Fair Labor Standards Act (FLSA)

There are four (4) major provisions of the FLSA: Minimum Wage, Overtime Pay, ChildLabor and Recordkeeping. Unless exempt, covered employees must be paid at least the minimum wage and not less than one and one-half times their regular rates of pay for overtime hours worked.

Positions considered exempt for FLSA purposes must meet one of the following exemptions:

* Executive
* Administrative
* Professional\*
* Highly Compensated Employees

\*The Department of Labor has determined that substitute teachers whose primary responsibility is teaching the same subjects as the everyday teacher for whom they substitute are exempt under the FLSA.

Positions typically considered non-exempt for the purposes of the FLSA are noted below:

* Paraprofessional staff (clerical, aides and technical staff)
* Auxiliary (custodial, maintenance, food service, transportation, etc.)
* Substitute staff for paraprofessionals and auxiliary staff
* Specific professional/administrative staff that do not meet the FLSA exemption include the Mobile Device Manager, Grants Coordinator, Payroll Accountant, and PEIMS Coordinator.

The district has determined the exempt status of each position and recorded the status on a Job Description. Every employee is required to sign a job description upon hire and when an employee changes assignments. The job description serves the function of notifying the employee of their respective job duties and responsibilities, but also their status under the FLSA.

The FLSA requires employers to:

* pay all covered nonexempt employees, for *all* hours worked, at least the Federal Minimum Wage of $7.25 per hour effective July 24, 2009;
* pay at least one and one-half times the employees’ regular rate(s) of pay for all hours worked over 40 in the work week;
* comply with the youth employment standards; and
* comply with the recordkeeping requirements

The district pays at or above the Federal Minimum Wage (currently $7.25 per hour). The School Board approves rates for all employees and substitutes. Temporary and seasonal staff rates are approved by the Human Resource Director or Chief Financial Officer based on current Board approved pay schedules. In addition, the district has an Extra Duty Pay Schedule that is annually approved by the School Board. Substitute staff for paraprofessionals will be paid the substitute full day and half day rates, but if they work over an eight hour day, payroll staff will ensure that they receive at least the Federal Minimum Wage rate.

# Hours Worked

**All Non-Exempt Employees\* MUST report all time worked on their weekly sign in sheets / timecards which are signed by the employee.** Covered employees must be paid for *all* hours worked in a work week. In general, compensable hours worked include all time an employee is on duty or at a prescribed place of work and any time that an employee worked. This would generally include work performed at home, travel time, waiting time, training, and probationary periods.

Time worked includes all before and after school meetings, parent nights, etc. A non-exempt employee of the district **can not volunteer** to help with a parent night, work through lunch, take work home, etc. During lunch time, the employee must be completely relieved from their duty for at least 30 minutes or they must be compensated for the time. If an employee meets at 6:30am to leave for a conference, their travel time should be documented on their weekly sign in sheet / timecard. The employee must be compensated for all time worked including travel time to and from a work event.

The district has established the following work week for all non-exempt staff:

 **Sunday 12:00 am through Saturday midnight**

Specific FLSA guidelines include the following [*excerpts from FLSA Fact Sheet #22 are denoted in italics*]:

**Suffered or Permitted to Work**: *Work not requested but suffered or permitted to be performed is work time that must be paid by the district. For example, an employee may voluntarily continue to work at the end of a shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable*.

If the supervisor allows or permits the employee to perform the work, the hours are compensable. If the employee is not authorized to work, but performs the work anyway, the employee shall be paid for compensable work hours, but shall be subject to disciplinary action for failure to follow an administrative directive.

**Waiting Time:** *Whether waiting time is hours worked under the Act depends upon the particular circumstances. The facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was waiting to be engaged (which is not work time).*

If an employee is engaged to wait, such as a bus driver at a field trip, the waiting time shall be compensable. The District shall compensate the bus driver at the approved extra duty pay rate for all driving and wait time hours.

**Rest and Meal Periods:** *Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid for as working time. These short periods must be counted as hours worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.*

If a non-exempt employee is not completely relieved from duty during their lunch break, he/she shall be compensated for the meal period. It shall be the employee’s responsibility to notify his/her immediate supervisor in the event that a meal has been missed or they were not completely relieved of duty during a meal period. The compensable meal period shall be added to the employee’s work hours on the weekly sign in sheet / timecard.

