UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

37th Annual School Law Conference

February 17-18, 2022
AT&T Conference Center
Austin, TX

The FLSA & School Districts

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THE FLSA & SCHOOL DISTRICTS

Introduction

The Fair Labor Standards Act (" the FLSA") is a federal law passed during the Depression Era to prevent "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers".[1] The FLSA's broad coverage applies to many working Americans, including employees who work for school districts.[2] The FLSA establishes requirements for employers to follow regarding the following: child labor laws, federal minimum wage, and overtime.

The FLSA's requirements are relatively straightforward. However, the consequences for FLSA violations can be *severe* and, more importantly, *expensive* for employers. Because of the penalties under the FLSA, it is important for school districts to take steps to minimize their liability under the FLSA. This paper will provide an overview of the FLSA and accompanying regulations and review common pitfalls that school districts should avoid regarding FLSA violations.

What is the FLSA?

The FLSA protects nonexempt employees by establishing the following requirements: (1) minimum wage; (2) overtime; (3) child labor, and (4) employer recordkeeping.[3] The FLSA has broad coverage, applying to most public and private employees.[4] The FLSA does not apply to independent contractors or employees whose job duties fail to meet an applicable exemption.[5]

It is important for school districts to properly comply with FLSA overtime requirements—damages have a two year look back period for violations that are not willful where good faith is proven, and a three year look back period for willful violations and for employer lawsuits.[6] The Department of Labor can also sue the District for willful violations, and the District is subject to criminal and individual liability.[7]

Some Basics and Definitions

Under the FLSA it is important to be familiar with several terms of art. "Workday" means the period between the time on any particular day when such employee commences his or her "principal activity" and the time on that day which he or she ceases such principal activity or activities.[8] Note, the workday may be longer than the employee's scheduled shift, tour of duty, or

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[1] 29 U.S.C. § 202(a).
[2] 29 U.S.C. § 206; 29 U.S.C. § 207; 29 U.S.C. § 203(s)(1)(B).
[3] 29 U.S.C. §§ 201—219.
[4] 29 U.S.C. § 207(a)(1); 29 C.F.R. § 776.2 *et seq.*; 29 C.F.R. § 776.22a
[5] 29 U.S.C. § 206; 29 U.S.C. § 207
[6] 29 U.S.C. § 255.
[7] *Handy Reference Guide to the Fair Labor Standards Act*, U.S. DEP'T OF L., https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa#15.
[8] U.S. Dep't of Lab. Wage & Hour Division, *Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)* (July 2008).

production time.[9] "Employ" means "suffered or permitted" to work.[10] This means that work not requested but allowed to be performed is work time that the employee must be paid for.[11] For example, an employee chooses to continue working at the end of his shift to finish an assigned task or to correct errors. This time spent working is "work time" and the employee must be compensated for this time accordingly. The reason the employee continues to work is immaterial to the analysis. "Compensation" includes: wages, commissions, certain bonuses, and room and board provided by the employer.

Employees are compensated for rest periods. "Rest periods" are considered work time and must be 20 minutes or less. "Meal periods", on the other hand, depend on whether the employee is completely relieved from his duties. Therefore, if the employee is on duty during his meal break, that is compensable work time. If the meal break is 30 minutes or longer and the employee is not on duty, that is not work time and the employee does not need to be compensated for that time.

Do the FLSA's Maximum Hours and Minimum Wage provisions apply to the District?

FLSA requirements apply to *your District*. As mentioned above, penalties for FLSA violations can be severe and expensive for school districts.[12] In 2016 alone, the Department of Labor collected over $266 million in back wages from Texas employers. Larger school districts can face steep penalties upwards of millions of dollars depending on the number and extent of violations.[13] Whether the FLSA applies to an employer and its employees is a three-step inquiry: (1) determine whether an employment relationship exists (i.e., independent contractors are not covered by the FLSA); (2) determine if individual or enterprise coverage exist; (3) determine if the employee's job meets an applicable exemption.[14]

The FLSA's overtime and minimum wage provisions apply to employment relationships.[15] Under the FLSA, "employ" means to "suffer or permit to work."[16] What is *not* included in this definition is: student teachers, trainees, interns, externs, apprentices, graduate assistants, and volunteers.[17] Even though an employment relationship my exist under the "suffer or permit to work" test, there must exist either individual coverage or enterprise coverage.[18] School districts are covered by enterprise coverage under the FLSA.[19]

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[9] *Id.*
[10] 29 U.S.C. § 203(g).
[11] 29 C.F.R. § 785.11.
[12] 29 U.S.C. § 216
[13] http://www.edcounsel.law/wp-content/uploads/2016/08/EdCounsel-Overtime-FLSA-Guidelines.pdf
[14] U.S. DEP'T OF LAB., "Who is Covered", https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/Digital_Reference_Guide_FLSA.pdf (last visited Dec. 16, 2021).
[15] *Id.*
[16] 29 U.S.C. § 203(g).
[17] *Id.*
[18] U.S. Dep't of Lab., *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs14.pdf (revised July 2009).
[19] 29 U.S.C. § 203(s)(1)(B); 29 C.F.R. § 553.3

Title search: The FLSA and School Districts

First appeared as part of the conference materials for the
37th Annual School Law Conference session
"The FLSA and School Districts"