

FAIR LABOR STANDARDS ACT – OVERTIME

1. PURPOSE: The purpose of this policy is to ensure that the Barbour County Board of Education, hereinafter referred to as the Board, complies with the overtime provisions of the Fair Labor Standards Act (FLSA), regulations of the U.S. Department of Labor, Wage and Hour Division, and all applicable state statutes and regulations related to the compensation of full-time and part-time employees.

2. GENERAL.

2.1 Service employees of the Board shall work a thirty-seven and a half-hour workweek each week; professional employees shall work a forty-hour workweek each week.

2.2 The length of the school day for licensed and professional staff will be a minimum of eight hours and will continue until professional responsibilities to students are completed. Administrative meetings, curriculum development, pupil supervision, assigned duties, parent conferences, group or individual planning and extra-curricular activities, etc. may require hours beyond the stated minimum.

2.3 Work schedules for all other employees will be defined by the superintendent, or, his/her designee, and will be consistent with the Fair Labor Standards Act, West Virginia statutes, and provisions of this policy.

2.4 Non-exempt employees are not permitted to volunteer to perform services for or on behalf of the school system if the volunteer duties involve the same types of duties that the employees normally perform as a part of their regular duties for the school district.

3. DEFINITION.

3.1 Workweek:

3.1.1 For purposes of the Fair Labor Standards Act, the workweek for all employees of the Board is defined as beginning at 12:00 a.m. Monday and ending at 11:59 p.m. Sunday.

3.1.2 Working hours for all non-exempt employees of the Board under the Fair Labor Standards Act, including paraprofessionals, aides, secretaries, bus operators, cafeteria, janitorial and maintenance personnel, will conform to the federal and state regulations. The classification of all employee positions of the Board, as to whether they are exempt or non-exempt for the provision of the Fair Labor Standards Act, are shown in Subsection C.3 of this policy.

4. ATTENDANCE EXPECTATIONS.-

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- 4.1 All employees shall be present during their scheduled working hours. Absence without prior approval, chronic absences, habitual tardiness or abuses of the designated working hours are all considered neglect of duty and will result in disciplinary actions, up to and including dismissal.
- 4.2 Non-exempt employees who have not been granted prior approval by appropriate authority to work overtime may not arrive at their workstations earlier than their scheduled starting time and must leave their workstations at their ending time. Failure to comply with this requirement may result in disciplinary actions, up to and including dismissal.

5. TIME AND ATTENDANCE REPORTS.

- 5.1 Every employee classified as service personnel is required to complete a time sheet for each week worked during the employee's employment term, reflecting the actual starting and ending times for each day worked and the total time worked. The employee and the employee's immediate supervisor will each sign the time sheet prior to its submittal in a timely manner to the finance office.
- 5.2 Employees classified as professional personnel are not required to file weekly time sheets, but must indicate days present and absent on the payroll report and initial the report.

6. OVERTIME AND COMPENSATORY TIME.

- 6.1 Overtime requiring time and one half pay is hereby established as all hours worked beyond 40 hours per week. The Board discourages overtime work by non-exempt employees unless absolutely necessary.
- 6.2 A non-exempt employee shall not work overtime without the expressed written approval of his/her supervisor. The request must be submitted in writing using the appropriate form. In an emergency situation, verbal approval may be granted, however, a written request must be submitted within 24 hours following the verbal approval. Failure to comply with this will result in non-payment of hours worked.
- 6.3 Supervisory personnel must monitor overtime use on a weekly basis to ensure that all overtime worked is necessary. With the mutual agreement of the employee and the immediate supervisor, as required by the provisions of West Virginia Code § 18 A-4-8a (8) and 18A-4-8(d), work schedules may be adjusted within a workweek to preclude the need for overtime. This is considered an adjusted workweek and would not be recorded as compensatory time, as long as the hours worked during the workweek do not exceed 37½ hours.
- 6.4 In lieu of overtime compensation shall not occur in Barbour County Schools.