**Sleeping Time:** *An employee who is required to be on duty for less than 24 hours is working even though he/she is permitted to sleep or engage in other personal activities when not busy. An employee required to be on duty for 24 hours or more may agree with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than 8 hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. No reduction is permitted unless at least 5 hours of sleep is taken.*

NOTE: Paraprofessionals (clerical, aides, and technical staff) must receive Business Office approval prior to attending any overnight trip with students.

Although rare, in the event that a non-exempt employee is on duty for more than 24 hours, such as a bus driver to an overnight field trip, the employee shall be provided with sleep facilities and at least five (5) hours of uninterrupted sleep time. A total of eight (8) sleep hours shall be excluded from the employee’s work hours, unless the employee was granted less than eight (8) hours. In that event, the actual number of sleep hours shall be excluded from the compensable hours.

**Travel time:** *Attendance at lectures, meetings, training programs and similar activities need not be counted as working time only if four criteria are met, namely: it is outside normal hours, it is voluntary, not job related, and no other work is concurrently performed.*

*Home to work travel: An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.*

*Home to Work on a Special One Day Assignment in Another City****:*** *An employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.*

*Travel That is All in a Day's Work****:*** *Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.*

*Travel Away from Home Community****:*** *Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.*

Generally, non-exempt employees shall be compensated for hours at training, workshops, etc. if the training is job-related. Hours while traveling away from the home community for training shall be recorded on the employee’s timecard / sign in sheet.

*FLSA Fact Sheet #22 – Hours Worked*

## Overtime

*Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. The regular rate of pay includes all remuneration for employment except certain payments excluded by the Act itself.*

Regular nonexempt employees are paid on an Annualized Salary Method with substitutes, temporary employees, and all extra duty pay paid on an Hourly Method. All non-exempt auxiliary employees shall be paid based on the *actual number of hours* worked per workweek. Employees paid on an annualized salary method are generally paid for their regularly assigned hours and do not earn additional pay unless they work more than their assigned hours.

Employees paid on an Annualized Salary Method include:

 Paraprofessional staff (aides, clerical and technical)

 Custodial

 Maintenance

 Food Service

 Bus Drivers and Bus Aides

Crosswalk Guards

Daycare

Employees paid on an Hourly Method include:

 Temporary and Seasonal staff

 Substitute “Auxiliary” staff

(Substitutes for Teachers and Para’s are paid on a ½ day or whole day increment)

Employees paid on an Annualized Salary Method

The total hours worked per work week will be reviewed to determine if the employee exceeded their normal, annualized work hours.

Auxiliary Staff: In the event that the employee exceeded their normal, annualized work hours, he/she shall be compensated for the additional hours. In the event that the employee did not work their normal, annualized work hours, he/she shall apply leave or be docked their regular rate of pay for the missed hours if less than a ½ day.

Paraprofessional Staff: In the event that the employee exceeded their normal, annualized work hours, he/she shall be compensated for the additional hours by recording comp time in Employee Access to be used or paid at a later date. In the event that the employee did not work their normal, annualized work hours, he/she shall apply leave or a dock day. All leave is recorded in ½ day increments, so they may need to use or earn comp time to ensure that all time worked outside of their regular work schedule is recorded.

Employees paid on a Direct Hourly Method

The total hours worked per work week will be entered in to the payroll system (Skyward) by the Payroll Accountant and/or Payroll and Activity Accounting Clerk. Employees are encouraged to track their work hours to verify the total hours paid on their paycheck match their actual hours worked.

*The FLSA provides that where State or local government employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime liability under the Act. (CFR 553.30)*

*The FLSA states that 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.*

Overtime pay for a single type of work [with a single hourly rate] shall be paid at 1 ½ times the regular hourly rate.

