

# Fair Labor Standards Act

Rev. Oct. 2015

Below are questions and answers submitted to this office concerning the **Fair Labor Standards Act**. We recently had these questions reviewed by the **Wage and Hour Division in Topeka /Kansas City** and they have made some changes to our previous memo.

**Wage & Hour Division website:** <http://www.dol.gov/whd>

**If you have questions, you should contact one of the wage offices listed below:**

**If your school district is located in one of these counties:**

Allen	Cherokee	Franklin	Leavenworth	Neosho	Wilson
Anderson	Coffey	Jackson	Linn	Osage	Woodson
Atchison	Crawford	Jefferson	Miami	Pottawatomie	Wyandotte
Bourbon	Doniphan	Johnson	Montgomery	Shawnee	
Brown	Douglas	Labette	Nemaha	Waubaussee	

U.S. Department of Labor – Phone: (913) 551-5721  
Wage & Hour Division  
Gateway Tower II  
400 State Ave., Ste. 1010  
Kansas City, Kansas 66101

**School districts in all other counties will contact:**

U.S. Department of Labor – Phone: (402) 221-4682  
ESA, Wage-Hour Division  
106 South 15<sup>th</sup> Street, Room 715  
Omaha, Nebraska 68102

## EXEMPTIONS

**Section 13(a)(I) of the FLSA states** (in part):

...**exempts** executive, administrative, professional, and outside sales employees from **the minimum wage and overtime requirements of the FLSA**, provided they meet certain tests regarding job duties and responsibilities and are compensated "on a salary basis" at not less than stated amounts. Subject to certain exceptions set forth in the regulations, in order to be considered "salaried", employees must receive their full salary for any work week in which they perform any work without regard to the number of days or hours worked. This rule applies to each exemption that has a salary requirement (outside sales employees, and certain licensed or certified doctors, lawyers and **teachers** have no salary requirement....)

### Professional Exemption

**Applicable to employees** who perform work requiring advanced knowledge and education, work in an artistic field which is original and creative, **work as a teacher**, or work as a computer system analyst, programmer, software engineer, or similarly skilled worker in the computer software field; who regularly exercise discretion and judgment; who perform work which is intellectual and varied in character, the accomplishment of which cannot be standardized as to time; who receive a salary which meets the requirements of the exemption (except doctors, lawyers, teachers and certain computer occupations); and who do not devote more than 20% of their time to work other than that described above.

To read the entire text of Section 13(a)(I) of the FLSA on exemptions, go to the following link:  
<http://www.dol.gov/dol/whd/flsa/index.htm>

## DISCLAIMER:

The U.S. Department of Labor, Wage and Hour Division has provided this information as a public service. The information is intended as a general description only and does not carry the force of legal opinion. Therefore, we make no express or implied guarantees. The *Federal Register* or the *Code of Federal Regulations* remains the official source for regulatory information published by the Department. We will make every effort to correct errors brought to our attention.

## Frequently Asked Questions Regarding Fair Labor Standards Act

1.	<p><b>Do you have to pay special education students who work in the school lunch program if such work is a part of their individual education plan? If yes, what is the minimum wage?</b></p> <p>No, provided it is a part of the student's training and is within the regular school day.</p>
2.	<p><b>What is the minimum wage for students working after school hours for the school district?</b></p> <p>If students are employed on a part-time basis pursuant to a bona-fide vocational education training program (student-learner), employers may obtain a certificate from the U.S. Department Labor, Wage and Hour Division, and pay no less than 75 percent of the minimum wage.</p> <p>A second type of certificate can be issued to employers by the U.S. Department of Labor, Wage and Hour Division, that allows for full-time students to be employed at subminimum wages in retail or service establishments, agriculture, or in the institutions of higher education which such students are attending. The subminimum wage rate for full-time students may not be less than 85 percent of the applicable statutory minimum wage.</p> <p>The 1996 Amendments to the Fair Labor Standards Act (FLSA) allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage. Certificates from the U.S. Department of Labor are not required in order for employees to be paid the youth minimum wage.</p>
3.	<p><b>Are school districts required to pay overtime for employees such as a secretary to the superintendent of schools or board clerk who may work more than a 40-hour week?</b></p> <p>Yes, unless the board clerk would qualify under the definitions of executive, administrative, or professional personnel. (See page 6 of WH Publication 1391, 553.32 (c). This is the same as 553 in 29 CFR.</p>
4.	<p><b>Do you have to pay certified employees (teachers) the minimum wage for extracurricular activities (coaching, class sponsor, organization or club sponsor) if it is a requirement of the school district that certified employees perform such activities?</b></p> <p>No. Teachers are specifically exempt from the Fair Labor Standards Act if it is a duty that requires their professional expertise. (See page 6 of WH Publication 1391, 553.32 (c).)</p>
5.	<p><b>Do you have to pay certified employees (teachers) the minimum wage for extra duties required by the school district such as ticket taking, timekeeping, scorekeeping, security, etc.?</b></p> <p>No, unless such employee's time in such activity exceeded 20 percent of their total hours for that specific work week. If the employee exceeds the 20 percent, compensation would be computed as described in Question #26.</p> <p>However, if the teacher gets a salary of \$250 or more per week, he or she is exempt from the FLSA if at least 51 percent of his or her time is spent teaching. (See pages 5 &amp; 6 of WH Publication 1391, 553.30 (c) (5) and 553.32 (c).)</p>