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- 6.5 In computing the 40-hour workweek for overtime purposes, only actual hours worked will be counted. Time taken off work on paid or unpaid leave, including personal, sick or military leave, vacation, time off without pay, jury duty, or other absences from work, whether approved or unapproved, outside school environment days, and days canceled due to inclement weather (snow days) will not be counted as hours worked.
- 6.6 Pursuant to the provisions of West Virginia Code § 18A-4-8a(6), any service personnel who is required to work on any legal school holiday as described in West Virginia Code §18A-5-2, shall be paid at the rate of one and one-half times the employee's usual hourly rate.
- 6.7 Pursuant to the provision of the West Virginia Code § 18A-4-8a(7), any full-time service personnel who is required to work in excess of his/her normal working day during any week which contains a school holiday shall be paid at the rate of one and one-half times the employee's usual hourly rate for the additional hours or fraction of additional hours worked.
- 6.8 Pursuant to the provision of West Virginia Code § 18A-4-8(e), an employee whose regular work week is scheduled from Monday through Friday and agrees to perform any work assignments on a Saturday or Sunday is to be paid for at least one-half day of work for each day he or she reports for work, and if the employee works more than three and one-half hours on any Saturday or Sunday, the employee is to be paid for at least a full-day of work. Any duty occurring on a Friday or Saturday evening that extends past midnight will be considered continuous duty and will not be compensated an additional one-half day.
- 6.9 In computing the overtime rate for a workweek in which this provision applies, only the actual hours worked on a Saturday or Sunday and the pay related to those hours will be included in the overtime computations. The pay for hours not actually worked will be paid at the employee's regular rate. Employees who report to work and leave early will be charged with the appropriate fraction of Sick Leave (SL), No-Cause (NC), or will be deducted that portion. If the services of a substitute are necessary, the sub will only be paid for the number of hours actually worked. This will not apply to transportation employees who may be unable to complete a morning or afternoon run due to an emergency situation. The substitute transportation employee would be paid for one half day in this situation.

7. COMPUTATION OF OVERTIME PAY.

- 7.1 Overtime compensation will be paid for actual hours worked in excess of 40 during a given workweek, as defined in Section 2.

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- 7.2 In computing the total number of overtime hours worked, time worked will be rounded to the nearest fifteen-minute increment. For example, one hour and 5 minutes will be rounded to one hour (1.0) hour and one hour and 10 minutes will be rounded to 1 hour and 15 minutes (1 and ¼ hour).
- 7.3 Overtime compensation will be paid at the rate of one and one-half times the employee's regular rate of pay for each hour worked in excess of 40 during a workweek. Generally, the regular rate will include all compensation earned by the employee during the workweek divided by the total numbers of hours worked.
- 7.4 In situations where an employee performs two or more different duties during the workweek with differing regular compensation rates, such as his/her regular duty and an extra-curricular and/or extra-duty assignment, overtime compensation will be computed using the following method. The Weighted Average Method involves calculating the employee's regular rate of pay for the workweek by taking the weighted average of all jobs performed during the workweek. To find the weighted average, determine the employee's total earnings for the week and divide this total by the total number of hours worked on all jobs. Once the weighted average has been determined, overtime will be calculated at one and one-half times this average.

8. VIOLATIONS.

- 8.1. Any exempt or non-exempt employee who violates any provision of the board's overtime policy, or any regulations or procedures related thereto, may be subject to disciplinary actions, up to and including dismissal.

C.3 – LIST OF EXEMPT AND NON-EXEMPT POSITIONS

The Fair Labor Standards Act (FLSA) designates some employees who are exempt from the overtime and minimum wage requirements of the FLSA.

1. There are four types of FLSA exemptions: executive, administrative, professional employees and "highly compensated" employees (29 Code of Federal Regulations (C.F.R.) Part 541)
2. Exempt employees generally must be paid on a "salaried" or fee basis, earn at least \$455 per week, and meet one of the "duties" tests below.

For computer employees to qualify as exempt employees, they must be compensated either on a salary or fee basis at a rate not less than \$455 per week, if compensated on a weekly basis, or a rate not less than \$27.63 per hour, if compensated on an hourly basis.

3. Employees who are exempt under the executive, administrative or professional exceptions must "primarily" perform executive, administrative or professional duties

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(i.e., generally at least 50% of the employee’s time). (29 C.F.R. Part 541) “Highly compensated” employees must perform at least one of these duties.

