the written policy. The grievance procedures should include the following:

- A statement of the school's jurisdiction over Title IX complaints;
- Adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;
- Notice of where complaints may be filed;

- Reporting policies and protocols, including provisions for confidential reporting;
- Identification of the employee or employees responsible for evaluating requests for confidentiality;
- Provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
- Designated and reasonably prompt time frames for the major stages of the complaint process;
- Written notice to the complainant and alleged perpetrator of the outcome of the complaint;
- Notice that Title IX prohibits retaliation;
- Notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
- Notice of available interim measures that may be taken to protect the student in the educational setting;
- The evidentiary standard that must be used (preponderance of the evidence) (i.e., more likely than not that sexual harassment occurred) in resolving a complaint;
- Notice of potential remedies for students;
- Notice of potential sanctions against perpetrators;
- Sources of counseling, advocacy, and support; and
- Assurance that the school will take steps to prevent recurrence of any sexual harassment and remedy discriminatory effects on the complainant and others, if appropriate.

<sup>2</sup> Depending on the specific nature of the problem, remedies for the complainant might include, but are not limited to:

- Providing an escort to ensure that the complainant can move safely between classes and activities;
- Ensuring that the complainant and alleged perpetrator do not attend the same classes;
- Moving the complainant or alleged perpetrator to another school within the district;
- Providing counseling services (which must be free of charge to the student);
- Providing medical services;
- Providing academic support services, such as tutoring
- arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and

- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.

<sup>3</sup> Factors to be considered when a complainant requests no investigation or no disciplinary action be taken include:

- Circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of sexual harassment or other violence, which include:
  - Whether there have been other sexual harassment complaints about the same alleged perpetrator;
  - Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
  - Whether the alleged perpetrator threatened further sexual harassment or other violence against the student or others; and
  - Whether the sexual harassment was committed by multiple perpetrators;
- Whether the student's report reveals a pattern of perpetration, such as illicit use of drugs or alcohol, at a given location or by a particular group that suggests there is an increased risk of future acts of sexual harassment under similar circumstances;
- Whether the sexual harassment was perpetrated with a weapon;
- The age of the student subjected to the sexual harassment; and
- Whether the school possesses other means to obtain relevant evidence, such as through security cameras, eye witness accounts, or physical evidence.

Legal References: Title IX of the Education Amendments of 1972, 20 USC 1681, et seq.  
34 CFR part 106

A.C.A. § 6-15-1005 (b) (1)

Date Adopted: 8/26/04

Last Revised: 3/8/2011

Last Revised: 3/13/2018

## **8.21— CLASSIFIED PERSONNEL SUPERVISION OF STUDENTS**

All District personnel are expected to conscientiously execute their responsibilities to promote the health, safety, and welfare of the District's students under their care. The Superintendent shall direct all principals to establish regulations ensuring adequate supervision of students throughout the school day and at extracurricular activities.

**Note:** This policy is similar to Policy 3.27. If you change this policy, review 3.27 at the same time to ensure applicable consistency between the two.

Date Adopted: 8/26/04

Last Revised:

## 8.22— CLASSIFIED PERSONNEL COMPUTER USE POLICY

The Westside School District provides computers and/or computer Internet access for many employees; to assist employees in performing work related tasks. Employees are advised that they enjoy **no expectation of privacy** in any aspect of their computer use, including email, and that under Arkansas law; both email and computer use records maintained by the district are subject to disclosure under the Freedom of Information Act. Consequently, no employee or student-related reprimands or other disciplinary communications should be made through email.

Passwords or security procedures are to be used as assigned, and confidentiality of student records is to be maintained at all times. Employees must not disable or bypass security procedures, compromise, attempt to compromise, or defeat the district's technology network security, alter data without authorization, disclose passwords to other staff members or students, or grant students access to any computer not designated for student use. It is the policy of this school district to equip each computer with Internet filtering software designed to prevent users from accessing material that is harmful to minors. The designated District Technology Administrator or designee may authorize the disabling of the filter to enable access by an adult for a bona fide research or other lawful purpose.

Employees who misuse district-owned computers in any way, including excessive personal use, using computers for personal use during work or instructional time, using computers to violate any other policy, knowingly or negligently allowing unauthorized access, or using the computers to access or create sexually explicit or pornographic text or graphics, will face disciplinary action, up to and including termination or non-renewal of the employment contract.

**Note:** This policy is similar to Policy 3.28. If you change this policy, review 3.28 at the same time to ensure applicable consistency between the two.

Legal References:     Children's Internet Protection Act; PL 106-554  
                              20 USC 6777  
                              47 USC 254(h)  
                              A.C.A. § 6-21-107  
                              A.C.A. § 6-21-111

Date Adopted: 5/13/2008  
Last Revised: 6/2/09

## 8.22F—CLASSIFIED PERSONNEL Internet Use Agreement

Name (Please Print) \_\_\_\_\_

School \_\_\_\_\_ Date \_\_\_\_\_

The \_\_\_\_\_ School District agrees to allow the employee identified above (“Employee”) to use the district’s technology to access the Internet under the following terms and conditions:

1. Conditional Privilege: The Employee’s use of the district’s access to the Internet is a privilege conditioned on the Employee’s abiding by this agreement.
2. Acceptable Use: The Employee agrees that in using the District’s Internet access he/she will obey all federal and state laws and regulations. Internet access is provided as an aid to employees to enable them to better perform their job responsibilities. Under no circumstances shall an Employee’s use of the District’s Internet access interfere with, or detract from, the performance of his/her job-related duties.
3. Penalties for Improper Use: If the Employee violates this agreement and misuses the Internet, the Employee shall be subject to disciplinary action up and including termination.
4. “Misuse of the District’s access to the Internet” includes, but is not limited to, the following:
  - a. using the Internet for any activities deemed lewd, obscene, vulgar, or pornographic as defined by prevailing community standards;
  - b. using abusive or profane language in private messages on the system; or using the system to harass, insult, or verbally attack others;
  - c. posting anonymous messages on the system;
  - d. using encryption software;
  - e. wasteful use of limited resources provided by the school including paper;
  - f. causing congestion of the network through lengthy downloads of files;
  - g. vandalizing data of another user;
  - h. obtaining or sending information which could be used to make destructive devices such as guns, weapons, bombs, explosives, or fireworks;
  - i. gaining or attempting to gain unauthorized access to resources or files;
  - j. identifying oneself with another person’s name or password or using an account or password of another user without proper authorization;
  - k. using the network for financial or commercial gain without district permission;
  - l. theft or vandalism of data, equipment, or intellectual property;
  - m. invading the privacy of individuals;
  - n. using the Internet for any illegal activity, including computer hacking and copyright or intellectual property law violations;
  - o. introducing a virus to, or otherwise improperly tampering with, the system;
  - p. degrading or disrupting equipment or system performance;
  - q. creating a web page or associating a web page with the school or school district without proper authorization;



attempting to gain access or gaining access to student records, grades, or files of students not under their jurisdiction;

- r. providing access to the District's Internet Access to unauthorized individuals; or
- s. taking part in any activity related to Internet use which creates a clear and present danger of the substantial disruption of the orderly operation of the district or any of its schools;
- t. making unauthorized copies of computer software.
- u. personal use of computers during instructional time.

5. Liability for debts: Staff shall be liable for any and all costs (debts) incurred through their use of the District's computers or the Internet including penalties for copyright violations.

6. No Expectation of Privacy: The Employee signing below agrees that in using the Internet through the District's access, he/she waives any right to privacy the Employee may have for such use. The Employee agrees that the district may monitor the Employee's use of the District's Internet Access and may also examine all system activities the Employee participates in, including but not limited to e-mail, voice, and video transmissions, to ensure proper use of the system.

7. Signature: The Employee, who has signed below, has read this agreement and agrees to be bound by its terms and conditions.

Employee's Signature: \_\_\_\_\_ Date  
\_\_\_\_\_

**Note:** This policy is similar to Policy 3.28F. If you change this policy, review 3.28F at the same time to ensure applicable consistency between the two.

Date Adopted: 8/26/04

Last Revised:

## **8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE\***

The Family and Medical Leave Act (FMLA) offers job protection for leave that might otherwise be considered excessive absences. Employees need to carefully comply with this policy to ensure they do not lose FMLA protection due to inaction or failure to provide the District with needed information. The FMLA provides up to twelve (12) work weeks (or, in some cases twenty-six (26) weeks) of job-protected leave to eligible employees with absences that qualify under the FMLA. While an employee can request FMLA leave and has a duty to inform the District, as provided in this policy, of foreseeable absences that may qualify for FMLA leave, it is the District's ultimate responsibility to identify qualifying absences as FMLA or non-FMLA. FMLA leave is unpaid, except to the extent that paid leave applies to any given absence as governed by the FMLA and this policy.

### **SECTION ONE – FMAL LEAVE GENERALLY**

#### **Definitions:**

“Eligible Employee” is an employee who has: Been employed by the District for at least twelve (12) months, which are not required to be consecutive; and

1. Performed at least 1250 hours of service during the twelve (12) month period immediately preceding the commencement of the leave.<sup>1</sup>

“FMLA” is the Family and Medical Leave Act

“Health Care Provider” means:

- a. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
- b. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;
- c. Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;
- d. Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement; or
- e. Any other person determined by the U.S. Secretary of Labor to be capable of providing health care services.

“Instructional Employee” is an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting and includes athletic coaches, driving instructors, preschool teachers, and special education assistants such as signers for

the hearing impaired. The term does not include, and the special rules related to the taking of leave near the end of a semester do not apply to: teacher assistants or aides who do not have as their principal job actual teaching or instructing, administrators, counselors, librarians, psychologists, and curriculum specialists.

“Intermittent leave” is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee’s usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee’s schedule for a period of time, normally from full-time to part-time.

“Next of Kin”, used in respect to an individual, means the nearest blood relative of that individual.

“Parent” is the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or a daughter. This term does not include parents “in-law.”

“Serious Health Condition” is an injury, illness, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical facility or continuing treatment by a health care provider.

“Son or daughter”, for numbers 1, 2, or 3 below, is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age eighteen (18), or age eighteen (18) or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence.<sup>2</sup>

“Year” the twelve (12) month period of eligibility shall begin on July first of each school-year.<sup>3</sup>

### **Policy**

The provisions of this policy are intended to be in line with the provisions of the FMLA. If any conflict(s) exist, the Family and Medical Leave Act of 1993, as amended, shall govern.

### **Leave Eligibility**

The District will grant up to twelve (12) weeks of leave in a year in accordance with the FMLA, as amended, to its eligible employees for one or more of the following reasons:

1. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
2. Because of the placement of a son or daughter with the employee for adoption or foster care;
3. To care for the spouse, son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition;
4. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee; and

5. Because of any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. (See Section Two)
6. To care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury. (See Section Two)

The entitlement to leave for reasons 1 and 2 listed above shall expire at the end of the twelve (12) month period beginning on the date of such birth or placement.

A legally married couple who are both eligible employees employed by the District may not take more than a combined total of twelve (12) weeks of FMLA leave for reasons 1, 2, or to care for a parent under number 3.

### **Provisions Applicable to both Sections One and Two**

#### **District Notice to Employees**

The District shall post, in conspicuous places in each school within the District where notices to employees and applicants for employment are customarily posted, a notice explaining the FMLA's provisions and providing information about the procedure for filing complaints with the Department of Labor.<sup>4</sup>

#### **Designation Notice to Employee**

When an employee requests FMLA leave or the District determines that an employee's absence may be covered under the FMLA, the District shall provide written notice within five (5) business days (absent extenuating circumstances) to the employee of the District's determination of his/her eligibility for FMLA leave.<sup>5</sup> If the employee is eligible, the District may request additional information from the employee and/or certification from a health care provider to help make the applicability<sup>6</sup> determination. After receiving sufficient information as requested, the District shall provide a written notice within five (5) business days (absent extenuating circumstances) to the employee of whether the leave qualifies as FMLA leave and will be so designated.<sup>7</sup>

If the circumstances for the leave don't change, the District is only required to notify the employee once of the determination regarding the designation of FMLA leave within any applicable twelve (12) month period.

Employees who receive notification that the leave request does not qualify under the FMLA are expected to return to work; further absences that are not otherwise excused could lead to discipline for excessive absences, or termination for job abandonment.

#### **Concurrent Leave Under the FMLA**

All FMLA leave is unpaid unless substituted by applicable accrued leave. The District requires employees to substitute any applicable accrued leave (in the order of sick, personal, or vacation leave as may be applicable) for any period of FMLA leave.<sup>6</sup>

An employee who does not have enough accrued leave to cover the number of days of FMLA leave taken shall not have his/her number of contract days altered because some of the FMLA leave taken was unpaid.

#### **Working at another Job while Taking FMLA for Personal or Family Serious Medical Condition**

No employee on FMLA leave for their own serious medical condition may perform work at another, non-district job while on FMLA leave. Except as provided in policy 8.36, employees who do perform work at another, non-district job while on FMLA leave for their own serious medical condition will be subject to discipline, which could include termination or nonrenewal of their contract of employment.

No employee on FMLA leave for the serious medical condition of a family member may perform work at another, non-district job while on FMLA leave. Employees who do perform work at another, non-district job while on FMLA leave for the serious medical condition of a family member will be subject to discipline, which could include termination or nonrenewal of their contract of employment.

#### **Health Insurance Coverage**

The District shall maintain coverage under any group health plan for the duration of FMLA leave the employee takes at the level and under the conditions coverage would have been provided if the employee had continued in active employment with the District. Additionally, if the District makes a change to its health insurance benefits or plans that apply to other employees, the employee on FMLA leave must be afforded the opportunity to access additional benefits and/or the same responsibility for changes to premiums. Any changes made to a group health plan that apply to other District employees, must also apply to the employee on FMLA leave. The District will notify the employee on FMLA leave of any opportunities to change plans or benefits. The employee remains responsible for any portion of premium payments customarily paid by the employee. When on unpaid FMLA leave, it is the employee's responsibility to submit his/her portion of the cost of the group health plan coverage to the district's business office on or before it would be made by payroll deduction.<sup>8</sup>

The District has the right to pay an employee's unpaid insurance premiums during the employee's unpaid FMLA leave to maintain the employee's coverage during his/her leave. The District may recover the employee's share of any premium payments missed by the employee for any FMLA leave period that the District maintains health coverage for the employee by paying his/her share. Such recovery shall be made by offsetting the employee's debt through payroll deductions or by other means against any monies owed the employee by the District.

An employee who chooses to not continue group health plan coverage while on FMLA leave, is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.<sup>9</sup>

If an employee gives unequivocal notice of an intent not to return to work, or if the employment relationship would have terminated if the employee had not taken FMLA leave, the District's obligation to maintain health benefits ceases.

If the employee fails to return from leave after the period of leave the employee was entitled has expired, the District may recover the premiums it paid to maintain health care coverage unless:

1. The employee fails to return to work due to the continuation, reoccurrence, or onset of a serious health condition that entitles the employee to leave under reasons 3 or 4 listed above; and/or
2. Other circumstances exist beyond the employee's control.

Circumstances under "a" listed above shall be certified by a licensed, practicing health care provider verifying the employee's inability to return to work.

### **Reporting Requirements During Leave**

Unless circumstances exist beyond the employee's control, the employee shall inform the district every two (2) weeks<sup>10</sup> during FMLA leave of his/her current status and intent to return to work.

### **Return to Previous Position**

An employee returning from FMLA leave is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An equivalent position must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, and authority.

The employee's right to return to work and/or to the same or an equivalent position does not supersede any actions taken by the District, such as conducting a RIF, that the employee would have been subject to had the employee not been on FMLA leave at the time of the District's actions.

## **Provisions Applicable to Section One**

### **Employee Notice to District**

#### **Foreseeable Leave:**

When the need for leave is foreseeable for reasons 1 through 4 listed above, the employee shall provide the District with at least thirty (30) days' notice, before the date the leave is to begin, of the employee's intention to take leave for the specified reason. An eligible employee who has no reasonable excuse for his/her failure to provide the District with timely advance notice of the need for FMLA leave may have his/her FMLA coverage of such leave delayed until thirty (30) days after the date the employee provides notice.

If there is a lack of knowledge of approximately when the leave will be required to begin, a change in circumstances, or an emergency, notice must be given as soon as practicable. As

soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.

When the need for leave is for reasons 3 or 4 listed above, the eligible employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the District subject to the approval of the health care provider of the spouse, son, daughter, or parent of the employee.

If the need for FMLA leave is foreseeable less than thirty (30) days in advance, the employee shall notify the District as soon as practicable. If the employee fails to notify as soon as practicable, the District may delay granting FMLA leave for the number of days equal to the difference between the number of days in advance that the employee should have provided notice and when the employee actually gave notice.

#### **Unforeseeable Leave:**

When the approximate timing of the need for leave is not foreseeable, an employee shall provide the District notice of the need for leave as soon as practicable given the facts and circumstances of the particular case.

Ordinarily, the employee shall notify the District within two (2) working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. Notice may be provided in person, by telephone, fax, email, or other electronic means. If the eligible employee fails to notify the District as required, unless the failure to comply is justified by unusual circumstances, the FMLA leave may be delayed or denied.

#### **Medical Certification**

Second and Third Opinions: In any case where the District has reason to doubt the validity of the initial certification provided, the District may require, at its expense, the employee to obtain the opinion of a second health care provider designated or approved by the employer. If the second opinion differs from the first, the District may require, at its expense, the employee to obtain a third opinion from a health care provider agreed upon by both the District and the employee. The opinion of the third health care provider shall be considered final and be binding upon both the District and the employee.

Recertification: The District may request, either orally or in writing, the employee obtain a recertification in connection with the employee's absence, at the employee's expense, no more often than every thirty (30) days unless one or more of the following circumstances apply:

- The original certification is for a period greater than thirty (30) days. In this situation, the District may require a recertification after the time of the original certification expires, but in any case, the District may require a recertification every six (6) months.
- The employee requests an extension of leave;
- Circumstances described by the previous certification have changed significantly; and/or
- The district receives information that casts doubt upon the continuing validity of the certification.

The employee must provide the recertification within fifteen (15) calendar days after the District's request.

No second or third opinion on a recertification may be required.

The District may deny FMLA leave if an eligible employee fails to provide a requested certification.

### **Substitution of Paid Leave**

When an employee's leave has been designated as FMLA leave for reasons 1 (as applicable), 2, 3, or 4 above, the District requires employees to substitute accrued sick, vacation, or personal leave for the period of FMLA leave.<sup>11</sup>

To the extent the employee has accrued paid vacation or personal leave, any leave taken that qualifies for FMLA leave for reasons 1 or 2 above shall be paid leave and charged against the employee's accrued leave.

Workers Compensation: FMLA leave may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition. To the extent that workers compensation benefits and FMLA leave run concurrently, the employee will be charged for any paid leave accrued by the employee at the rate necessary to bring the total amount of combined income up to 100% of usual contracted daily rate of pay. If the health care provider treating the employee for the workers compensation injury certifies the employee is able to return to a "light duty job," but is unable to return to the employee's same or equivalent job, the employee may decline the District's offer of a "light duty job." As a result, the employee may lose his/her workers' compensation payments, but for the duration of the employee's FMLA leave, the employee will be paid for the leave to the extent that the employee has accrued applicable leave.

### **Return to Work<sup>12</sup>**

If the District's written designation determination that the eligible employee's leave qualified as FMLA leave under reason 4 above stated that the employee would have to provide a "fitness-for-duty" certification from a health care provider for the employee to resume work, the employee must provide such certification prior to returning to work. The employee's failure to do so voids the District's obligation to reinstate the employee under the FMLA and the employee shall be terminated.

If the District's written designation determination that the eligible employee's leave qualified as FMLA leave under reason 4 above stated that the employee would have to provide a "fitness-for-duty" certification from a health care provider for the employee to resume work **and** the designation determination listed the employee's essential job functions, the employee must provide certification that the employee is able to perform those functions prior to returning to work. The employee's failure to do so or his/her inability to perform his/her job's essential functions voids the District's obligation to reinstate the employee under the FMLA and the employee shall be terminated.



### **Failure to Return to Work:**

In the event that an employee is unable or fails to return to work within FMLA's leave timelines, the superintendent will make a determination at that time regarding the documented need for a severance of the employee's contract due to the inability of the employee to fulfill the responsibilities and requirements of his/her contract.

