

REVISED POLICY - VOL. 29, NO. 1

FAIR LABOR STANDARDS ACT ("FLSA")

Statement of Policy

It shall be the policy of the _____ ~~School Corporation~~ School Board to comply with the ~~provision~~ provisions of the Fair Labor Standards Act of 1938.

Definitions of Terms Applicable to this Policy:

- A. **"Employ"** means to suffer or permit work.
- B. **"Exempt Employees"** means an employee who is exempt from the FLSA minimum wage and overtime provision. These employees may include executive, administrative, professional, and computer employees earning at least a specified minimum salary.
- C. **"FLSA"** means the Fair Labor Standards Act of 1938 as amended by 29 U.S.C. Section 201 et seq. and the regulations implementing this Act found, in part, at 29 C.F.R. Part 541.
- D. **"Non-Exempt Employee"** means an employee who is not exempt from the FLSA minimum wage and overtime provisions.
- E. **"Primary Duty"** means the principal, main, major, or most important duty that the employee performs. Determination of an employee's primary duty shall be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.
- F. **"Salary Basis"** means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis.

- G. **"Workday"** means the period between the time on any particular day when an employee commences his/her "principal activity" and the time on that day at which s/he ceases such principal activity or activities. The workday may therefore be longer than the employee's scheduled shift, hours, tour of duty, or production time.
- H. **"Workweek"** means the seven (7) day period of time beginning on Sunday at 12:00 a.m. to Saturday 11:59 p.m.

Minimum Wage

It is the policy of the _____ School Corporation Board to pay at least the minimum wage required by the FLSA to all employees covered, non-exempt employees, unless an employee's individual contract or the terms of an applicable collective bargaining agreement provide for greater benefits than mandated by the FLSA or Indiana law.

Recordkeeping Responsibilities

It shall be the responsibility of all non-exempt employees to record and submit an accurate account of their time worked each week on approved forms or via electronic or machine timecards. An employee's misrepresentation or failure to submit an accurate account of their time worked may subject the employee to discipline up to and including discharge.

Non-exempt employee time records shall be verified by a supervisor who has personal knowledge of the hours worked by the employee. It shall be a violation of this policy for a supervisor to ask a non-exempt employee to record fewer hours than were actually worked by the employee.

A non-exempt employee's time record is an official school record and will be maintained for a period of not less than three (3) years.

Overtime

Overtime for hourly non-exempt employees shall be paid at a rate of one and onehalf times the employee's regular rate of pay for each hour worked in a workweek in excess of forty (40) hours worked.

Overtime may be authorized only by a supervisor and will be used primarily to address circumstances of an emergency or temporary nature. Non-exempt employees who work overtime without prior approval from a supervisor may be subject to disciplinary action up to and including discharge.

Joint/Dual Employment

Joint/Dual Employment exists when:

- A. an employee is employed in two (2) wage positions or a salaried and a wage position with the _____ Rochester _____ School Corporation; and
- B. at least one of the positions is non-exempt:

- 1. if one of the positions is exempt, the hours may not have to be added together to calculate the number of overtime hours worked;

To determine this, the duties of the two (2) positions must be combined as if one (1) position. If the percentage of time spent performing non-exempt duties exceeds fifty percent (50%), the employee is considered non-exempt and hours worked shall be added together for the two (2) positions.

- 2. if both positions are non-exempt, hours worked are cumulative, and overtime shall be paid after forty (40) hours are worked in a workweek in one (1) or a combination of positions;
 - 3. if the two (2) positions are paid at different rates, a weighted average shall be used as the regular rate for determining overtime compensation due.

Joint employment does not exist when the employee independently seeks employment with another school corporation or another state agency.

Volunteers

The FLSA requires that non-exempt employees must be compensated for all hours they are required or permitted to work. Thus, even though employees volunteer to work beyond their normally scheduled hours, the employer must compensate employees for those hours worked. An individual is considered to be a volunteer only if the following conditions are met:

- A. services are performed for which no compensation is received beyond expenses of a nominal fee, and
- B. services rendered are not the same type services that the individual is employed to perform for the school employer

Example: A custodial employee wishing to volunteer as a lay coach for a sport team. This individual is not considered an employee while volunteering.

