DEPARTMENT OF
HUMAN RESOURCES

FAIR LABOR
STANDARDS ACT
(FLSA)
GUIDELINES

Updated January 2016
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The information contained in this publication provides guidelines for complying with the Fair Labor Standards Act (FLSA).

1. **DEFINITION AND GENERAL PROVISIONS OF FLSA**

   The Fair Labor Standards Act (FLSA) requires employers to compensate all covered employees, or non-exempt employees, for all hours worked, and require overtime payments for hours worked beyond 40 hours per work week. The law also requires non-exempt employees to be paid at least the federal minimum wage. In addition, the act sets guidelines for employment of minors, and includes wage and hour record keeping requirements.

   FLSA compliance is very important because the school system can be held liable for violations of the law. It is also important to note that employees of public agencies may also be held individually liable for violations.

   The Fair Labor Standards Act is enforced by the [Wage and Hour Division](https://www.dol.gov/whd) (WHD) of the U.S. Department of Labor (DOL).

2. **EFFECT OF BARGAINING UNIT AGREEMENTS**

   The information in this guide describes the requirements of the law. Should bargaining unit agreements provide benefits beyond the law, the agreements will prevail.

3. **NON-EXEMPT EMPLOYEES DEFINITION**

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

   Non-exempt employees (sometimes referred to as hourly employees) are required to be paid an overtime premium of time-and-one-half for actual time worked in excess of 40 hours per week under the FLSA. Non-exempt positions in BCPS include but are not limited to, bus driver, bus attendant, cafeteria worker, secretary, mechanic, and building service worker.

   Refer to Section 4, Exempt Employees’ Definition and General Information, for information on exempt employees.

   Questions regarding the FLSA status of a position should be directed to the Office of Classification, 443-809-8938.

4. **EXEMPT EMPLOYEES DEFINITION and GENERAL INFORMATION**

   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 test, 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. Computer professional jobs are also, under certain circumstances, exempt from the provisions of the FLSA.

Teachers are specifically identified by the Department of Labor as being exempt from the provisions of the FLSA. However, BCPS teachers conducting bus duty are eligible for compensation for time worked beyond the duty day. Teachers should report total minutes worked beyond the duty day on a daily basis using the Bus Duty Log Worksheet.

Questions regarding the FLSA status of a position should be directed to the Office of Classification, 443-809-8938.

5. **DETERMINATION OF EXEMPT OR NON-EXEMPT EMPLOYEE STATUS**

The classification specialist in the Department of Human Resources, in consultation with appropriate stakeholders, determines the FLSA status of positions that have not already been clearly established by law.

If you are unsure if you or an employee you supervise is an exempt or non-exempt employee, check with your supervisor or call the Office of Classification at 443-809-8938.

If you disagree with the FLSA determination for your position, you can request a classification review of your position by completing part I of a Position Content Questionnaire (PCQ) available on the Internet and Intranet on the Office of Classification’s Web page and forwarding the completed form to your supervisor. These forms are used to analyze positions and are the basis for their classification and FLSA designation. In addition to the forms, the classification specialist may schedule an interview to gather additional information to be used in determining classification and FLSA status.

6. **OVERTIME COMPENSATION**

a. **OVERTIME**

Under the FLSA, hours worked over 40 hours in a work week are considered overtime. Any non-exempt employee who works beyond 40 hours per work week must be compensated at a rate of time and one half. Non-exempt employees may not “volunteer” to work without compensation (see Section 11, Volunteering).

Overtime must be pre-approved by a supervisor, and the form of compensation, either paid time or compensatory (comp) time, must be agreed upon prior to the work being performed (see Section 6c, Compensatory Time and Section 6e, Reporting Procedures, Authorization Form).

An employee, with supervisory approval, may adjust his/her schedule during the work week to offset extended work days. If an employee needs to work into the evening (e.g., three 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.
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 work is not performed beyond scheduled hours without prior approval. It is the role of the administrator to counsel the employee and initiate progressive disciplinary action if the process has not been followed. Assistance with this process can be obtained by contacting the Office of Employee Dispute Resolution.

For ESPBC represented employees, vacation, paid leave and holiday pay are not treated as hours worked and are not counted toward the 40 hour limit which must be exceeded for the time and one half provision to take effect.

Article 7.3 of the ESPBC Master Agreement states the overtime compensation practices for covered employees.

Non-exempt employees represented by AFSCME and required to respond to emergency and on-call situations do not have to seek pre-approval for overtime hours when the situation would present a danger to the public health and safety, but must notify a supervisor of any overtime worked under these circumstances as soon as possible.