### **Intermittent or Reduced Schedule Leave**

To the extent practicable, employees requesting intermittent or reduced schedule leave shall provide the District with not less than thirty (30) days' notice, before the date the leave is to begin, of the employee's intention to take leave.

Eligible employees may only take intermittent or reduced schedule leave for reasons 1 and 2 listed above if the District agrees to permit such leave upon the request of the employee. If the District agrees to permit an employee to take intermittent or reduced schedule leave for such reasons, the agreement shall be consistent with this policy's requirements governing intermittent or reduced schedule leave. The employee may be transferred temporarily during the period of scheduled intermittent or reduced leave to an alternative position that the employee is qualified for and that better accommodates recurring periods of leave than does the employee's regular position. The alternative position shall have equivalent pay and benefits but does not have to have equivalent duties.

Eligible employees may take intermittent or reduced schedule FMLA leave due to reasons 3 or 4 listed above when the medical need is best accommodated by such a schedule. The eligible employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider.

When granting leave on an intermittent or reduced schedule for reasons 3 or 4 above that is foreseeable based on planned medical treatment, the District may temporarily transfer eligible employees for the period of scheduled intermittent or reduced leave to an alternative position that the employee is qualified for and that better accommodates recurring periods of leave than does the employee's regular position. The alternative position shall have equivalent pay and benefits but does not have to have equivalent duties. When the employee is able to return to full-time work, the employee shall be placed in the same or equivalent job as he/she had when the leave began. The employee will not be required to take more FMLA leave than necessary to address the circumstances requiring the need for the leave.

### **Special Provisions relating to Instructional Employees as Defined in This Policy**

The FMLA definition of "instructional employees" covers a small number of classified employees. Any classified employee covered under the FMLA definition of an "instructional employee" and whose FMLA leave falls under the FMLA's special leave provisions relating to "instructional employees" shall be governed by the applicable portions of policy 3.32—  
LICENSED PERSONNEL FAMILY MEDICAL LEAVE.

## **SECTION TWO - FMLA LEAVE CONNECTED TO MILITARY SERVICE**

### **Leave Eligibility**

The FMLA provision of military associated leave is in two categories. Each one has some of its own definitions and stipulations. Therefore, they are dealt with separately in this Section of the policy. Definitions different than those in Section One are included under the respective reason for leave. Definitions that are the same as in Section One are NOT repeated in this Section.

### **Qualifying Exigency**

An eligible employee may take FMLA leave for any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. Examples include issues involved with short-notice deployment, military events and related activities, childcare and school activities, the need for financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and other activities as defined by federal regulations.<sup>13</sup>

### **Definitions:**

“Covered active duty” means:

- in the case of a member of a **regular** component of the Armed Forces, duty during deployment of the member with the armed forces to a foreign country; and
- in the case of a member of a **reserve** component of the Armed Forces, duty during deployment of the member with the armed forces to a foreign country under a call to order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

“Son or daughter on active duty or call to active duty status” means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

### **Certification<sup>14</sup>**

The District may require the eligible employee to obtain certification to help the district determine if the requested leave qualifies for FMLA leave for the purposes of a qualifying exigency. The District may deny FMLA leave if an eligible employee fails to provide the requested certification.

### **Employee Notice to District**

#### **Foreseeable Leave:**

When the necessity for leave for any qualifying exigency is foreseeable, whether because the spouse, son, daughter, or parent of the employee is on covered active duty, or because of notification of an impending call or order to covered active duty, the employee shall provide such notice to the District as is reasonable and practicable regardless of how far in advance the leave is foreseeable. As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.

#### **Unforeseeable Leave:**

When the approximate timing of the need for leave is not foreseeable, an employee shall provide the District notice of the need for leave as soon as practicable given the facts and circumstances of the particular case. Ordinarily, the employee shall notify the District within two (2) working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. Notice may be provided in person, by telephone, fax, email, or other electronic means. If the eligible employee fails to notify the District as required unless the failure to comply is justified by unusual circumstances, the FMLA leave may be delayed or denied.

### **Substitution of Paid Leave**

When an employee's leave has been designated as FMLA leave for any qualifying exigency, the District requires employees to substitute accrued vacation, or personal leave for the period of FMLA leave.

### **Intermittent or Reduced Schedule Leave**

Eligible employees may take intermittent or reduced schedule leave for any qualifying exigency. The employee shall provide the district with as much notice as is practicable.

### **Special Provisions relating to Instructional Employees as Defined in This Policy**

The FMLA definition of "instructional employees" covers a small number of classified employees. Any classified employee covered under the FMLA definition of an "instructional employee" and who's FMLA leave falls under the FMLA's special leave provisions relating to "instructional employees" shall be governed by the applicable portions of policy 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE.

### **Serious Illness**

An eligible employee is eligible for leave to care for a spouse, child, parent or next of kin who is a covered service member with a serious illness or injury under the following conditions and definitions.

### **Definitions:**

“Covered Service Member” is:

1. a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
2. a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

“Outpatient Status”, used in respect to a covered service member, means the status of a member of the Armed Forces assigned to:

- a. A military medical treatment facility as an outpatient; or
- b. A unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

“Parent of a covered servicemember” is a covered servicemember’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents “in law.”

“Serious Injury or Illness” :

- A. In the case of a member of the Armed Forces, including the National Guard or Reserves, it means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and
- B. In the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during a period as a covered service member defined in this policy, it means a qualifying (as defined by the U.S. Secretary of Labor) injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

“Son or daughter of a covered servicemember” means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.<sup>2</sup>

“Year”, for leave to care for the serious injury or illness of a covered service member, the twelve (12) month period begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends twelve (12) months after that date.

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of twenty-six (26) weeks of leave during one twelve (12) - month period to care for the service member who has a serious injury or illness as defined in this policy. An eligible employee who cares for such a covered service member continues to be limited for reasons 1 through 4 in Section One and for any qualifying exigency to a total of twelve (12) weeks of leave during a year as defined in this policy. For example, an eligible employee who cares for such a covered service member for sixteen (16) weeks during a twelve (12) month period could only take a total of ten (10) weeks for reasons 1 through 4 in Section One and for any qualifying exigency. An eligible employee may not take more than twelve (12) weeks of FMLA leave for reasons 1 through 4 in Section One and for any qualifying exigency regardless of how little leave the eligible employee may take to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury.

If a legally married couple are both eligible employees employed by the District, the legally married couple are entitled to a combined total of twenty-six (26) weeks of leave during one twelve (12) month period to care for their spouse, son, daughter, parent, or next of kin who is a covered service member with a serious injury or illness, as defined in this policy. The leave taken by a legally married couple who care for such a covered service member continues to

be limited to a total of twelve (12) weeks of FMLA leave for reasons 1 through 4 in Section One and for any qualifying exigency during a year, as defined in this policy, regardless of whether or not the legally married couple uses less than a combined total of fourteen (14) weeks to care for a covered service member with a serious injury or illness; moreover, the legally married couple's twelve (12) weeks are combined when taken for reasons 1, 2, or to care for a parent under reason 3 in Section One.

. For example, a legally married couple who are both eligible employees and who care for such a covered service member for sixteen (16) weeks during a twelve (12) month period could:

1. Each take up to ten (10) weeks for reason 4 in section 1 or a qualifying exigency;
2. Take a combined total of ten (10) weeks for reasons 1, 2, or to care for a parent under reason 3 in Section One; or
3. Take a combination of numbers 1 and 2 that totals ten (10) weeks of leave.

#### **Medical Certification<sup>15</sup>**

The District may require the eligible employee to obtain certification of the covered service member's serious health condition to help the District determine if the requested leave qualifies for FMLA leave. The District may deny FMLA leave if an eligible employee fails to provide the requested certification.

#### **Employee Notice to District**

##### **Foreseeable Leave:**

When the need for leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury is clearly foreseeable at least thirty (30) days in advance, the employee shall provide the District with not less than thirty (30) days' notice before the date the employee intends for the leave to begin for the specified reason. An eligible employee who has no reasonable excuse for his/her failure to provide the District with timely advance notice of the need for FMLA leave may have his/her FMLA coverage of such leave delayed until thirty (30) days after the date the employee provides notice.

If the need for FMLA leave is foreseeable less than thirty (30) days in advance, the employee shall notify the District as soon as practicable. If the employee fails to notify as soon as practicable, the District may delay granting FMLA leave for an amount of time equal to the difference between the length of time that the employee should have provided notice and when the employee actually gave notice.

When the need for leave is to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury, the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the district subject to the approval of the health care provider of the spouse, son, daughter, or parent of the employee.

##### **Unforeseeable Leave:**

When the approximate timing of the need for leave is not foreseeable, an employee shall provide the District notice of the need for leave as soon as practicable given the facts and

circumstances of the particular case. Ordinarily, the employee shall notify the District within two (2) working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. Notice may be provided in person, by telephone, fax, email, or other electronic means. If the eligible employee fails to notify the District as required, unless the failure to comply is justified by unusual circumstances, the FMLA leave may be delayed or denied.

#### **Substitution of Paid Leave**

When an employee's leave has been designated as FMLA leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury, the District requires employees to substitute accrued sick, vacation, or personal leave for the period of FMLA leave.

#### **Intermittent or Reduced Schedule Leave**

To the extent practicable, employees requesting intermittent or reduced schedule leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury shall provide the District with at least thirty (30) days' notice, before the date the leave is to begin, of the employee's intention to take leave.

Eligible employees may take intermittent or reduced schedule FMLA leave to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury when the medical need is best accommodated by such a schedule. The eligible employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider.

When granting leave on an intermittent or reduced schedule to care for a spouse, child, parent or next of kin who is a covered servicemember with a serious illness or injury that is foreseeable based on planned medical treatment, the District may temporarily transfer eligible employees for the period of scheduled intermittent or reduced leave to an alternative position that the employee is qualified for and that better accommodates recurring periods of leave than does the employee's regular position. The alternative position shall have equivalent pay and benefits but does not have to have equivalent duties. When the employee is able to return to full-time work, the employee shall be placed in the same or equivalent job as he/she had when the leave began.

#### **Special Provisions relating to Instructional Employees (as defined in this policy)**

The FMLA definition of "instructional employees" covers a small number of classified employees. Any classified employee covered under the FMLA definition of an "instructional employee" and whose FMLA leave falls under the FMLA's special leave provisions relating to "instructional employees" shall be governed by the applicable portions of policy 3.32—LICENSED PERSONNEL FAMILY MEDICAL LEAVE.

Notes: This policy is similar to Policy 3.32. If you change this policy, review 3.32 at the same time to ensure applicable consistency between the two.

Determining whether an absence qualifies as FMLA leave is a **DISTRICT** responsibility and not the employee's. While much of the statutes' language refers to an employee's request for FMLA leave, the employee has **NO** mandatory responsibility for initiating the exchange of information that might relate his/her absence to that of the FMLA. The District has the right and the duty to ask for enough information concerning an employee's absence to make a determination. The employee has the responsibility and duty to respond to questions asked in an effort for the District to make the initial determination. Any issue of medical certification to be provided by the employee is secondary to that of informal questioning to determine whether the absence does in fact, fall under the FMLA umbrella. The District must fulfill its responsibility for the posting of employee FMLA notice requirements to make those requirements enforceable. This is done through posting the notices available at the link in footnote #4 **AND** by the employee's receipt of this policy in the employee handbook.

<sup>1</sup> It is possible for a full time employee to be eligible for FMLA leave one year and not the next. For example, if an employee on a 190 day contract takes the full twelve (12) weeks of FMLA leave in year one, that would mean the employee only worked 130 days. Assuming the employee is credited for eight (8) hours per workday, the employee would have only worked 1040 hours during that time (130 x 8=1040), which would make the employee ineligible for FMLA leave for the year following the year ~~in~~ that the employee took the leave.

<sup>2</sup> The Wage and Hour Division of the Department of Labor has issued a Guidance to help interpret the scope of the definition of "son or daughter" as it applies to an employee standing "in loco parentis" to a child. The following quote from the Guidance is offered to give an idea of the complexity of the definition. (The Guidance, in full, is available by calling the ASBA office or at the link in footnote #4.)

*Congress intended the definition of "son or daughter" to reflect "the reality that many children in the United States today do not live in traditional 'nuclear' families with their biological father and mother. Increasingly, those who find themselves in need of workplace accommodation of their child care responsibilities are not the biological parent of the children they care for, but their adoptive, step, or foster parents, their guardians, or sometimes simply their grandparents or other relatives or adults." Congress stated that the definition was intended to be "construed to ensure that an employee who actually has day-to-day responsibility for caring for a child is entitled to leave even if the employee does not have a biological or legal relationship to that child."*

<sup>3</sup> Districts can choose one of four (4) possible "twelve (12) - month periods." Each one has possible advantages and disadvantages. Choose the one that will work best for your district. The four (4) options are:

- 1) the calendar year;
- 2) Any fixed twelve (12) - month leave year such as a fiscal year or a year starting on an employee's "anniversary" date;
- 3) The twelve (12) - month period measured forward from the date any employee's first FMLA leave for reasons 1 through 5 begins;
- 4) A rolling twelve (12) - month period measured backward from the date an employee uses any FMLA leave for reasons 1 through 5.

<sup>4</sup> A Department of Labor poster along with several additional forms that are necessary to fulfill FMLA's requirements are available at <http://www.dol.gov/whd/fmla/index.htm>. Please note that the DOL forms lack the required disclaimer required by the Genetic Information Nondiscrimination Act (GINA). We suggest that you include the following language taken from the final rule implementing the GINA:

*The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.*

<sup>5</sup> We suggest you use the Department of Labor's *Notice of Eligibility and Rights and Responsibilities* form (otherwise known as WH-381) to help you fulfill the requirements of this section. It's available at the link in footnote #4 or by calling the ASBA office. When making the determination, we suggest initially erring on the side of granting it. Retroactively designating leave as FMLA has more potential liability for the district if the employee can demonstrate the initial failure to grant the leave under FMLA caused him/her harm or injury. If due to receipt of the medical certification, it turns out that the leave does not qualify, you will need to readjust the available FMLA leave accordingly.

<sup>6</sup> As used in this policy, "applicable" is a very important word. Some leave taken under FMLA also applies to sick leave and therefore, the employee will get paid for the leave to the extent the employee has sick leave accrued. Other leave taken under FMLA is not applicable to sick leave and therefore the FMLA leave is unpaid. For instance, "applicable leave" in terms of time taken under FMLA due to the birth of a child will vary depending on the language in your District's policy on sick leave. For instance, if sick leave may be taken "for reason of personal illness or illness in the immediate family" (based on the statutory definition in A.C.A. § 6-17-1202, and an employee gives birth to a child, she may take sick leave for the amount of time that her personal physician deems it necessary for her to physically recover from childbirth. Once the medically necessary time has passed, sick leave is no longer appropriate and cannot be used. While under the FMLA, the employee could take additional time off work, she would need to take unpaid FMLA leave for this purpose, unless she had personal days or vacation days available. However, if your district has a much more liberal definition of sick leave in District policy, the results could be entirely different. Another example would be the potential for overlap between pregnancy complications that arise to the level of a "serious health condition." For instance, pregnancy complications that rose to the level of a "serious health condition" would qualify for both, while missing work for a dentist's appointment would qualify for sick leave, but would not qualify for FMLA leave. Consult policy 8.5—CLASSIFIED EMPLOYEES SICK LEAVE when making the determination of what sick leave qualifies under both policies.



<sup>7</sup> There are several issues that must be addressed in the written notice. The *Designation Notice* (WH-382) available from the Wage and Hour Division of the US Department of Labor is a good way to both give your employee written notice and help ensure you have included the necessary information in the notice. The *Designation Notice* is available at the link contained in footnote #4 or by calling the ASBA office.

<sup>8</sup> The District cannot cancel an employee's insurance for the employee's failure to pay his/her share of the premium until the payment is thirty (30) or more days late. The District must give prior, written notice to the employee at least fifteen (15) days prior to the cancellation of the policy stating that the policy will be terminated on a given date if payment is not received by that date, which must be at least fifteen (15) days from the date of the letter.

<sup>9</sup> Due to the district's liability for meeting the requirement of this paragraph and similar obligations for life insurance premiums or other benefits, the District needs to consider picking up the costs of such premiums during an employee's **unpaid** FMLA leave **if** the employee fails to pay his/her share of the costs. If the District elects to maintain such benefits during the leave, at the conclusion of leave the District is entitled to recover only the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work. To help you decide if you should choose to pay premium costs in such a situation, the following excerpt from 29 CFR 825.212(c):

*If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. See § 825.215(d)(1) through (5). In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage. If an employer terminates an employee's insurance in accordance with this section and fails to restore the employee's health insurance as required by this section upon the employee's return, the employer may be liable for benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable relief tailored to the harm suffered.*

<sup>10</sup> You may choose the time interval of the required duty to report, but it must be reasonable.

<sup>11</sup> ASBA model policy 8.5—CLASSIFIED EMPLOYEES SICK LEAVE includes language entitling employees with up to fifteen (15) days of sick leave in a school-year for issue relating to the adoption of a child. If you have not adopted this provision, delete #2 from this sentence. Include reason #1 if you have a liberal sick leave policy that would permit leave to be taken for bonding with a new born son or daughter.

<sup>12</sup> The Department of Labor's *Designation Notice* has entries that address this section's requirements. It's very helpful. For this section, you will need both the *Designation Notice* (WH-382) and the appropriate *Medical Certification form* (WH-380-E or WH-380-F); the

*Designation Notice* to fulfill your notice requirements and the medical certification form to enable you to determine if the employee's leave is actually covered under the FMLA. They are available at the link in footnote #4 or by calling the ASBA office.

<sup>13</sup> The types and amounts of leave available for a particular type of qualifying exigency are covered in 29 C.F.R. § 825.126. Call the ASBA office for a copy.

<sup>14</sup> You can use WH-384, *Certification of Qualifying Exigency for Military Family Leave* to obtain the certification. It's available at the link in footnote #4 or by calling the ASBA office.

<sup>15</sup> You can use WH-385, *Covered Service Member Serious Injury* form to obtain the certification. It's available at the link in footnote #4 or by calling the ASBA office.

Cross References:      8.5—CLASSIFIED EMPLOYEES SICK LEAVE  
                              8.12—CLASSIFIED PERSONNEL OUTSIDE EMPLOYMENT  
                              8.36—CLASSIFIED PERSONNEL WORKPLACE INJURIES AND WORKERS'  
                              COMPENSATION

Legal References:      29 USC §§ 2601 et seq.  
                              29 CFR part 825

\* All school districts are covered under the Family and Medical Leave Act and are required to keep certain payroll and employee identification records and post pertinent notices regarding FMLA for its employees. Employees, however, are only eligible for FMLA benefits if the district has fifty (50) or more employees within a seventy-five (75) - mile radius of the district's offices. Your district may choose to offer FMLA benefits to your employees even though they are not technically eligible. If your district has less than fifty (50) employees and chooses not to offer FMLA benefits, the following policy serves to inform your employees of why FMLA benefits do not apply to them and could help to avoid possible confusion resulting from the posting of FMLA notices.

Date Adopted: 6/19-12  
Last Revised: 5/13/14  
Last Revised: 6/12/16

## **8.24—SCHOOL BUS DRIVER’S USE OF MOBILE COMMUNICATION DEVICES**

“School Bus” is a motorized vehicle that meets the following requirements:

1. Is privately owned and operated for compensation, or which is owned, leased or otherwise operated by, or for the benefit of the District; and
2. Is operated for the transportation of students from home to school, from school to home, or to and from school events.<sup>1</sup>

Any driver of a school bus shall not operate the school bus while using a device to browse the internet, make or receive phone calls or compose or read emails or text messages.<sup>2</sup> If the school bus is safely off the road with the parking brake engaged, exceptions are allowed to call for assistance due to a mechanical problem with the bus, or to communicate with any of the following during an emergency:

- An emergency system response operator or 911 public safety communications dispatcher;
- A hospital or emergency room;
- A physician's office or health clinic;
- An ambulance or fire department rescue service;
- A fire department, fire protection district, or volunteer fire department; or
- A police department.

In addition to statutorily permitted fines, violations of this policy shall be grounds for disciplinary action up to and including termination.

Notes: This policy is similar to Policy 3.51. If you change this policy, review 3.51 at the same time to ensure applicable consistency between the two.

<sup>1</sup> Students are not required to be transported on a school bus as long as the transporting vehicle is not scheduled for a regularly occurring route or takes a route that contains frequent stops to pick up or drop off students.