Exemptions

Certain school employees shall be exempt from the overtime and minimum wage provisions of the FLSA and shall therefore be exempt employees for the purposes of this policy. Exempt employees may include, but are not limited to, the following categories:

- A. Executive
- B. Administrative
- C. Learned Professionals
- D. Computer Employees

The tests for these exemptions can be found in the administrative guidelines that accompany this policy.

A. Administrative

~~To qualify for the administrative employee exemption, all of the following tests must be met:~~

- ~~1. The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;~~
- ~~2. The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and~~
- ~~3. The employee's primary duty includes the exercise of discretion and independent judgement with respect to matters of significance.~~

~~The administrative exemption shall apply to employees compensated on a salary or fee basis at a rate not less than \$455 a week and whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment. Academic administrative functions include operations directly in the field of education, and do not include jobs relating to areas outside the educational field.~~

~~Employees engaged in academic administrative functions include: the Superintendent or other head of an elementary or secondary school system, and any assistants responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any viceprincipals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the various subject matter departments; academic counselors and other employees with similar responsibilities.~~

~~To qualify for the learned professional employee exemption, all of the following tests must be met:~~

- ~~"Work requiring advanced knowledge" means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment. Professional work is therefore distinguished from work involving routine mental, manual, mechanical, or physical work. A professional employee generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.~~

~~Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. Exempt teachers include, but are not limited to, regular academic teachers; kindergarten or nursery school teachers; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrument music teachers. The salary and salary basis requirements do not apply to bona fide teachers.~~

~~C.~~ **Computer Employees**

~~To qualify for the computer employee exemption, the following tests must be met:~~

- ~~1. the employee must be compensated either on a salary or fee basis at a rate not less than \$445 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour~~
- ~~2. the employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below~~
- ~~3. The employee's primary duty must consist of:~~
 - ~~a. the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;~~
 - ~~b. the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;~~

- ~~c. the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or~~
- ~~d. a combination of the aforementioned duties, the performance of which requires the same level of skills.~~

~~The computer employee exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters, and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in the primary duties test described above, are also not exempt under the computer employee exemption.~~

~~D. Deduction from Exempt Employees Pay~~

~~The _____ School Corporation reserves the right to make deductions from the pay of otherwise exempt employees under the following circumstances:~~

Deduction from Exempt Employees Pay

The Corporation reserves the right to make deductions from the pay of otherwise exempt employees under the following circumstances:

- ~~1.A.~~ when the employee is absent from work for one (1) or more full days for personal reasons other than sickness or disability
- ~~2.B.~~ for absences of one (1) or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy, or practice or providing compensation for salary lost due to illness

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- ~~3.C.~~ to offset amounts employees receive as jury or witness fees, ~~or for military pay or military pay against the salary due for that particular week~~
- ~~4.D.~~ for penalties imposed in good faith for infractions of safety rules of major significance
- ~~5.E.~~ for unpaid disciplinary suspensions of one (1) or more full days imposed in good faith for workplace conduct rule infractions

~~Additionally, the _____ School Corporation shall not be required to pay the full salary in the initial or terminal week of employment, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.~~

~~The _____ School Corporation recognizes that with limited legally permissible exceptions, no deductions should be taken from the salaries of exempt employees. If an exempt employee believes that any improper deduction has been made from their salary, the exempt employee should report the matter immediately to the Superintendent or Business Manager. If the deduction is deemed inappropriate, the exempt employee will be promptly reimbursed for the entire amount of the deduction and the _____ School Corporation will make a good faith commitment to avoid any recurrence of the error.~~

~~The Corporation shall not be required to pay the full salary in the initial or terminal week of employment, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.~~

~~In addition to the foregoing, exempt employees who accrue personal leave and sick leave may have their pay reduced or may be placed on unpaid leave for absences due to personal reasons of less than one (1) full day when leave is not used by the employee because:~~

- ~~A. permission to use leave has not been sought or permission has been sought and denied;~~

- B. the employee's accrued leave has been exhausted; or
- C. the employee chooses to use leave without pay.

Deductions from the pay for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

The Corporation recognizes that with limited legally permissible exceptions, no deductions should be taken from the salaries of exempt employees. If an exempt employee believes that any improper deduction has been made from their salary, the exempt employee should report the matter immediately to the Superintendent or Business Manager. If the deduction is deemed inappropriate, the exempt employee will be promptly reimbursed for the entire amount of the deduction and the Corporation will make a good faith commitment to avoid any recurrence of the error.

29 U.S.C. Section 201 et seq.
29 C.F.R. Part 541