Overtime pay for multiple hourly rates (dual positions) shall be paid at 1 ½ times the ***weighted average of the pay rates***. For example, if an aide employee works 37.5 hours at his/her regular hourly rate of $13.00 and an additional 20 hours at an hourly rate of $15.00, he/she would be paid at the weighted average of the hourly rates. Illustration below:



*FLSA Fact Sheet #23 – Overtime*

## Child Labor

*The FLSA restricts the work hours and types of occupations for workers between the ages of 14 and 17. The most restrictive limitations are for workers between the ages of 14 and 15. The limitations include the following:*

* *outside school hours;*
* *no more than 3 hours on a school day, including Fridays;*
* *no more than 8 hours on a non-school day;*
* *no more than 18 hours during a week when school is in session;*
* *no more than 40 hours during a week when school is not in session;*
* *between 7am and 7pm - except between June 1 and Labor day (extended to 9pm)*

The Human Resources department shall record the age of all minor workers in the payroll system. The Payroll department shall monitor compliance with the FLSA as it relates to type of occupation and work hour limitations. The immediate supervisor shall be provided information related to the limitations for their respective minor worker(s).

## Recordkeeping (Timekeeping System)

*Every covered employer must keep certain records for each non-exempt worker. The Act requires no particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate.*

The district has timecards and weekly sign in sheets to collect all regular work hours for non-exempt employees. If any extra duty is performed, the appropriate form must be completed which includes detail time worked. **All work hours for the regular job, extra assignments, training, working lunches, waiting time, etc. shall be entered on your timecard or weekly sign in sheet.** If you work any duties on the Extra Duty Pay Schedule, you will complete the Extra Duty Form including detail hours worked. If you are a game worker, you will complete the Game Worker Form including detail hours worked.

Limited Substitutes (previously retired from TRS), may only sub in the place of a current employee. Due to the retiree’s risk of losing their annuity and TRS surcharges, these limited substitutes may NOT work in any of the following assignments: game worker, various other extra duty assignments; extra sub; or vacant position.

Exempt employees are tracked with a daily (or 1/2 day) sign in to assist campuses and departments with ensuring that all leave is entered in Employee Access. These employees are not required to have sign in and out times on their sign in sheet. Not all district exempt employees are required to sign in/out daily. Exception; all TRS retirees are required to sign in and out to collect all regular work hours for TRS reporting. Contact campus office or payroll office if you have any questions.

All timecards (including electronic timecards), sign in sheets, extra duty pay and game worker forms must be reviewed, approved and signed by the campus principal or department director or their designee prior to submitting to the payroll office for processing.

In addition, all leave and absences for employees shall be entered in Employee Access by the employee and approved by the campus principal or department director or their designee. If any corrections or adjustments are necessary after the leave is approved an email will need to be sent by the employee requesting the correction/adjustment to the Payroll Accountant and/or Payroll and Activity Accounting Clerk. This email must also be sent to the campus or department approver (cc) so if they have any issues with the correction/adjustment they may contact the payroll staff prior to processing. Payroll staff will not process if the campus or department approver is not copied on the email notification.

Non-exempt substitute for Paraprofessionals/Auxiliary

All substitutes for non-exempt paraprofessionals (clerical and aides) and Auxiliary staff shall sign in and out on the Substitute Form. All hours worked shall be reviewed by the Payroll Accountant and/or the Payroll and Activity Accounting Clerk to ensure that the sub pay rates are at least the Federal Minimum Wage.

Exempt substitute for Teachers/Professional Staff

All substitute teachers shall sign in on the Substitute Form. All days (and half days) worked shall be entered in the Skyward payroll system by the Payroll Accountant or the Payroll and Activity Accounting Clerk.

The Payroll Accountant and/or Payroll and Activity Accounting Clerk shall review all extra time worked and make sure that comp time is entered in Employee Access for all non-exempt employees that are in clerical, aide, or technical positions. Overtime hours for all other non-exempt employees including auxiliary staff and employees paid on the direct hours method shall be entered in the Skyward payroll system.

It shall be an employee’s responsibility to ensure that all work hours are submitted in accordance with district pay cycles.

The appropriate staff shall verify and submit weekly all time cards and sign in sheets for staff assigned to their campus or department.

Rounding Time Chart

*According to the FLSA, an employer may disregard working time that is insubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes. These periods of time are referred to as de minimis. Employers should establish rounding rules. (CFR 785.47)*

Minutes rounding rules:

 0 – 7 minutes = 0

8 – 22 minutes = .25

23 – 37 minutes = .50

38 – 52 minutes = .75

53 – 60 minutes = 1.00

**Time should always be recorded in 1/4hr (0.25) increments on a daily basis.** *You can use fractions or decimals.*All physical time worked over 40hrs earns time and a half. When you total your daily hours, if you work more than 7 minutes into a quarter hour then you round up, if you work 7 minutes or less into the quarter hour, then you round down for your daily total hours worked. *So for example if you work 7hrs and 50 minutes your daily total is 7.75hrs. If you work 7hrs and 55 minutes your daily total is 8hrs*. This grace period for reporting time worked will not be considered a reason for early departure or late arrival from your assigned work schedule.