<sup>2</sup>A.C.A. § 6-19-120 only prohibits "cell phone" use;; A.C.A. § 27-51-1504 prohibits the use of a “handheld wireless telephone” for browsing the internet, sending or receiving emails, and sending or receiving text messages at any time; and A.C.A. § 27-51-1609 prohibits the use of a “handheld wireless communication device” for any purpose while in a school zone. The terminology in this sentence is designed to combine these statutes and to cover all the distractions that could affect a driver's ability to safely drive the bus.

Legal References: A.C.A. § 6 –19 -120

A.C.A. § 27-51-1504

A.C.A. § 27-51-1609

Date Adopted: 8/26/04

Last Revised: 5/13/2014

Last Revised: 5/12/15

## 8.25— CLASSIFIED PERSONNEL CELL PHONE USE

Use of cell phones or other electronic communication devices by employees during their designated work time for other than District approved purposes is strictly forbidden unless specifically approved in advance by the superintendent, building principal, or their designees.<sup>1</sup>

District staff shall not be given cell phones or computers for any purpose other than their specific use associated with school business. School employees who use a school issued cell phones and/or computers for non-school purposes, except as permitted by District policy, shall be subject to discipline, up to and including termination. School employees who are issued District cell phones due to the requirements of their position may use the phone for personal use on an “as needed” basis provided it is not during designated work time.<sup>2</sup>

All employees are forbidden from using school issued cell phones while driving any vehicle at any time. Violation may result in disciplinary action up to and including termination.<sup>3</sup>

No employee shall use any device for the purposes of browsing the internet; composing or reading emails and text messages; or making or answering phone calls while driving a motor vehicle which is in motion and on school property. Violation may result in disciplinary action up to and including termination.<sup>4</sup>

**Notes:** This policy is similar to Policy 3.34. If you change this policy, review 3.34 at the same time to ensure applicable consistency between the two.

<sup>1</sup> The goal is to eliminate the use of cell phones during designated work time. You may change who has the authority to approve the use of cell phones if you wish to.

<sup>2</sup> The IRS has changed its position regarding the use of district issued cell phones for personal use for those employees who have a genuine **need** for a cell phone due to their job’s duties. Cell phones **cannot** be issues as a fringe benefit, but only as a “legitimate” need related to their job’s responsibilities. There is no longer a need to keep track of personal calls and claim their value as income. The district has the option of supplying the phone directly to the employee or of reimbursing the employee for the cost of his/her personal phone that is used for both District and personal purposes. Any such reimbursement can only be for the specific employee and not any other individuals associated with that employee’s cell phone plan. There has been no change to the use of school computers for personal purposes.

<sup>3</sup> This sentence is included because insurance companies have ruled that injuries occurring while driving and talking on school issued cell phones are subject to workers comp awards.

<sup>4</sup> This sentence was added due to the dangers involved for both drivers and pedestrians associated with distracted driving. A.C.A. § 27-51-1609 prohibits the use of a “wireless handheld telephone” while in a school zone for any purpose when that use is not hands free.

While the policy language exceeds the statutory language, we believe the expanded language is important for the protection of students and employees alike.

ss References: 4.47— POSSESSION AND USE OF CELL PHONES AND OTHER ELECTRONIC  
DEVICES  
7.14—USE OF DISTRICT CELL PHONES AND COMPUTERS

Legal References: IRS Publication 15 B  
A.C.A. § 27-51-1602  
A.C.A. § 27-51-1609

Date Adopted: 8/26/04  
Last Revised: 3/11/08  
Last Revised: 4/14/09  
Last Revised: 5/13/2014  
Last Revised: 5/12/15

## **8.26—CLASSIFIED PERSONNEL RESPONSIBILITIES GOVERNING BULLYING**

School employees who have witnessed, or are reliably informed that, a student has been a victim of bullying as defined in this policy, including a single action which if allowed to continue would constitute bullying, shall report the incident(s) to the principal, or designee,. The principal, or designee, shall be responsible for investigating the incident(s) to determine if disciplinary action is warranted.

The person or persons reporting behavior they consider to be bullying shall not be subject to retaliation or reprisal in any form.

District staff are required to help enforce implementation of the district's anti-bullying policy and shall receive the training necessary to comply with this policy. The district's definition of bullying is included below. Students who bully another person are to be held accountable for their actions whether they occur on school equipment or property; off school property at a school-sponsored or school-approved function, activity, or event; or going to or from school or a school activity. Students are encouraged to report behavior they consider to be bullying, including a single action which if allowed to continue would constitute bullying, to their teacher or the building principal. The report may be made anonymously.

A school principal, or designee, who receives a credible report or complaint of bullying shall promptly investigate the complaint or report and make a record of the investigation and any action taken as a result of the investigation.

District employees are held to a high standard of professionalism, especially when it comes to employee-student interactions. Actions by a District employee towards a student that would constitute bullying if the act had been performed by a student shall result in disciplinary action, up to and including termination. This policy governs bullying directed towards students and is not applicable to adult on adult interactions. Therefore, this policy does not apply to interactions between employees. Employees may report workplace conflicts to their supervisor.<sup>1</sup> In addition to any disciplinary actions, the District shall take appropriate steps to remedy the effects resulting from bullying.

### **Definitions:**

“Attribute” means an actual or perceived personal characteristic including without limitation race, color, religion, ancestry, national origin, socioeconomic status, academic status, disability, gender, gender identity, physical appearance, health condition, or sexual orientation;

“Bullying” means the intentional harassment, intimidation, humiliation, ridicule, defamation, or threat or incitement of violence by a student against another student or public school employee by a written, verbal, electronic, or physical act that may address an attribute of the other student, public school employee, or person with whom the other student or public school employee is associated and that causes or creates actual or reasonably foreseeable:

- Physical harm to a public school employee or student or damage to the public school employee's or student's property;
- Substantial interference with a student's education or with a public school employee's role in education;
- A hostile educational environment for one (1) or more students or public school employees due to the severity, persistence, or pervasiveness of the act; or
- Substantial disruption of the orderly operation of the school or educational environment;

“Electronic act” means without limitation a communication or image transmitted by means of an electronic device, including without limitation a telephone, wireless phone or other wireless communications device, computer, or pager that results in the substantial disruption of the orderly operation of the school or educational environment.

Electronic acts of bullying are prohibited whether or not the electronic act originated on school property or with school equipment, if the electronic act is directed specifically at students or school personnel and maliciously intended for the purpose of disrupting school, and has a high likelihood of succeeding in that purpose;

“Harassment” means a pattern of unwelcome verbal or physical conduct relating to another person's constitutionally or statutorily protected status that causes, or reasonably should be expected to cause, substantial interference with the other's performance in the school environment; and

“Substantial disruption” means without limitation that any one or more of the following occur as a result of the bullying:

- Necessary cessation of instruction or educational activities;
- Inability of students or educational staff to focus on learning or function as an educational unit because of a hostile environment;
- Severe or repetitive disciplinary measures are needed in the classroom or during educational activities; or
- Exhibition of other behaviors by students or educational staff that substantially interfere with the learning environment.

Examples of "Bullying" may include but are not limited to a pattern of behavior involving one or more of the following:

1. Sarcastic comments "compliments" about another student's personal appearance or actual or perceived attributes,
2. Pointed questions intended to embarrass or humiliate,
3. Mocking, taunting or belittling,
4. Non-verbal threats and/or intimidation such as “fronting” or “chesting” a person,

5. Demeaning humor relating to a student's actual or perceived attributes,
6. Blackmail, extortion, demands for protection money or other involuntary donations or loans,
7. Blocking access to school property or facilities,
8. Deliberate physical contact or injury to person or property,
9. Stealing or hiding books or belongings,
10. Threats of harm to student(s), possessions, or others,
11. Sexual harassment, as governed by policy 8.20, is also a form of bullying, and/or
12. Teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct or is homosexual, regardless of whether the student self-identifies as homosexual or transgender (Examples: "Slut", "You are so gay.", "Fag", "Queer")..

Notes: A school employee who has reported violations under the school district's policy shall be immune from any tort liability which may arise from the failure to remedy the reported incident.

Act 907 of 2011 requires all personnel to receive training related to compliance with the district's anti bullying policies.

This policy is similar to Policy 3.38. If you change this policy, review 3.38 at the same time to ensure applicable consistency between the two.

<sup>1</sup> This paragraph is optional. We have included it because we have received multiple phone calls where district employees were attempting to use the policy against fellow employees.

Legal Reference: A.C.A. § 6-18-514

Date Adopted: 9/13/05

Last Revised: 7/27/07

Last Revised: 3/8/2011

Last Revised: 5/12/15

Last Revised: 4/12/16

Last Revised: 3/13/2018





## **8.27—CLASSIFIED PERSONNEL LEAVE — INJURY FROM ASSAULT**

Any staff member who, while in the course of their employment, is injured by an assault or other violent act; while intervening in a student fight; while restraining a student; or while protecting a student from harm, shall be granted a leave of absence for up to one (1) year from the date of the injury, with full pay.

A leave of absence granted under this policy shall not be charged to the staff member's sick leave.

In order to obtain leave under this policy, the staff member must present documentation of the injury from a physician, with an estimate for time of recovery sufficient to enable the teacher to return to work, and written statements from witnesses (or other documentation as appropriate to a given incident) to prove that the incident occurred in the course of the teacher's employment.

**Note:** This policy is similar to Policy 3.15. If you change this policy, review 3.15 at the same time to ensure applicable consistency between the two.

Legal Reference:       A.C.A. § 6-17-1308

Date Adopted: 8/26/04

Last Revised:

## **8.28— DRUG FREE WORKPLACE - CLASSIFIED PERSONNEL**

The conduct of district staff plays a vital role in the social and behavioral development of our students. It is equally important that the staff have a safe, healthful, and professional environment in which to work. To help promote both interests, the district shall have a drug free workplace. It is, therefore, the district's policy that district employees are prohibited from the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances, illegal drugs, inhalants, alcohol, as well as inappropriate or illegal use of prescription drugs. Such actions are prohibited both while at work or in the performance of official duties while off district property; violations of this policy will subject the employee to discipline, up to and including termination.

To help promote a drug free workplace, the district shall establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the district's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance abuse programs, and the penalties that may be imposed upon employees for drug abuse violations. (Insert substance abuse resources here.)<sup>1</sup>

Should any employee be found to have been under the influence of, or in illegal possession of, any illegal drug or controlled substance, whether or not engaged in any school or school-related activity, and the behavior of the employee, if under the influence, is such that it is inappropriate for a school employee in the opinion of the superintendent, the employee may be subject to discipline, up to and including termination. This policy also applies to those employees who are under the influence of alcohol while on campus or at school-sponsored functions, including athletic events.

Any incident at work resulting in injury to the employee requiring medical attention shall require the employee to submit to a drug test, which shall be paid at the District's worker's compensation carrier's expense. Failure for the employee to submit to the drug test or a confirmed positive drug test indicating the use of illegal substances or the misuse of prescription medications shall be grounds for the denial of worker's compensation benefits in accordance with policy 8.36—CLASSIFIED PERSONNEL WORKPLACE INJURIES AND WORKERS' COMPENSATION.<sup>2</sup>

An employee living on campus or on school owned property is permitted to possess alcohol in his/her residence. The employee is bound by the restrictions stated in this policy while at work or performing his/her official duties.

Possession, use or distribution of drug paraphernalia by any employee, whether or not engaged in school or school-related activities, may subject the employee to discipline, up to and including termination. Possession in one's vehicle or in an area subject to the employee's control will be considered to be possession as though the substance were on the employee's person.

It shall not be necessary for an employee to test at a level demonstrating intoxication by any substance in order to be subject to the terms of this policy. Any physical manifestation of

being under the influence of a substance may subject an employee to the terms of this policy. Those physical manifestations include, but are not limited to: unsteadiness; slurred speech; dilated or constricted pupils; incoherent and/or irrational speech; or the presence of an odor associated with a prohibited substance on one's breath or clothing.

Should an employee desire to provide the District with the results of a blood, breath or urine analysis, such results will be taken into account by the District only if the sample is provided within a time range that could provide meaningful results and only by a testing agency chosen or approved by the District. The District shall not request that the employee be tested, and the expense for such voluntary testing shall be borne by the employee.

Any employee who is charged with a violation of any state or federal law relating to the possession, use or distribution of illegal drugs, other controlled substances or alcohol, or of drug paraphernalia, must notify his immediate supervisor within five (5) week days (i.e., Monday through Friday, inclusive, excluding holidays) of being so charged. The supervisor who is notified of such a charge shall notify the Superintendent immediately.

If the supervisor is not available to the employee, the employee shall notify the Superintendent within the five (5) day period.

Any employee so charged is subject to discipline, up to and including termination. However, the failure of an employee to notify his supervisor or the Superintendent of having been so charged shall result in that employee being recommended for termination by the Superintendent.

Any employee convicted of any criminal drug statute violation for an offense that occurred while at work or in the performance of official duties while off district property shall report the conviction within 5 calendar days to the superintendent. Within 10 days of receiving such notification, whether from the employee or any other source, the district shall notify federal granting agencies from which it receives funds of the conviction. Compliance with these requirements and prohibitions is mandatory and is a condition of employment.

Any employee convicted of any state or federal law relating to the possession, use or distribution of illegal drugs, other controlled substances, or of drug paraphernalia, shall be recommended for termination.

Any employee who must take prescription medication at the direction of the employee's physician, and who is impaired by the prescription medication such that he cannot properly perform his duties shall not report for duty. Any employee who reports for duty and is so impaired, as determined by his supervisor, will be sent home. The employee shall be given sick leave, if owed any. The District or employee will provide transportation for the employee, and the employee may not leave campus while operating any vehicle. It is the responsibility of the employee to contact his physician in order to adjust the medication, if possible, so that the employee may return to his job unimpaired. Should the employee attempt to return to work while impaired by prescription medications, for which the employee has a prescription, he will, again, be sent home and given sick leave, if owed any.

Should the employee attempt to return to work while impaired by prescription medication a third time the employee may be subject to discipline, up to and including a recommendation of termination.

Any employee who possesses, uses, distributes or is under the influence of a prescription medication obtained by a means other than his own current prescription shall be treated as though he was in possession, possession with intent to deliver, or under the influence, etc. of an illegal substance. An illegal drug or other substance is one which is (a) not legally obtainable; or (b) one which is legally obtainable, but which has been obtained illegally. The District may require an employee to provide proof from his physician and/or pharmacist that the employee is lawfully able to receive such medication. Failure to provide such proof, to the satisfaction of the Superintendent, may result in discipline, up to and including a recommendation of termination.

A report to the appropriate licensing agency shall be filed within seven (7) days of:

- 1) A final disciplinary action taken against an employee resulting from the diversion, misuse, or abuse of illicit drugs or controlled substances; or
- 2) The voluntary resignation of an employee who is facing a pending disciplinary action resulting from the diversion, misuse, or abuse of illicit drugs or controlled substances. The report filed with the licensing authority shall include, but not be limited to:
  - The name, address, and telephone number of the person who is the subject of the report; and
  - A description of the facts giving rise to the issuance of the report.

When the employee is not a healthcare professional, law enforcement will be contacted regarding any final disciplinary action taken against an employee for the diversion of controlled substances to one (1) or more third parties.

**Notes:** <sup>1</sup> This is where you should insert the drug counseling services, rehabilitation, and employee assistance abuse programs available within your district. For example, “Such services are available from the following sources...”

This policy addresses the requirement for Safe and Drug Free Schools which is required for your district to be eligible to receive **any** federal grants. It is required that all employees receive a copy of the policy and be advised of the contents and requirements of the policy. In addition to publishing a policy statement, the statutes require employers to establish a drug-free awareness program to educate employees about the dangers of drug abuse as well as about the specifics of their policy. The statute does not specify a particular format for the awareness program, although it does state that the education effort must be ongoing and not just a one-time event. For assistance in constructing a drug awareness program the Department of Labor has the following web site: <http://www.dol.gov/asp/programs/drugs/workingpartners/materials/materials.asp>.

<sup>2</sup> Requiring employees who need medical treatment for injuries at work to be drug tested is optional but is recommended. A.C.A. § 11-9-102 states that an injury resulting while the employee is under the influence of alcohol or illegal drugs is not a compensable injury. Requiring all employees to be drug tested for work injuries resulting in medical treatment

will allow the district to abide the prohibition against paying worker's comp for a drug related injury.

Legal References: 41 U.S.C. § 8101, 8103, and 8104  
A.C.A. § 11-9-102  
A.C.A. § 17-80-117

Date Adopted: 8/26/04  
Last Revised: 6/2/09  
Last Revised: 5/12/15  
Last Revised: 4/12/16

## **8.28F—DRUG FREE WORKPLACE POLICY ACKNOWLEDGEMENT**

### CERTIFICATION

I, hereby certify that I have been presented with a copy of the Westside District's drug-free workplace policy, that I have read the statement, and that I will abide by its terms as a condition of my employment with District.

Signature \_\_\_\_\_

Date \_\_\_\_\_

## **8.29—CLASSIFIED PERSONNEL VIDEO SURVEILLANCE AND OTHER MONITORING**

The Board of Directors has a responsibility to maintain discipline, protect the safety, security, and welfare of its students, staff, and visitors while at the same time safeguarding district facilities, vehicles, and equipment. As part of fulfilling this responsibility, the board authorizes the use of video/audio surveillance cameras, automatic identification, data compilation devices, and technology capable of tracking the physical location of district equipment, students, and/or personnel.

The placement of video/audio surveillance cameras shall be based on the presumption and belief that students, staff and visitors have no reasonable expectation of privacy anywhere on or near school property, facilities, vehicles, or equipment, with the exception of places such as rest rooms or dressing areas where an expectation of bodily privacy is reasonable and customary.

Signs shall be posted on district property and in or on district vehicles to notify students, staff, and visitors that video cameras may be in use. Violations of school personnel policies or laws caught by the cameras and other technologies authorized in this policy may result in disciplinary action.

The district shall retain copies of video recordings until they are erased which may be accomplished by either deletion or copying over with a new recording.

Videos, automatic identification, or data compilations containing evidence of a violation of district personnel policies and/or state or federal law shall be retained until the issue of the misconduct is no longer subject to review or appeal as determined by board policy or staff handbook; any release or viewing of such records shall be in accordance with current law.

Staff who vandalize, damage, defeat, disable, or render inoperable (temporarily or permanently) surveillance cameras and equipment, automatic identification, or data compilation devices shall be subject to appropriate disciplinary action and referral to appropriate law enforcement authorities.

Video recordings and automatic identification or data compilation records may become a part of a staff member's personnel record.

The board has a responsibility to maintain discipline, protect the safety, security, and welfare of its students, staff, and visitors while at the same time safeguarding district facilities, vehicles, and equipment. As part of fulfilling this responsibility, the board authorizes the use of video/audio surveillance cameras. The placement of video/audio surveillance cameras shall be based on the presumption and belief that students, staff and visitors have no reasonable expectation of privacy anywhere on or near school property, facilities, vehicles, or equipment, with the exception of places such as rest rooms or dressing areas where an expectation of privacy is reasonable and customary.



Signs shall be posted on district property and in or on district vehicles to notify students, staff, and visitors that video cameras may be in use. Violations of school personnel policies or laws caught by the cameras may result in disciplinary action.

The district shall retain copies of video recordings until they are erased which may be accomplished by either deletion or copying over with a new recording.

Videos containing evidence of a violation of district personnel policies and/or state or federal law shall be retained until the issue of the misconduct is no longer subject to review or appeal as determined by board policy or staff handbook; any release or viewing of such records shall be in accordance with current law.

Staff who vandalize, damage, defeat, disable, or render inoperable (temporarily or permanently) surveillance cameras and equipment shall be subject to appropriate disciplinary action and referral to appropriate law enforcement authorities.

Video recordings may become a part of a staff member's personnel record.

Note: This policy is similar to policies 4.48 and 3.41. If you change this policy, review 4.48 and 3.41 at the same time to ensure applicable consistency between the policies.

Date Adopted: 5/13/2008

Last Revised: 3/8/2011

## **8.30—CLASSIFIED PERSONNEL REDUCTION IN FORCE**

### **SECTION ONE**

The School Board acknowledges its authority to conduct a reduction in force (RIF) when a decrease in enrollment or other reason(s) make such a reduction necessary or desirable. A RIF will be conducted when the need for a reduction in the work force exceeds the normal rate of attrition for that portion of the staff that is in excess of the needs of the district as determined by the superintendent.

