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NONCERTIFIED PERSONNEL

8.1—NONCERTIFIED PERSONNEL SALARY SCHEDULE

Enter your District's salary schedule for this policy which must accurately reflect your district's actual pay practices and is not required by law to include step increases for additional years of experience. State law requires each District to include its noncertified employee's salary schedule in its written personnel policies unless the District recognizes a classified employee's union in its policies for, among other things, the negotiation of salaries. Your district is required to have a salary schedule for at least the following five categories of noncertified personnel: 1) Maintenance and Operations; 2) Transportation; 3) Food Service; 4) Secretarial and Clerical; and 5) Aids and Paraprofessionals.

Legal References: A.C.A. § 6-17-2301

Date Adopted:

Last Revised:

8.2— NONCERTIFIED PERSONNEL EVALUATIONS

Noncertified personnel may be periodically evaluated.

Any forms, procedures or other methods of evaluation, including criteria, are to be developed by the Superintendent and or his designee(s), but shall not be part of the personnel policies of the District.

Legal Reference: A.C.A. § 6-17-2301

Date Adopted:

Last Revised:

8.3—EVALUATION OF NONCERTIFIED PERSONNEL BY RELATIVES

No person shall be employed in, or assigned to, a position which would require that he be evaluated by any relative, by blood or marriage, including spouse, parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, nephew, or first cousin.

Date Adopted:

Last Revised:

8.4— NONCERTIFIED EMPLOYEES DRUG TESTING

Scope of Policy

Each person hired for a position which allows or requires that the employee operate any type of motor vehicle which is privately owned and operated for compensation, or which is owned, leased or otherwise operated by, or for the benefit of the District, and is operated for the transportation of children to or from school or school sponsored activity shall undergo a physical examination, including a drug test. Each person's initial employment for a job entailing a safety sensitive function is conditioned upon the district receiving a negative drug test result for that employee. The offer of employment is also conditioned upon the employee's signing an authorization for the request for information by the district from the Commercial Driver Alcohol and Drug Testing Database.

Methods of Testing

The collection, testing methods and standards shall be determined by the agency or other medical organizations chosen by the School Board to conduct the collection and testing of samples. The drug and alcohol testing is to be conducted by a laboratory certified pursuant to the most recent guidelines issued by the United States Department of Health and Human Services for such facilities. ("Mandatory Guidelines for Federal Workplace Drug Testing Programs").

Definition

Safety sensitive function includes:

1. All time spent inspecting, servicing, and/or preparing the vehicle;
2. All time spent driving the vehicle;
3. All time spent loading or unloading the vehicle or supervising the loading or unloading of the vehicle; and
4. All time spent repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Requirements

Employees shall be drug and alcohol free from the time the employee is required to be ready to work until the employee is relieved from the responsibility for performing work and/or any time they are performing a safety-sensitive function. In addition to the testing required as an initial condition of employment, employees shall submit to subsequent drug tests as required by law and/or regulation. Subsequent testing includes, and/or is triggered by, but is not limited to:

1. Random tests;
2. Testing in conjunction with an accident;
3. Receiving a citation for a moving traffic violation; and
4. Reasonable suspicion.

Prohibitions

- a. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater;
- b. No driver shall use alcohol while performing safety-sensitive functions;
- c. No driver shall perform safety-sensitive functions within four (4) hours after using alcohol;
- d. No driver required to take a post-accident alcohol test under # 2 above shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first;
- e. No driver shall refuse to submit to an alcohol or drug test in conjunction with # 1, 2, and/or 4 above;
- f. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when using any controlled substance, except when used pursuant to the instructions of a licensed medical practitioner, knowledgeable of the driver's job responsibilities, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate his/her vehicle. It is the employee's responsibility to inform his/her supervisor of the employee's use of such medication;
- g. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive or has adulterated or substituted a test specimen for controlled substances.

Violation of any of these prohibitions may lead to disciplinary action being taken against the employee, which could include termination or non-renewal.

Testing for Cause

Drivers involved in an accident in which there is a loss of another person's life shall be tested for alcohol and controlled substances as soon as practicable following the accident. Drivers shall also be tested for alcohol within eight (8) hours and for controlled substances within thirty two (32) hours following an accident for which they receive a citation for a moving traffic violation if the accident involved: 1) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or 2) one or more motor vehicles incurs disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Refusal to Submit

Refusal to submit to an alcohol or controlled substance test means that the driver

- Failed to appear for any test within a reasonable period of time as determined by the employer consistent with applicable Department of Transportation agency regulation;
- Failed to remain at the testing site until the testing process was completed;
- Failed to provide a urine specimen for any required drug test;

- Failed to provide a sufficient amount of urine without an adequate medical reason for the failure;
- Failed to undergo a medical examination as directed by the Medical Review Officer as part of the verification process for the previous listed reason;
- Failed or declined to submit to a second test that the employer or collector has directed the driver to take;
- Failed to cooperate with any of the testing process; and/or
- Adulterated or substituted a test result as reported by the Medical Review Officer.

Consequences for Violations

Drivers who engage in any conduct prohibited by this policy, who refuse to take a required drug or alcohol test, refuse to sign the request for information required by law, or who exceed the acceptable limits for the respective tests shall no longer be allowed to perform safety sensitive functions. Actions regarding their continued

employment shall be taken in relation to their inability to perform these functions and could include termination or non-renewal of their contract of employment.

Drivers who exhibit signs of violating the prohibitions of this policy relating to alcohol or controlled substances shall not be allowed to perform or continue to perform safety-sensitive functions if they exhibit those signs during, just preceding, or just after the period of the work day that the driver is required to be in compliance with the provisions of this policy. This action shall be based on specific, contemporaneous, articulatable observations concerning the behavior, speech, or body odors of the driver. The Superintendent or his/her designee shall require the driver to submit to “reasonable suspicion” tests for alcohol and controlled substances. The direction to submit to such tests must be made just before, just after, or during the time the driver is performing safety-sensitive functions. If circumstances prohibit the testing of the driver the Superintendent or his/her designee shall remove the driver from reporting for, or remaining on, duty for a minimum of 24 hours from the time the observation was made triggering the driver’s removal from duty.

If the results for an alcohol test administered to a driver is equal to or greater than 0.02, but less than 0.04, the driver shall be prohibited from performing safety-sensitive functions for a period not less than 24 hours from the time the test was administered. Unless the loss of duty time triggers other employment consequence policies, no further other action against the driver is authorized by this policy for test results showing an alcohol concentration of less than 0.04.

Notes: You are required to give drivers a copy of the procedures that will be used in the testing for drugs and alcohol. If you are following your own policy in this regard, give your drivers a copy of that policy; if you’re using a drug testing company to

administer the tests, give your drivers a copy of the test administration procedures.

You are required to provide your drivers the name of the person you have designated to answer your drivers questions about the materials you give them regarding drug and alcohol testing.

You are also required to give your employees “information pertaining to the effects of alcohol and controlled substance use on an individual’s health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver’s or a co-worker’s); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.”

Give a copy of this policy to your drivers.

Have your drivers sign an acknowledgement that they have received all of the information contained in this policy and these footnotes.

¹ You have the option of also requiring an alcohol test, but you may not selectively require it, i.e. if you require it for one prospective employee you must require it for all prospective employees.

