



## Wages & Hours

The Fair Labor Standards Act (FLSA) prescribes standards for wages and overtime pay, which affect most private and public employment. The act is administered by the [Wage and Hour Division](#) of the [Employment Standards Administration \(ESA\)](#). It requires employers to pay covered employees who are not otherwise exempt at least the federal minimum wage and overtime pay of one-and-one-half-times the regular rate of pay. For nonagricultural operations, it restricts the hours that children under age 16 can work and forbids the employment of children under age 18 in certain jobs deemed too dangerous. For agricultural operations, it prohibits the employment of children under age 16 during school hours and in certain jobs deemed too dangerous.

## FLSA & Education:

# Attendance on Demand<sup>®</sup> Eases Compliance with FLSA Regulations for Overtime in Education

### Summary:

In school districts across America, compliance with the Fair Labor Standards Act, especially as it relates to overtime pay, is increasingly crucial. The burden of proof is 100% on the employer to comply with FLSA regulations. Many unclassified employee groups have filed, and won, suits against school districts for underpayment of overtime. Retroactive payments of twice the amount of overtime owed, along with legal fees, put pressure on our already stressed educational system. Attendance on Demand<sup>®</sup> blended rates provide a way for school districts to calculate overtime compliance with FLSA regulations. This document details the impact the FLSA is having upon the educational system, examines ways in which your school district is affected by these regulations, and explains how Attendance on Demand can be your solution.

**Disclaimer**

This document simplifies a complex Act as it is understood by Attendance on Demand, Inc. It is not to be taken as legal advice. For further information about FLSA compliance, job classification, or proper overtime payment for employees please contact the U.S. Department of Labor at [www.dol.gov](http://www.dol.gov) or 1-866-4-USWAGE.

## **What Is the Fair Labor Standards Act?**

The Fair Labor Standards Act (FLSA) advocates for workers by establishing minimum-wage, overtime, and child labor standards in the United States. These standards usually apply only to hourly employees, but some salaried employees also are covered under FLSA. In fact, the only true measure of whether or not employees are covered by the FLSA is their status: exempt or nonexempt, as determined by the employee's primary duties.

## **What Does the FLSA Say About Overtime?**

According to the U.S. Fair Labor Standards Act, overtime must be paid at 1.5 times the employee's average pay rate after the employee has worked 40 hours. Because some employees work at different rates throughout the week, it can be complicated to calculate a fair overtime wage. According to the U.S. Department of Labor:

“Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs.”

(<http://dol.gov/esa/regs/compliance/whd/whdfs23.htm> )

## **How Do Fair Labor Standards Act Regulations Affect My School District?**

Your school district may not be in compliance with FLSA regulations. It is a very complex law, and easy to misinterpret. However, misunderstanding of the law does not free school districts from the obligation to comply with that law. Several school districts have been sued for noncompliance. For example, 110 of Mississippi's 150 school districts have been sued. Employees and legal counsel are organizing to continue the wave of litigation. For example, the School Litigation Group (SLG), which covers 10 states, was founded to take legal action against school districts that are not compliant with FLSA overtime regulations.

This recent litigation is fueled by several factors:

- Nonexempt employees often work more than one job.
- Employees “volunteer” for regular work activities.
- Employee gap time is not always considered.
- Records of hours are frequently inexact.
- Payroll and human resources staff are few.

Employees who work for school districts often have multiple jobs. For example, the same person can work 25 hours a week as a bus driver, and 20 hours a week as a cafeteria server. Although it is easy to consider this worker as having two separate jobs, for the purposes of FLSA this worker has one job, works over 40 hours a week, and is entitled to overtime pay at 1.5 times the average pay of those two activities.

A second consideration for school districts is nonexempt employees volunteering for work that is similar to the work for which they are paid. Furthermore, if an employee does a task on a regular basis for the school district, even if it is considered volunteering, the employee must be paid—and that pay goes towards the calculation of overtime hours. In fact, nonexempt employees can volunteer only on an “occasional and sporadic” basis. Regular volunteering, and volunteer work in which the employee performs his or her regular duties, is considered work. So, the employee who works 25 hours as a bus driver, 20 hours as a cafeteria server, and volunteers 5 hours as a server at sporting events must be paid for all 50 hours of work, 10 hours of which must be paid at an overtime rate. Because the employee is volunteering as a server, the volunteer work must be paid.

Gap time can also lead to underpayment of nonexempt employees. For example, if a salaried teacher aide is paid a salary to work 37.5 hours a week and works 42 hours, that employee is due 2 hours of overtime and 2.5 hours of gap pay. An employee must be paid for 100% of her work; if she works more than her contracted amount, the hours up to 40 hours must be paid at a regular rate, and the hours over 40 hours must be paid at an overtime rate.

Another consideration for school districts is the accurate recording of employee time. If your school district, like many other school districts, keeps paper time sheets that record the employee’s schedule (not the hours the employee actually works), these records are considered inaccurate and do not comprise an accurate legal record of employee attendance. For example, if an employee comes in late on Monday morning due to a sick child, but stays late on Friday evening to volunteer for ticket-taking at a basketball game, her time sheet may be recorded like this:

In	Out	In	Out	Total	
Monday	8AM	4PM		8	
Tuesday	8AM	4PM		8	
Wednesday	8AM	4PM		8	
Thursday	8AM	4PM		8	
Friday	8AM	4PM	7PM	10PM	11
Weekly Total				43	

Even though the principal and the payroll manager know that on Monday she was in at 11AM, counteracting her overtime on Friday– this is not recorded in the time sheet. She is paid for 40 hours at her regular wage. A later audit would find the employee due overtime pay.