In effecting a reduction in force, the primary goals of the school district shall be: what is in the best interests of the students; to maintain accreditation in compliance with the Standards of Accreditation for Arkansas Public Schools and/or the North Central Association; and the needs of the district. A reduction in force will be implemented when the superintendent determines it is advisable to do so and shall be effected through non-renewal, termination, or both. Any reduction in force will be conducted by evaluating the needs and long- and short-term goals of the school district in relation to the staffing of the district.

If a reduction in force becomes necessary, the RIF shall be conducted separately for each occupational category of classified personnel identified within the district on the basis of each employee's years of service. The employee within each occupational category with the least years of experience will be non-renewed first. The employee with the most years of employment in the district as compared to other employees in the same category shall be non-renewed last. In the event that employees within a given occupational category have the same length of service to the district the one with the earlier hire date, based on date of board action, will prevail.

When the District is conducting a RIF, all potentially affected classified employees shall receive a listing of the personnel within their category with corresponding totals of years of service. Upon receipt of the list, each employee has ten (10) working days within which to appeal his or her total years of service to the superintendent whose decision shall be final. Except for changes made pursuant to the appeals process, no changes will be made to the list that would affect an employee's total after the list is released.

Total years of service to the district shall include non-continuous years of service; in other words, an employee who left the district and returned later will have the total years of service counted, from all periods of employment. Working fewer than 160 days in a school year shall not constitute a year. Length of service in a licensed position shall not count for the purpose of length of service for a classified position. There is no right or implied right for any employee to "bump" or displace any other employee. This specifically does not allow a licensed employee who might wish to assume a classified position to displace a classified employee.

Pursuant to any reduction in force brought about by consolidation or annexation and as a part of it, the salaries of all employees will be brought into compliance, by a partial RIF if necessary, with the receiving district's salary schedule. Further adjustments will be made if length of contract or job assignments change.<sup>1</sup> A Partial RIF may also be conducted in

conjunction with any job reassignment whether or not it is conducted in relation to an annexation or consolidation.

**Recall: Option 1<sup>2</sup>**

There shall be no right of recall for any classified employee.

**SECTION TWO**

**Option A<sup>2</sup>**

In the event the district is involved in an annexation or consolidation, employees from all the districts involved will be ranked according to years of service. A year of employment at an annexed or consolidated district will be counted the same as a year at the receiving or resulting district. No credit for years of service will be given at other public or private schools, or for higher education or Educational Service Cooperative employment.

**Notes:** <sup>1</sup> For example, if the district's salary schedule provided for a range of salaries for maintenance employees ranging from \$8.50 an hour to \$12.50 an hour, and one maintenance employee is making \$14.00 an hour, the superintendent, as part of the RIF, would send a letter of partial nonrenewal to the maintenance employee to bring the salary into compliance with the salary schedule.

<sup>2</sup> For either Options 1 and 2 or Options A and B, select the option that will work best for your district. If you choose Option B, the ninety (90) day time period may be lengthened or shortened (within reason) to suit your preference.

Legal Reference: A.C.A. § 6-17-2407

Date Adopted: 8/26/04

Last Revised: 5/13/2014

Last Revised: 6/13/2017

### **8.31—CLASSIFIED PERSONNEL TERMINATION AND NON-RENEWAL**

For procedures relating to the termination and non-renewal of CLASSIFIED employees, please refer to the Public School Employee Fair Hearing Act A.C.A. § 6-17-1701 through 1705. The Act specifically is not made a part of this policy by this reference.

A copy of the code is available in the office of the principal of each school building.

Legal reference:           A.C.A. § 6-17-2301

Date Adopted: 8/26/04

Last Revised:

### **8.32—CLASSIFIED PERSONNEL ASSIGNMENTS**

The superintendent shall be responsible for assigning and reassigning CLASSIFIED personnel.

Date Adopted: 8/26/04

Last Revised:

### **8.33—CLASSIFIED PERSONNEL SCHOOL CALENDAR**

The superintendent shall present to the PPC a school calendar which the board has adopted as a proposal. The Superintendent, in developing the calendar, shall accept and consider recommendations from any staff member or group wishing to make calendar proposals. The PPC shall have the time prescribed by law and/or policy in which to make any suggested changes before the board may vote to adopt the calendar.

The Westside School District shall operate by the following calendar. (Insert your school calendar here.)

## 2017/18 School Calendar

August 2017						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

September 2017						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

October 2017						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November 2017						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

December 2017						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

January 2018						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February 2018						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

March 2018						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

April 2018						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

May 2018						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

June 2018						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

[illegible]

Aug. 14	Begin 1st Quarter	Sept. 4	Labor Day (NS)	Sept. 21	P/T Conference	Sept. 22	Prof. Dev. (NS)
Oct. 13	End 1st Quarter (43 days)	Oct. 16	Begin 2nd Quarter	Nov. 16	Progress Reports	Nov. 20-24	Thanksgiving Break
Dec. 18/19	Semester Tests	Dec. 19	End 2nd Quarter (43 days)	Dec. 20-Jan. 2	Christmas Break	Jan. 3	Begin 3rd Quarter
Jan. 15	MLK Jr. (NS)	Feb. 15	P/T Conferences	Feb. 16	Prof. Dev. (NS)	Feb. 19	President's Day (NS)
March 9	End 3rd Quarter (45 days)	March 12	Begin 4th Quarter	Mar. 19-23	Spring Break (NS)	Mar. 30	Good Friday (NS)
April 19	Progress Reports	May 10	Graduation	May 23-24	Semester Tests	May 24	End 4th quarter (40 days)

Weather Days: Jan. 15, Feb. 19, March 30, May 25, 29

### **8.34—CLASSIFIED PERSONNEL WHO ARE MANDATORY REPORTERS DUTY TO REPORT CHILD ABUSE, MALTREATMENT OR NEGLECT (NEW)**

It is the statutory duty of CLASSIFIED school district employees **who are mandatory reporters**<sup>1</sup> and who have reasonable cause to suspect child abuse or maltreatment to directly and personally report these suspicions to the Arkansas Child Abuse Hotline, by calling 1-800-482-5964. Failure to report suspected child abuse, maltreatment or neglect by calling the Hotline can lead to criminal prosecution and individual civil liability of the person who has this duty. Notification of local or state law enforcement does not satisfy the duty to report; only notification by means of the Child Abuse Hotline discharges this duty.

The duty to report suspected child abuse or maltreatment is a direct and personal duty for statutory mandatory reporters, and cannot be assigned or delegated to another person. There is no duty to investigate, confirm or substantiate statements a student may have made which form the basis of the reasonable cause to believe that the student may have been abused or subjected to maltreatment by another person; however, a person with a duty to report may find it helpful to make a limited inquiry to assist in the formation of a belief that child abuse, maltreatment or neglect has occurred, or to rule out such a belief<sup>2</sup>. Employees and volunteers who call the Child Abuse Hotline in good faith are immune from civil liability and criminal prosecution.

By law, no school district or school district employee may prohibit or restrict an employee or volunteer **who is a mandatory reporter** from directly reporting suspected child abuse or maltreatment, or require that any person notify or seek permission from any person before making a report to the Child Abuse Hotline.

Notes: <sup>1</sup> For a listing of who qualifies as mandatory reporters refer to A.C.A. § 12-12- 07(b).

<sup>2</sup> This is a delicate matter and the district would be wise to avail itself of professional development in this area available from DHS and other sources.

This policy is similar to Policy 3.40. If you change this policy, review 3.40 at the same time to ensure applicable consistency between the two.

Legal References: A.C.A. § 12-12-504, 507, 517

Date Adopted: 5/13/08

Last Revised: 6/2/09

## **8.35—RELEASE OF STUDENT’S FREE AND REDUCED PRICE MEAL ELIGIBILITY INFORMATION**

As part of the district’s participation in the National School Lunch Program and the School Breakfast Program, the district collects eligibility data from its students. The data’s confidentiality is very important and is governed by federal law. The district has made the determination to release student eligibility status or information<sup>1</sup> as permitted by law. Federal law governs how eligibility data may be released and to whom. The district will take the following steps to ensure its confidentiality:

Some data may be released to government agencies or programs authorized by law to receive such data without parental consent, while other data may only be released after obtaining parental consent. In both instances, allowable information shall only be released on a need to know basis to individuals authorized to receive the data. The recipients shall sign an agreement with the district specifying the names or titles of the persons who may have access to the eligibility information. The agreement shall further specify the specific purpose(s) for which the data will be used and how the recipient(s) shall protect the data from further, unauthorized disclosures.

The superintendent shall designate the staff member(s) responsible for making eligibility determinations. Release of eligibility information to other district staff shall be limited to as few individuals as possible who shall have a specific need to know such information to perform their job responsibilities. Principals, counselors, teachers, and administrators shall not have routine access to eligibility information or status.

Each staff person with access to individual eligibility information shall be notified of their personal liability for its unauthorized disclosure and shall receive appropriate training on the laws governing the restrictions of such information.<sup>2</sup>

Notes: The Children’s Nutrition Unit of the ADE website (<http://cnn.k12.ar.us>) has the referenced Commissioner’s Memos as well as helpful information to develop your policy statement packet. Additionally, Commissioner’s Memos FIN 09-041 has two attachments that will go a long way toward explaining the restrictions on the release of eligibility information and status.

<sup>1</sup> The district owns the data and has the right to choose whether or not to release it to **anyone**. (Isn’t that interesting!) Therefore, the district must make the decisions concerning its release. With the ownership comes the responsibility to ensure proper security of the data.

<sup>2</sup> The penalty for improper disclosure of eligibility information is a fine of not more than \$1000 and/or imprisonment of not more than one year.

Legal References: Commissioner’s Memos IA-05-018, FIN 09-041, and IA 99-011



ADE Eligibility Manual for School Meals Revised July 2008

7 CFR 210.1 – 210.31

7 CFR 220.1 – 220.22

42 USC 1758(b)(6)

Date Adopted: 4/14/09

Last Revised:

## SUPPORTING DOCUMENTS AND INFORMATION FOR POLICY—8.11

This information is offered to assist you in developing your CLASSIFIED overtime/comptime policies and is not to be included in your district's policy manual.

### Important Points to be Considered in Finalizing Your Policy and Meeting FLSA Requirements

The most basic points of the requirements of the Fair Labor Standards Act (29 USCS § 201 et seq.) are:

- all covered employees shall be paid for every hour they work,
- employees shall receive time and a half for all hours over 40 worked in any week,
- employees shall be compensated for overtime on the paycheck immediately following the week in which it was earned,
- each employee shall know the number of hours they are expected to work in a “normal” workweek,
- meticulous records need to be kept of the hours each employee works each week,
- all employees are hourly employees unless they clearly meet the requirements for “exempt” employees as specified in the FLSA.

Covered employees are those who are not exempt. Exempt employees as a general rule are those who are required to have a certification as a condition of their employment. There are exceptions, but determinations should be done on a case by case basis. Employees may choose to have their wages paid over the school's full fiscal year. Each employee choosing to do so should have an itemization on his contract stating what his hourly wage is, how many hours per week he is expected to work, and what he can expect to earn if he were to work his normal workweek for the term of his contract. Any overtime earned in a pay period must be paid the following paycheck; overtime earnings cannot be worked into the 12 month payout. Remember that an announcement that no overtime will be permitted does not negate your obligation to pay for the unasked or unauthorized hours worked. A district's only option in such instances is to take disciplinary action.

For employees who have previously been salaried it may take some explaining to get them to be comfortable with being an hourly employee. By having the hourly wage and projected annual earnings listed on employees' contracts they can be shown that the change is not intended to lessen their net pay. Consider including such items as hourly rate of pay; starting date for the year; expected ending date for the year; expected number of hours for per day and per week; and expected annual earnings if all of the “normal” hours are worked.

It is important to distinguish between hours worked and hours not worked, but which have been compensated for, such as sick leave or personal leave. The FLSA refers to such compensation as “payments for hours not worked.” If an employee is sick for a day and receives compensation for that day (let's say it's 8 hours), the sick leave hours for which he is compensated do not count in the number of hours he has worked for the week. Thus, if the

same employee worked 40 hours in the remainder of the workweek, his total hours worked for the week would be 40 and not 48.

As previously stated, the number of hours each employee is expected to work in their normal workweek has to be determined and stated as part of their contract. If an employee has a normal workweek of 30 hours and works 35 hours in a particular workweek, you have the option of paying him his regular rate for the 5 additional hours or giving comptime at a one-to-one ratio. Overtime does not kick in unless an employee works more than 40 hours in a workweek.

For those districts which have previously been lax on keeping written records of how many hours each employee worked each and every week, the comptime policy will be a change from the way “it’s always been done.” Once again it is important to stress that the changes are merely a way to have the district in compliance with the law. The lawyers looking for clients are using lax record keeping as a means of getting their foot in the door. Once this happens, the time spent on keeping the records correctly in the first place will seem very tame by comparison.

There is a part of the Code of Federal Regulations (29 CFR § 516.2(c)) which was included in some information districts received from the DOL which makes a record keeping exception for employees on a “fixed schedule.” Lunch breaks are an example of why we are not recommending districts do this. Any lunch break less than 30 minutes in length has to be counted as time worked. With a written record of exactly what time an employee breaks for, and returns from lunch, there can be no subsequent question regarding whether the employee did, in fact, receive a duty free lunch break of at least 30 minutes. Consistency of enforcement for all employees can also help to smooth the transition.

Note: as stated in footnote #8 of the policy, the district is also required to keep certain records for exempt employees. 29 CFR § 516.2 –516.6 and (29 CFR § 553.50 states what records a district is required to keep and for how long. They are cited in the supplemental information that follows. The district also must display minimum wage posters in each work site. They can be downloaded from the DOL by going to <http://www.dol.gov/esa/regs/compliance/posters/flsa.htm>.

## Bus Drivers

There is no specific mention of bus drivers in the policy, but among the implications of the FLSA is that bus drivers will receive different net pay (assuming they receive the same hourly rate of pay) based on the length of their routes which must be measured on a time basis. The hours bus drivers are required to spend inspecting, cleaning, or otherwise dealing with their bus before and/or after their route needs to be included in determining the hours they work in their normal workweek. For non-route purposes such as field trips and/or athletics, bus drivers have to be paid for all the time they are on the job. 29 CFR § 785.16(a) states, in part, “Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use

the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived.” A rule of thumb for the lower limit to qualify for such duty free time is 3 hours, but note that the code also states that the time must be able to be used effectively for his own purposes. It is highly recommended that you have signed agreements with your drivers regarding their on and off the clock hours for their road trips. Overnight trips are treated similarly. So long as the driver knows that they have no duty responsibilities you are not obligated to pay for those hours. Should you have any reason to unexpectedly need a driver’s services, you become obligated to pay them for their time.

Employees who work more than one job for the district are to be paid for the total hours worked each week in all the their jobs combined. If their wages are different in one or more jobs, they are to be paid for the number of hours worked at each wage. If they work more than 40 hours in a workweek, they are to be paid for the amount of overtime they work at each wage. To do this, take the total earned from the hours worked at each wage, divide that number by the total number of hours worked (which gives you the “blended” hourly rate), multiply the quotient by 1/2 and that is the total due in overtime wages for the week.

The hours worked by employees who work “occasionally or sporadically” for the district in a different capacity than their regular employment shall not be counted in their hours worked for overtime purposes. Occasional and sporadic is defined as infrequent, irregular, or occurring in scattered instances. Provided the employee does so entirely voluntarily and without any fear of reprisals for not doing so. Consult 29 USCS § 207(p) and 29 CFR § 553.31 in the supplemental information that follows for further clarification.

The following are the pertinent portions of the U.S. Code relating to minimum wage, overtime, and Department of Labor (DOL) inspection rights. Major portions of extraneous code have been deleted. The U.S. Code is the statute itself which is subsequently interpreted in the Code of Federal Regulations (CFR). The CFR is included in this document immediately following the U.S. Code. Refer to the U.S. Code to better understand references in the Code of Federal Regulations (CFR) supporting documents when sections are mentioned such as section 7(e). In the example cited, the reference is to 29 USCS § 207 (e), which is included in the following cites. For each section included, the heading in bold type will be shown as, for example, Sec. 206, which is actually 29 USCS § 206.

## UNITED STATES CODE SERVICE

### TITLE 29--LABOR

#### CHAPTER 8--FAIR LABOR STANDARDS

##### Sec. 206. Minimum wage

(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) except as otherwise provided in this section, not less than \$4.25 an hour during the period ending on September 30, 1996, not less than \$4.75 an hour during the year beginning on October 1,

1996, and not less than \$5.15 an hour beginning September 1, 1997; ASBA note: 6-17-2203 stipulates that full time classified employees (those working 20 or more hours per week) shall receive not less than \$6.25/hour. This figure was increased by Act 1773 of 2003 to 6.38/hour.

(d) Prohibition of sex discrimination

(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

#### Sec. 207. Maximum hours

(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions

(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for

commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966--

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) Employment pursuant to collective bargaining agreement; employment by independently owned and controlled local enterprise engaged in distribution of petroleum products

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed--

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks; or

(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty-hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) of this section or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed;

(e) ``Regular rate" defined

As used in this section the ``regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include--

- (1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;
- (2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;
- (3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;
- (4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;
- (5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day of workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) of this section or in excess of the employee's normal working hours or regular working hours, as the case may be;
- (6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;
- (7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a) of this section), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; or

(g) Employment at piece rates

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such

employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection--

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) of this section are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(h) Credit toward minimum wage or overtime compensation of amounts excluded from regular rate

(1) Except as provided in paragraph (2), sums excluded from the regular rate pursuant to subsection (e) of this section shall not be creditable toward wages required under section 206 of this title or overtime compensation required under this section.

(2) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) of this section shall be creditable toward overtime compensation payable pursuant to this section.

(o) Compensatory time

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only--

(A) pursuant to--

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and



(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than--

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee, whichever is higher.

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency--

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) of this section if--

(A) such employee is paid at a per-page rate which is not less than--

(i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,

(ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or

(iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

(B) the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee's attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court reporting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.

(7) For purposes of this subsection--

(A) the term ``overtime compensation" means the compensation required by subsection (a), and

(B) the terms ``compensatory time" and ``compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(p) Special detail work for fire protection and law enforcement employees; occasional or sporadic employment; substitution

(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(3) If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(q) Maximum hour exemption for employees receiving remedial education

Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is--

(1) provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(2) designed to provide reading and other basic skills at an eighth grade level or below; and

(3) does not include job specific training.

## Sec. 211. Collection of data

(a) Investigations and inspections

The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any

industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter. Except as provided in section 212 of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 of this title, the Administrator shall bring all actions under section 217 of this title to restrain violations of this chapter.

(b) State and local agencies and employees

With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and duties under this chapter, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Records

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 207(p)(3) of this title may not be required under this subsection to keep a record of the hours of the substitute work.

Sec. 213. Exemptions

(a) Minimum wage and maximum hour requirements

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities).

## Sec. 216. Penalties

### (b) Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) of this title.

### (c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207 of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee

pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in section 255(a) of this title, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

#### Sec. 218. Relation to other laws

(a) No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

### CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations (CFR) is intended to be the explanation of the code as enacted. The following are CFR excerpts relating to the Fair Labor Standards Act. As we did with the code itself, most of the extraneous portions have been omitted for sanity purposes. For each section included the heading in bold type will be shown as, for example, Sec. 516.2, which is actually 29 CFR § 516.2.

#### TITLE 29--LABOR

#### CHAPTER V--WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

#### RECORDS TO BE KEPT BY EMPLOYERS (29CFR 516.0 – 516.12)

##### Subpart A--General Requirements

Sec. 516.2 Employees subject to minimum wage or minimum wage and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Act.

(a) Items required. Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom section 6 or both sections 6 and 7(a) of the Act apply:

- (1) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records,
- (2) Home address, including zip code,
- (3) Date of birth, if under 19,
- (4) Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss., or Ms.) (Employee's sex identification is related to the equal pay provisions of the Act which are administered by the Equal Employment Opportunity Commission. Other equal pay recordkeeping requirements are contained in 29 CFR part 1620.)
- (5) Time of day and day of week on which the employee's workweek begins (or for employees employed under section 7(k) of the Act, the starting time and length of each employee's work period). If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice,
- (6)(i) Regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the Act,
- (ii) explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, and
- (iii) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate" (these records may be in the form of vouchers or other payment data),
- (7) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of 7 consecutive workdays),
- (8) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation,
- (9) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under paragraph (a)(8) of this section,
- (10) Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions,
- (11) Total wages paid each pay period,
- (12) Date of payment and the pay period covered by payment.