Article VI, Section 2 of the AFSCME Master Agreement states the overtime compensation practices for its covered employees.

If an employee regularly requests authorization to work beyond scheduled work hours, or states that he/she cannot take off to use accrued 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 the Office of Staffing, 443-809-7870, or the Office of Classification, 443-809-8938, may be helpful.
b. **GAP TIME**

For non-exempt employees whose work week is less than 40 hours, the time worked beyond the normal work week up to 40 is considered “gap time” (e.g., if an employee’s normal work week is 37.5 hours, and he/she works 39 hours, he/she has worked 1.5 hours of gap time). Gap time is compensable at the regular hourly rate, not at time and a half.

Gap time needs to be pre-approved and the form of compensation, either paid time or compensatory time, needs to be agreed upon prior to the work being performed (see Section 6c, Compensatory Time).

c. **COMPENSATORY (COMP) TIME**

Under the FLSA, comp time 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 their regular weekly schedule. 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 [ESPBC Master Agreement](#), comp time can also be earned hour for hour for gap time.

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.

An employee who has accrued comp time must 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 comp time off. The use of comp time needs to be approved by the administrator prior to its use.

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 will be paid out as overtime pay to the employee. There is a 240 hour limit on accrued comp time which represents not more than 160 hours of actual overtime worked.

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

Personal illness or family illness leave should be used for illness and an employee should not be made to use comp time for illness. Comp time can be approved and used if an employee chooses to use it for healthcare appointments.

Although the law states that compensatory time should be used within “a reasonable time period,” the [ESPBC Master Agreement](#) states that comp time must be used by the end of the school year/fiscal year. It is 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.).
It is the responsibility of the supervisor to monitor comp time balances of their employees and ensure it is used within the fiscal year.

Exempt employees do not accrue compensatory time.

d. **APPROVAL FOR OVERTIME/COMPENSATORY (COMP) TIME**

Overtime must be pre-approved by a supervisor, and the form of compensation, either paid time or comp time, must be agreed upon prior to the work being performed (see Section 6c, Compensatory Time and Section 6e, Reporting Procedures, Authorization Form).

e. **REPORTING PROCEDURES**

Non-exempt employees must have prior authorization to work beyond their normally scheduled hours.

AFSCME-represented employees must obtain authorization to work overtime from an appropriate supervisor, except when emergency conditions that may threaten public health and safety exist. In these circumstances, the supervisor must be notified of overtime hours as soon as possible.

All overtime and gap time hours are to be reported in the electronic time and attendance system.

At this time, overtime for regular employees is not charged to the school budget; however, there is no specific overtime funding in the budget. Overtime is charged to each central office budget.
7. **COMPENSABLE ACTIVITIES/TIME - NON-EXEMPT EMPLOYEES**

a. **PROFESSIONAL DEVELOPMENT/TRAINING ACTIVITIES**

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

If *any* of the above conditions are *not* met, the time is compensable.

b. **COMMUTING TIME**

Basic commuting time to and from work is not compensable time but if the employee makes any work-related stops along the way, those stops are compensable time.

c. **WORK AT HOME**

Any work related to a non-exempt employee’s job that is done at home or on any off-site premises is compensable. This includes answering work-related e-mail messages using any personal computing device (i.e., PC, smart phone, tablet) (see Section 7d, Electronic Communications).

d. **ELECTRONIC COMMUNICATIONS**

Non-exempt employees who choose to access their BCPS e-mail accounts through personal computing devices such as smart phones may not do so during non-working hours without prior approval from an appropriate supervisor. Any time spent accessing, reading and/or responding to work-related e-mail or working on other electronic work materials is compensable under the FLSA.

It is the responsibility of the supervisor to ensure that all non-exempt employees understand that they are not to read and respond to work-related e-mails during non-working hours without prior approval.

e. **NON-EXEMPT EMPLOYEES WORKING A SECOND JOB IN BCPS**

Occasionally, non-exempt employees are hired for a second, temporary or contractual position in the system (e.g., an office secretary in a school obtains a position as an evening high school secretary). Whenever this occurs, the employee’s compensation will be reviewed and determined at the time of hire into the second position.
8. **BREAKS AND LUNCH – NON-EXEMPT EMPLOYEES**

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 of 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 answering phones, working while eating and responding to work requests are not permitted. If work is performed, the employee must be compensated.

If a non-exempt employee is expected to eat with students, the time is compensable and the employee must be paid.

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

Additional information regarding breaks and lunch can be found in the AFSCME Master Agreement, Article VI, Section 7 and the ESPBC Master Agreement, Article 7, Section 7.5.