² While A.C.A. § 6-19-108(e) permits a district to hire a non-certified bus driver in an emergency situation, 49CFR382.301 forbids a first time driver (employee) from performing any safety sensitive functions prior to the district receiving a negative drug test for the employee.

³ While the provisions for fines contained in 27-23-209 do not apply to school districts, school districts are still required to comply with this law. It is for this reason, along with simple prudence in not hiring a person who receives a positive drug/alcohol test, that this language is included. The request for information required by the state is in addition to the federal requirement (49CFR40.25(a)(b)) that you request drug and alcohol test results from any U.S. Department of Transportation regulated employers who have employed the employee during any period during the two years prior to the date of the employee’s application.

⁴ Employers are required to report to the Office of Driver Services of the Revenue Division of the Department of Finance and Administration within three (3) business days the results of an alcohol test if it was performed due to cause or as part of random testing and the results were positive or the employee refused to provide a specimen for testing.

²; ⁵The drivers covered under this policy are those who operate a vehicle as outlined in the first paragraph, “Scope of Policy.” Federal law requires you to remove them from safety-sensitive functions when a drug or alcohol related problem exists, but the law does not enter into the realm of dismissing them from other, non-driving, duties.

This policy is similar to Policy 3.7. If you change this policy, review 3.7 at the same time to ensure applicable consistency between the two.

Legal Reference: A.C.A. § 6-19-108
 A.C.A. § 27-23-201 et seq.
 49 C.F.R. § 382-101 – 605
 49 C.F.R. § part 40
 Arkansas Division of Academic Facilities and Transportation Rules Governing
Maintenance and Operations of Arkansas Public School Buses and Physical
Examinations of School Bus Drivers

Date Adopted:

Date Adopted:
Last Revised:

8.5— NONCERTIFIED EMPLOYEES SICK LEAVE

Definitions

1. “Employee” is an employee of the District working 20 or more hours per week who is not required to have a teaching license as a condition of his employment.
2. “Sick Leave” is absence from work due to illness, whether by the employee or a member of the employee’s immediate family, or due to a death in the family. The principal shall determine whether sick leave will be approved on the basis of a death outside the immediate family of the employee.
3. “Current Sick Leave” means those days of sick leave for the current contract year, which leave is granted at the rate of one day of sick leave per month worked, or major part thereof.*
4. “Accumulated Sick Leave” is the total of unused sick leave, up to a maximum of ninety (90) days accrued from previous contract, but not used.
5. “Immediate family” means an employee’s spouse, child, parent, or any other relative provided the other relative lives in the same household as the teacher.

Sick Leave

The principal has the discretion to approve sick leave for an employee to attend the funeral of a person who is not related to the employee, under circumstances deemed appropriate by the principal. Such approved sick leave shall not exceed two hours.

Pay for sick leave shall be at the employee’s daily rate of pay, which is that employee’s hourly rate of pay times the number of hours normally worked per day. Absences for illness in excess of the employee’s accumulated and current sick leave shall result in a deduction from the employee’s pay at the daily rate or minimum wage.

At the discretion of the principal (or Superintendent), the District may require a written statement from the employee’s physician. Failure to provide such documentation of illness may result in sick leave not being paid, or in dismissal.

Excessive absenteeism, whatever the cause, to the extent that the employee is not carrying out his assigned duties to the degree that the education of students or the efficient operation of a school or the district is substantially adversely affected (at the determination of the principal or Superintendent) may result in dismissal.

Legal Reference: A.C.A. § 6-17-1301 et seq.

Date Adopted:

Last Revised:

8.6—SICK LEAVE BANK — NONCERTIFIED EMPLOYEES

This policy allows an employee to voluntarily donate a leave day or days to another employee who, because of some long term illness or death in the family, has exhausted their leave days. Leave days in mass may not be given to someone who has not exhausted their leave days.

Leave days must be given to a particular individual rather than be thrown into a pot to be used by anyone. Transfer of days will occur from one individual to another individual.

Payment for Unused Sick Leave:

When a non-certified employee retires, said employee will be paid \$50.00 per day for unused sick leave, up to a maximum of 90 days.

Legal Reference: A.C.A. § 6-17-1306

Date Adopted:

Last Revised:

8.7— NONCERTIFIED PERSONNEL PERSONAL AND PROFESSIONAL LEAVE

Personal Leave

For the district to function efficiently and have the necessary personnel present to effect a high achieving learning environment, employee absences need to be kept to a minimum. The district acknowledges that there are times during the school year when employees have personal business that needs to be addressed during the school day. Each full-time employee shall receive one (1) day of personal leave per contract year. The leave may be taken in increments of no less than one (1) hour.

Employees shall take personal leave or leave without pay for those absences which are not due to attendance at school functions and do not qualify for other types of leave (for sick leave see policy 8.5, for professional leave, see below).

School functions, for the purposes of this policy, means:

1. Athletic or academic events related to the school district in which the employee is acting on behalf of the district in which the employee is acting on behalf of the district; and
2. Meetings and conferences related to education.

The determination of what activities meet the definition of a school function shall be made by the employee's immediate supervisor or designee. In no instance shall paid leave in excess of allotted vacation days and/or personal days be granted to an employee who is absent from work while receiving remuneration from another source as compensation for the reason for their absence.

Any employee desiring to take personal leave may do so by making a written request to his supervisor at least twenty-four (24) hours prior to the time of the requested leave. The twenty-four hour requirement may be waived by the supervisor when the supervisor deems it appropriate.

Employees who fail to report to work when their request for a personal day has been denied or who have exhausted their allotted personal days, shall lose their daily rate of pay for the day(s) missed (leave without pay). While there are instances where personal circumstances necessitate an employee's absence beyond the allotted days of sick and/or personal leave, any employee who requires leave without pay must receive advance permission (except in medical emergencies) from their immediate supervisor. Failure to report to work without having received permission to be absent is grounds for discipline, up to and including termination. When all sick leave and extended leave have been exhausted, days may be donated to the individual by another employee of the district.

Personal leave does not accumulate from one contract year to the next.

Professional Leave

"Professional leave" is granted for the purpose of enabling an employee to participate in professional activities (e.g., teacher workshops or serving on professional committees) which can serve to improve the school district's instructional program or enhances the employee's ability to perform his duties. Professional leave will also be granted when a school district employee is subpoenaed for a matter arising

out of the employee's employment with the school district. Any employee seeking professional leave must make a written request to his immediate supervisor, setting forth the information necessary for the supervisor to make an informed decision. The supervisor's decision is subject to review and overruling by the superintendent. Budgeting concerns and the potential benefit for the district's students will be taken into consideration in reviewing a request for professional leave.

Applications for professional leave should be made as soon as possible following the employee's discerning a need for such leave, but, in any case, no less than two (2) weeks before the requested leave is to begin, if possible.

If the employee does not receive or does not accept remuneration for their participation in the professional leave activity and a substitute is needed for the employee, the district shall pay the full cost of the substitute. If the employee receives and accepts remuneration for their participation in the professional leave activity (e.g., scholastic audits or praxis assessments), the employee shall forfeit his/her daily rate of pay from the district for the time the employee misses. The cost of a substitute, if one is needed, shall be paid by the employee.

Non-Certified Extended Leave

One extended day is granted to full time employees for each year of employment. Extended days are not replenished after use, but do roll over if they are unused. Extended leave can only be used when all of the employee's sick leave has been exhausted.

