

FLSA FAQ's

BASICS OF THE LAW

What is the Fair Labor Standards Act?

The Fair Labor Standards Act (FLSA) was enacted by Congress in 1938 as a means of economic recovery from the Great Depression. Among other things, the Act banned oppressive child labor, set a minimum hourly wage, and required a pay premium for overtime worked for certain employees.

Why is compliance with FLSA important?

The FLSA requires compensation for work performed for non-exempt employees over 40 hours within a work week. The school system can be held liable for violations of the law, but employees of public agencies may also be held individually liable for violations.

What are exempt and non-exempt employees?

The FLSA identifies two types of employees based on duties and compensation: non-exempt employees and exempt employees.

Non-exempt employees are required by the Act to be paid an overtime premium of time-and-one-half for actual time worked in excess of 40 hours per week.

Exempt employees are salaried employees and as such are required to fulfill the duties of their positions regardless of the number of hours worked. In 2004, the U.S. Department of Labor (DOL) enacted changes to its regulations regarding exempt employees. Briefly, the DOL issued language which more clearly defined which employees in an organization are not subject to the overtime, minimum wage, and timekeeping provisions of the law. Employees who meet a salary basis test and a duties basis test are identified as exempt. There are three defined exempt categories of jobs: executive, administrative, and professional. Outside sales and computer professional jobs are also, under certain circumstances, exempt from the FLSA.

Who determines the FLSA status of a position in BCPS?

The Classification Specialist in human resources, in consultation with appropriate others, determines the FLSA status of positions that have not already been clearly established by law.

What if I disagree with the FLSA determination regarding my job?

You can request a classification review of your position by completing part I of a Position Content Questionnaire (PCQ) available on the internet on the Office of Classifications webpage and forwarding the completed form to your supervisor. These forms are used to analyze positions and are the basis for the classification and FLSA designation.

OVERTIME

Is all time worked beyond an employee's scheduled hours considered overtime?

Under the FLSA, only hours worked over 40 hours in a work week are considered overtime.

Does overtime have to be authorized by an administrator prior to an employee working over 40 hours?

Hours worked by an employee beyond his or her scheduled work hours (whether at the worksite or at home) need to be approved and authorized by the administrator, as well as the form of compensation agreed upon, prior to the work being performed.

Is leave time or paid holidays considered in the hours worked during the week?

No, leave time and paid holidays are not included in hours worked for overtime purposes and the FLSA only counts hours worked for overtime. If an employee works a paid holiday, he/she would be entitled to another day off.

How does “gap” time differ from overtime?

Gap time is the time an employee works beyond his/her scheduled hours but before 40 hours. E.g. an employee’s weekly hours total 37.5 but the employee works 39 hours one week. The employee has worked 1.5 hours of gap time. According to Section 7.3 of the BACE Master Agreement gap time is compensated hour for hour either by cash payment at the employee’s hourly rate or by hour for hour compensatory time.

Does gap time need to be approved?

Gap time needs to be approved and the form of compensation needs to be agreed upon prior to the work being performed.

Can an employee’s hours be adjusted within the same work week so the employee stays within the 40 hour standard?

If an employee needs to work into the evening (e.g. 3 hours later than normal hours), it is possible to have the employee come into work three hours later as long as the change does not disrupt the business operations of the school or office or cause a hardship on the employee. The adjustment must occur in the **SAME WORK WEEK** since each work week stands alone. These adjustments do not have to be reported on the authorization form but you will want to keep a record on-site.

Where is overtime pay charged?

At this time, overtime for permanent employees is not charged to the school budget; however, there is no specific overtime funding in the budget. Administrators should utilize comp time rather than overtime and monitor overtime charges and comp time through reports provided on Metaviewer.

Are staff development/training and committees considered compensable activities if they occur beyond the employees normal work hours and exceed the scheduled work hours for the employee?

In order for a training or meeting to **NOT** be considered compensable work time, **ALL** of the following four (4) criteria must be met:

- 1) Attendance must occur outside the employee’s work hours
- 2) Attendance must be voluntary

- 3) The employee must do no productive work while attending (productive to the employer)
- 4) The training or meeting should not be directly related to the employee's job

Is normal commuting time to work considered compensable time?

Basic commuting time to and from work is not compensable time but if the employee makes any work-related stops along the way the clock starts ticking.

BREAKS AND LUNCH

The FLSA does not require payment for time not worked such as meals, rest periods (breaks), holidays or vacations. Federal law states that if employees are provided a break 20 minutes or less the employer must continue to pay them. If a meal break is provided of 30 minutes or more then no pay is due, even if the employee stays at his/her workstation, as long as the employee is *completely relieved* of his/her work duties. This means no answering phones, working while eating and responding to work requests. If work is performed, the employee must be compensated.

If a paraeducator is expected to eat with students, the time is not to be deducted from the calculation of work time.

If an employee works through his/her break no additional compensation is due since the employee is already paid for breaks.

What if an employee regularly requests authorization to work beyond scheduled work hours or states he/she can't take off to use comp time?

An assessment of the situation needs to occur. Questions and/or issues to consider include:

- Are there tasks that are no longer necessary or could be performed more efficiently?
- Can the work be prioritized more effectively and lower priority tasks performed at non-peak times?
- Are there other staff members that can assist with tasks?
- Is the employee working efficiently or are there constant interruptions, socializing or other distractions occurring?
- Does the employee have the necessary skills/resources to perform the duties?
- Has consultation with other schools/offices occurred to discuss alternate strategies for addressing work load?

Strategies to address the situation will vary based upon the assessment. Consultation with appropriate others may be helpful.