(b) Records of retroactive payment of wages. Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division pursuant to section 16(c) and/or section 17 of the Act, shall:

- (1) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.
- (2) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour Division, and (i) preserve a copy as part of the records, (ii) deliver a copy to the employee, and (iii) file the original, as evidence of payment by the employer and receipt

by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(c) Employees working on fixed schedules. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by paragraph (a)(7) of this section, the schedule of daily and weekly hours the employee normally works. Also,

(1) In weeks in which an employee adheres to this schedule, indicates by check mark, statement or other method that such hours were in fact actually worked by him, and

(2) In weeks in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.

Sec. 516.3 Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to section 13(a)(1) of the Act.

With respect to each employee in a bona fide executive, administrative, or professional capacity (including employees employed in the capacity of academic administrative personnel or teachers in

elementary or secondary schools), or in outside sales, as defined in part 541 of this chapter (pertaining to so-called "white collar" employee exemptions), employers shall maintain and preserve records

containing all the information and data required by Sec. 516.2(a) except paragraphs (a) (6) through (10) and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites. (This may be shown as the dollar amount of earnings per month, per week, per month plus commissions, etc. with appropriate addenda such as "plus hospitalization and insurance plan A," "benefit package B," "2 weeks paid vacation," etc.)

Sec. 516.4 Posting of notices.

Every employer employing any employees subject to the Act's minimum wage provisions shall post and keep posted a notice explaining the Act, as prescribed by the Wage and Hour Division, in conspicuous places in every establishment where such employees are employed so as to permit

them to observe readily a copy. Any employer of employees to whom section 7 of the Act does not apply because of an exemption of broad application to an establishment may alter or modify the poster with a legible notation to show that the overtime provisions do not apply.

For example: Overtime Provisions Not Applicable to Taxicab Drivers (section 13(b)(17)).

Sec. 516.5 Records to be preserved 3 years.

Each employer shall preserve for at least 3 years:

(a) Payroll records. From the last date of entry, all payroll or other records containing the employee information and data required under any of the applicable sections of this part, and

(b) Certificates, agreements, plans, notices, etc.

From their last effective date, all written:

(1) Collective bargaining agreements relied upon for the exclusion of certain costs under section 3(m)

of the Act,

(2) Collective bargaining agreements, under section 7(b)(1) or 7(b)(2) of the Act, and any amendments or additions thereto,

(3) Plans, trusts, employment contracts, and collective bargaining agreements under section 7(e) of the Act,

(4) Individual contracts or collective bargaining agreements under section 7(f) of the Act.

Where such contracts or agreements are not in writing, a written memorandum summarizing the terms of each such contract or agreement,

(5) Written agreements or memoranda summarizing the terms of oral agreements or understandings under section 7(g) or 7(j) of the Act, and

(6) Certificates and notices listed or named in any applicable section of this part.

(c) Sales and purchase records. A record of (1) total dollar volume of sales or business, and (2) total volume of goods purchased or received during such periods (weekly, monthly, quarterly, etc.), in such

form as the employer maintains records in the ordinary course of business.

#### Sec. 516.6 Records to be preserved 2 years.

(a) Supplementary basic records: Each employer required to maintain records under this part shall preserve for a period of at least 2 years.

(1) Basic employment and earnings records. From the date of last entry, all basic time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part the pay period earnings or wages of those employees.

(2) Wage rate tables. From their last effective date, all tables or schedules of the employer which provide the piece rates or other rates used in computing straight-time earnings, wages, or salary, or overtime pay computation.

(b) Order, shipping, and billing records: From the last date of entry, the originals or true copies of all customer orders or invoices received, incoming or outgoing shipping or delivery records, as well as

all bills of lading and all billings to customers (not including individual sales slips, cash register tapes or the like) which the employer retains or makes in the usual course of business operations.

(c) Records of additions to or deductions from wages paid:

(1) Those records relating to individual employees referred to in Sec. 516.2(a)(10) and

(2) All records used by the employer in determining the original cost, operating and maintenance cost, and depreciation and interest charges, if such costs and charges are involved in the additions to or deductions from wages paid.



Sec. 516.7 Place for keeping records and their availability for inspection.

(a) Place of records. Each employer shall keep the records required by this part safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be made available within 72 hours following notice from the Administrator or a duly authorized and designated representative.

(b) Inspection of records. All records shall be available for inspection and transcription by the Administrator or a duly authorized and designated representative.

Sec. 516.8 Computations and reports.

Each employer required to maintain records under this part shall make such extension, recomputation, or transcription of the records and shall submit to the Wage and Hour Division such reports concerning persons employed and the wages, hours, and other conditions and practices of employment set forth in the records as the Administrator or a duly authorized and designated representative may request in writing.

Sec. 516.9 Petitions for exceptions.

(a) Submission of petitions for relief. Any employer or group of employers who, due to peculiar conditions under which they must operate, desire authority to maintain records in a manner other than required in this part, or to be relieved of preserving certain records for the period specified in this part, may submit a written petition to the Administrator requesting such authority, setting forth the reasons therefor.

(b) Action on petitions. If, after review of the petition, the Administrator finds that the authority requested will not hinder enforcement of the Act, the Administrator may grant such authority limited by any conditions determined necessary and subject to subsequent revocation. Prior to revocation of such authority because of noncompliance with any of the prescribed conditions, the employer will be notified of the reasons and given an opportunity to come into compliance.

(c) Compliance after submission of petitions. The submission of a petition or the delay of the Administrator in acting upon such petition will not relieve any employer or group of employers from any obligations to comply with all the applicable requirements of the regulations in this part. However, the Administrator will provide a response to all petitions as soon as possible.

Sec. 553.50 Records to be kept of compensatory time. (This section is from the comp-time regulations, but for your convenience we have also included it here.)

For each employee subject to the compensatory time and compensatory time off provisions of section 7(o) of the Act, a public agency which is a State, a political subdivision of a State or an interstate governmental agency shall maintain and preserve records containing the basic information and data required by Sec. 516.2 of this title and, in addition:

- (a) The number of hours of compensatory time earned pursuant to section 7(o) each workweek, or other applicable work period, by each employee at the rate of one and one-half hour for each overtime hour worked;
- (b) The number of hours of such compensatory time used each workweek, or other applicable work period, by each employee;
- (c) The number of hours of compensatory time compensated in cash, the total amount paid and the date of such payment; and
- (d) Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time off. If such agreement or understanding is not in writing, a record of its existence must be kept.

## COMPENSATORY TIME (29 CFR 553.1 – 553.106)

### Subpart A--General

#### Sec. 553.3 Coverage--general.

- (a)(1) In 1966, Congress amended the FLSA to extend coverage to State and local government employees engaged in the operation of hospitals, nursing homes, schools, and mass transit systems.
- (2) In 1972, the Education Amendments further extended coverage to employees of public preschools.
- (3) In 1974, the FLSA Amendments extended coverage to virtually all of the remaining State and local government employees who were not covered as a result of the 1966 and 1972 legislation.
- (b) Certain definitions already in the Act were modified by the 1974 Amendments. The definition of the term "employer" was changed to include public agencies and that of "employee" was amended to include individuals employed by public agencies. The definition of "enterprise" contained in section 3(r) of the Act was modified to provide that activities of a public agency are performed for a "business purpose." The term "enterprise engaged in commerce or in the production of goods for commerce" defined in section 3(s) of the Act was expanded to include public agencies.

### Section 7(o)--Compensatory Time and Compensatory Time Off

#### Sec. 553.20 Introduction.

Section 7 of the FLSA requires that covered, nonexempt employees receive not less than one and one-half times their regular rates of pay for hours worked in excess of the applicable maximum hours standards. However, section 7(o) of the Act provides an element of flexibility to State and local government employers and an element of choice to their employees or the representatives of their employees regarding compensation for statutory overtime hours. The exemption provided by this subsection authorizes a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, to provide compensatory time off (with certain limitations, as provided in Sec. 553.21) in lieu of monetary overtime compensation that would otherwise be required under section 7. Compensatory time received by an employee in lieu of cash must be at the rate of not less

than one and one-half hours of compensatory time for each hour of overtime work, just as the monetary rate for overtime is calculated at the rate of not less than one and one-half times the regular rate of pay.

## 29 CFR 553.21 Statutory Provisions

Section 7(o) provides as follows:

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only--

(A) pursuant to--

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3). (240 hours for schools)

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than--

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee, whichever is higher.

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency--

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.  
29 USC 207(o)(5)(B)

(6) The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) of this section if—

(A) such employee is paid at a per-page rate which is not less than--

(i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,

(ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or

(iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

(B) the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee's attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court reporting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.

(7) For purposes of this subsection--

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

Sec. 553.22 "FLSA compensatory time" and "FLSA compensatory time off".

(a) Compensatory time and compensatory time off are interchangeable terms under the FLSA. Compensatory time off is paid time off the job which is earned and accrued by an employee in lieu of immediate cash payment for employment in excess of the statutory hours for which overtime compensation is required by section 7 of the FLSA.

(b) The Act requires that compensatory time under section 7(o) be earned at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by section 7 of the FLSA. Thus, the 480-hour limit on accrued compensatory time represents not more than 320 hours of actual overtime worked, and the 240-hour limit represents not more than 160 hours of actual overtime worked.

(c) The 480- and 240-hour limits on accrued compensatory time only apply to overtime hours worked after April 15, 1986. Compensatory time which an employee has accrued prior to April 15, 1986, is not subject to the overtime requirements of the FLSA and need not be aggregated with compensatory time accrued after that date.

Sec. 553.23 Agreement or understanding prior to performance of work.

(a) General. (1) As a condition for use of compensatory time in lieu of overtime payment in cash, section 7(o)(2)(A) of the Act requires an agreement or understanding reached prior to the performance of work. This can be accomplished pursuant to a collective bargaining agreement, a memorandum of understanding or any other agreement between the public agency and representatives of the employees. If the employees do not have a representative, compensatory time may be used in lieu of cash overtime compensation only if such an agreement or understanding has been arrived at between the public agency and the individual employee before the performance of work. No agreement or understanding is required with respect to employees hired prior to April 15, 1986, who do not have a representative, if the employer had a regular practice in effect on April 15, 1986, of granting compensatory time off in lieu of overtime pay.

(2) Agreements or understandings may provide that compensatory time off in lieu of overtime payment in cash may be restricted to certain hours of work only. In addition, agreements or understandings may provide for any combination of compensatory time off and overtime payment in cash (e.g., one hour compensatory time credit plus one-half the employee's regular hourly rate of pay in cash for each hour of overtime worked) so long as the premium pay principle of at least "time and one-half" is maintained. The agreement or understanding may include other provisions governing the preservation, use, or cashing out of compensatory time so long as these provisions are consistent with section 7(o) of the Act. To the extent that any provision of an agreement or understanding is in violation of section 7(o) of the Act, the provision is superseded by the requirements of section 7(o).

(b) Agreement or understanding between the public agency and a representative of the employees. (1) Where employees have a representative, the agreement or understanding concerning the use of compensatory time must be between the representative and the public agency either through a collective bargaining agreement or through a memorandum of understanding or other type of oral or written agreement. In the absence of a collective bargaining agreement applicable to the employees, the representative need not be a formal or recognized bargaining agent as long as the representative is designated by the employees. Any agreement must be consistent with the provisions of section 7(o) of the Act.

(2) Section 2(b) of the 1985 Amendments provides that a collective bargaining agreement in effect on April 15, 1986, which permits compensatory time off in lieu of overtime compensation, will remain in effect until the expiration date of the collective bargaining agreement unless otherwise modified. However, the terms and conditions of such agreement under which compensatory time off is provided after April 14, 1986, must not violate the requirements of section 7(o) of the Act and these regulations.

(c) Agreement or understanding between the public agency and individual employees. (1) Where employees of a public agency do not have a recognized or otherwise designated representative, the agreement or understanding concerning compensatory time off must be between the public agency and the individual employee and must be reached prior to the performance of work. This agreement or understanding with individual employees need not be in writing, but a record of its existence must be kept. (See Sec. 553.50.) An employer need not adopt the same agreement or understanding with different employees and need not provide compensatory time to all employees. The agreement or understanding to provide compensatory time off in lieu of cash overtime compensation may take the form of an

express condition of employment, provided (i) the employee knowingly and voluntarily agrees to it as a condition of employment and (ii) the employee is informed that the compensatory time received may be preserved, used or cashed out consistent with the provisions of section 7(o) of the Act. An agreement or understanding may be evidenced by a notice to the employee that compensatory time off will be given in lieu of overtime pay. In such a case, an agreement or understanding would be presumed to exist for purposes of section 7(o) with respect to any employee who fails to express to the employer an unwillingness to accept compensatory time off in lieu of overtime pay. However, the employee's decision to accept compensatory time off in lieu of cash overtime payments must be made freely and without coercion or pressure.

(2) Section 2(a) of the 1985 Amendments provides that in the case of employees who have no representative and were employed prior to April 15, 1986, a public agency that has had a regular practice of awarding compensatory time off in lieu of overtime pay is deemed to have reached an agreement or understanding with these employees as of April 15, 1986. A public agency need not secure an agreement or understanding with each employee employed prior to that date. If, however, such a regular practice does not conform to the provisions of section 7(o) of the Act, it must be modified to do so with regard to practices after April 14, 1986. With respect to employees hired after April 14, 1986, the public employer who elects to use compensatory time must follow the guidelines on agreements discussed in paragraph (c)(1) of this section.

Sec. 553.25 Conditions for use of compensatory time ("reasonable period", "unduly disrupt").

(a) Section 7(o)(5) of the FLSA provides that any employee of a public agency who has accrued compensatory time and requested use of this compensatory time, shall be permitted to use such time off within a "reasonable period" after making the request, if such use does not "unduly disrupt" the operations of the agency. This provision, however, does not apply to "other compensatory time" (as defined below in Sec. 553.28), including compensatory time accrued for overtime worked prior to April 15, 1986.

(b) Compensatory time cannot be used as a means to avoid statutory overtime compensation. An employee has the right to use compensatory time earned and must not be coerced to accept more compensatory time than an employer can realistically and in good faith expect to be able to grant within a reasonable period of his or her making a request for use of such time.

(c) Reasonable period. (1) Whether a request to use compensatory time has been granted within a "reasonable period" will be determined by considering the customary work practices within the agency based on the facts and circumstances in each case. Such practices include, but are not limited to (a) the normal schedule of work, (b) anticipated peak workloads based on past experience, (c) emergency requirements for staff and services, and (d) the availability of qualified substitute staff.

(2) The use of compensatory time in lieu of cash payment for overtime must be pursuant to some form of agreement or understanding between the employer and the employee (or the representative of the employee) reached prior to the performance of the work. (See Sec. 553.23.) To the extent that the (conditions under which an employee can take compensatory

time off are contained in an agreement or understanding as defined in Sec. 553.23, the terms of such agreement or understanding will govern the meaning of "reasonable period".

(d) Unduly disrupt. When an employer receives a request for compensatory time off, it shall be honored unless to do so would be "unduly disruptive" to the agency's operations. Mere inconvenience to the employer is an insufficient basis for denial of a request for compensatory time off. (See H. Rep. 99-331, p. 23.) For an agency to turn down a request from an employee for compensatory time off requires that it should reasonably and in good faith anticipate that it would impose an unreasonable burden on the agency's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services.

#### Sec. 553.26 Cash overtime payments.

(a) Overtime compensation due under section 7 may be paid in cash at the employer's option, in lieu of providing compensatory time off under section 7(o) of the Act in any workweek or work period. The FLSA does not prohibit an employer from freely substituting cash, in whole or part, for compensatory time off; and overtime payment in cash would not affect subsequent granting of compensatory time off in future workweeks or work periods. (See Sec. 553.23(a)(2).)

(b) The principles for computing cash overtime pay are contained in 29 CFR part 778. Cash overtime compensation must be paid at a rate not less than one and one-half times the regular rate at which the employee is actually paid. (See 29 CFR 778.107.)

(c) In a workweek or work period during which an employee works hours which are overtime hours under FLSA and for which cash overtime payment will be made, and the employee also takes compensatory time off, the payment for such time off may be excluded from the regular rate of pay under section 7(e)(2) of the Act. Section 7(e)(2) provides that the regular rate shall not be deemed to include. . . payments made for occasional periods when no work is performed due to vacation, holiday, . . . or other similar cause. As explained in 29 CFR 778.218(d), the term "other similar cause" refers to payments made for periods of absence due to factors like holidays, vacations, illness, and so forth. Payments made to an employee for periods of absence due to the use of accrued compensatory time are considered to be the type of payments in this "other similar cause" category.

#### Sec. 553.27 Payments for unused compensatory time.

(a) Payments for accrued compensatory time earned after April 14, 1986, may be made at any time and shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(b) Upon termination of employment, an employee shall be paid for unused compensatory time earned after April 14, 1986, at a rate of compensation not less than--

(1) The average regular rate received by such employee during the last 3 years of the employee's employment, or

(2) The final regular rate received by such employee, whichever is higher.

(c) The phrase last 3 years of employment means the 3-year period immediately prior to termination. Where an employee's last 3 years of employment are not continuous because of a break in service, the period of employment after the break in service will be treated as new

employment. However, such a break in service must have been intended to be permanent and any accrued compensatory time earned after April 14, 1986, must have been cashed out at the time of initial separation. Where the final period of employment is less than 3 years, the average rate still must be calculated based on the rate(s) in effect during such period.

(d) The term ``regular rate" is defined in 29 CFR 778.108. As indicated in Sec. 778.109, the regular rate is an hourly rate, although the FLSA does not require employers to compensate employees on an hourly basis.

#### Sec. 553.28 Other compensatory time.

(a) Compensatory time which is earned and accrued by an employee for employment in excess of a nonstatutory (that is, non-FLSA) requirement is considered ``other" compensatory time. The term ``other" compensatory time off means hours during which an employee is not working and which are not counted as hours worked during the period when used. For example, a collective bargaining agreement may provide that compensatory time be granted to employees for hours worked in excess of 8 in a day, or for working on a scheduled day off in a nonovertime workweek. The FLSA does not require compensatory time to be granted in such situations.

(b) Compensatory time which is earned and accrued by an employee working hours which are ``overtime" hours under State or local law, ordinance, or other provisions, but which are not overtime hours under section 7 of the FLSA is also considered ``other" compensatory time. For example, a local law or ordinance may provide that compensatory time be granted to employees for hours worked in excess of 35 in a workweek. Under section 7(a) of the FLSA, only hours worked in excess of 40 in a workweek are overtime hours which must be compensated at one and one-half times the regular rate of pay.

(c) Similarly, compensatory time earned or accrued by an employee for employment in excess of a standard established by the personnel policy or practice of an employer, or by custom, which does not result from the FLSA provision, is another example of ``other" compensatory time.

(d) The FLSA does not require that the rate at which ``other" compensatory time is earned has to be at a rate of one and one-half hours for each hour of employment. The rate at which ``other" compensatory time is earned may be some lesser or greater multiple of the rate or the straight-time rate itself.

(e) The requirements of section 7(o) of the FLSA, including the limitations on accrued compensatory time, do not apply to ``other" compensatory time as described above.

#### Other Exemptions

#### Sec. 553.30 Occasional or sporadic employment-section 7(p)(2).

(a) Section 7(p)(2) of the FLSA provides that where State or local government employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime liability under the Act.



(b) Occasional or sporadic. (1) The term occasional or sporadic means infrequent, irregular, or occurring in scattered instances. There may be an occasional need for additional resources in the delivery of certain types of public services which is at times best met by the part-time employment of an individual who is already a public employee. Where employees freely and solely at their own option enter into such activity, the total hours worked will not be combined for purposes of determining any overtime compensation due on the regular, primary job. However, in order to prevent overtime abuse, such hours worked are to be excluded from computing overtime compensation due only where the occasional or sporadic assignments are not within the same general occupational category as the employee's regular work.

(2) In order for an employee's occasional or sporadic work on a part-time basis to qualify for exemption under section 7(p)(2), the employee's decision to work in a different capacity must be made freely and without coercion, implicit or explicit, by the employer. An employer may suggest that an employee undertake another kind of work for the same unit of government when the need for assistance arises, but the employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision.