Date Adopted:
Last Revised:

8.8—NONCERTIFIED PERSONNEL RESPONSIBILITIES IN DEALING WITH SEX OFFENDERS ON CAMPUS

Individuals who have been convicted of certain sex crimes must register with law enforcement as sex offenders. Arkansas law places restrictions on sex offenders with a Level 1 sex offender having the least restrictions (lowest likelihood of committing another sex crime), and Level 4 sex offenders having the most restrictions (highest likelihood of committing another sex crime).

While Levels 1 and 2 place no restrictions prohibiting the individual's presence on a school campus, Levels 3 and 4 have specific prohibitions. These are specified in Policy 6.10—SEX OFFENDERS ON CAMPUS (MEGAN'S LAW) and it is the responsibility of district staff to know and understand the policy and, to the extent requested aid school administrators in enforcing the restrictions placed on campus access to Level 3 and Level 4 sex offenders.

It is the intention of the board of directors that district staff not stigmatize students whose parents or guardians are sex offenders while taking necessary steps to safeguard the school community and comply with state law. Each school's administration should establish procedures so attention is not drawn to the accommodations necessary for registered sex offender parents or guardians.¹

Cross Reference: **6.10—SEX OFFENDERS ON CAMPUS (MEGAN'S LAW)**

Legal Reference: A.C.A. § 12-12-913 (g) (2)
 Arkansas Department of Education Guidelines for "Megan's Law"
 A.C.A. § 5-14-131

Date Adopted:

Last Revised:

8.9—PUBLIC OFFICE – NONCERTIFIED PERSONNEL

An employee of the District who is elected to the Arkansas General Assembly or any elective or appointive public office (not legally constitutionally inconsistent with employment by a public school district) shall not be discharged or demoted as a result of such service.

No paid leave will be granted for the employee's participation in such public office. The employee may receive pay for personal leave or vacation (if applicable), if approved in advance by the Superintendent, during his absence.

Prior to taking leave, and as soon as possible after the need for such leave is discerned by the employee, he must make written request for leave to the Superintendent, setting out, to the degree possible, the dates such leave is needed.

An employee who fraudulently requests sick leave for the purpose of taking leave to serve in public office may be subject to non-renewal or termination of his employment contract.

Cross Reference: Policy # 8.17—Noncertified Personnel Political Activity

Legal Reference: A.C.A. § 6-17-115

Date Adopted:

Last Revised:

8.10—JURY DUTY – NONCERTIFIED PERSONNEL

Employees are not subject to discharge, loss of sick leave, loss of vacation time or any other penalty due to absence from work for jury duty, upon giving reasonable notice to the District through the employee's immediate supervisor.

The employee must present the original (not a copy) summons to jury duty to his supervisor in order to confirm the reason for the requested absence.

Employees shall receive their regular pay from the district while serving jury duty, and shall reimburse the district from the stipend they receive for jury duty, up to, but not to exceed, the cost of the substitute hired to replace the employee in his/her absence.

Legal Reference: A.C.A. § 16-31-106

Date Adopted:

Last Revised:

8.11—OVERTIME, COMPTIME, and COMPLYING WITH FLSA

The Pangburn School District shall comply with those portions of the Fair Labor Standards Act that relate to the operation of public schools. The act requires that covered employees be compensated for all hours worked at greater than or equal to the applicable minimum wage for workweeks of less than or equal to 40 hours. It also requires that employees be compensated for workweeks of greater than 40 hours at 1 1/2 times their regular rate of pay either monetarily or through compensatory time. Comp time must be recorded in the main office and all paperwork should be turned in as it is in the case of any other absence.

Definitions

Overtime is hours worked in excess of 40 per workweek. Compensation given for hours **not** worked such as for holidays or sick days do **not** count in determining hours worked per workweek.^D

Workweek is the seven day consecutive period of time from 12:00AM on Sunday to midnight on the following Saturday. Each workweek is independent of every other workweek for the purpose of determining the number of hours worked and the remuneration entitled to by the employee for that week.^E

Exempt Employees are those employees who are not covered under the FLSA.^F They include administrators and professional employees such as teachers, counselors, nurses, and supervisors. Any employee who is unsure of their coverage status should consult with the District's Administration.

Covered Employees (also defined as non-exempt employees) are those employees who are not exempt, generally termed noncertified, and include bus drivers, clerical workers, maintenance personnel, custodians, transportation workers, receptionists, paraprofessionals, food service workers, secretaries, and bookkeepers.

Regular Rate of Pay includes all forms of remuneration for employment and shall be expressed as an hourly rate.^G For those employees previously paid on a salary basis, the salary shall be converted to an hourly equivalent. Employees shall be paid for each and every hour worked.

Employment Relationships

1. The District does not have an employment relationship in the following instances.
2. Between the District and student teachers;
3. Between the District and its students;
4. Between the District and individuals who as a public service volunteer or donate their time to the District without expectation or promise of compensation.

The District does not have a joint employment relationship in the following instances.

1. Between the District and off-duty policemen or deputies who are hired on a part-time basis for security purposes or crowd control. The District is separate from and acts independently of other governmental entities.
2. Between the District and any agency contracted with to provide transportation services, security services, or other services.

Hours Worked

Employees shall be compensated for all the time they are required to be on duty^H and shall be paid for all hours worked each workweek. Employees shall accurately record the hours they work each week.^I

The District shall determine the manner to be used by employees to accurately record the hours they work. Each employee shall record the exact time they commence and cease work including meal breaks. Employees arriving early may socialize with fellow workers who are off the clock, but shall not commence working without first recording their starting time.^J

Employees shall sign in/clock in where they start work and sign out/clock out at the site where they cease working. Employees who do not start and end their workday at the same site shall carry a time card or sheet with them to accurately record their times. They shall turn in their time sheets or cards to their immediate supervisor no later than the following Monday morning after reviewing them to be sure that they accurately reflect their hours worked for that week.

Each employee is to personally record his or her own times. Any employee who signs in or out (or who punches a time clock) for another employee or who asks another employee to do so for him or her will be dismissed.

Employees whose normal workweek is less than 40 hours and who work more than their normal number of hours in a given workweek may, at the District's option, be given compensatory time for the hours they worked in excess of their normal workweek in lieu of their regular rate pay. Compensatory time given in this manner shall be subject to the same conditions regarding accumulation and use as compensatory time given in lieu of overtime pay.

Breaks and Meals

Each employee working more than 20 hours per week shall be provided two, paid, 15 minute duty free breaks per workday.^K

Meal periods which are less than 30 minutes in length or in which the employee is not relieved of duty are compensable.^L Employees with a bona fide meal period shall be completely relieved of their duty to allow them to eat their meal which they may do away from their work site, in the school cafeteria, or in a break area.

The employee shall not engage in any work for the District during meal breaks except in rare and infrequent emergencies.

Overtime

Covered employees shall be compensated at not less than 1.5 times his or her regular rate of pay for all hours worked over 40 in a workweek.^M Overtime compensation shall be computed on the basis of the hours worked in each week and may not be waived by either the employee or the District. Overtime compensation shall be paid on the next regular payday for the period in which the overtime was earned.^N

Employees working two or more jobs for the District at different rates of pay shall be paid overtime at a weighted average of the differing wages.^O This shall be determined by dividing the total regular remuneration for all hours worked by the number of hours worked in that week to arrive at the weighted average. One half that rate is then multiplied times the number of hours worked over 40 to arrive at the overtime compensation due.