6.	<b>Do you have to pay noncertified employees the minimum wage for extra duties required by the school district such as ticket taking, timekeeping, scorekeeping, security, etc.?</b> Yes.
7.	<b>Do you have to pay noncertified employees the minimum wage for the following activities: library aides, coaching assistants, secretarial/clerical, special education paraprofessionals, cooks, custodians, bus drivers, maintenance workers, etc.?</b> Yes.
8.	<b>Do you have to pay noncertified employees the minimum wage that are in a supervisory position?</b> No, provided such persons fall under the definition of executive, administrative, or professional personnel. (See page 6 of WH Publication 1391, 553.32 (c).)
9.	<b>Does a school district have to pay students the minimum wage for helping operate the down box, the chain, timekeeping, scorekeeping, etc., at ball games or other activities when they do so at the school district's request?</b> Yes.
10.	<b>If a school employee, whether certified or non certified, volunteers to assist the school district, are such employees under the Fair Labor Standards Act?</b> No, as long as the individual volunteers for services that are not the same type of services which the individual is employed to perform for the school district. The FLSA does not permit an individual to perform hours of volunteer service for a public agency when such hours involve the same type of services which the individual is employed to perform for the same public agency. (See pages 6 & 7 of WH publication 1391, 553.100, 553.101 and 553.103.)
11.	<b>How does the minimum wage law affect a school bus driver who is also employed as a classroom teacher? How do you compute overtime pay on such employee?</b> A classroom teacher is exempt under the Fair Labor Standards Act providing they do not exceed 20 percent of the time worked in the work week on activities not essentially a part of and necessarily incidental to the teaching duties.  If the teacher gets a salary of \$250 or more per week, he or she is exempt from the FLSA if at least 51 percent of his or her time is spent teaching.  If the individual is not spending enough time teaching to be exempt from overtime then compute overtime as shown in question 26.
12.	<b>Are fringe benefits required to be included in the computation of overtime pay?</b> No. (See page 4 of WH Publication 1391, 553.26 (b).)
13.	<b>If cash is an option under a fringe benefit package, is the cash received under the option a part of computing the minimum wage for overtime pay?</b> Yes, unless the cash is in lieu of a specific fringe benefit and is equal to the amount of the fringe benefit. Records must be maintained to reflect the cash paid in lieu of such fringe benefit if it is exempt in the calculation of overtime pay.
14.	<b>Are substitute teachers exempt from the Fair Labor Standards Act?</b> Yes, provided they meet the requirements of 541.303.
15.	<b>Are directors of transportation, maintenance, food service, etc., exempt from the Fair Labor Standards Act?</b> If a director of transportation, maintenance, food service, etc. meets the definition of executive, administrative, or professional personnel, such person would be exempt from the FLSA. If the employee

