

REVISED POLICY - VOL. 35, NO. 2

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.** ~~rights to its employees. To that end, the Board shall pay at least the minimum wage required by the FLSA to all covered, non-exempt employees. Further, the Board recognizes the safe and efficient operation of the District may occasionally require covered, non-exempt employees to work more than forty (40) hours during a given work week. **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 period). **()** 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. **[or Monday at 12:00 a.m. and continuing to the following Sunday at 11:59 p.m.]**. **[NOTE: End of Choice]** Covered, non-exempt employees who work (i.e., perform work on behalf of or for the benefit of the Board) more than forty (40) hours in a given work week will receive premium pay (i.e., one and one half (1 1/2) times the employee’s regular hourly rate of pay) for all hours worked in excess of forty (40).~~

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 period). (X) Work week is defined as the seven (7) day period of time beginning on (X) 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.. [NOTE: END OF CHOICE]

The Superintendent ~~or his/her designee~~ 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. **[NOTE: END OF CHOICE]** 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 ~~specific~~ specific job duties and be paid ~~a on~~ **minimum per week** salary **as established by the Department of Labor.** ~~basis at not less than \$913 per week (i.e., \$47,476 for a full year worker).~~ 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.** ~~may be paid at least \$913 per week on a salary basis or on an hourly basis at a rate not less than \$27.63 an hour.~~ 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.

~~Notwithstanding the fact that exempt school employees continue to meet the salary basis requirements and are not disqualified from exemption even if the employee’s pay is reduced or the employee is placed on a leave without pay for absences for personal reasons or because of illness or injury of less than one (1) work day because accrued leave is not used for specific reasons, the Board reserves the right to make deductions from the pay of otherwise exempt employees under the following circumstances:~~

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; or**
- 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 his/her salary, the employee should immediately report this information to the **(x)** Superintendent, **()** Business Manager, **()** _____, or 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.

~~The Board directs the Superintendent~~ **This policy shall be to distribute distributed** ~~this policy to all~~ employees upon initial hire, and **to all employees** on an annual basis.

~~29 U.S.C. 201 et seq.
29 C.F.R. Part 541~~

~~[DRAFTING NOTE: This rate represents the standard per week salary at the 40th percentile of weekly earnings of full-time nonhourly workers in the lowest wage Census Region, which in 2016 was the South. Beginning January 1, 2020, and every three (3) years thereafter, the Labor Secretary shall update the required salary amount.]~~

[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 forty (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 or their equivalent (for example, one (1) full-time and two (2) half-time employees are equivalent to two (2) full-time employees); and 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 Exemption:* 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 prototypes, 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.]**

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

| © NEOLA **20162017**