Examples:

7 1/4hrs = 7.25hrs = 7hrs 15min ~~~ 7 1/2hrs = 7.5hrs = 7hrs 30min ~~~ 7 3/4hrs = 7.75hrs = 7hrs 45min

Daily totals should NOT show ~~7.15 7.30 7.45~~

Please make sure the time recorded for each day totals that **ACTUAL time worked** for each day. Leave hours should not be reported as hours worked.

The employee must **sign** the sign-in sheet at the **end of the week** -- do not sign the sign-in sheet until you have worked your last day for the week.

If a **correction to the time recorded** on the timecard (including electronic timecard) or sign in sheet is needed, the employee must initial the change/correction. Just mark through the incorrect time and write the correct time and initial. Do **NOT use whiteout.**

If you are **attending a conference / out-of-district event**, as a non-exempt employee you must record your travel time and any time that you are working/representing the district at the conference/event as hours worked. (Excused leave should be entered in the system for the day, but time should also be recorded on your sign in sheet.)

**All Non-Exempt Employees MUST receive approval from their Campus Principal / Department Director before working any extra time.**

**Non-Exempt Employees (paraprofessionals, clerical, aides, etc.) must receive Business Office approval prior to attending any overnight trip with students.**

Failure or non-compliance with the district’s timekeeping procedures shall be subject to appropriate disciplinary action. An employee’s due process for violation of the district’s timekeeping procedures shall be as follows (depending on the severity, steps one and two may be eliminated):

1. Oral warning

2. Written directive

3. Disciplinary action, up to and including a recommendation for termination of employment

Falsifying timekeeping records or directing or coercing others to do so is a violation of the *Educator Code of Ethics*. [Refer to Board Policy DH Legal, Local and Exhibit]

An employee who falsifies their timekeeping record or the timekeeping record of another employee shall be subject to immediate termination. Falsifying of time cards may include, but is not limited to: signing in and out for another employee or having another employee sign in or out for them; entering time that you did not work is considered fraudulent time entry.

Sample Timesheet (Timecard or Sign in Sheet)

Every non-exempt employee should know how to complete their timecard or weekly sign in sheet.

* Employee name (printed)
* Time period – work week (begin and end date of the work week)
* Department/Campus
* Assignment (if using a timecard), not required on the campus sign in sheets
* Time in – actual time (morning arrival)
* Time out – actual time (if leave for lunch or any other reason – duty free for 30 minutes)
* Time in – actual time (back to work)
* Time out – actual time (leaving for the day)
	+ If you leave more than once during the day just write another time in & time out.
* Total hours worked per day
* Total hours worked for the week
* Employee Signature (sign at end of week after all work is completed)
* Principal, Department Director or designee signature after review of time worked.
* *If your department has an accounting approved electronic system for recording employee time worked, the electronic timecard generated by the system needs to be signed by the employee and department director or supervisor.*

## Compensatory Time

Employees may be compensated for overtime at time-and-a-half rate with compensatory time off (comp time) or direct pay. **The district only pays comp time balances twice a year or when an employee leaves the district with a comp time balance.**  The following applies to all paraprofessional non-exempt employees (clerical, aides, and technical staff):

* Employees can accumulate up to 60 hours of comp time.
* Use of comp time may be at the employee’s request with supervisor approval, as workload permits, or at the supervisor’s direction.

In your **time and a half calculations for comp time earned above 40hrs,** you should always **round up** to the next quarter hour. So for example if you work 41.25hrs, you will earn 1.25 x 1.5 = 1.875 or **2hrs comp time**. Another example, 40.75hrs = 0.75 x 1.5 = 1.125 or 1.25 or **1hr 15min comp earned**.

An **Exhibit – Calculating Comp Time Earned / Used** is available as an extension of these procedures. It includes examples and more information.

**Please see the Employee Handbook and the Employee Access Manual**

**on the district website under "District > Staff Resources" for a lot more information on the various types of leave and earning and recording comp time earned.**