9. **NURSING MOTHERS**

Under the FLSA, nursing mothers must be given “reasonable break time to express breast milk for her nursing child for one year after the child’s birth each time such employee has the need to express the milk.”

The law also requires the employer provide a private area, out of view and free from intrusion, other than a restroom, for the nursing mother to use to express milk. If a dedicated area is not available, the space provided must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a private area is acceptable as long as it is shielded from view and free from intrusion from co-workers or the public.

10. **INCLEMENT WEATHER**

The master agreements outline procedures for 10 month teachers and 10 month ESPBC-represented employees regarding inclement weather.

**Twelve month employees** (with the exception of 12 month infants and toddlers teachers) are expected to report to work if the schools and/or central offices remain open. If the employee does not report, he/she must use approved leave. When applicable, employees should report the absence in SmartFind Express (12 month school-based CASE- and TABCO-represented employees only) or Kronos. Absences for inclement weather are considered absences for personal reasons under the FLSA. If the schools and offices are closed, no time is charged. Article 7, Section 7.6 of the ESPBC Master Agreement states that 12 month employees are allowed to use personal business, comp time or accrued vacation when schools are closed to students.
For overtime calculation purposes, any time an ESPBC-represented employee does not report due to inclement weather is not counted towards hours worked.

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

11. VOLUNTEERING

An employee cannot volunteer to work “off the clock” in most cases and is not permitted to waive their rights under the FLSA.

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

There are a few specific circumstances in which a non-exempt employee may volunteer. In order to do so, 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.

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?

a. PARENT EMPLOYEE

For an employee who is also a parent of a child in the school, the wage and hour division will not cite FLSA violations for time spent by the parents or a person who stands in loco 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.

b. SPORT/SPECIAL EVENTS

A parent who volunteers to work at sports or special school-related events in which their child is participating does not have to be compensated as long as they:

- offer their services freely, without coercion or pressure, direct or implied, and
- do not perform the same types of services which they are employed to do.
c. **PTA VOLUNTEERS**

Employees may volunteer for the PTA if it 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 in this instance. Secretarial or clerical employees can perform volunteer services for the PTA even though they provide the same services to the school.

**12. SUBSTITUTE TEACHERS**

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.
13. **Responsibilities Checklist for Administrators/Supervisors**

- Monitor time of employees and ensure that employees do not perform work during lunch breaks, begin work prior to defined work hours, continue work after the end of defined work hours without prior approval, or complete work at home or on non-work time without obtaining prior approval of administrator/supervisor.

- Review requests for work that extends beyond the employee’s normal work hours for all non-exempt employees.

- Determine if an employee’s schedule can be adjusted within a work week in order to complete the work that needs to be done and make appropriate adjustments instead of granting overtime pay/comp time when possible.

- Ensure the appropriate reporting of comp time and overtime in the electronic time and attendance system.

- Ensure that all comp time is utilized in accordance with the ESPBC agreement before the end of the school year (10 month employees) or fiscal year (12 month employees) so that no balance is carried over into the next school or fiscal year.

- Counsel and/or provide disciplinary action (warning letter, letter of reprimand) to employees who do not comply with overtime pay or comp time procedures. **Please note:** the employee must be compensated for time worked in excess of their regularly scheduled hours per week even if approval was not obtained but appropriate disciplinary action must be taken.
14. **Responsibilities Checklist for Employees**

- Perform work duties only during designated work hours.

- Do not perform any work duties during lunch, or before or after the start of the work day, without prior approval and authorization from a supervisor.

- Do not access electronic work materials and do not read or respond to BCPS email outside of designated work hours without prior approval from a supervisor.

- Determine whether or not you will accept comp time in lieu of payment for gap time or overtime.

- Use comp time as soon as possible after it is accrued and available.

- Ensure that all comp time is utilized in accordance with the ESPBC agreement before the end of the school year (10 month employees) or fiscal year (12 month employees) so that no balance is carried over into the next school or fiscal year.
15. FLSA RESOURCES and CONTACTS

BCPS Office of Payroll:  http://www.bcps.org/offices/payroll/
State of Maryland Wage and Hour Division:  www.dllr.state.md.us/labor/wages/
U.S. Department of Labor Wage and Hour Division:  www.dol.gov/whd/flsa
BCPS Office of Classification:  443-809-8938
BCPS Office of Payroll:  443-809-4240
BCPS Office of Staffing:  443-809-7869
BCPS Office of Employee Dispute Resolution:  443-809-8936