

## Wage and Hour Law in Schools

- I. Fair Labor Standards Act Overview
- II. The 2016 FLSA Regulations Amendments
- III. Paying 9-11 Month Employees Over 12 Months
- IV. FLSA Implications of Coaching and Extracurricular Stipends



Presented by: Jay E. Greening, Esq.



## Fair Labor Standards Act Overview



## Fair Labor Standards Act Overview

Broadly speaking, the FLSA includes 3 basic requirements:

As the Act applies to **non-exempt** employees, employers must:

1. Pay employees on an hourly basis at a rate that meets or exceeds the minimum wage.
2. Pay employees 1.5x their hourly rate for hours worked beyond 40 in a work week.
3. Keep accurate records of all hours worked.



## Fair Labor Standards Act Overview

Certain white-collar employees are exempt from minimum wage, overtime and record keeping requirements.

**Generally speaking**, to be exempt, both of these tests must be met:

- Salary Test: Employee must be paid a predetermined and **fixed minimum salary** that is not subject to reduction because of quality or quantity of work performed.
- Duties Test: Employee's job duties must primarily involve **executive, administrative** or **professional** duties as defined by the regulations.



## Fair Labor Standards Act Overview

Certain white-collar employees are exempt from minimum wage, overtime and record keeping requirements.

The Act also includes an exemption for **teachers**. There is **no minimum salary requirement** for teachers.

To be exempt, the employee must have the **primary duty of teaching**, tutoring, instructing or lecturing in the activity of imparting knowledge and must be employed and engaged in this activity in an educational establishment.

Includes academic teachers, kindergarten and nursery school pupils, teachers of skilled and semi-skilled trades and occupations, teachers engaged in automobile driving instruction, home economics teachers, and vocal or instrumental music instructors.



## Fair Labor Standards Act Overview

Certain white-collar employees are exempt from minimum wage, overtime and record keeping requirements.

The Act also includes an exemption for **academic administrative personnel**.

To be an exempt academic administrator **must be paid at least as much as an entry-level teacher** and:

Work must be related to the **academic operations and functions in a school** rather than to administration along the lines of general business operations.

Includes: **Superintendent, Assistant Superintendents and other Administrators** responsible for curriculum, instruction, testing, establishing academic standards, and other aspects of the teaching program; **principals** and **assistant principals** responsible for the operation of an elementary or secondary school; **academic counselors** and **other employees with similar responsibilities**.



## Fair Labor Standards Act Overview

Certain white-collar employees are exempt from minimum wage, overtime and record keeping requirements.

The Act also includes an exemption for highly-compensated employees.

To be an exempt highly-compensated employee:

- Employee is paid **more than \$100,000** (until December 1, 2016) per year
- Employee performs **office or non-manual work**;
- Employee customarily and regularly performs **one identifiable** executive, administrative or professional **duty**.



## Fair Labor Standards Act Overview

### Salary and Duties Tests

**Salary Test:** Employee must be paid a predetermined and **fixed minimum salary** that is not subject to reduction because of quality or quantity of work performed.



## Fair Labor Standards Act Overview

### Historical Changes:

- Since 1938, the DOL has updated the salary level requirement 7 times.
- The DOL most recently updated the regulations in 2004.
- Current regulations indicate that salary must be **at least \$455 per week** (Until December 1, 2016) in order for the employee to be exempt.



## Fair Labor Standards Act Overview

### Salary and Duties Tests

**Duties Test:** Employee's job duties must primarily involve **executive**, **administrative** or **professional** duties as defined by the regulations.



## Fair Labor Standards Act Overview

### Executive:

- manages the enterprise, or a department or subdivision of the enterprise;
- must regularly direct the work of at least two or more other full-time employees or their equivalent; and
- must have the authority to hire or fire other employees, or the employee's suggestions and recommendations must be given particular weight.

### Administrative:

- primary duty must be the performance of office or non-manual work directly related to management or general business operations; and
- primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.