(3) Typically, public recreation and park facilities, and stadiums or auditoriums utilize employees in occasional or sporadic work. Some of these employment activities are the taking of tickets, providing security for special events (e.g., concerts, sports events, and lectures), officiating at youth or other recreation and sports events, or engaging in food or beverage sales at special events, such as a county fair. Employment in such activity may be considered occasional or sporadic for regular employees of State or local government agencies even where the need can be anticipated because it recurs seasonally (e.g., a holiday concert at a city college, a program of scheduled sports events, or assistance by a city payroll clerk in processing returns at tax filing time). An activity does not fail to be occasional merely because it is recurring. In contrast, for example, if a parks department clerk, in addition to his or her regular job, also regularly works additional hours on a part-time basis (e.g., every week or every other week) at a public park food and beverage sales center operated by that agency, the additional work does not constitute intermittent and irregular employment and, therefore, the hours worked would be combined in computing any overtime compensation due.

(c) Different capacity. (1) In order for employment in these occasional or sporadic activities not to be considered subject to the overtime requirements of section 7 of the FLSA, the regular government employment of the individual performing them must also be in a different capacity, i.e., it must not fall within the same general occupational category.

(2) In general, the Administrator will consider the duties and other factors contained in the definitions of the 3-digit categories of occupations in the Dictionary of Occupational Titles (except in the case of public safety employees as discussed below in section (3)), as well as all the facts and circumstances in a particular case, in determining whether employment in a second capacity is substantially different from the regular employment.

(3) For example, if a public park employee primarily engaged in playground maintenance also from time to time cleans an evening recreation center operated by the same agency, the additional work would be considered hours worked for the same employer and subject to the Act's overtime requirements because it is not in a different capacity. This would be the case even though the work was occasional or sporadic, and, was not regularly scheduled. Public

safety employees taking on any kind of security or safety function within the same local government are never considered to be employed in a different capacity.

(4) However, if a bookkeeper for a municipal park agency or a city mail clerk occasionally referees for an adult evening basketball league sponsored by the city, the hours worked as a referee would be considered to be in a different general occupational category than the primary employment and would not be counted as hours worked for overtime purposes on the regular job. A person regularly employed as a bus driver may assist in crowd control, for example, at an event such as a winter festival, and in doing so, would be deemed to be serving in a different capacity.

(5) In addition, any activity traditionally associated with teaching (e.g., coaching, career counseling, etc.) will not be considered as employment in a different capacity. However, where personnel other than teachers engage in such teaching-related activities, the work will be viewed as employment in a different capacity, provided that these activities are performed on an occasional or sporadic basis and all other requirements for this provision are met. For example, a school secretary could substitute as a coach for a basketball team or a maintenance engineer could provide instruction on auto repair on an occasional or sporadic basis.

#### Sec. 553.31 Substitution--section 7(p)(3).

(a) Section 7(p)(3) of the FLSA provides that two individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked shall be excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under the Act. Where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.

(b) The provisions of section 7(p)(3) apply only if employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee substitute or "trade time" with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward by the employer, and (ii) exclusively for the employee's own convenience.

(c) A public agency which employs individuals who substitute or "trade time" under this subsection is not required to keep a record of the hours of the substitute work.

(d) In order to qualify under section 7(p)(3), an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. This requires that the agency be aware of the arrangement prior to the work being done, i.e., the employer must know what work is being done, by whom it is being done, and where and when it is being done. Approval is manifest when the employer is aware of the substitution and indicates approval in whatever manner is customary.

#### Recordkeeping

## Sec. 553.50 Records to be kept of compensatory time.

For each employee subject to the compensatory time and compensatory time off provisions of section 7(o) of the Act, a public agency which is a State, a political subdivision of a State or an interstate governmental agency shall maintain and preserve records containing the basic information and data required by Sec. 516.2 of this title and, in addition:

- (a) The number of hours of compensatory time earned pursuant to section 7(o) each workweek, or other applicable work period, by each employee at the rate of one and one-half hour for each overtime hour worked;
- (b) The number of hours of such compensatory time used each workweek, or other applicable work period, by each employee;
- (c) The number of hours of compensatory time compensated in cash, the total amount paid and the date of such payment; and
- (d) Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time off. If such agreement or understanding is not in writing, a record of its existence must be kept.

## OVERTIME COMPENSATION (29 CFR 778.0 –603)

### Subpart A--General Considerations

#### Sec. 778.5 Relation to other laws generally.

Various Federal, State, and local laws require the payment of minimum hourly, daily or weekly wages different from the minimum set forth in the Fair Labor Standards Act, and the payment of overtime compensation computed on bases different from those set forth in the Fair Labor Standards Act. Where such legislation is applicable and does not contravene the requirements of the Fair Labor Standards Act, nothing in the act, the regulations or the interpretations announced by the Administrator should be taken to override or nullify the provisions of these laws. Compliance with other applicable legislation does not excuse noncompliance with the Fair Labor Standards Act. Where a higher minimum wage than that set in the Fair Labor Standards Act is applicable to an employee by virtue of such other legislation, the regular rate of the employee, as the term is used in the Fair Labor Standards Act, cannot be lower than such applicable minimum, for the words "regular rate at which he is employed" as used in section 7 must be construed to mean the regular rate at which he is lawfully employed.

### Subpart B--The Overtime Pay Requirements

#### Introductory

#### Sec. 778.100 The maximum-hours provisions.

Section 7(a) of the Act deals with maximum hours and overtime compensation for employees who are within the general coverage of the Act and are not specifically exempt from its overtime pay requirements. It prescribes the maximum weekly hours of work permitted for the employment of such employees in any workweek without extra compensation for overtime, and a general overtime rate of pay not less than one and one-half times the employee's regular rate which the employee must receive for all hours worked in any workweek in excess of the applicable maximum hours. The employment by an employer of an employee in any work subject to the Act in any workweek brings these provisions into operation. The employer is prohibited from employing the employee in excess of the prescribed maximum hours in such workweek without paying him the required extra compensation for the overtime hours worked at a rate meeting the statutory requirement.

#### Sec. 778.101 Maximum nonovertime hours.

As a general standard, section 7(a) of the Act provides 40 hours as the maximum number that an employee subject to its provisions may work for an employer in any workweek without receiving additional compensation at not less than the statutory rate for overtime. Hours worked in excess of the statutory maximum in any workweek are overtime hours under the statute; a workweek no longer than the prescribed maximum is a nonovertime workweek under the Act, to which the pay requirements of section 6 (minimum wage and equal pay) but not those of section 7(a) are applicable.

#### Sec. 778.104 Each workweek stands alone.

The Act takes a single workweek as its standard and does not permit averaging of hours over 2 or more weeks. Thus, if an employee works 30 hours one week and 50 hours the next, he must receive overtime compensation for the overtime hours worked beyond the applicable maximum in the second week, even though the average number of hours worked in the 2 weeks is 40. This is true regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, monthly or other basis. The rule is also applicable to pieceworkers and employees paid on a commission basis. It is therefore necessary to determine the hours worked and the compensation earned by pieceworkers and commission employees on a weekly basis.

#### Sec. 778.105 Determining the workweek.

An employee's workweek is a fixed and regularly recurring period of 168 hours--seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under the Fair Labor Standards Act, a single workweek may be established for a plant or other establishment as a whole or different workweeks may be established for different employees or groups of employees. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act. The proper method of computing overtime pay in a period

in which a change in the time of commencement of the workweek is made, is discussed in Secs. 778.301 and 778.302.

#### Sec. 778.106 Time of payment.

There is no requirement in the Act that overtime compensation be paid weekly. The general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends. When the correct amount of overtime compensation cannot be determined until some time after the regular pay period, however, the requirements of the Act will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practicable. Payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may payment be delayed beyond the next payday after such computation can be made. Where retroactive wage increases are made, retroactive overtime compensation is due at the time the increase is paid, as discussed in Sec. 778.303. For a discussion of overtime payments due because of increases by way of bonuses, see Sec. 778.209.

#### Sec. 778.107 General standard for overtime pay.

The general overtime pay standard in section 7(a) requires that overtime must be compensated at a rate not less than one and one-half times the regular rate at which the employee is actually employed. The regular rate of pay at which the employee is employed may in no event be less than the statutory minimum. (The statutory minimum is the specified minimum wage applicable under section 6 of the Act, except in the case of workers specially provided for in section 14 and workers in Puerto Rico, the Virgin Islands, and American Samoa who are covered by wage orders issued pursuant to section 8 of the Act.) If the employee's regular rate of pay is higher than the statutory minimum, his overtime compensation must be computed at a rate not less than one and one-half times such higher rate. Under certain conditions prescribed in section 7 (f), (g), and (j), the Act provides limited exceptions to the application of the general standard of section 7(a) for computing overtime pay based on the regular rate. With respect to these, see Secs. 778.400 through 778.421 and 778.601 and part 548 of this chapter. The Act also provides, in section 7(b), (i), (k), and (m) and in section 13, certain partial and total exemptions from the application of section 7(a) to certain employees and under certain conditions. Regulations and interpretations concerning these exemptions are outside the scope of this part 778 and reference should be made to other applicable parts of this chapter.

#### Sec. 778.108 The ``regular rate''.

The ``regular rate" of pay under the Act cannot be left to a declaration by the parties as to what is to be treated as the regular rate for an employee; it must be drawn from what happens under the employment contract (*Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446). The Supreme Court has described it as the hourly rate actually paid the employee for the normal, nonovertime workweek for which he is employed--an ``actual fact" (*Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419). Section 7(e) of the Act requires

inclusion in the "regular rate" of "all remuneration for employment paid to, or on behalf of, the employee" except payments specifically excluded by paragraphs (1) through (7) of that subsection. (These seven types of payments, which are set forth in Sec. 778.200 and discussed in Secs. 778.201 through 778.224, are hereafter referred to as "statutory exclusions.") As stated by the Supreme Court in the *Youngerman-Reynolds* case cited above: "Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary 'regular rate' in the wage contracts."

#### Sec. 778.110 Hourly rate employee.

- (a) Earnings at hourly rate exclusively. If the employee is employed solely on the basis of a single hourly rate, the hourly rate is his "regular rate." For his overtime work he must be paid, in addition to his straight time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of 40 in the week. Thus a \$6 hourly rate will bring, for an employee who works 46 hours, a total weekly wage of \$294 (46 hours at \$6 plus 6 at \$3). In other words, the employee is entitled to be paid an amount equal to \$6 an hour for 40 hours and \$9 an hour for the 6 hours of overtime, or a total of \$294.
- (b) Hourly rate and bonus. If the employee receives, in addition to his earnings at the hourly rate, a production bonus of \$9.20, the regular hourly rate of pay is \$6.20 an hour (46 hours at \$6 yields \$276; the addition of the \$9.20 bonus makes a total of \$285.20; this total divided by 46 hours yields a rate of \$6.20). The employee is then entitled to be paid a total wage of \$303.80 for 46 hours (46 hours at \$6.20 plus 6 hours at \$3.10, or 40 hours at \$6.20 plus 6 hours at \$9.30).

#### Sec. 778.115 Employees working at two or more rates.

Where an employee in a single workweek works at two or more different types of work for which different nonovertime rates of pay (of not less than the applicable minimum wage) have been established, his regular rate for that week is the weighted average of such rates. That is, his total earnings (except statutory exclusions) are computed to include his compensation during the workweek from all such rates, and are then divided by the total number of hours worked at all jobs. Certain statutory exceptions permitting alternative methods of computing overtime pay in such cases are discussed in Secs. 778.400 and 778.415 through 778.421.

#### Sec. 778.116 Payments other than cash.

Where payments are made to employees in the form of goods or facilities which are regarded as part of wages, the reasonable cost to the employer or the fair value of such goods or of furnishing such facilities must be included in the regular rate. (See part 531 of this chapter for a discussion as to the inclusion of goods and facilities in wages and the method of determining reasonable cost.) Where, for example, an employer furnishes lodging to his employees in addition to cash wages 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.

## Subpart C--Payments That May Be Excluded From the ``Regular Rate''

Sec. 778.200 Provisions governing inclusion, exclusion, and crediting of particular payments.

The Statutory Provisions:

(a) Section 7(e). This subsection of the Act provides as follows: (e) ``Regular rate" defined As used in this section the ``regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include--

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day of workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) of this section or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek

applicable to such employee under subsection (a) of this section), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; or

(b) Section 7(h). This subsection of the Act provides as follows:

Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) shall be creditable toward overtime compensation payable pursuant to this section.

(c) Only the statutory exclusions are authorized. It is important to determine the scope of these exclusions, since all remuneration for employment paid to employees which does not fall within one of these seven exclusionary clauses must be added into the total compensation received by the employee before his regular hourly rate of pay is determined.

Sec. 778.208 Inclusion and exclusion of bonuses in computing the ``regular rate."

Section 7(e) of the Act requires the inclusion in the regular rate of all remuneration for employment except seven specified types of payments. Among these excludable payments are discretionary bonuses, gifts and payments in the nature of gifts on special occasions, contributions by the employer to certain welfare plans and payments made by the employer pursuant to certain profit-sharing, thrift and savings plans. These are discussed in Secs. 778.211 through 778.214. Bonuses which do not qualify for exclusion from the regular rate as one of these types must be totaled in with other earnings to determine the regular rate on which overtime pay must be based. Bonus payments are payments made in addition to the regular earnings of an employee. For a discussion on the bonus form as an evasive bookkeeping device, see Secs. 778.502 and 778.503.

Sec. 778.216 The provisions of section 7(e)(2) of the Act.

Section 7(e)(2) of the Act provides that the term ``regular rate" shall not be deemed to include "payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment ..." However, since such payments are not made as compensation for the employee's hours worked in any workweek, no part of such payments can be credited toward overtime compensation due under the Act.

Sec. 778.217 Reimbursement for expenses.

(a) General rule. Where an employee incurs expenses on his employer's behalf or where he is required to expend sums solely by reason of action taken for the convenience of his employer, section 7(e)(2) is applicable to reimbursement for such expenses. Payments made by the employer to cover such expenses are not included in the employee's regular rate (if the amount of the reimbursement reasonably approximates the expenses incurred). Such payment is not compensation for services rendered by the employees during any hours worked in the workweek.



(b) Illustrations. Payment by way of reimbursement for the following types of expenses will not be regarded as part of the employee's regular rate:

(1) The actual amount expended by an employee in purchasing supplies, tools, materials, or equipment on behalf of his employer.

(2) The actual or reasonably approximate amount expended by an employee in purchasing, laundering or repairing uniforms or special clothing which his employer requires him to wear.

(3) The actual or reasonably approximate amount expended by an employee, who is traveling "over the road" on his employer's business, for transportation (whether by private car or common carrier) and living expenses away from home, other travel expenses, such as taxicab fares, incurred while traveling on the employer's business.

(4) "Supper money", a reasonable amount given to an employee, who ordinarily works the day shift and can ordinarily return home for supper, to cover the cost of supper when he is requested by his employer to continue work during the evening hours.

(5) The actual or reasonably approximate amount expended by an employee as temporary excess home-to-work travel expenses incurred (i) because the employer has moved the plant to another town before the employee has had an opportunity to find living quarters at the new location or (ii) because the employee, on a particular occasion, is required to report for work at a place other than his regular workplace.

The foregoing list is intended to be illustrative rather than exhaustive.

(c) Payments excluding expenses. It should be noted that only the actual or reasonably approximate amount of the expense is excludable from the regular rate. If the amount paid as "reimbursement" is disproportionately large, the excess amount will be included in the regular rate.

(d) Payments for expenses personal to the employee. The expenses for which reimbursement is made must in order to merit exclusion from the regular rate under this section, be expenses incurred by the employee on the employer's behalf or for his benefit or convenience. If the employer reimburses the employee for expenses normally incurred by the employee for his own benefit, he is, of course, increasing the employee's regular rate thereby. An employee normally incurs expenses in traveling to and from work, buying lunch, paying rent, and the like. If the employer reimburses him for these normal everyday expenses, the payment is not excluded from the regular rate as "reimbursement for expenses." Whether the employer "reimburses" the employee for such expenses or furnishes the facilities (such as free lunches or free housing), the amount paid to the employee (or the reasonable cost to the employer or fair value where facilities are furnished) enters into the regular rate of pay as discussed in Sec. 778.116. See also Sec. 531.37(b) of this chapter.

#### Sec. 778.218 Pay for certain idle hours.

(a) General rules. Payments which are made for occasional periods when the employee is not at work due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, where the payments are in amounts approximately equivalent to the employee's normal earnings for a similar period of time, are not made as compensation for his hours of employment. Therefore, such payments may be excluded from the regular rate of pay under section 7(e)(2) of the Act and, for the same reason, no part of such payments may be credited toward overtime compensation due under the Act.

(b) Limitations on exclusion. This provision of section 7(e)(2) deals with the type of absences which are infrequent or sporadic or unpredictable. It has no relation to regular "absences" such as lunch periods nor to regularly scheduled days of rest. Sundays may not be workdays in a particular plant, but this does not make them either "holidays" or "vacations," or days on which the employee is absent because of the failure of the employer to provide sufficient work. The term holiday is read in its ordinary usage to refer to those days customarily observed in the community in celebration of some historical or religious occasion; it does not refer to days of rest given to employees in lieu of or as an addition to compensation for working on other days.

(c) Failure to provide work. The term "failure of the employer to provide sufficient work" is intended to refer to occasional, sporadically recurring situations where the employee would normally be working but for such a factor as machinery breakdown, failure of expected supplies to arrive, weather conditions affecting the ability of the employee to perform the work and similarly unpredictable obstacles beyond the control of the employer. The term does not include reduction in work schedule (as discussed in Secs. 778.321 through 778.329), ordinary temporary layoff situations, or any type of routine, recurrent absence of the employee.

(d) Other similar cause. The term "other similar cause" refers to payments made for periods of absence due to factors like holidays, vacations, sickness, and failure of the employer to provide work. Examples of "similar causes" are absences due to jury service, reporting to a draft board, attending a funeral of a family member, inability to reach the workplace because of weather conditions. Only absences of a nonroutine character which are infrequent or sporadic or unpredictable are included in the "other similar cause" category.

#### Subpart D--Special Problems

##### Sec. 778.303 Retroactive pay increases.

Where a retroactive pay increase is awarded to employees as a result of collective bargaining or otherwise, it operates to increase the regular rate of pay of the employees for the period of its retroactivity. Thus, if an employee is awarded a retroactive increase of 10 cents per hour, he is owed, under the Act, a retroactive increase of 15 cents for each overtime hour he has worked during the period, no matter what the agreement of the parties may be. A retroactive pay increase in the form of a lump sum for a particular period must be prorated back over the hours of the period to which it is allocable to determine the resultant increases in the regular rate, in precisely the same manner as a lump sum bonus. For a discussion of the method of allocating bonuses based on employment in a prior period to the workweeks covered by the bonus payment, see Sec. 778.209.

##### Sec. 778.308 The overtime rate is an hourly rate.

(a) Section 7(a) of the Act requires the payment of overtime compensation for hours worked in excess of the applicable maximum hours standard at a rate not less than one and one-half times the regular rate. The overtime rate, like the regular rate, is a rate per hour. Where employees are paid on some basis other than an hourly rate, the regular hourly rate is derived, as previously explained, by dividing the total compensation (except statutory exclusions) by the total hours of work for which the payment is made. To qualify as an overtime premium

under section 7(e)(5), (6), or (7), the extra compensation for overtime hours must be paid pursuant to a premium rate which is likewise a rate per hour (subject to certain statutory exceptions discussed in Secs. 778.400 through 778.421).

Sec. 778.315 Payment for all hours worked in overtime workweek is required.

In determining the number of hours for which overtime compensation is due, all hours worked (see Sec. 778.223) by an employee for an employer in a particular workweek must be counted. Overtime

compensation, at a rate not less than one and one-half times the regular rate of pay, must be paid for each hour worked in the workweek in excess of the applicable maximum hours standard. This extra compensation for the excess hours of overtime work under the Act cannot be said to have been paid to an employee unless all the straight time compensation due him for the nonovertime hours under his contract (express or implied) or under any applicable statute has been paid.

Sec. 778.316 Agreements or practices in conflict with statutory requirements are ineffective.

