Q: What is the Fair Labor Standards Act?

A: The Fair Labor Standards Act (FLSA) requires employers to compensate covered employees (non-exempt employees) for all hours worked and requires 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.

Q: What does the term “non-exempt” mean?

A: 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.

Q: What does the term “exempt” mean?

A: Exempt employees are salaried employees who are required to fulfill the duties of their positions regardless of the number of hours worked. Employees who meet a salary test, a salary basis test, and/or a duties basis test are identified as exempt.

Q: When is overtime due?

A: Under the FLSA, hours worked over 40 hours in a work week are considered overtime. A non-exempt employee who works beyond 40 hours per work week must be compensated at a rate of time and one half for actual time worked in excess of 40 hours. Non-exempt employees may not “volunteer” to work without compensation.

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

A: 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.

Q: Can an employee’s hours be adjusted within the same work week so the employee stays within the 40 hour standard?
A: 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. These adjustments do not have to be reported on the authorization form but you must keep a record of adjusted schedules on site.

Q: What is compensatory or “comp” time?

A: 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.

Q: Does “comp” time have to be authorized by an administrator prior to an employee working over 40 hours?

A: 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.

Q: How can I determine if staff development/training and committees are considered compensable activities if they occur outside of the employees normal work hours?

A: 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.

Q: Can non-exempt employees work through lunch to avoid overtime?

A: No. Non-exempt employees must be completely relieved of duties during meal periods. Performance of any work duties such as answering phones or emails, or being required to eat with students during meal periods is not permissible. When non-exempt employees are required to eat with students, the time is compensable and the employee must be paid.

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

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

A: 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.

Q: Do exempt employees accrue comp time?

A: Exempt employees do not accrue compensatory time. Exempt employees are salaried employees and as such are required to fulfill the duties of their positions regardless of the number of hours worked.

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

A: No. An employee cannot volunteer to work “off the clock” in most cases and is not permitted to waive their rights under the FLSA.

Q: Can an employee volunteer for the PTA or at school sports/special events?

A: Parents who volunteer to work at sports or special school-related events in which their children are participating do 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.

Q: Who can I contact with additional questions about FLSA compliance?

A: 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:  443-809-4191
BCPS Office of Employee Dispute Resolution:  443-809-8936