

Book Policy Manual

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Title Vol. 41, No. 1 - August 2022 Revised FAIR LABOR STANDARDS ACT (FLSA)

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REVISED POLICY - VOL. 41, NO. 1

6700 - FAIR LABOR STANDARDS ACT (FLSA)

It is the Board of Education's policy to comply with the provisions of the Fair Labor Standards Act (FLSA) and its implementing regulations. The Board shall pay at least the minimum wage required by the FLSA and Ohio law () and local municipal law/ordinance/regulation to all 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 Federal, State, or local law.

Non-exempt employees are hourly employees or salaried employees who do not qualify for a professional, administrative, executive, computer, or any other exemption under the FLSA.

Non-exempt employees who work (i.e., perform work on behalf of or for the benefit of the Board) more than forty (40) hours during a given work week will receive overtime pay in accordance with the FLSA for all hours worked in excess of forty (40). **[CHOOSE ONE (1) OF THE FOLLOWING:]** ~~() Work week is defined as a fixed and regularly recurring period of 168 hours (i.e., seven (7) consecutive twenty-four (24) hour periods).~~ (☒) Work week is defined as the seven (7) day period of time beginning on () ~~Sunday at 12:00 a.m. and continuing to the following Saturday at 11:59 p.m.~~ (☒) Monday at 12:00 a.m. and continuing to the following Sunday at 11:59 p.m. **[END OF OPTION]**

The Superintendent shall determine the necessity and availability of overtime work. (☒) Overtime may be authorized only by a supervisor and will be used primarily to address circumstances of an emergency or temporary nature. **[END OF OPTION]** Non-exempt employees who work overtime without prior approval from the Superintendent or a supervisor may be subject to disciplinary action, up to and including termination.

Exempt employees are individuals who are exempt from the FLSA minimum wage and overtime provisions. These employees include, but are not limited to, persons employed in bona fide executive, administrative, and professional positions, and certain computer employees. To qualify for the exemption, employees generally must meet certain tests regarding their job duties and be paid a minimum per week salary as established by the Department of Labor. The salary requirement does not apply to teachers. Exempt computer employees must also meet a minimum per week or per hour salary established by the Department of Labor. Being paid on a "salary basis" means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. Additionally, the predetermined amount cannot be reduced because of variation in the quality or quantity of the employee's work. Subject to the exceptions listed below, an exempt employee must receive the full salary for any work week in which the employee performs any work, regardless of the number of days or hours worked.

Deductions may be made to an otherwise exempt employee's salary in certain circumstances without jeopardizing the employee's exempt status. Deductions may occur under the following circumstances:

- A. the employee is absent from work for one (1) or more full days for personal reasons other than sickness or disability
- B. the employee is absent from work for 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 of providing compensation for salary lost due to illness
- C. to offset amounts employees receive as jury or witness fees, or for military pay
- D. for unpaid disciplinary suspensions of one (1) or more full days imposed in good faith for workplace conduct rule infractions
- E. for penalties imposed in good faith for infractions of safety rules of major significance

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;
- C. the employee chooses to use leave without pay.

Deductions from an exempt employee's 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 Board shall also not be required to pay the full salary in the initial or terminal week of employment if the employee does not work the entire week, or for weeks in which an exempt employee takes unpaid leave under the Family & Medical Leave Act.

The Board recognizes that with limited legally permissible exceptions as described, no deductions should be taken from the salaries of exempt employees. If an exempt employee believes that an improper deduction has been made to the exempt employee's his/her salary, the employee should immediately report this information to the ~~() Superintendent, () Business Manager,~~ ☒ payroll supervisor, [END OF OPTION] or the employee's his/her immediate supervisor. Reports of improper deductions will be promptly investigated. If it is determined that an improper deduction has occurred, the employee will be promptly reimbursed for any improper deduction made, and the Board will make a good faith commitment to avoid any recurrence of the error.

This policy shall be distributed to employees upon initial hire, to all employees, and on an annual basis.

[DRAFTING NOTE: Job titles do not determine exempt status, nor does receipt of a particular salary. If an employee does not meet all of the applicable criteria for a specific exemption, the employee will be covered by the FLSA and entitled to overtime if s/he works more than forth (40) hours in a week, regardless of whether the individual is paid a salary. Under the standard duties test, an employee's primary duty (i.e., principal, main, major, or most important duty) - based on all of the facts in a particular case - must be that of an exempt executive, administrative or professional employee, or an exempt computer employee.

Executive Exemption: 1) the employee's primary duty must be managing the enterprise in which the employee is employed, or managing a customarily recognized department or subdivision of the enterprise; 2) the employee must customarily and regularly direct the work of at least two (2) or more other full-time employees of their equivalent (for example, one (1) full-time and two half-time employees are equivalent to two full-time employees); 3) the employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees must be given particular weight.

Administrative Exemptions: 1) 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 2) the employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.

Additionally, academic administrative personnel whose primary duty is performing administrative functions directly related to academic instruction or training in an educational institution, such as principals and vice-principals responsible for the operation of an elementary or secondary school, academic counselors who perform work such as administering school testing programs, assisting students with academic problems, and advising students concerning degree requirements, and others with similar responsibilities, are eligible for a special alternative salary level that does not apply to white collar employees outside of an educational institution. Specifically, these academic administrative personnel are exempt from the FLSA's minimum wage and overtime requirements if they are paid at least as much as the entrance salary for teachers in the District.

Computer employee exemption: 1) the employee must be employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field; and 2) 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 prototype, 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.]

Reasonable Break Time for Nursing Mothers

As required by Federal law, the District shall take steps necessary to support staff members who decide to breastfeed their infants by providing additional unpaid reasonable break time, as necessary, for a qualified employee to express breast milk for their nursing child for one (1) year after the child's birth on District premises.

Prior to returning to work from maternity leave, it shall be the employee's responsibility to notify their supervisor of their intent to continue breastfeeding their infant(s), and of their need to express milk during work hours. Further, it shall be the responsibility of the employee to keep their supervisor informed of their needs in this regard throughout the period of lactation.

The building administrator shall designate a private area, other than a restroom, where an employee can express breast milk. The designated area shall be a space where intrusion from coworkers, students, and the public shall be prevented, and one where an employee who is using this area can be shielded from view.

An employee shall be enabled to express milk during regularly scheduled break periods. The Principal or employee's supervisor shall make an accommodation if the time of regular breaks needs to be adjusted or if additional and/or longer breaks are needed. In the event that more breaks are needed or the break(s) need to be longer than legally required, the additional time required shall be unpaid, and the employee's work schedule or work day shall, therefore, be modified accordingly. The Principal or the employee's supervisor shall work with the employee to make these necessary modifications.

[DRAFTING NOTE: An employer that employs less than fifty (50) employees shall not be subject to the requirements of this subsection if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.]

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Legal 29 C.F.R. Part 541
 29 U.S.C. 201 et seq.
 R.C. Chapter 4111

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