Additionally, it is clear that the previous timesheet is not exact. A realistic timesheet might look like this:

In	Out		In	Out	Total
Monday	11:02AM		4:15PM		5:13
Tuesday	8:00AM		3:57PM		7:57
Wednesday	7:55AM		4:03PM		8:08
Thursday	7:59AM		4:00PM		8:01
Friday	8:02AM	4:02PM	6:55PM	9:45PM	10:50
Weekly Total					40:09

The last factor that can expose your school district to problems with FLSA is the sheer lack of personnel dedicated to recordkeeping. Overworked staffs often manage complex networks of employees, many of those employees with a multitude of job responsibilities. Inaccurate timekeeping and incorrect calculation of overtime pay can be an unintended consequence.

Due to all of these factors, even the most conscientious school administrators can find their school districts under legal and financial strain. Knowing how to quickly correct the process of overtime payment, and retroactively paying employees for overtime can, while financially draining, save school districts from greater crises in the future.

### **How Can My School District Counter Lawsuits Due To Incorrect Overtime Calculation?**

- Classify employees correctly under FLSA regulations.
- Obtain a legal audit to retroactively pay employees back overtime pay.
- Keep accurate time and attendance records.
- Simplify the calculation of overtime pay using Attendance on Demand blended rates.

The first step in avoiding the recent trend of lawsuits against school districts is to correctly classify employees under FLSA regulations. Many payroll and human resources personnel believe that employees are exempt from FLSA if they are salaried. This is not always the case. The guidelines state that employees must also be executive, managerial, or professional workers, as well as be salaried, to be exempt from FLSA regulations. Key examples of employees who may be salaried, but who are nonexempt, include teachers' aides, administrative assistants, custodians, bus drivers, and computer technicians.

The issue can be further confused if employees work part of the time in exempt positions and part of the time at nonexempt positions. For example, a cafeteria manager is an exempt employee; however, he also works a portion of the time serving in the cafeteria. His primary duties determine whether he is considered exempt. While time is not the sole test, as a guideline, an activity at which an employee spends more than 50 percent of his time is considered his primary duty. If you have questions about whether or not your employees are exempt or nonexempt, contact the Department of Labor at [www.dol.gov](http://www.dol.gov) or 1-866-4-USWAGE.

Obtaining a legal audit to retroactively pay employees for unpaid overtime is a smart decision. One option is obtaining a Department of Labor audit. However, the school district is then obligated to pay any overtime costs that are due. Another option is to hire an outside law firm to conduct the audit, and then make an effort to pay employees unpaid overtime. This can help school districts prevent, or at least prepare for and minimize the costs of, litigation.

An important step to quickly becoming compliant with FLSA regulations is to adopt timekeeping practices that accurately record employees' time and overtime. Employees' actual time must be recorded. Timekeeping can be dramatically improved with the use of time recorders and time and attendance software that keep a precise record of the exact minute employees begin and end work. If an employee performs diverse tasks with different pay rates, Attendance on Demand tracks the time spent performing each task and calculates an accurate wage. When an employee passes the 40-hour threshold, time is automatically recorded and paid as overtime. Attendance on Demand® is powerful software that can be customized to reflect your time and attendance policies, as well as FLSA regulations for nonexempt employees.

The blended rates feature in Attendance on Demand makes it easy to manage employee overtime pay. All calculations happen behind-the-scenes. Even in complex situations where employees earn different hourly rates for several types of work, school districts can use the technology to calculate and track hours using an overtime rate that is compliant with FLSA. That means that the employee's weighted average pay is used as the base pay for overtime calculations.

For example, if an employee makes \$6.50 an hour for 23 hours as a playground supervisor for the first half of the week and \$5.75 an hour for 17 hours as a cafeteria worker for the second half of the week (both nonexempt positions), then works 6 extra hours in the cafeteria, that employee will earn \$9.27 for each hour of overtime pay.

$$(6.50 * 23) + (5.75 * 17) / 40 = \text{Base Rate of } \$6.18$$

$$\$6.18 * \text{Overtime Multiplier of } 1.5 = \text{Overtime Rate of } \$9.27$$

$$\text{Weekly Salary} = (\$6.50 * 23) + (\$5.75 * 17) + (\$9.27 * 6) = \$302.87$$

This calculation highlights the importance of correct recordkeeping and calculation of employee time and overtime. Paying the employee \$8.63 (\$5.75 \* 1.5) for each hour of overtime in the cafeteria does not comply with FLSA regulations, even though it seems reasonable. Weekly overtime must be calculated with the entire week's salary in mind.

## **Conclusion**

The recent surge of legal actions taken against school districts for incorrect payment of overtime is straining the limits of an already overtaxed educational system. School districts are 100% responsible for FLSA compliance. Investing the time to learn about and comply with FLSA overtime regulations can save your school district substantial amounts of money. Industry-leading tools like Attendance on Demand can greatly simplify FLSA-compliant overtime calculation, as well as maintain accurate employee attendance records, for better protection against this type of litigation. Attendance on Demand records become invaluable legal records of employee attendance and pay.

[www.attendanceondemand.com](http://www.attendanceondemand.com) 1.800.465.9980

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