	does not qualify under the exemptions, such a person would be under the FLSA.
16.	<b>If a person is employed by a school district as a teacher aide or coaching aide on an hourly rate, is such person covered by the Fair Labor Standards Act?</b> Yes.
17.	<b>May a school bus driver employed for nine months receive his regular pay over a 12-month period?</b> Federal law allows this, however, overtime pay must be paid on scheduled pay dates and at an actual hourly rate based on the nine months of employment. State law (1996 Legislative Senate Bill 521) does allow school boards to adopt a policy permitting employees to make the selection of being paid over 12 months.
18.	<b>If a school district employs a secretary on an hourly rate and the same person serves as a board treasurer, does the Fair Labor Standards Act apply to both jobs?</b> Yes. See response to Question #3. (See page 6 of WH Publication 1391, 553.30 (c) (3).)
19.	<b>Are holidays, vacation time, sick leave, and funeral leave counted in the hours in computing overtime pay?</b> Not required. (See pages 10 & 11 of WH Publication 1391, 553.221.)
20.	<b>When a school bus driver is required to take an overnight trip, for what hours is the driver required to be paid? For example, a school district may take a bus load of students to a state playoff activity and the driver may be required to wait as much as 24 hours prior to the return trip home.</b> Any time that an employee is required to be on duty, such employee is covered under the FLSA. Any time an employee is unable to use the time effectively for their own purpose, and the employee is under the control of the employer, such time is covered under the FLSA. If an employee is completely relieved of duty for a period long enough to enable the employee to use the time effectively for his or her own purposes, such hours are not hours worked under the FLSA. An employee is not completely relieved of duty and cannot use the time effectively for his or her own purposes unless the employee is definitely told in advance that he or she may leave the job and that the employee will not have to commence work until a specified time. Whether the time is long enough to enable the employee to use the time effectively for his or her own purposes depends upon all the facts and circumstances of the case. (See pages 10 and 11 of WH Publication 1391, 553.221.)
21.	<b>When a bus driver is required to take a trip (track meet) and such driver has approximately six hours during the activity in which his services would not be needed prior to the return trip home, are the six hours considered hours worked under the FLSA?</b> No, those six hours would not be considered hours worked provided the individual is completely relieved of duty.
22.	<b>May a school district pay a bus driver on a rate per mile?</b> Yes, provided it equates to at least the minimum wage.
23.	<b>May a school district guarantee a minimum of 50 hours for an employee at a set rate, including overtime for the last 10 hours, and pay such person for the full 50 hours even though they may work fewer hours? For example, a school district would like to employ a custodian for 40 hours per week at \$8.00 per hour and 10 hours per week at \$12.00 per hour and guarantee such employee a minimum of 50 hours even though the employee may actually work less than 50 hours.</b> No.
24.	<b>May a school district employ a noncertified person (custodian) on a yearly basis and pay such employee a fixed salary with fluctuating hours?</b> The regular rate for an employee whose hours of work fluctuate from week to week, who is paid a stipulated salary with the clear understanding that it constitutes straight-time pay for all hours worked, whatever their number and whether few or many, will vary from week to week. The employee's regular rate is determined

each week by dividing the salary by the number of hours he or she worked in that week. The regular rate cannot, of course, be less than the applicable minimum wage. Since the employee has been paid his or her straight-time compensation, he or she must receive additional overtime pay for each overtime hour worked in the week at not less than one-half the regular rate. Take the example of an employee who works no more than 50 hours and is compensated on a fluctuating work week basis at a weekly salary of \$400. If during the course of four weeks the employee works 40, 44, 50, and 48 hours, the employee's regular rate in each of these weeks is \$10.00, \$9.09, \$8.00, and \$8.33. Since the employee has been paid his or her straight-time pay for all hours worked, only additional half-time pay is due. The employee's pay would be computed as follows: for the first week the employee is due \$300; for the second week the employee is due \$418.18 (\$400+ (4 hours x \$4.54)); for the third week the employee is due \$440 (\$400 + (10 hours x \$4.00)); for the fourth week the employee is due \$433.33 (400 + (8 hours x \$4.16)).

25. **If a person works more than 40 hours during a specific work week, may that person receive compensatory time rather than overtime pay?**

Yes. State and local governments are permitted to give their employees compensatory time off in lieu of immediate overtime pay in cash, at a rate of not less than one and one-half hours for each hour of overtime worked, but only pursuant to a collective bargaining agreement, or an agreement or understanding arrived at between the employer and employee before performance of the work.

