

General Personnel

Administrative Procedure - Fair Labor Standards Act 12-Step Compliance Checklist

Important – Cooperative officials should contact the Board Attorney for application of the Fair Labor Standards Act (FLSA) to specific situations. The information contained in this procedure, and any information provided in the hyperlinks contained in it, should be confirmed with the Board Attorney before its application to a specific situation.

The U.S. Dept. of Labor, Wage and Hour Division, administers the FLSA. It posts an encyclopedic amount of information on the FLSA on its website at: www.dol.gov/whd/regs/compliance/hrg.htm#8.

Checklist for compliance with the FLSA:

1. Classify employees as exempt or non-exempt.

Identify which employees are covered by the overtime requirements of the FLSA, i.e., *non-exempt*, and which employees are exempt from the overtime requirements. See Administrative Procedure 5:35-AP1, *Fair Labor Standards Act Exemptions*, for a list of school employees traditionally exempt and non-exempt. Include a record in each employee's file stating whether he or she is exempt or non-exempt.

An exemption from the FLSA overtime pay/compensatory time requirements is the exception, rather than the rule. Any uncertainty should be resolved in favor of finding the employee to be non-exempt and the overtime compensable, as the burden is on the school system to prove that exemptions are applicable.

2. Make sure all employees have access to and understand the Board policy and administrative procedures on the workweek, overtime, and compensatory time. See: Board policy 5:35, *Compliance with the Fair Labor Standards Act*, and Administrative Procedure 5:35-AP3, *Compensable Work Time for Non-Exempt Employees Under the FLSA*.

In addition, make sure that all employees:

- a. Are provided a copy of the Board policy or access to the Board policy published on-line;
 - b. Acknowledge that they have received and understand the policy; and
 - c. Agree to follow the policy and procedures or be subject to discipline.
3. Notify non-exempt employees of their expected work hours in a workweek.
Be clear that the salary of non-exempt employees is paid for a 40-hour workweek. Supervisors may regularly schedule employees to work 37.5 hours per week and leave the remainder as possible flexible time. However, to avoid the possibility of *straight-time* claims for hours worked between 37.5 and 40, supervisors need to clearly communicate that the Cooperative pays employees a salary for up to 40 hours of work and that the Cooperative retains the right to request that the employee perform additional duties up to 40 hours without additional pay.
 4. Keep precise records of the hours worked by every non-exempt employee by using a good timesheet, time clock, computerized check-in system, or other method. Make sure individual employees keep and sign their weekly record of hours worked. Print an

acknowledgment similar to the following on every time sheet: “I acknowledge that I have reviewed this time sheet and that it accurately records all of the time that I worked for the NDSEC on the dates indicated and that I did not work for the NDSEC at any other times during the workweek that are not recorded on this timesheet.”

5. Annually train NDSEC supervisory staff, as well as supervisors when first assigned supervisory duties, on FLSA compliance issues, including:
 - a. What counts as compensable work time (see Administrative Procedure 5:35-AP3, *Compensable Work Time for Non-Exempt Employees Under the FLSA*);
 - b. How timesheets must be completed for non-exempt employees; and
 - c. Their duty to monitor timesheets and verify time worked.
6. Train all non-exempt staff when hired and regularly thereafter on the following topics:
 - a. Board policy requirements;
 - b. What counts as compensable time; and
 - c. How to complete timesheets correctly.
7. Require non-exempt employees who want to volunteer to execute a Volunteer Agreement. See Exhibit 5:35-E, *Volunteer Agreement Executed by a Non-Exempt Employee*.

Non-exempt employees may only volunteer to perform services on behalf of the school that do not involve the same types of duties they regularly perform in their jobs. Further, in order to be a bona fide volunteer (1) the volunteer services may not be the same as or similar to the employee’s regular work duties, (2) the employee must freely and voluntarily, i.e., without any direct or implied coercion or requirement, agree to perform the volunteer services, and (3) the employee provides the services without promise of compensation; however, a volunteer may be paid expenses, reasonable benefits, or a nominal fee to perform the services. See Administrative Procedure 5:35-AP3, *Compensable Work Time for Non-Exempt Employees Under the FLSA*, for information about *nominal fees*.

8. Have all non-exempt employees sign the following documents:
 - a. A statement that they were given a copy of the Board’s policy on work time and have reviewed it, and that they understand violators may be subject to discipline; and
 - b. If applicable, an agreement that any overtime worked over 40 hours per week will be compensated with time and a half compensatory time rather than overtime pay. See Exhibit 5:310-E, *Agreement to Receive Compensatory Time-Off*.
9. Have supervisory, payroll, and business staffs monitor weekly time records.

Make sure that supervisory staff continuously monitors weekly time records for accuracy and completeness, and that they report all overtime worked by non-exempt staff to the finance office for either overtime pay or compensatory time credit.
10. Keep FLSA-required records for non-exempt and exempt employees. See Administrative Procedure 5:35-AP2, *Employee Records Required by the Fair Labor Standards Act*.
11. Post all federal and State required employment posters.

Make sure that all employment posters are widely posted, e.g., in the teachers’ lounge, school office, cafeteria kitchen, bus garage, janitor’s closet, and other places where employees gather.

12. Consult the Cooperative attorney about FLSA compliance.

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