## Fair Labor Standards Act Overview

### Professional:

- primary duty must be the performance of work requiring advanced knowledge, which includes work requiring the consistent exercise of discretion and judgment;
- advanced knowledge must be in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

### Computer Employees:

The employee's primary duty must consist of:

- 1) The application of systems analysis techniques and procedures;
- 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs; or
- 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or



## 2016 FLSA Regulations Amendments



## 2016 FLSA Regulations Amendments

### Final Rule:

- On May 23, 2016, the Final Rule was published in the Federal Register
- Changes go into effect on December 1, 2016
- Changes **affect the salary test**
- Changes **do not apply** to teachers or academic administrative personnel



## 2016 FLSA Regulations Amendments

### Salary Increases:

- Raises the salary level requirement for **Executive, Administrative, and Professional**, employees from the current rate of \$455 per week (\$23,660 per year) to **\$913 per week** (\$47,476 per year)  
(40th percentile of weekly earnings of full-time salaried workers in the United States' lowest wage census region.)
- Raises the salary level requirement for Highly Compensated Employees from the current rate of \$100,000 per year level to **\$134,004 per year**  
(90th percentile of weekly earnings of full-time salaried workers nationally.)



## 2016 FLSA Regulations Amendments

### Salary Test Amounts Automatically Increase

- **updated every 3 years**
- 40th percentile for EAPs
- 90th percentile for HCEs
- The DOL will publish updated rates at least 150 days in advance





## 2016 FLSA Regulations Amendments

### Practical Guidance for Schools:

1. For non-teachers and non-academic administrative personnel, employees **must meet both** the salary and duties tests.
2. **Applicable positions** include, without limitation: Director of Buildings and Grounds, Director of Transportation, Cafeteria Director, personnel meeting the Computer Employees exemption, Deans engaged in only non-licensed work, Office Managers, Maintenance Directors, Security Supervisors, etc.



## 2016 FLSA Regulations Amendments

### Practical Guidance for Schools:

3. Applicable employees working less than 9-11 months retain exemption even if annual salary is less than \$47,476. **Exemption is based upon weekly rate.**
4. Options for Previously Exempt Employees who no longer meet the salary test.
  - a. Convert to hourly pay and limit to 40 hours per week
  - b. If more than 40 hours per week, convert to hourly with lower hourly wage.
  - c. Flex hours during work week to avoid exceeding 40 hours
  - d. Compensatory Time Off (must be pursuant to agreement and limited to 240 hours banked)
  - e. Reduce workloads
  - f. Pay overtime



## Paying 9-11 Month Employees Over 12 Months



## Paying 9-11 Month Employees Over 12 Months

- A. Paying hourly workers (non-exempt employees) on a “salary” basis.
- B. Spreading Out Salary or Wages over 12 months for Employees who work less than 12 months.
  - 1. Teachers in a bargaining unit: Yes, pursuant to CBA
  - 2. Teachers and Licensed Administrators not in a bargaining unit:  
Yes, pursuant to School Code – 10 or 12 month pay schedule
  - 3. Non-exempt employees in a bargaining unit: Yes, pursuant to CBA
  - 4. Non-exempt employees not in a bargaining unit:  
Generally, no. However, there may be a way to reduce risk
  - 5. Non-licensed Administrators working less than 12 months:  
Generally, no. However, there may be a way to reduce risk

FLSA Implications of Coaching and Extracurricular Stipends



FLSA Implications of Coaching and Extracurricular Stipends

- A. Employees who are teachers in the district: No issues
- B. Community members and teachers from other districts:  
Permissible if teaching rather than performing manual labor
- C. Non-exempt employees in the district: Discouraged

*But see:*

WHD opinion FLSA2005-51 (November 10, 2005)

WHD opinion FLSA2009-10 (March 2, 2009)

Purdham v. Fairfax County Sch. Bd., No. 10-1048 (4th Cir.  
Mar. 10, 2011)

Volunteer paid a nominal fee – economic realities  
or Coaches qualifying as a “teacher”  
but not performing manual labor



Questions?