The maximum compensatory time, which may be accrued by any affected employee, shall be 240 hours. An employee who has accrued the maximum number of compensatory hours shall be paid overtime compensation in cash for any additional overtime hours of work.

An employee shall be permitted to use accrued compensatory time within a reasonable period after it is requested if to do so would not unduly disrupt the operations of the employing public agency.

Payment for accrued compensatory time upon termination of employment shall be calculated at the average regular rate of pay for the final three years of employment, or the final regular rate received by the employee, whichever is the higher.

26. **How do you compute overtime pay when an employee works in two different jobs at two different rates? For example, a person is receiving \$8.00 per hour as a custodian for 30 hours per week and \$10.00 per hour as a bus driver for 20 hours per week.**

Where an employee in a single work week works at two or more different types of work for which different straight-time rates have been established, the employee's 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. The employee's pay would be computed as follows:

\$8.00 per hour for 30 hours	=	\$240.00
\$10.00 per hour for 20 hours	=	\$200.00
Total work hours . 50 hours		\$440.00
Average hourly wage (\$440 ÷ 50)	.	\$ 8.80
Overtime factor	x	.50
Additional amount per hour for overtime pay	.	\$ 4.40
Number of hours overtime	.	10
Overtime pay	.	\$44.00
Total wages for week	.	\$484.00

Employees of a State or local government agency may at their own option undertake employment for the same employer on an occasional or sporadic basis in a part-time job in a different capacity than their regular employment. The hours of work in the different job shall not be counted as hours worked for overtime pay purposes on the regular job.

27.	<p><b>May a school district pay a school bus driver a flat amount for activity trips?</b>  Yes, provided such flat amount is at least equal to the minimum wage and time-and-a half is paid for all overtime.</p>
28.	<p><b>Do deductions for partial day or full day absences jeopardize an employee's Fair Labor Standards Act exemption as a salaried employee or certified teacher with the school district?</b>  No, according to 29CFR541.602b listed below the employee would still be considered exempt from overtime under the Fair Labor Standards Act.</p> <p><b>29CFR541.5d <i>Special provisions applicable to employees of public agencies</i></b>  <b>Section Number: 541.710</b>  <b>Section Name: Special provisions applicable to employees of public agencies.</b></p> <p>(a) An employee of a public agency who otherwise meets the requirements of Sec. 541.118 shall not be disqualified from exemption under Secs. 541.1, 541.2, or 541.3 on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee because-</p> <p>(1) permission for its use has not been sought or has been sought and denied;  (2) accrued leave has been exhausted; or  (3) the employee chooses to use leave without pay.</p> <p>(b) Deductions from the pay of an employee of a public agency for absences due to a budget - required furlough shall not disqualify the employee from being paid "on a salary basis" <i>except</i> in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.</p> <p>[57 FR 37677, Aug. 19, 1992]</p>

**SPECIAL NOTES:**

It is essential that adequate time cards be kept to document hours worked for all employees who are covered by the Fair Labor Standards Act. The Fair Labor Standards Act also contains **child labor** provisions. The FLSA child labor Provisions are designed to protect the educational opportunities of minors and prohibit their Employment in jobs and under conditions detrimental to their health or well-being. The Provisions include restrictions on hours of work for minors under 16 and lists hazardous Occupations orders for both farm and nonfarm jobs declared by the Secretary of Labor to be too dangerous for minors to perform. For further information on the child labor provisions Consult the U.S. Department of Labor, Wage and Hour Division Internet site or contact The Wage and Hour Division. The phone number and address of the Wage and Hour Division office serving your county is shown at the beginning of this document.

To read the entire text of Section 13(a)(l) of the FLSA on exemptions, go to the following link:  
<http://www.dol.gov/dol/whd/flsa/index.htm>

This document was created with the assistance of the Wage and Hour Division by:  
KANSAS STATE DEPARTMENT OF EDUCATION | Landon State Office Building | School Finance | (785) 296-3872  
900 SW Jackson St, Ste 356 | Topeka KS 66612 | Craig Neuenswander, Director | [craign@ksde.org](mailto:craign@ksde.org)

If you have questions, please contact the **Wage and Hour Division** office  
for your county listed on Page 1.

###

T:guidelines and manuals/Fair Labor Standards Act