Provided the employee and the District have a written agreement or understanding before the work is performed,^P compensatory time off may be awarded in lieu of overtime pay for hours worked over 40 in a workweek and shall be awarded on an hour by hour basis.^Q The District reserves the right to determine if it will award compensatory time in lieu of monetary pay for the overtime worked. The maximum number of compensatory hours an employee may accumulate at a time is 20. The employee must be able to take the compensatory time off within a reasonable period of time that is not unduly disruptive to the District.

An employee whose employment is terminated with the District, whether by the District or the employee shall receive monetary compensation for unused compensatory time. Of the following methods, the one that yields the greatest money for the employee shall be used.

1. The average regular rate received by the employee during the last 3 years of employment. Or
2. The final regular rate received by the employee.^R

Overtime Authorization

There will be instances where the district's needs necessitate an employee work overtime. It is the Board's desire to keep overtime worked to a minimum. To facilitate this, employees shall receive authorization from their supervisor in advance of working overtime except in the rare instance when it is unforeseen and unavoidable.

All overtime worked will be paid in accordance with the provisions of the FLSA, but unless the overtime was pre-approved or fit into the exceptions noted previously, disciplinary action must be taken for failure to follow District policy. In extreme and repeated cases, disciplinary action could include the termination of the employee.

Leave Requests

All covered employees shall submit a leave request form prior to taking the leave if possible. If, due to unforeseen or emergency circumstances, advance request was not possible the leave form shall be turned in the day the employee returns to work. Unless specifically granted by the Board for special circumstances, the reason necessitating the leave must fall within District policy.

Payment for leave could be delayed or not occur if an employee fails to turn in the required leave form. Leave may be taken in a minimum of 4 hour increments.⁷

Record Keeping^S and Postings^T

The District shall keep and maintain records as required by the FLSA for the period of time^U required by the act.

The District shall display minimum wage posters where employees can readily observe them.

Cooperation with Enforcement Officials^V

All records relating to the FLSA shall be available for inspection by, and District employees shall cooperate fully with, officials from the DOL and/or its authorized representatives in the performance of their jobs relating to:

1. Investigating and gathering data regarding the wages, hours, and other conditions and practices of employment;
2. Entering, inspecting, and/or transcribing the premises and its records;
3. Questioning employees and investigating such facts as the inspectors deem necessary to determine whether any person has violated any provision of the FLSA.

Legal References:

- A: 29 USC § 206(a), ACA § 6-17-2203
- B: 29 USC § 207(a)(1), 29 CFR § 778.100
- C: 29 USC § 207(o), 29 CFR § 553.50
- D: 29 CFR § 778.218(a)
- E: 29 CFR § 778.105
- F: 29 USC § 213(a), 29 CFR §§ 541 et seq.
- G: 29 USC § 207(e), 29 CFR § 778.108
- H: 29 CFR §§ 785.9, 785.16
- I: 29 CFR § 516.2(7)
- J: 29 CFR §§ 785.1 et seq.
- K: ACA § 6-17-2205
- L: 29 CFR §§ 785.19
- M: 29 USC § 207(a), 29 CFR § 778.100, 29 USC § 207(o), 29 CFR §§ 553.20 – 553.32
- N: 29 CFR § 778.106
- O: 29 USC § 207(g)(2), 29 CFR § 778.115
- P: 29 USC § 207(o)(2)(A), 29 CFR § 553.23
- Q: 29 CFR § 553.20
- R: 29 USC § 207(o)(4), 29 CFR § 553.27
- S: 29 USC § 211(c), 29 CFR §§ 516.2, 516.3, 553.50
- T: 29 CFR § 516.4
- U: 29 CFR §§ 516.5, 516.6
- V: 29 USC § 211(a)(b)

Date Adopted:

Last Revised:

8.12— NONCERTIFIED PERSONNEL OUTSIDE EMPLOYMENT

An employee of the District may not be employed in any other capacity during regular working hours.

An employee may not accept employment outside of his district employment which will interfere, or otherwise be incompatible with the District employment, including normal duties outside the regular work day; nor shall an employee accept other employment which is inappropriate for an employee of a public school.

The Superintendent, or his designee(s), shall be responsible for determining whether outside employment is incompatible, conflicting, or inappropriate.

Legal Reference: A.C.A. § 6-24-106, 107, 111

Date Adopted:

Last Revised:

8.13— NONCERTIFIED PERSONNEL EMPLOYMENT

All prospective employees must fill out an application form provided by the District, in addition to any resume provided, all of which information is to be placed in the personnel file of those employed.

If the employee provides false or misleading information, or if he withholds information to the same effect, it may be grounds for dismissal.

The Pangburn School District is an equal opportunity employer and shall not discriminate on the grounds of race, color, religion, national origin, sex, age, or disability.

Date Adopted:

Last Revised:

8.14— NONCERTIFIED PERSONNEL REIMBURSEMENT OF TRAVEL EXPENSES

Employees shall be reimbursed for personal and/or travel expenses incurred while performing duties or attending workshops or other employment-related functions, provided that prior written approval for the activity for which the employee seeks reimbursement has been received from the Superintendent, principal (or other immediate supervision with the authority to make school approvals), or the appropriate designee of the Superintendent.

It is the responsibility of the employee to determine the appropriate supervisor from which he must obtain approval.

Reimbursement claims must be made on forms provided by the District and must be supported by appropriate, original receipts. Copies of receipts or other documentation are not acceptable, except in extraordinary circumstances.

Cross Reference: Policy #7.12

Date Adopted:

Last Revised:

8.15— NONCERTIFIED PERSONNEL TOBACCO USE

Smoking or the use of tobacco, or products containing tobacco in any form, in or on any property owned or leased by the district, including buses or other school vehicles, is prohibited.

Violation of this policy by employees shall be grounds for disciplinary action up to, and including, dismissal.

Legal Reference: A.C.A. § 6-21-609

Date Adopted:

Last Revised:

8.16—DRESS OF NONCERTIFIED EMPLOYEES

Employees shall ensure that their dress and appearance are professional and appropriate to their positions.

Date Adopted:

Last Revised:

8.17— NONCERTIFIED PERSONNEL POLITICAL ACTIVITY

Employees are free to engage in political activity outside of work hours and to the extent that it does not affect the performance of their duties or adversely affect important working relationships.

It is specifically forbidden for employees to engage in political activities on the school grounds or during work hours. The following activities are forbidden on school property:

1. Using students for preparation or dissemination of campaign materials;
2. Distributing political materials;
3. Distributing or otherwise seeking signatures on petitions of any kind;
4. Posting political materials; and
5. Discussing political matters with students, in or out of the classroom, in other than circumstances appropriate to the employee's responsibilities to the students and where a legitimate pedagogical reason exists.

Date Adopted:

Last Revised:

8.18— NONCERTIFIED PERSONNEL DEBTS

All employees are expected to meet their financial obligations. If an employee writes “hot” checks or has his income garnished, dismissal may result.

An employee will not be dismissed for having been the subject of one (1) garnishment. However, a second or third garnishment may result in dismissal.

At the discretion of the Superintendent, he or his designee may meet with an employee who has received a second garnishment for the purpose of warning the employee that a third garnishment will result in a recommendation of dismissal to the School Board.