While it is permissible for an employer and an employee to agree upon different base rates of pay for different types of work, it is settled under the Act that where a rate has been agreed upon as applicable to a particular type of work the parties cannot lawfully agree that the rate for that work shall be lower merely because the work is performed during the statutory overtime hours, or during a week in which statutory overtime is worked. Since a lower rate cannot lawfully be set for overtime hours it is obvious that the parties cannot lawfully agree that the working time will not be paid for at all. An agreement that only the first 8 hours of work on any days or only the hours worked between certain fixed hours of the day or only the first 40 hours of any week will be counted as working time will clearly fail of its evasive purpose. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be compensated unless authorized in advance, will not impair the employee's right to compensation for work which he is actually suffered or permitted to perform.

Sec. 778.318 Productive and nonproductive hours of work.

(a) Failure to pay for nonproductive time worked. Some agreements provide for payment only for the hours spent in productive work; the work hours spent in waiting time, time spent in travel on the employer's behalf or similar nonproductive time are not made compensable and in some cases are neither counted nor compensated. Payment pursuant to such an agreement will not comply with the Act; such nonproductive working hours must be counted and paid for.

(b) Compensation payable for nonproductive hours worked. The parties may agree to compensate nonproductive hours worked at a rate (at least the minimum) which is lower than the rate applicable to productive work. In such a case, the regular rate is the weighted average of the two rates, as discussed in Sec. 778.115 and the employee whose maximum hours standard is 40 hours is owed compensation at his regular rate for all of the first 40 hours and at a rate not less than one and one-half times this rate for all hours in excess of 40. (See Sec.

778.415 for the alternative method of computing overtime pay on the applicable rate.) In the absence of any agreement setting a different rate for nonproductive hours, the employee would be owed compensation at the regular hourly rate set for productive work for all hours up to 40 and at a rate at least one and one-half times that rate for hours in excess of 40.

(c) Compensation attributable to both productive and nonproductive hours. The situation described in paragraph (a) of this section is to be distinguished from one in which such nonproductive hours are properly counted as working time but no special hourly rate is assigned to such hours because it is understood by the parties that the other compensation received by the employee is intended to cover pay for such hours. For example, while it is not proper for an employer to agree with his pieceworkers that the hours spent in down-time (waiting for work) will not be paid for or will be neither paid for nor counted, it is permissible for the parties to agree that the pay the employees will earn at piece rates is intended to compensate them for all hours worked, the productive as well as the nonproductive hours. If this is the agreement of the parties, the regular rate of the pieceworker will be the rate determined by dividing the total piecework earnings by the total hours worked (both productive and nonproductive) in the workweek. Extra compensation (one-half the rate as so determined) would, of course, be due for each hour worked in excess of the applicable maximum hours standard.

Sec. 778.321 Decrease in hours without decreasing pay--general.

Since the regular rate of pay is the average hourly rate at which an employee is actually employed, and since this rate is determined by dividing his total remuneration for employment (except statutory exclusions) for a given workweek by the total hours worked in that workweek for which such remuneration was paid, it necessarily follows that if the schedule of hours is reduced while the pay remains the same, the regular rate has been increased.

## HOURS WORKED (29 CFR 785.1 – 785.50)

### Subpart A--General Considerations

#### Sec. 785.1 Introductory statement.

Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) requires that each employee, not specifically exempted, who is engaged in commerce, or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce, or in the production of goods for commerce receive a specified minimum wage. Section 7 of the Act (29 U.S.C. 207) provides that persons may not be employed for more than a stated number of hours a week without receiving at least one and one-half times their regular rate of pay for the overtime hours. The amount of money an employee should receive cannot be determined without knowing the number of hours worked. This part discusses the principles involved in determining what constitutes working time. It also seeks to apply these principles to situations that frequently arise. It cannot include every possible situation. No inference should be drawn from the fact that a subject or an illustration is omitted. If doubt arises inquiries should be sent to the Administrator of the Wage and Hour Division, U.S.

Department of Labor, Washington, DC 20210, or to any area or Regional Office of the Division.

## Subpart B--Principles for Determination of Hours Worked

### Sec. 785.7 Judicial construction.

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer of his business." (Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123, 321 U. S. 590 (1944)) Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that "an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer." (Armour & Co. v. Wantock, 323 U.S. 126 (1944); Skidmore v. Swift, 323 U.S. 134 (1944)) The workweek ordinarily includes "all the time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place". (Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946)) The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Sec. 785.34.

### Sec. 785.9 Statutory exemptions.

(a) The Portal-to-Portal Act. The Portal-to-Portal Act (secs. 1-13, 61 Stat. 84-89, 29 U.S.C. 251-262) eliminates from working time certain travel and walking time and other similar "preliminary" and "postliminary" activities performed "prior" or "subsequent" to the "workday" that are not made compensable by contract, custom, or practice. It should be noted that "preliminary" activities do not include "principal" activities. See Secs. 790.6 to 790.8 of this chapter. Section 4 of the Portal-to-Portal Act does not affect the computation of hours worked within the "workday". "Workday" in general, means the period between "the time on any particular workday at which such employee commences (his) principal activity or activities" and "the time on any particular workday at which he ceases such principal activity or activities." The "workday" may thus be longer than the employee's scheduled shift, hours, tour of duty, or time on the production line. Also, its duration may vary from day to day depending upon when the employee commences or ceases his "principal" activities. With respect to time spent in any "preliminary" or "postliminary" activity compensable by contract, custom, or practice, the Portal-to-Portal Act requires that such time must also be counted for purposes of the Fair Labor Standards Act. There are, however, limitations on this requirement. The "preliminary" or "postliminary" activity in question must be engaged in during the portion of the day with respect to which it is made compensable by the contract,

custom, or practice. Also, only the amount of time allowed by the contract or under the custom or practice is required to be counted. If, for example, the time allowed is 15 minutes but the activity takes 25 minutes, the time to be added to other working time would be limited to 15 minutes. (*Galvin v. National Biscuit Co.*, 82 F. Supp. 535 (S.D.N.Y. 1949) appeal dismissed, 177 F. 2d 963 (C.A. 2, 1949))

(b) Section 3(o) of the Fair Labor Standards Act. Section 3(o) gives statutory effect, as explained in Sec. 785.26, to the exclusion from measured working time of certain clothes-changing and washing time at the beginning or the end of the workday by the parties to collective bargaining agreements.

## Subpart C--Application of Principles

### Sec. 785.11 General.

Work not requested but suffered or permitted is work time. For example, an employee may voluntarily continue to work at the end of the shift. He may be a pieceworker, he may desire to finish an assigned task or he may wish to correct errors, paste work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time. (*Handler v. Thrasher*, 191, F. 2d 120 (C.A. 10, 1951); *Republican Publishing Co. v. American Newspaper Guild*, 172 F. 2d 943 (C.A. 1, 1949; *Kappler v. Republic Pictures Corp.*, 59 F. Supp. 112 (S.D. Iowa 1945), *aff'd* 151 F. 2d 543 (C.A. 8, 1945); 327 U.S. 757 (1946); *Hogue v. National Automotive Parts Ass'n.* 87 F. Supp. 816 (E.D. Mich. 1949); *Barker v. Georgia Power & Light Co.*, 2 W.H. Cases 486; 5 CCH Labor Cases, para. 61,095 (M.D. Ga. 1942); *Steger v. Beard & Stone Electric Co., Inc.*, 1 W.H. Cases 593; 4 Labor Cases 60,643 (N.D. Texas, 1941))

### Sec. 785.12 Work performed away from the premises or job site.

The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked.

### Sec. 785.13 Duty of management.

In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

## Waiting Time

### Sec. 785.14 General.

Whether waiting time is time worked under the Act depends upon particular circumstances. The determination involves ``scrutiny and construction of the agreements between particular

parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the employee was engaged to wait or they may show that he waited to be engaged." (Skidmore v. Swift, 323 U.S. 134 (1944)) Such questions "must be determined in accordance with common sense and the general concept of work or employment." (Central Mo. Tel. Co. v. Conwell, 170 F. 2d 641 (C.A. 8, 1948)).

#### Sec. 785.15 On duty.

A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, fireman who plays checkers while waiting for alarms and a factory worker who talks to his fellow employees while waiting for machinery to be repaired are all working during their periods of inactivity. The rule also applies to employees who work away from the plant. For example, a repair man is working while he waits for his employer's customer to get the premises in readiness. The time is worktime even though the employee is allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employee is unable to use the time effectively for his own purposes. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employee is engaged to wait. (See: Skidmore v. Swift, 323 U.S. 134, 137 (1944); Wright v. Carrigg, 275 F. 2d 448, 14 W.H. Cases (C.A. 4, 1960); Mitchell v. Wigger, 39 Labor Cases, para. 66,278, 14 W.H. Cases 534 (D.N.M. 1960); Mitchell v. Nicholson, 179 F. Supp. 292, 14 W.H. Cases 487 (W.D.N.C. 1959))

#### Sec. 785.16 Off duty.

(a) General. Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.

(b) Truck drivers; specific examples. A truck driver who has to wait at or near the job site for goods to be loaded is working during the loading period. If the driver reaches his destination and while awaiting the return trip is required to take care of his employer's property, he is also working while waiting. In both cases the employee is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Washington, DC to New York City, leaving at 6 a.m. and arriving at 12 noon, and is completely and specifically relieved from all duty until 6 p.m. when he again goes on duty for the return trip the idle time is not working time. He is waiting to be engaged. (Skidmore v. Swift, 323 U.S. 134, 137 (1944); Walling v. Dunbar Transfer & Storage, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); Gifford v. Chapman, 6 W.H. Cases 806; 12 Labor Cases para. 63,661 (W.D. Okla., 1947); Thompson v. Daugherty, 40 Supp. 279 (D. Md. 1941))

#### Sec. 785.17 On-call time.

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. (*Armour & Co. v. Wantock*, 323 U.S. 126 (1944); *Handler v. Thrasher*, 191 F. 2d 120 (C.A. 10, 1951); *Walling v. Bank of Waynesboro, Georgia*, 61 F. Supp. 384 (S.D. Ga. 1945))

#### Rest and Meal Periods

##### Sec. 785.18 Rest.

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

#### Preparatory and Concluding Activities

##### Sec. 785.19 Meal.

(a) Bona fide meal periods. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (*Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), *aff'd* 197 F. 2d 981 (C.A. 8, 1952), *cert. denied* 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), *aff'd* 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C. A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); *aff'd* 136 F. 2d 359 (C.A. 10, 1943); *cert. denied* 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36

Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

(b) Where no permission to leave premises. It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

Lectures, Meetings and Training Programs



#### Sec. 785.27 General.

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

- (a) Attendance is outside of the employee's regular working hours;
- (b) Attendance is in fact voluntary;
- (c) The course, lecture, or meeting is not directly related to the employee's job; and
- (d) The employee does not perform any productive work during such attendance.

#### Sec. 785.28 Involuntary attendance.

Attendance is not voluntary, of course, if it is required by the employer. It is not voluntary in fact if the employee is given to understand or led to believe that his present working conditions or the continuance of his employment would be adversely affected by nonattendance.

#### Traveltime

#### Sec. 785.34 Effect of section 4 of the Portal-to-Portal Act.

The Portal Act provides in section 4(a) that except as provided in subsection (b) no employer shall be liable for the failure to pay the minimum wage or overtime compensation for time spent in "walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities." Subsection (b) provides that the employer shall not be relieved from liability if the activity is compensable by express contract or by custom or practice not inconsistent with an express contract. Thus travelttime at the commencement or cessation of the workday which was originally considered as working time under the Fair Labor Standards Act (such as underground travel in mines or walking from time clock to work-bench) need not be counted as working time unless it is compensable by contract, custom or practice. If compensable by express contract or by custom or practice not inconsistent with an express contract, such travelttime must be counted in computing hours worked. However, ordinary travel from home to work (see Sec. 785.35) need not be counted as hours worked even if the employer agrees to pay for it. (See *Tennessee Coal, Iron & RR. Co. v. Muscoda Local*, 321 U.S. 590 (1946); *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 690 (1946); *Walling v. Anaconda Copper Mining Co.*, 66 F. Supp. 913 (D. Mont. (1946).)

#### Sec. 785.35 Home to work; ordinary situation.

An employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different job sites.

Normal travel from home to work is not worktime.

Sec. 785.37 Home to work on special one-day assignment in another city.

A problem arises when an employee who regularly works at a fixed location in one city is given a special 1-day work assignment in another city. For example, an employee who works in Washington, DC, with regular working hours from 9 a.m. to 5 p.m. may be given a special assignment in New York City, with instructions to leave Washington at 8 a.m. He arrives in New York at 12 noon, ready for work. The special assignment is completed at 3 p.m., and the employee arrives back in Washington at 7 p.m. Such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment. It was performed for the employer's benefit and at his special request to meet the needs of the particular and unusual assignment. It would thus qualify as an integral part of the "principal" activity which the employee was hired to perform on the workday in question; it is like travel involved in an emergency call (described in Sec. 785.36), or like travel that is all in the day's work (see Sec. 785.38). All the time involved, however, need not be counted. Since, except for the special assignment, the employee would have had to report to his regular work site, the travel between his home and the railroad depot may be deducted, it being in the "home-to-work" category. Also, of course, the usual meal time would be deductible.

Sec. 785.38 Travel that is all in the day's work.

Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time. However, if the employee goes home instead of returning to his employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked. (*Walling v. Mid-Continent Pipe Line Co.*, 143 F. 2d 308 (C. A. 10, 1944))

Sec. 785.41 Work performed while traveling.

Any work which an employee is required to perform while traveling must, of course, be counted as hours worked. An employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when he is permitted to sleep in adequate facilities furnished by the employer.

Adjusting Grievances, Medical Attention, Civic and Charitable Work, and Suggestion Systems

#### Sec. 785.42 Adjusting grievances.

Time spent in adjusting grievances between an employer and employees during the time the employees are required to be on the premises is hours worked, but in the event a bona fide union is involved the counting of such time will, as a matter of enforcement policy, be left to the process of collective bargaining or to the custom or practice under the collective bargaining agreement.

#### Sec. 785.43 Medical attention.

Time spent by an employee in waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when he is working constitutes hours worked.

#### Sec. 785.44 Civic and charitable work.

Time spent in work for public or charitable purposes at the employer's request, or under his direction or control, or while the employee is required to be on the premises, is working time. However, time spent voluntarily in such activities outside of the employee's normal working hours is not hours worked.

### Subpart D--Recording Working Time

#### Sec. 785.48 Use of time clocks.

(a) Differences between clock records and actual hours worked. Time clocks are not required. In those cases where time clocks are used, employees who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for such periods provided, of course, that they do not engage in any work. Their early or late clock punching may be disregarded. Minor differences between the clock records and actual hours worked cannot ordinarily be avoided, but major discrepancies should be discouraged since they raise a doubt as to the accuracy of the records of the hours actually worked.

(b) "Rounding" practices. It has been found that in some industries, particularly where time clocks are used, there has been the practice for many years of recording the employees' starting time and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that the employees are fully compensated for all the time they actually work. For enforcement purposes this practice of computing working time will be accepted, provided that it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.

### **8.36—CLASSIFIED PERSONNEL WORKPLACE INJURIES and WORKERS' COMPENSATION**

The district provides Workers' Compensation Insurance, as required by law. Employees who sustain **any** injury at work must immediately notify their immediate supervisor, or in the absence of their immediate supervisor notify district treasurer<sup>1</sup>. An injured employee must fill out a Form N and the employee's supervisor will determine whether to report the claim or to file the paperwork if the injury requires neither medical treatment or lost work time. While many injuries will require no medical treatment or time lost at work, should the need for treatment arise later, it is important that there be a record that the injury occurred. All employees have a duty to provide information and make statements as requested for the purposes of the claim assessment and investigation.

For injuries requiring medical attention, the district will exercise its right to designate the initial treating physician and an injured employee will be directed to seek medical attention, if necessary, from a specific physician or clinic. In addition, employees whose injuries require medical attention shall submit to a drug test, which shall be paid at the District's worker's compensation carrier's expense. Failure for the employee to submit to the drug test or a confirmed positive drug test indicating the use of illegal substances or the misuse of prescription medications shall be grounds for the denial of worker's compensation benefits.<sup>2</sup>

A Workers' Compensation absence may run concurrently with FMLA leave (policy 3.32) when the injury is one that meets the criteria for a serious health condition. To the extent that workers compensation benefits and FMLA leave run concurrently, the employee will be charged for any paid leave accrued by the employee at the rate necessary to bring the total amount of combined income up to 100% of usual contracted daily rate of pay. If the health care provider treating the employee for the workers compensation injury certifies the employee is able to return to a "light duty job," but is unable to return to the employee's same or equivalent job, the employee may decline the District's offer of a "light duty job." As a result, the employee may lose his/her workers' compensation payments, but for the duration of the employee's FMLA leave, the employee will be paid for the leave to the extent that the employee has accrued applicable leave.

Employees who are absent from work in the school district due to a Workers' Compensation claim may not work at a non-district job until they have returned to full duties at their same or equivalent district job; those who violate this prohibition may be subject to discipline up to and including termination. This prohibition does NOT apply to an employee whose has been cleared by his/her doctor to return to "light duty" but the District has no such position available for the employee and the employee's second job qualifies as "light duty".

To the extent an employee has accrued sick leave and a WC claim has been filed, an employee:

- Will be charged for a day's sick leave for the all days missed until such time as the WC claim has been approved or denied;

- Whose WC claim is accepted by the WC insurance carrier as compensable and who is absent for eight or more days shall be charged sick leave at the rate necessary, when combined with WC benefits, to bring the total amount of combined income up to 100% of the employee's usual contracted daily rate of pay;
- Whose WC claim is accepted by the WC insurance carrier as compensable and is absent for 14 or more days will be credited back that portion of sick leave for the first seven (7) days of absence that is not necessary to have brought the total amount of combined income up to 100% of the employee's usual contracted gross pay.

Notes: This policy is similar to policy 3.44. If you change this policy, review 3.44 at the same time to ensure applicable consistency between the two.

<sup>1</sup> Insert the **position** of the person to be notified.

<sup>2</sup> Requiring employees who need medical treatment for injuries at work to be drug tested is optional but is recommended. A.C.A. § 11-9-102 states that an injury resulting while the employee is under the influence of alcohol or illegal drugs is not a compensable injury. Requiring all employees to be drug tested for work injuries resulting in medical treatment will allow the district to abide the prohibition against paying worker's comp for a drug related injury.

Cross Reference:     8.5—CLASSIFIED EMPLOYEES SICK LEAVE  
                           8.12—CLASSIFIED PERSONNEL OUTSIDE EMPLOYMENT  
                           8.23—CLASSIFIED PERSONNEL FAMILY MEDICAL LEAVE

Legal References:     Ark. Workers Compensation Commission RULE 099.33 -  
                           MANAGED CARE  
                           A.C.A. § 11-9-102  
   A.C.A. § 11-9-508(d)(5)(A)  
   A.C.A. § 11-9-514(a)(3)(A)(i)

Date Adopted: 6/2/09  
 Last Revised: 5/13/2014  
 Last Revised: 5/12/15  
 Last Revised: 4/12/16

## **8.37—CLASSIFIED PERSONNEL SOCIAL NETWORKING AND ETHICS**

### **Definitions**

**Social Media Account:** a personal, individual, and non-work related account with an electronic medium or service where users may create, share, or view user-generated content, including videos, photographs, blogs, podcasts, messages, emails or website profiles or locations, such as FaceBook, Twitter, LinkedIn, MySpace, Instagram.

**Professional/education Social Media Account:** an account with an electronic medium or service where users may create, share, or view user-generated content, including videos, photographs, blogs, podcasts, messages, emails or website profiles or locations, such as FaceBook, Twitter, LinkedIn, MySpace, Instagram.

Blogs are a type of networking and can be either social or professional in their orientation. Professional blogs, approved by the principal or his/her designee, are encouraged and can provide a place for staff to inform students and parents on school related activities. Social blogs are discouraged to the extent they involve staff and students in a non-education oriented format.

### **Policy**

District staff are encouraged to use educational technology, the Internet, and professional/education social networks to help raise student achievement and to improve communication with parents and students. However, technology and social media accounts also offer staff many ways they can present themselves unprofessionally and/or interact with students inappropriately.

It is the duty of each staff member to appropriately manage all interactions with students, regardless of whether contact or interaction with a student occurs face-to-face or by means of technology, to ensure that the appropriate staff/student relationship is maintained. This includes instances when students initiate contact or behave inappropriately themselves.