- a. Executive employee: Must be paid on a salary or fee basis and primary duty must include; (1) managing the enterprise in which he/she is employed or managing a recognized subdivision or department of the enterprise; AND (2) customary regular direction of two or more other employees AND (3) authority to hire and fire other employees or have hiring and firing recommendations carry significant weight. Includes superintendents, assistant superintendents, treasurers/chief school business official and most directors.
 - b. Administrative employee: In addition to salary requirements, primary duty must include; (1) either performing office or non-manual work directly related to management policies or general operations of the employer OR performing functions in the administration of a school system (or department or subdivision) in work directly related to the academic instruction or training AND (2) work requiring the exercise of discretion and independent judgment with respect to matters of significance. Includes principals, assistant principals, coordinators, and supervisors.
 - c. Professional employee: In addition to salary requirements, primary duty must include: (1) either work requiring knowledge of an advanced type customarily acquired by a long course of specialized study (work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion) OR (2) work requiring invention, imagination or talent in a recognized field of artistic endeavor OR (3) teaching in a school system/educational institution OR (4) work requiring highly specialized computer knowledge (primary duty consists of applying or designing systems, hardware or software.) Includes “learned professions” such as teaching, psychology, nursing (at the level of R.N. and above), counseling and accounting.
 - d. “Highly Compensated” Employee: Employee’s salary is more than \$100,000 annually AND employee regularly performs one or more of the exempt duties of an executive, administrative or professional employee AND primary duty is non-manual office work.
4. If an employee primarily performs non-exempt work, overtime and minimum wage requirements may apply. For example, if the director of maintenance spends most of his/her time doing hands-on maintenance, then he/she is most likely a “non-exempt” employee.
 5. Exempt employees are not covered by FLSA minimum wage and overtime provisions; however, they are covered by equal pay and record-keeping provisions.

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6. FLSA provisions do not apply to the following “non-covered” persons; independent contractors, bona fide volunteers and trainees, such as student teachers.

The following list represents some of the common categories of school district employees under the exemptions as well as a list of common categories of non-exempt employees. Certain

positions, such as superintendent, may qualify under more than one category, but are listed under the following categories below to be consistent with school districts in other states.

Executive Exemption -

Superintendent	102
Associate/Assistant Superintendent	103
Directors, Coordinators	106-107
Treasurer/CSBO	108

Administrative Exemption -

Administrative Assistant	104
Principals	111-114
Assistant Principals	115-118
Head Teacher	119
Curriculum Specialist	201
Attendance Director	322
Director/Coordinator of Services	521
Supervisor of Maintenance	570
Supervisor of Transportation	650
Food Services Supervisor	670

Professional Exemption -

Librarian	203
Remedial Specialist	204
Counselor	205-208
Teacher	210-241
Dentist	306
Professional Accountant	308
Physician	315
Psychiatrist	317
Psychologist	318
Registered Nurse	319
School Nurse	320-321
Attendance Officer	323
Social Worker	324

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Physical/Occupational Therapist	331,332
Dental Hygienist	403
Audiologist	405
Psychometrist	408

Non-Exempt Employees -

Aide	501-504
Paraprofessional	515
Autism Mentor	519
Accountant/Auditor	522-525
Buyer	526
Braille or Sign Language Specialist	527
Clerk	528-533
Secretary	535-538
Receptionist	541
Computer Technicians	545-547
Draftsman	549
Media Worker	551,557, 559
Inventory Supervisor	555
Accounts Payable Supervisor	560
Payroll Supervisor	561
Audio Visual Technician	574
Maintenance Worker	576-644
School Bus Operator/Truck Driver	652, 655, 659
Heavy Equipment Operator	657
Cafeteria Worker	672, 675-677
Custodians	681-684
Grounds man/Watchman	686, 688
Sanitation Plant Operator	690

Source: Board of Education Minutes

Adopted: 8/8/05

Revised: 06/14/10; 9/26/05

**Legal Reference: U.S. Department of Labor
WV Codes §18A-4-8a(8); §18A-4-8(d); §18A-4-8a(6); §18A-4-8a(7),
§ 18A-4-8(e); §18A-5-2**