At the discretion of the Superintendent, a second garnishment may be used as a basis for a recommended dismissal. The Superintendent may take into consideration other factors in deciding whether to recommend dismissal based on a second garnishment. Those factors may include, but are not limited to, the amount of the debt, the time between the first and the second garnishment, and other financial problems which come to the attention of the District.

Date Adopted:

Last Revised:

8.19— NONCERTIFIED PERSONNEL GRIEVANCES

The purpose of this policy is to provide an orderly process for employees to resolve, at the lowest possible level, their concerns related to the personnel policies or salary payments of this district.

Definitions

Grievance: a claim or concern related to the interpretation, application, or claimed violation of the personnel policies, including salary schedules, federal or state laws and regulations, or terms or conditions of employment, raised by an individual employee of this school district. Other matters for which the means of resolution are provided or foreclosed by statute or administrative procedures shall not be considered grievances. Specifically, no grievance may be entertained against a supervisor for directing, instructing, reprimanding, or “writing up” an employee under his/her supervision. A group of employees who have the same grievance may file a group grievance.

Group Grievance: A grievance may be filed as a group grievance if it meets the following criteria: (meeting the criteria does not ensure that the subject of the grievance is, in fact, grievable)

1. More than one individual has interest in the matter; and
2. The group has a well-defined common interest in the facts and/or circumstances of the grievance; and
3. The group has designated an employee spokesperson to meet with administration and/or the board; and
4. All individuals within the group are requesting the same relief.

Employee: any person employed under a written contract by this school district.

Immediate Supervisor: the person immediately superior to an employee who directs and supervises the work of that employee.

Working day: Any weekday other than a holiday whether or not the employee under the provisions of their contract is scheduled to work or whether they are currently under contract.

Process

Level One: An employee who believes that he/she has a grievance shall inform that employee’s immediate supervisor that the employee has a potential grievance and discuss the matter with the supervisor within five working days of the occurrence of the grievance. The supervisor shall offer the employee an opportunity to have a witness or representative who is not a member of the employee’s immediate family present at their conference. (The five-day requirement does not apply to grievances concerning back pay.) If the grievance is not advanced to Level Two within five working days following the conference, the matter will be considered resolved and the employee shall have no further right with respect to said grievance.

If the grievance cannot be resolved by the immediate supervisor, the employee can advance the grievance to Level Two. To do this, the employee must complete the top half of the Level Two Grievance Form within five working days of the discussion with the immediate supervisor, citing the manner in which the specific personnel policy was violated that has given rise to the grievance, and submit the Grievance Form to his/her immediate supervisor. The supervisor will have ten working days to respond to the grievance using the bottom half of the Level Two Grievance Form which he/she will submit to the building principal or, in the event that the employee’s immediate supervisor is the building principal, the superintendent.

Level Two (when appeal is to the building principal): Upon receipt of a Level Two Grievance Form, the building principal will have ten working days to schedule a conference with the employee filing the grievance. The principal shall offer the employee an opportunity to have a witness or representative who is not a member of the employee's immediate family present at their conference. After the conference, the principal will have ten working days in which to deliver a written response to the grievance to the employee. If the grievance is not advanced to Level Three within five working days the matter will be considered resolved and the employee shall have no further right with respect to said grievance.

Level Two (when appeal is to the superintendent): Upon receipt of a Level Two Grievance Form, the superintendent will have ten working days to schedule a conference with the employee filing the grievance. The superintendent shall offer the employee an opportunity to have a witness or representative who is not a member of the employee's immediate family present at their conference. After the conference, the superintendent will have ten working days in which to deliver a written response to the grievance to the employee.

Level Three: If the proper recipient of the Level Two Grievance was the building principal, and the employee remains unsatisfied with the written response to the grievance, the employee may advance the grievance to the superintendent by submitting a copy of the Level Two Grievance Form and the principal's reply to the superintendent within five working days of his/her receipt of the principal's reply. The superintendent will have ten working days to schedule a conference with the employee filing the grievance. The superintendent shall offer the employee an opportunity to have a witness or representative who is not a member of the employee's immediate family present at their conference. After the conference, the superintendent will have ten working days in which to deliver a written response to the grievance to the employee.

Appeal to the Board of Directors: An employee who remains unsatisfied by the written response of the superintendent may appeal the superintendent's decision to the Board of Education within five working days of his/her receipt of the Superintendent's written response by submitting a written request for a board hearing to the superintendent. If the grievance is not appealed to the Board of Directors within five working days of his/her receipt of the superintendent's response, the matter will be considered resolved and the employee shall have no further right with respect to said grievance.

The school board will address the grievance at the next regular meeting of the school board, unless the employee agrees in writing to an alternate date for the hearing. After reviewing the Level Two Grievance Form and the superintendent's reply, the board will decide if the grievance, on its face, is grievable under district policy. If the grievance is presented as a "group grievance," the Board shall first determine if the composition of the group meets the definition of a "group grievance." If the Board determines that it is a group grievance, the Board shall then determine whether the matter raised is grievable. If the Board rules the composition of the group does not meet the definition of a group grievance, or the grievance, whether group or individual, is not grievable, the matter shall be considered closed. (Individuals within the disallowed group may choose to subsequently refile their grievance as an individual grievance beginning with Level One of the process.) If the Board rules the grievance to be grievable, they shall immediately commence a hearing on the grievance. All parties have the right to representation by a person of their own choosing who is not a member of the employee's immediate family at the appeal hearing before the Board of Directors. The employee shall have no less than 90 minutes to present his/her grievance, unless a shorter period is agreed to by the employee, and both parties shall have the opportunity to present and question witnesses. The hearing shall be open to the public unless the employee requests a private hearing. If the hearing is open, the parent or guardian of any student

under the age of eighteen years who gives testimony may elect to have the student's testimony given in closed session. At the conclusion of the hearing, if the hearing was closed, the Board of Directors may excuse all parties except board members and deliberate, by themselves, on the hearing. At the conclusion of an open hearing, board deliberations shall also be in open session unless the board is deliberating the employment, appointment, promotion, demotion, disciplining, or resignation of the employee. A decision on the grievance shall be announced no later than the next regular board meeting.

Records

Records related to grievances will be filed separately and will not be kept in, or made part of, the personnel file of any employee.

Reprisals

No reprisals of any kind will be taken or tolerated against any employee because he/she has filed or advanced a grievance under this policy.

Legal Reference: ACA § 6-17-208, 210

Date Adopted:

Last Revised:

8.19F—LEVEL TWO GRIEVANCE FORM - NONCERTIFIED

Name: _____

Date submitted to supervisor: _____

Noncertified Personnel Policy grievance is based upon:

Grievance (be specific): _____

What would resolve your grievance? _____

Supervisor's Response

Date submitted to recipient: _____

Date Adopted:

Last Revised:

8.20— NONCERTIFIED PERSONNEL SEXUAL HARASSMENT

The Pangburn School District is committed to having an academic and work environment in which all students and employees are treated with respect and dignity. Student achievement and amicable working relationships are best attained in an atmosphere of equal educational and employment opportunity that is free of discrimination. Sexual harassment is a form of discrimination that undermines the integrity of the educational environment and will not be tolerated.

Believing that prevention is the best policy, the district will periodically inform students and employees about the nature of sexual harassment, the procedures for registering a complaint, and the possible redress that is available. The information will stress that the district does not tolerate sexual harassment and that students and employees can report inappropriate behavior of a sexual nature without fear of adverse consequences.