Public school employees are, and always have been, held to a high standard of behavior. Staff members are reminded that whether specific sorts of contacts are permitted or not specifically forbidden by policy, they will be held to a high standard of conduct in all their interactions with students. Failure to create, enforce and maintain appropriate professional and interpersonal boundaries with students could adversely affect the District's relationship with the community and jeopardize the employee's employment with the district.

Staff members are discouraged from creating personal social media accounts to which they invite students to be friends or followers.<sup>1</sup> Employees taking such action do so at their own risk and are advised to monitor the site's privacy settings regularly.

District employees may set up blogs and other professional/education social media accounts using District resources and following District guidelines<sup>1</sup> to promote communications with students, parents, and the community concerning school-related activities and for the purpose of supplementing classroom instruction. Accessing professional/education social media during school hours is permitted.

Staff are reminded that the same relationship, exchange, interaction, information, or behavior that would be unacceptable in a non-technological medium, is unacceptable when done through the use of technology. In fact, due to the vastly increased potential audience digital dissemination presents, extra caution must be exercised by staff to ensure they don't cross the line of acceptability. A good rule of thumb for staff to use is, "if you wouldn't say it face-to-face in a group, don't say it online."

Whether permitted or not specifically forbidden by policy, or when expressed in an adult-to-adult, face-to-face context, what in other mediums of expression could remain private opinions, including "likes" or comments that endorse or support the message or speech of another person, when expressed by staff on a social media website, have the potential to be disseminated far beyond the speaker's desire or intention.

This could undermine the public's perception of the individual's fitness to interact with students, thus undermining the employee's effectiveness. In this way, the expression and publication of such opinions, could potentially lead to disciplinary action being taken against the staff member, up to and including termination or nonrenewal of the contract of employment.

Accessing social media websites for personal use during school hours is prohibited, except during breaks or preparation periods. Staff are discouraged from accessing social media websites on personal equipment during their breaks and/or preparation periods because, while this is not prohibited, it may give the public the appearance that such access is occurring during instructional time. Staff shall not access social media websites using district equipment at any time, including during breaks or preparation periods, except in an emergency situation or with the express prior permission of school administration. All school district employees who participate in social media websites shall not post any school district data, documents, photographs taken at school or of students, logos, or other district owned or created information on any website. Further, the posting of any private or confidential school district material on such websites is strictly prohibited.

Specifically, the following forms of technology based interactivity or connectivity are expressly permitted or forbidden:<sup>2</sup>

#### Privacy of Employee's Social Media Accounts

In compliance with A.C.A. § 11-2-124, the District shall not require, request, suggest, or cause a current or prospective employee to:

1. Disclose the username and/or password to his/her personal social media account;

2. Add an employee, supervisor, or administrator to the list of contacts associated with his/her personal social media account;
3. Change the privacy settings associated with his/her personal social media account; or
4. Retaliate against the employee for refusing to disclose the username and/or password to his/her personal social media account.

The District may require an employee to disclose his or her username and/or password to a personal social media account if the employee's personal social media account activity is reasonable believed to be relevant to the investigation of an allegation of an employee violating district policy, or state, federal or local laws or regulations. If such an investigation occurs, and the employee refuses, upon request, to supply the username and/or password required to make an investigation, disciplinary action may be taken against the employee, which could include termination or nonrenewal of the employee's contract of employment with the District.

Notwithstanding any other provision in this policy, the District reserves the right to view any information about a current or prospective employee that is publicly available on the Internet.

In the event that the district inadvertently obtains access to information that would enable the district to have access to an employee's personal social media account, the district will not use this information to gain access to the employee's social media account. However, disciplinary action may be taken against an employee in accord with other District policy for using district equipment or network capability to access such an account. Employees have no expectation of privacy in their use of District issued computers, other electronic device, or use of the District's network. (See policy 8.22—CLASSIFIED PERSONNEL COMPUTER USE POLICY)

Notes: While only the Privacy of Employee's Social Media Accounts section of this policy is required by statute, ASBA strongly recommends adopting the policy in its entirety after consulting with staff for localizing purposes.

This policy is similar to policy 3.45. If you change this policy, review 3.45 at the same time to ensure applicable consistency between the two.

<sup>1</sup> The policy's separate definitions for "social media websites" and "professional/education social media accounts" are important. Districts are encouraged to establish "professional/education social media accounts" as an acceptable means of teacher and district communication with students and parents. This can serve to discourage inappropriate staff/student interactions on "social media websites." ASBA strongly suggests using the discussions for modifying/personalizing this policy as a means for generating the acceptable guidelines and procedures for staff creation of private social networks. We recommend **NOT** incorporating the guidelines into the policy, but have them available for all staff to review. Incorporating them into the policy will make it much harder to change them if the need arises.



<sup>2</sup> What is and is not acceptable staff/student interaction on social networking websites is an education community decision, and will vary from district to district. As a general rule, the greater the degree of real-life connections and interactivity between staff and students that normally occur in the community, the greater the tolerance will be for virtual connections and interactivity. Use the following list to help guide discussions with staff to determine which items should be included in the policy and with what modifications/stipulations. It is as important to include in the policy what **is** permitted as what **is not** permitted. Your discussions may elicit additional bullets to include in the policy.

- Sharing personal landline or cell phone numbers with students;
- Text messaging students;
- Emailing students other than through and to school controlled and monitored accounts;
- Soliciting students as friends or contacts on social networking websites;
- Accepting the solicitation of students as friends or contacts on social networking websites;
- Creation of administratively approved and sanctioned “groups” on social networking websites that permit the broadcast of information without granting students access to staff member’s personal information;
- Sharing personal websites or other media access information with students through which the staff member would share personal information and occurrences.

Cross reference: 8.22—CLASSIFIED PERSONNEL COMPUTER USE POLICY

Legal Reference: A.C.A. § 11-2-124

Date Adopted: 3/8/2011

Last Revised: 6/6/13

## 8.38—CLASSIFIED PERSONNEL VACATIONS

240 day contracted employees are credited with 10 days of vacation<sup>1</sup> at the beginning of each fiscal year. This is based on the assumption that a full contract year will be worked. If an employee fails to finish the contract year due to resignation or termination, the employee's final check will be reduced at the rate of .833 days per month, or major portion of a month, for any days used but not earned.

All vacation time must be approved by the superintendent who shall consider the staffing needs of the district in making his/her determination.<sup>2</sup>

No employee shall be entitled to more than 15 days of vacation as of the first day of each fiscal year. The permissible carry forward includes the 10 days credited upon the start of the fiscal year. Employees having accrued vacation totaling more than 15 days as of the date this policy is implemented shall not be eligible to increase the number of days carried forward during their employment with the district.<sup>3</sup> Earned but unused vacation will be paid upon resignation, retirement, termination, or nonrenewal at the employee's current daily rate of pay.<sup>4</sup>

Notes: This policy is similar to policy 3.46. If you change this policy, review policy 3.46 at the same time to ensure applicable consistency between the two.

<sup>1</sup> Select your eligibility criteria and number of vacation days. Eligibility does not have to be 240 day employees and vacation does not have to be 10 days. If you choose a number other than 10 days, you will need to change the proration rate in the paragraph's final sentence for used, but unearned vacation.

<sup>2</sup> Insert the position that will be responsible for approving vacation requests.

<sup>3</sup> This sentence should be included whether you are changing your previous policy or you have not had a policy but have had the **practice** of allowing and paying accrued vacation greater than 15 days. It will help limit your future fiscal liability.

<sup>4</sup> Unlike sick leave, vacation is not transferable from one district to another and so we have included resignation, retirement, termination, and non-renewal as instances when the district will pay the employee for unused vacation. You may replace the list for when the district will pay for unused vacation with "any severance of employment". In any instance of such pay, the rate of pay for accrued, but unused vacation, does not have to be at the daily rate of pay. It may be at a set sum (so many dollars for each unused day) or as a percentage of the employee's daily rate of pay. If the district does not choose to place limits on the amount payable at employment severance, then the rate payable would be that employees current daily rate of pay.

Date Adopted: 3/8/2011

Last Revised:

## **8.39—DEPOSITING COLLECTED FUNDS**

From time to time, staff members may collect funds in the course of their employment. It is the responsibility of any staff member to deposit such funds they have collected daily into the appropriate accounts for which they have been collected. The Superintendent or his/her designee shall be responsible for determining the need for receipts for funds collected and other record keeping requirements and of notifying staff of the requirements.

Staff that use any funds collected in the course of their employment for personal purposes, or who deposit such funds in a personal account, may be subject to discipline up to and including termination.

Notes: This policy is similar to policy 3.47—DEPOSITING COLLECTED FUNDS. If you change this policy, review 3.47 at the same time to ensure applicable consistency between the two.

<sup>1</sup>“Daily” is a suggested length of time that aligns with policy 7.7. You may select a different time period, but if you change it, be sure to change policy 7.7 to match. The reason for this policy and the shorter timeline is to protect both the district and employees from possible overnight theft which is only covered by insurance if there are receipts to prove the existence of the funds and even then, there is a deductible (often \$1000). It could often be the case that the receipts and the funds would be in the same envelope and be stolen at the same time. The bottom line is that the daily timeline is to protect both the district and the employee.

Date adopted: 3/8/2011

Last Revised:

## **8.40—CLASSIFIED PERSONNEL WEAPONS ON CAMPUS**

### **Firearms<sup>1</sup>**

Except as permitted by this policy, no employee of this school district, including those who may possess a “concealed carry permit,” shall possess a firearm on any District school campus or in or upon any school bus or at a District designated bus stop.

Employees who meet one or more of the following conditions are permitted to bring a firearm onto school property.

- He/she is participating in a school-approved educational course or program involving the use of firearms such as ROTC programs, hunting safety or military education, or before or after-school hunting or rifle clubs;
- The firearms are securely stored and located in an employee’s on-campus personal residence and/or immediately adjacent parking area;<sup>2</sup>
- He/she is a registered, commissioned security guard acting in the course and scope of his/her duties.
- He/she has a valid conceal carry license and leaves his/her handgun in his/her locked vehicle in the district parking lot.

Possession of a firearm by a school district employee who does not fall under any of the above categories anywhere on school property, including parking areas and in or upon a school bus, will result in disciplinary action being taken against the employee, which may include termination or nonrenewal of the employee.

### **Other Weapons<sup>3</sup>**

#### **Option 2**

An employee may possess a pocket knife which for the purpose of this policy is defined as a knife that can be folded into a case and has a blade or blades of less than three (3) inches or less each. An employee may carry, for the purpose of self-defense, a small container of tear gas<sup>4</sup> or mace which for the purpose of this policy is defined as having a capacity of 150cc or less. Employees are expected to safeguard such items in such a way as to ensure they are not possessed by students. Such items are not to be used against students, parents or other school district employees. Possession of weapons, knives or self-defense items that do not comply with the limits contained herein, the failure of an employee to safeguard such items, or the use of such items against students, parents or other school district employees may result in disciplinary action being taken against the employee, which may include termination or nonrenewal of the employee.

Employees who are participating in a Civil War reenactment may bring a Civil War era weapon onto campus with prior permission of the building principal. If the weapon is a firearm, the firearm must be unloaded.<sup>5</sup>

Notes: This policy is similar to Policy 3.48. If you change this policy, review Policy 3.48 at the same time to ensure consistency between the two.

<sup>1</sup> The possession of handguns and firearms is a very hot topic. In Arkansas, the laws governing their possession on school grounds are both complicated and less than clear. The two statutes most directly affecting schools are A.C.A. § 5-73-119 (herein after 119) and A.C.A. § 5-73-306 (herein after 306).

119 governs firearms (including handguns) while 306 deals strictly with concealed handguns (those guns having a barrel length of 12" or less).

119 prohibits firearms on "developed school property" while 306 prohibits concealed handgun permit holders from carrying their handguns into school buildings or events but permits the concealed carry licensee to leave a handgun in his/her locked vehicle at a publicly owned parking lot.

119 permits those who are on a "journey beyond the county in which a person lives" to carry handguns and firearms on school property. Technically, this would allow those employees who commute from outside the county in which they teach to bring their firearms to school. While we accept that concealed carry licensees may leave their handgun in their locked vehicle in the parking lot, we see this as complicated to enforce and generally problematic. Also, as we interpret the statute, parents visiting the school for an athletic or other event can bring their handgun, though it must be left in their locked vehicle, with them. We cannot control that through policy.

<sup>2</sup> If your district has housing for any employee and that employee chooses to have any firearms in the house, they should be kept in a very secure place. It would be wise to keep them in a locked gun safe so that no one other than the employee has access to them.

<sup>3</sup> Select the option that works best for your district. In making your decision, note that in Option #2, you can choose to include only the first or the second sentence or you can keep both sentences. If you keep the first sentence, the length of the blade allowed is limited by A.C.A. § 5-73-120(b)(4) to less than three inches (3"). Also, A.C.A. § 5-73-120(a) prohibits individuals from carrying a weapon "with a purpose to employ the...weapon against a person." Presumably, an employee could possess a small pocket knife with no intent to use it against another person. Inherent in making the decision on either sentence in Option #2 is the possibility of a student taking the knife or the tear gas and misusing it.

<sup>4</sup> You can replace "tear gas" with "pepper spray" or leave "tear gas" in the policy and add "pepper spray."

<sup>5</sup> While the policy language only specifically covers employees, A.C.A. § 6-5-502 permits any person who is a Civil War reenactor to bring a Civil War era weapon onto campus with the prior permission of the principal.

Legal References:     A.C.A. § 5-73-119  
A.C.A. § 5-73-120  
A.C.A. § 5-73-124(a)(2)  
A.C.A. § 5-73-301  
A.C.A. § 5-73-306  
A.C.A. § 6-5-502

Date Adopted: 6/6/13  
Last Revised: 5/13/2014  
Last Revised: 5/12/15  
Last Revised: 4/12/16

## **8.41—WRITTEN CODE OF CONDUCT FOR EMPLOYEES INVOLVED IN PROCUREMENT WITH FEDERAL FUNDS**

For purposes of this policy, “Family member” includes:

- An individual's spouse;
- Children of the individual or children of the individual's spouse;
- The spouse of a child of the individual or the spouse of a child of the individual's spouse;
- Parents of the individual or parents of the individual's spouse;
- Brothers and sisters of the individual or brothers and sisters of the individual's spouse;
- Anyone living or residing in the same residence or household with the individual or in the same residence or household with the individual's spouse; or
- Anyone acting or serving as an agent of the individual or as an agent of the individual's spouse.

No District employee, administrator, official, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds, including the District Child Nutrition Program funds, if a conflict of interest exists, whether the conflict is real or apparent. Conflicts of interest arise when one or more of the following has a financial or other interest in the entity selected for the contract:

1. The employee, administrator, official, or agent;
2. Any family member of the District employee, administrator, official, or agent;
3. The employee, administrator, official, or agent’s partner; or
4. An organization that currently employs or is about to employ one of the above.

Employees, administrators, officials, or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements including, but not limited to:

- a. Entertainment;
- b. Hotel rooms;
- c. Transportation;
- d. Gifts;
- e. Meals; or
- f. Items of nominal value (e.g. calendar or coffee mug).<sup>1</sup>

Violations of the Code of Conduct shall result in discipline, up to and including termination. The District reserves the right to pursue legal action for violations.

All District personnel involved in purchases with Federal funds, including child nutrition personnel, shall receive training on the Code of Conduct. Training should include guidance about how to respond when a gratuity, favor, or item with monetary value is offered.<sup>2</sup>

Notes: This policy is similar to Policy 3.52. If you change this policy, review 3.52 at the same time to ensure applicable consistency between the two.

<sup>1</sup> Districts may set standards covering instances where the financial interest is not substantial and the gift is an unsolicited item of nominal value. If you do wish to set standards for these situations, delete this sentence and add a statement permitting such acceptance and the circumstances where it is acceptable.

<sup>2</sup> The training provided should cover instances where there is doubt concerning the appropriateness of accepting gifts, favors, etc. the employee should be instructed to consider the following questions:

- How would the public perceive this action of receiving the gift, favor, etc.?
- Will acceptance of the gift, favor, etc. possibly influence a future purchasing decision?

The training should cover the Rules Governing Ethical Guidelines And Prohibitions For Educational Administrators, Employees, Board Members And Other Parties including the contract disclosure forms checklists from Commissioner's Memo FIN 09-036.

Legal References: A.C.A. § 6-24-101 et seq.

Arkansas Department of Education Rules Governing the Ethical Guidelines And Prohibitions For Educational Administrators, Employees, Board Members And Other Parties

Commissioner's Memo FIN 09-036

Commissioner's Memo FIN-10-048

Commissioner's Memo FIN 15-074

2 C.F.R. § 200.318

7 C.F.R. § 3016.36

7 C.F.R. § 3019.42

Date Adopted: 5/12/15

Last Revised: 4/12/16



## **8.42—CLASSIFIED PERSONNEL BUS DRIVER END OF ROUTE REVIEW**

Each bus driver shall walk inside the bus from the front to the back to make sure that all students have gotten off the bus after each trip. If a child is discovered through the bus walk, the driver will immediately notify the central office and make arrangements for transporting the child appropriately. If children are left on the bus after the bus walk through has been completed and the driver has left the bus for that trip, the driver shall be subject to discipline up to and including termination.

Date Adopted: 5/13/2014

Last Revised:

## **8.43—CLASSIFIED PERSONNEL USE OF PERSONAL PROTECTIVE EQUIPMENT**

Employees whose job duties require the use or wearing of Personal Protective Equipment (PPE) shall use or wear the prescribed PPE at all times while performing job duties that expose employees to potential injury or illness. Examples of PPE include, but are not limited to:<sup>1</sup>

- Head and face protection:
  - Hard hat;
  - Bump cap;
  - Welding helmet;
  - Safety goggles;
  - Safety glasses;
  - Face shield;
- Respiratory protection:
  - Dust/mist mask;
  - Half-face canister respirators;
- Hearing protection:
  - Ear plugs;
  - Ear muffs;
- Hand protection, which is based on hazard exposure(s) and type(s) of protection needed:
  - Leather;
  - Latex;
  - Rubber;
  - Nitrile;
  - Kevlar;
  - Cotton;
- Body protection:
  - Welding apron;
  - Welding jackets;
  - Coveralls/Tyvek suits;
- Foot Protection:
  - Metatarsal protection;
  - Steel toed boots/shoes;
  - Slip resistant shoes;
- Fall Protection:
  - Belts, harnesses, lanyards;
  - Skylight protection;
  - Safe ladders;
  - Scissor lifts.

Employees operating a school-owned vehicle that is equipped with seat belts for the operator shall be secured by the seat belt at all times the employee is operating the vehicle. If the vehicle is equipped with seat belts for passengers, the employee operating the vehicle shall not put the vehicle into motion until all passengers are secured by a seat belt. Employees traveling in, but not operating, a school owned vehicle that is equipped with seat belts for passengers shall be secured by a seat belt at all times the vehicle is in motion.

Employees who fail to use or wear the prescribed PPE required by their job duties put themselves and co-workers at risk of sustaining personal injuries. Employees who are found to be performing job duties without using or wearing the necessary PPE required by the employee's job duties may be disciplined, up to and including termination.

A supervisor may be disciplined, up to and including termination, if the supervisor:

1. Fails to ensure the employee has the prescribed PPE before the employee assumes job duties requiring such equipment;
2. Fails to provide an employee replacement PPE when necessary in order for the employee to continue to perform the job duties that require the PPE; or
3. Instructs the employee to perform the employee's job duties without the prescribed PPE required by those job duties.

An employee shall **not** be disciplined for refusing to perform job duties that require the employee to use/wear PPE if:

- a. The employee has not been provided the prescribed PPE; or
- b. The PPE provided to the employee is damaged or worn to the extent that the PPE would not provide adequate protection to the employee.

An employee's immediate Supervisor is responsible for providing the employee training on the proper use, care, and maintenance of any and all PPE that the employee may be required to use.

Notes: This policy is similar to Policy 3.55. If you change this policy, review 3.55 at the same time to ensure applicable consistency between the two.

When designing employee schedules, be sure to account for the time employees spend putting on and taking off PPE. The time an employee spends putting on and taking off PPE at the worksite is compensable and may result in overtime issues for non-exempt employees under Policy 8.11.

<sup>1</sup> This is not intended to be an all-inclusive list, and you may add or remove items from the list based on what PPE your employees should be using.

Cross Reference: 8.11—OVERTIME, COMPTIME, and COMPLYING WITH FLSA

Date Adopted: 3/13/2018

Last Revised:6/10/2019