What if an employee works beyond his/her scheduled hours or does work at home without prior authorization?

If the employee works without authorization or prior permission, he/she must be compensated in accordance with the law. It is the duty of management to exercise control to see that the work is not performed. It is the role of the administrator to counsel the employee and initiate

progressive disciplinary action if necessary. Assistance (including sample letters) with this process can be obtained by contacting Personnel Services in human resources.

COMPENSATORY (COMP) TIME

What is comp time?

Under the FLSA, compensatory time off is paid time off the job which is earned and accrued by an employee in lieu of cash payment for work performed in excess of 40 hours. The FLSA requires that comp time be earned at a rate of one and one half hours for each hour of employment over 40 hours. According to the BACE Master Agreement, compensatory time can also be earned hour for hour for gap time.

Do I have a choice between receiving comp time or overtime pay?

Under the law, the method of compensation has to be agreed upon before the work is performed. If an employee does not agree to comp time, the administrator can offer the hours and work to an employee who agrees to accept comp time.

Does comp time have to be approved by the administrator?

Yes, comp time has to be approved and the authorization form “Authorization to Work Beyond Scheduled Hours” needs to be completed and submitted to payroll. Comp time earned will be reported on the employee’s pay stub and on Metaviewer.

If compensatory time is earned, how soon does it have to be used?

An employee who has accrued comp time needs to be permitted to use the comp time within a “reasonable period” after making the request if the use does not “unduly disrupt” the business operations. Mere inconvenience to the employer is an insufficient basis for denial of a request for compensatory time off.

Does the use of earned comp time need to be approved by the Administrator?

Yes, the comp time needs to be approved by the Administrator prior to its use and recorded on the NOA card and payroll sheet.

What is the maximum amount of comp time an employee can accumulate?

There is a 240 hour limit on accrued compensatory time which represents not more than 160 hours of actual overtime worked.

What happens if compensatory time is not used by the end of the fiscal year?

If comp time is not used by the end of the school year for 10 month employees, or by the end of the fiscal year for 12 month employees the, comp time must be paid out as overtime pay to the employee.

Does comp time have to be used before using vacation or personal business leave?

Comp time should be used before vacation time (does not apply to 10 month employees) and before using personal business leave.

Can comp time be used for illness?

Personal illness or family illness leave should be used for illness and an employee should not be made to use comp time. Comp time can be approved and used if an employee chooses to use it for healthcare appointments. If the employee has no paid personal or family illness leave, approval to use comp time is made in consultation with human resources.

Does an employee have to use their earned comp time within the same pay period?

While this would be preferred, the law states within “a reasonable time period” and the BACE Master Agreement states by the end of the school year/fiscal year. It may be best not to wait until the end of the school or fiscal year, but it is acceptable to take into account the disruption to business operations. If approved, the employee can take it monthly, quarterly and in chunks of time (e.g. 1-2 hours, half day, full day, etc.).

Will an employee be paid for comp time if they end their employment with BCPS?

Yes, the payroll office will pay out any remaining comp time to the employee.

EXEMPT EMPLOYEES

If teachers are exempt employees, are substitute teachers considered exempt employees too?

The DOL has reiterated its position that substitute teachers may qualify as exempt under the FLSA if their primary duty is teaching and imparting knowledge in an elementary or secondary school. This is true whether or not they have an advanced degree so long as teaching is their primary duty.

What are the procedures for snow or inclement weather days for exempt employees?

The Master Agreement outlines procedures for 10 month teachers and 10 month BACE employees. For 12 month employees, if the school system remains open, the employee is expected to report to work. If the employee does not report, he/she must submit a NOA leave card. Absences for inclement weather are considered absences for personal reasons under the FLSA. If the schools and offices are closed, no time is charged. Section 7.6 of the BACE Master Agreement states that twelve month employees are allowed to use personal business, comp time or accrued vacation when schools are closed to students.

For exempt employees who have no remaining personal business or vacation leave available, and are absent or work a partial day, contact Human Resources or Payroll for direction on appropriate payroll coding.

Do exempt employees accumulate comp time?

Exempt employees do not accumulate comp time.

VOLUNTEERING

Can an employee volunteer to stay to complete work or complete work in the evening or on weekends and not be compensated?

No, an employee cannot volunteer to work “off the clock.”

When, and under what circumstances, can an employee of the school system volunteer?

In order to qualify as a volunteer all of the following criteria must be met:

The services provided for charitable or civic reasons must be done without promise, expectation or receipt of compensation.

The services must be offered freely and without direct or indirect coercion or pressure from the employer.

The services performed are different from those they are employed to perform.

Other questions to consider include:

Are the activities those typically associated with volunteer work?

Do the activities involve activities replacing regular employees?

Do the activities tend to occur at times convenient for the individual?

Are the activities subject to only minimal control by the receiver of the person’s efforts?

Can an employee who is also a parent of a child in the school volunteer at the school even if some of the activities of the volunteering are similar to duties performed as an employee?

The wage and hour division will not cite FLSA violations for time spent by the parents or a person who stands in *local parentis* of a child in the school even if some of the volunteer services they provide are the same as those they provide as an employee. The volunteer parent must perform the services without any expectation of compensation, coercion or pressure from the employer.

Can an employee volunteer for the PTA?

If the PTA is a non-profit organization with its own governing board of director’s independent from the school system, the PTA is not considered the same public agency as the school system. Secretarial or clerical employees can perform volunteer services for the PTA even though they provide the same services to the school.

Can an employee volunteer at sport events and other special events?

An employee may be considered a volunteer if they are not performing the same or similar service they are employed to perform. The key is that the volunteer services and the employment services are substantially different.