It shall be a violation of this policy for any student or employee to be subjected to, or to subject another person to, sexual harassment as defined in this policy. Any employee found, after an investigation, to have engaged in sexual harassment will be subject to disciplinary action up to, and including, termination.

Sexual harassment refers to unwelcome sexual advances, requests for sexual favors, or other personally offensive verbal, visual, or physical conduct of a sexual nature made by someone under any of the following conditions:

1. Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's education or employment;
2. Submission to, or rejection of, such conduct by an individual is used as the basis for academic or employment decisions affecting that individual; and/or
3. Such conduct has the purpose or effect of substantially interfering with an individual's academic or work performance or creates an intimidating, hostile, or offensive academic or work environment.

The terms "intimidating," "hostile," and "offensive" include conduct of a sexual nature which has the effect of humiliation or embarrassment and is sufficiently severe, persistent, or pervasive that it limits the student's or employee's ability to participate in, or benefit from, an educational program or activity or their employment environment.

Within the educational or work environment, sexual harassment is prohibited between any of the following: students; employees and students; non-employees and students; employees; employees and non-employees.

Actionable sexual harassment is generally established when an individual is exposed to a pattern of objectionable behaviors or when a single, serious act is committed. What is, or is not, sexual harassment will depend upon all of the surrounding circumstances. Depending upon such circumstances, examples of sexual harassment include, but are not limited to: unwelcome touching; crude jokes or pictures; discussions of sexual experiences; pressure for sexual activity; intimidation by words, actions, insults, or name calling; teasing related to sexual characteristics; and spreading rumors related to a person's alleged sexual activities.

Employees who believe they have been subjected to sexual harassment are encouraged to file a complaint by contacting their immediate supervisor, administrator, or Title IX coordinator who will assist them in the

complaint process. Under no circumstances shall an employee be required to first report allegations of sexual harassment to a school contact person if that person is the individual who is accused of the harassment. To the extent possible, complaints will be treated in a confidential manner. Limited disclosure may be necessary in order to complete a thorough investigation.

Employees who file a complaint of sexual harassment will not be subject to retaliation or reprisal in any form.

Employees who knowingly fabricate allegations of sexual harassment shall be subject to disciplinary action up to and including termination.

Individuals who withhold information, purposely provide inaccurate facts, or otherwise hinder an investigation of sexual harassment shall be subject to disciplinary action up to and including termination.

Legal References: Title IX of the Education Amendments of 1972, 20 USC 1681, et seq.
Title VII of the Civil Rights Act of 1964, 42 USC 2000-e, et seq.
ACA § 6-15-1005 (b) (1)

Date Adopted:
Last Revised:

8.21— NONCERTIFIED PERSONNEL SUPERVISION OF STUDENTS

All District personnel are expected to conscientiously execute their responsibilities to promote the health, safety, and welfare of the District's students under their care. The Superintendent shall direct all principals to establish regulations ensuring adequate supervision of students throughout the school day and at extracurricular activities.

Date Adopted:

Last Revised:

8.22— NONCERTIFIED PERSONNEL COMPUTER USE POLICY

The Pangburn School District provides computers and/or computer Internet access for many employees, to assist employees in performing work related tasks. Employees are advised that they enjoy **no expectation of privacy** in any aspect of their computer use, including email, and that under Arkansas law, both email and computer use records maintained by the district are subject to disclosure under the Freedom of Information Act.

Passwords or security procedures are to be utilized as assigned, and confidentiality of student records relating to personnel is to be maintained at all times. Employees must not disable or bypass security procedures, disclose passwords to other staff members or students, or grant students access to any computer not designated for student use. It is the policy of this school district to equip each computer with Internet filtering software designed to prevent users from accessing material that is harmful to minors. The designated District Technology Administrator or designee may authorize the disabling of the filter to enable access by an adult for a bona fide research or other lawful purpose.

Employees who misuse district-owned computers in any way, including excessive personal use, using computers for personal use during work or instructional time, using computers to violate any other policy, knowingly or negligently allowing unauthorized access, or using the computers to access or create sexually explicit or pornographic text or graphics, will face disciplinary action, up to and including termination or non-renewal of the employment contract.

Legal References: 20 USC 6801 et seq. (Children’s Internet Protection Act; PL 106-554)
 A.C.A. § 6-21-107
 A.C.A. § 6-21-111

Date Adopted:
Last Revised:

8.22F—NONCERTIFIED PERSONNEL INTERNET USE AGREEMENT

The Pangburn School District agrees to allow the employee identified above (employee) to use the district's technology to access the Internet under the following terms and conditions:

1. Conditional Privilege: The Pangburn School District, to help teachers and staff with work-related tasks, provides computers and, in many cases, computer Internet access and/or campus e-mail accounts for its employees. This access is a privilege that should not be taken lightly. The employee's use of the district's access to the Internet is a privilege conditioned on the employee's abiding by this agreement.
2. Acceptable Use: The employee agrees that in using the district's Internet access he/she shall obey all federal and state laws and regulations. Internet access is provided as an aid to employees to enable them to better perform their job responsibilities. Under no circumstances shall an employee's use of the district's Internet access interfere with, or detract from, the performance of his/her job-related duties.
3. Student Confidentiality and General Security: Under Arkansas law, all student records must be kept confidential. Therefore, it is imperative that employees keep their passwords in a secure location. All employees should use all the safety precautions advised by the district to maintain the integrity of network security. Employees must not disable or bypass security procedures, disclose passwords to other staff members or students, or grant students or any unauthorized individual access to any computer not designated for that individual's use. Every staff member must have any computer issued to them turned on, on campus and/or hooked into the campus network, at least one day and over one night each week so that every computer may download the required Windows and virus updates from the campus network.
4. Installation of Programs: All employees also recognize the need to keep the district's computer system free of illegal software. For that reason, only a designated technology staff member is allowed to install programs on school computers. All programs that are installed must be for school-related purposes, meaning only educational software will be installed unless otherwise approved by the administration.
5. Penalties for Improper Use: If the employee violates this agreement and misuses the Internet, the employee shall be subject to disciplinary action up to and including termination.
6. "Misuse of the District's Access to the Internet" includes but is not limited to the following:
 - a. using the Internet or any computer resources for any activities deemed sexually explicit, lewd, obscene, vulgar, or pornographic as defined by prevailing community standards;
 - b. using abusive or profane language in private messages on the system; or using the system to harass, insult, or verbally attack others;
 - c. posting anonymous messages on the system;
 - d. using encryption software;
 - e. wasting use of limited resources provided by the school including paper;
 - f. causing congestion of the network through lengthy downloads of files;
 - g. vandalizing data of another user;
 - h. obtaining or sending information which could be used to make destructive devices such as guns, weapons, bombs, explosives, or fireworks;
 - i. gaining or attempting to gain unauthorized access to resources or files;

- j. identifying oneself with another person's name or password or using an account or password of another user without proper authorization;
- k. using the network for financial or commercial gain without district permission;
- l. theft or vandalism of data, equipment, or intellectual property;
- m. invading the privacy of individuals;
- n. using the Internet for any illegal activity, including computer hacking and copyright or intellectual property law violations;
- o. introducing a virus to, or otherwise improperly tampering with, the system;
- p. degrading or disrupting equipment or system performance;
- q. creating a web page or associating a web page with the school or school district without proper authorization;
- r. attempting to gain access or gaining access to student records, grades, or files of students not under their jurisdiction;
- s. providing access to the district's Internet access to unauthorized individuals; or
- t. taking part in any activity related to Internet use which creates a clear and present danger of the substantial disruption of the orderly operation of the district or any of its schools;
- u. making unauthorized copies of computer software;
- v. excessive personal use of computers and/or personal use of computer during instructional time;
- w. accessing free web-based e-mail (effective July 1, 2006) or engaging in any form of instant messaging;
- y. listening to music or playing games over the Internet or allowing students to do so;
- z. plugging any personal network equipment (router, laptop, etc.) into the school's network

8. Content Filtering: Pangburn School District has Internet content filtering software in place as provided by the state through DIS. This software allows the district to prevent any harmful or obscene websites from being viewed by minors. It is each teacher's responsibility to monitor his/her students' internet activity and report any websites that are being viewed that should be blocked by the filter. For any site that has been blocked by the content filter but is needed by an employee for work-related duties, the employee may request an exemption for that site. Once the requested site has been reviewed, the site will be unblocked, if it is deemed safe and acceptable.

