

Employee Overtime Requirements

Wage and hour issues probably are not at the top of school districts' agendas. However, failure to pay attention to overtime requirements can lead to serious problems. The federal Fair Labor Standards Act (FLSA) generally requires that employees working over 40 hours in a work week receive payment for overtime at a rate 1.5 times that of their regular hourly rate. School districts may not be aware that these requirements could apply to their support personnel and other employees.

School districts that have failed to satisfy these requirements have faced costly consequences. For example, litigation regarding overtime requirements in Mississippi has cost school districts there \$30 million to \$50 million in overtime liability. Fortunately, the laws governing wage and hour regulations are not hard to follow as long as the applicability of overtime exemptions to school personnel is understood.

FLSA creates exemptions from overtime requirements generally based on the type of work the employee performs. School administrators and professionals such as superintendents, department heads, assistant superintendents, principals, teachers, counselors, psychologists, professional therapists and other supervisors are exempt and are not typically entitled to overtime pay.

Employees such as cafeteria workers, bus drivers, secretaries, custodians, mechanics, aides and other support workers are not exempt and generally are entitled to overtime, if they work more than 40 hours in a given work week. This is true regardless of whether they are normally paid on an hourly basis or on a weekly or monthly salaried basis.

Most wage and hour issues arise from employee dual employment. For example, a full-time secretary may work as a sports coach for the school district after hours. When non-exempt employees have two or more jobs with the school district and, as a result, work more than 40 hours in a work week, the school district is obliged to pay overtime. It does not matter that the employee's work time did not exceed 40 hours in either of the jobs, separately.

However, school districts do not have to pay employees overtime for intermittent secondary employment in positions such as ticket takers, food vendors, etc. Intermittent secondary employment is not included for the purposes of determining overtime if it meets the following exception from FLSA overtime requirements: (1) the work is "solely" at the employee's option; (2) the work is occasional or sporadic, and, (3) the work is in a different capacity from the employee's regular work. Accordingly, if an employee, e.g., a janitor, decides to take tickets or sell food at an occasional or sporadic event, the hours worked at the event will be deemed to be occasional and/or sporadic and need not be combined with other hours worked. It is important to note that regular part-time jobs, such as coaching a sports team throughout a season and/or school year, will not fall under this exception. Hence, they have to be counted in overtime calculations.

If your school district is required to pay overtime as a result of dual employment of non-exempt employees, the proper overtime rate is determined by looking at the wages due to the employee under both (or all) jobs worked for the school district. If a calculation of overtime is

required, the school district must determine the appropriate hourly rate for each job (if the employee is paid a salary as opposed to an hourly rate) by dividing the employee's salary by the number of hours normally worked for that salary. If the hourly rates are not the same, overtime is calculated on a blended rate regardless of the job in which the overtime hours occurred. The blended rate is more than just an average of the two hourly rates. It also takes into consideration the number of hours normally worked at each rate. For example, an employee paid \$20 per hour for one job and \$10 per hour in another job would have an average rate of \$15 per hour ($\$20 \times 60\% + \$10 \times 40\%$). However, if the employee normally works 60 percent of the time at \$20 an hour and 40 percent of the time at \$10 an hour, the blended rate would be \$16 an hour. The appropriate overtime rate based on the blended hourly rate would be \$24 an hour ($1.5 \times \16). Even if the overtime hours are worked in the lower paying job, the appropriate overtime rate is the one calculated from the blended hourly rate.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.