9. Liability for Debts: Teachers and staff shall be liable for any and all costs (debts) incurred through their use of the district's computers or the Internet including penalties for copyright violations.

10. No Expectation of Privacy: The employee signing below agrees that in using the district's computers and/or Internet access, he/she waives any right to privacy the employee may have for such use. The employee agrees that the district may monitor the employee's use of the district's internet access and may also examine all computer system activities the employee participates in, including but not limited to e-mail, voice, video transmissions, web pages visited, files created, and programs used, to ensure proper use of the system.

Date Adopted:

8.23— NONCERTIFIED PERSONNEL FAMILY MEDICAL LEAVE

Eligibility

The Pangburn School District will grant up to twelve (12) weeks of leave in accordance with the Family Medical Leave Act of 1993 (FMLA) to its employees who have been employed by the District for at least twelve (12) months and for 1250 hours of service during the twelve (12) month period immediately preceding the commencement of the leave. The twelve (12) month period of eligibility shall begin on the first duty day of the school year. Leave will be granted for one or more of the following reasons:

1. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
2. Because of the placement of a son or daughter with the employee for adoption or foster care;
3. In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition; and
4. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

The entitlement to leave for reasons 1 and 2 listed above shall expire at the end of the twelve (12) month period beginning on the date of such birth or placement.

If both the husband and wife are employed by the district and entitled to leave as defined above, the District may, as determined by the needs of the District, limit their leave to a combined total of twelve (12) weeks when taken for reasons 1 or 2 listed above or to care for a parent with a serious health condition.

Notice by Employees

Foreseeable: When the need for leave is foreseeable, the employee must provide the District with at least thirty (30) days advance notice before the leave is to begin. If thirty (30) days is not practicable, such as because of a lack of knowledge of approximately when the leave will be required to begin, notice must be given as soon as practicable. As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.

When the need for leave is for reasons 3 or 4 listed above, the employee should provide a medical certification from a health care provider supporting the need for leave at the time the notice for leave is given, but must provide certification at least fifteen (15) days prior to the date the leave is to begin.

Failure by the employee to give thirty (30) days notice may delay the taking of FMLA leave until at least thirty (30) days after the date the employee provides notice to the District.

Unforeseeable: When the approximate timing of the need for leave is not foreseeable, an employee shall provide the District notice of the need for leave as soon as practicable given the facts and circumstances of the particular case. Ordinarily, the employee shall notify the District within two (2) working days of learning of the

need for leave, except in extraordinary circumstances where such notice is not feasible. Notice may be provided in person, by telephone, telegraph, fax, or other electronic means.

Medical Certification

The required medical certification from a licensed, practicing health care provider of the need for FMLA leave for reasons 3 or 4 listed above shall include the date on which the serious health condition began, the probable duration of the condition, and the appropriate medical facts within the knowledge of the health care provider regarding the condition. For reason 4 listed above, the certification must include a statement that the employee is unable to perform the required functions of his/her position.

Second Opinion: In any case where the District has reason to doubt the validity of the certification provided, the District may require, at its expense, the employee to obtain the opinion of a second health care provider designated or approved by the employer. If the second opinion differs from the first, the District may require, at its expense, the employee to obtain a third opinion from a health care provider agreed upon by both the District and the employee. The opinion of the third health care provider shall be considered final and be binding upon both the District and the employee.

Recertification: The District may request the employee obtain a recertification, at the employees expense, no more often than every thirty (30) days unless one or more of the following circumstances apply;

- a. The employee requests an extension of leave;
- b. Circumstances described by the previous certification have changed significantly; and/or
- c. The District receives information that casts doubt upon the continuing validity of the certification.

The employee must provide the recertification in no more than fifteen (15) calendar days after the District's request.

No second or third opinion on recertification may be required.

Concurrent Leave

The District requires employees to substitute any applicable accrued leave for any part of the twelve (12) week period of FMLA leave. All FMLA leave is unpaid unless substituted by applicable accrued leave.

Workers Compensation: FMLA leave may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition.

Health Insurance Coverage

The District shall maintain coverage under any group health plan for the duration of FMLA leave the employee takes at the level and under the conditions coverage would have been provided if the employee had continued in

active employment with the District. The employee remains responsible for any portion of premium payments customarily paid by the employee. When on unpaid FMLA leave, it is the employee's responsibility to submit their portion of the cost of the group health plan coverage to the District's business office on or before it would be made by payroll deduction.

If an employee gives unequivocal notice of intent not to return to work, or if the employment relationship would have terminated if the employee had not taken FMLA leave the district's obligation to maintain health benefits ceases.

If the employee fails to return from leave after the period of leave to which the employee was entitled has expired, the District may recover the premiums it paid to maintain health care coverage unless:

- a. The employees fails to return to work due to the continuation, reoccurrence, or onset of a serious health condition that entitles the employee to leave under reasons 3 or 4 listed above; and/or
- b. Other circumstances exist beyond the employee's control.

Circumstances under "a" listed above shall be certified by a licensed, practicing health care provider verifying the employee's inability to return to work.

Reporting Requirements During Leave

Employees shall inform the District every two weeks during FMLA leave of their current status and intent to return to work.

Return to Work

Medical Certification: An employee who has taken FMLA leave under reason 4 stated above shall provide the District with certification from a health care provider that the employee is able to resume work.

Return to Previous Position: An employee returning from FMLA leave is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An equivalent position must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, and authority. The employee may not be restored to a position requiring additional licensure or certification.

Failure to Return to Work: In the event that an employee is unable or fails to return to work, the Superintendent will make a determination at that time regarding the documented need for a severance of the employees contract due to the inability of the employee to fulfill the responsibilities and requirements of their contract.

Intermittent Leave

The District will honor employee requests for intermittent leave as prescribed by the FMLA and that are in the best interests of the District.

Policy

The provisions of this policy are intended to be in line with the provisions of the FMLA. If any conflict(s) exist, the Family Medical Leave Act of 1993 shall govern.

Legal References: 29 USC 2601 et seq.
 29 CFR 825.100 et seq.

Date Adopted:
Last Revised:

* All school districts are covered under the Family Medical Leave Act and are required to keep certain payroll and employee identification records and post pertinent notices regarding FMLA for its employees. Employees, however, are only eligible for FMLA benefits if the district has 50 or more employees within a 75-mile radius of the district's offices. Your district may choose to offer FMLA benefits to your employees even though they are not technically eligible. If your district has less than 50 employees and chooses not to offer FMLA benefits, the following policy serves to inform your employees of why FMLA benefits do not apply to them and could help to avoid possible confusion resulting from the posting of FMLA notices.

Legal References: 29 USC 2601 et seq.
 29 CFR 825.100 et seq.

Date Adopted:
Last Revised:

8.24—SCHOOL BUS DRIVER’S USE OF CELL PHONES

Any driver of a motor vehicle which is privately owned and operated for compensation, or which is owned, leased or otherwise operated by, or for the benefit of the District, and is operated for the transportation of children to or from school or school sponsored activity shall not operate a cell phone unless the vehicle is safely off the road with the parking brake engaged.

Legal Reference: A.C.A. § 6 –19 -120
ADE Rules and Regulations Governing Mobile Phone Usage by School Bus Drivers

Date Adopted:
Last Revised:

8.25— NONCERTIFIED PERSONNEL CELL PHONE USE

Use of cell phones or other electronic communication devices by employees during their designated work time is strictly forbidden unless specifically approved in advance by the superintendent, building principal, or their designees.

Date Adopted:

Last Revised:

8.26—NONCERTIFIED PERSONNEL RESPONSIBILITIES GOVERNING BULLYING

School employees who have witnessed, or are reliably informed that, a student has been a victim of bullying as defined in this policy, including a single action which if allowed to continue would constitute bullying, shall report the incident(s) to the principal. The principal or his/her designee shall be responsible for investigating the incident(s) to determine if disciplinary action is warranted.

District staff are required to help enforce implementation of the district's anti-bullying policy. The district's definition of bullying is included below. Students who bully another person are to be held accountable for their actions whether they occur on school equipment or property; off school property at a school-sponsored or school-approved function, activity, or event; or going to or from school or a school activity. Students are encouraged to report behavior they consider to be bullying, including a single action which if allowed to continue would constitute bullying, to their teacher, staff member, or the building principal. The report may be made anonymously.

Definitions:

Bullying means the intentional harassment, intimidation, humiliation, ridicule, defamation, or threat or incitement of violence by a student against another student or public school employee by a written, verbal, electronic, or physical act that causes or creates a clear and present danger of:

- Physical harm to a public school employee or student or damage to the public school employee's or student's property;
- Substantial interference with a student's education or with a public school employee's role in education;
- A hostile educational environment for one (1) or more students or public school employees due to the severity, persistence, or pervasiveness of the act; or
- Substantial disruption of the orderly operation of the school or educational environment;

Electronic act means without limitation a communication or image transmitted by means of an electronic device, including without limitation a telephone, wireless phone or other wireless communications device, computer, or pager that results in the substantial disruption of the orderly operation of the school or educational environment.

Electronic acts of bullying are prohibited whether or not the electronic act originated on school property or with school equipment, if the electronic act is directed specifically at students or school personnel and maliciously intended for the purpose of disrupting school, and has a high likelihood of succeeding in that purpose.

Harassment means a pattern of unwelcome verbal or physical conduct relating to another person's constitutionally or statutorily protected status that causes, or reasonably should be expected to cause, substantial interference with the other's performance in the school environment; and

Substantial disruption means without limitation that any one or more of the following occur as a result of the bullying:

- Necessary cessation of instruction or educational activities;
- Inability of students or educational staff to focus on learning or function as an educational unit because of a hostile environment;
- Severe or repetitive disciplinary measures are needed in the classroom or during educational activities; or
- Exhibition of other behaviors by students or educational staff that substantially interfere with the learning environment.

Examples of "Bullying" may include but are not limited to a pattern of behavior involving one or more of the following:

5. Sarcastic "compliments" about another student's personal appearance,
6. Pointed questions intended to embarrass or humiliate,
7. Mocking, taunting or belittling,
8. Non-verbal threats and/or intimidation such as "fronting" or "chesting" a person,
9. Demeaning humor relating to a student's race, gender, ethnicity or personal characteristics,
10. Blackmail, extortion, demands for protection money or other involuntary donations or loans,
11. Blocking access to school property or facilities,
12. Deliberate physical contact or injury to person or property,
13. Stealing or hiding books or belongings, and/or
14. Threats of harm to student(s), possessions, or others.

Legal Reference: A.C.A. § 6-18-514

Date Adopted:

Last Revised:

8.27 NONCERTIFIED PERSONNEL LEAVE — INJURY FROM ASSAULT

Any staff member who, while in the course of their employment, is injured by an assault or other violent act; while intervening in a student fight; while restraining a student; or while protecting a student from harm, shall be granted a leave of absence for up to one (1) year from the date of the injury, with full pay.

A leave of absence granted under this policy shall not be charged to the staff member's sick leave.

In order to obtain leave under this policy, the staff member must present documentation of the injury from a physician, with an estimate for time of recovery sufficient to enable the staff member to return to work, and written statements from witnesses (or other documentation as appropriate to a given incident) to prove that the incident occurred in the course of the staff member's employment.

Legal Reference: A.C.A. § 6-17-1308

Date Adopted:

Last Revised:

8.28— DRUG FREE WORKPLACE - NONCERTIFIED PERSONNEL

The conduct of district staff plays a vital role in the social and behavioral development of our students. It is equally important that the staff have a safe, healthful, and professional environment in which to work. To help promote both interests, the district shall have a drug free workplace. It is, therefore, the district's policy that district employees are prohibited from the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances, illegal drugs, inhalants, alcohol, as well as inappropriate or illegal use of prescription drugs. Such actions are prohibited both while at work or in the performance of official duties while off district property; violations of this policy will subject the employee to discipline, up to and including termination.

To help promote a drug free workplace, the district shall establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the district's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance abuse programs, and the penalties that may be imposed upon employees for drug abuse violations.

Should any employee be found to have been under the influence of, or in illegal possession of, any illegal drug or controlled substance or under the influence of alcohol, whether or not engaged in any school or school-related activity, and the behavior of the employee, if under the influence, is such that it is inappropriate for a school employee in the opinion of the superintendent, the employee may be subject to discipline, up to and including termination.

Possession, use or distribution of drug paraphernalia by any employee, whether or not engaged in school or school-related activities, may subject the employee to discipline, up to and including termination. Possession in one's vehicle or in an area subject to the employee's control will be considered to be possession as though the substance were on the employee's person.

It shall not be necessary for an employee to test at a level demonstrating intoxication by any substance in order to be subject to the terms of this policy. Any physical manifestation of being under the influence of a substance may subject an employee to the terms of this policy. Those physical manifestations include, but are not limited to: unsteadiness; slurred speech; dilated or constricted pupils; incoherent and/or irrational speech; or the presence of an odor associated with a prohibited substance on one's breath or clothing.

Should an employee desire to provide the District with the results of a blood, breath or urine analysis, such results will be taken into account by the District only if the sample is provided within a time range that could provide meaningful results and only by a testing agency chosen or approved by the District. The District shall not request that the employee be tested, and the expense for such voluntary testing shall be borne by the employee.

Any employee who is charged with a violation of any state or federal law relating to the possession, use or distribution of illegal drugs, other controlled substances or alcohol, or of drug paraphernalia, must notify his immediate supervisor within five (5) week days (i.e., Monday through Friday, inclusive, excluding holidays) of being so charged. The supervisor who is notified of such a charge shall notify the Superintendent immediately. If the supervisor is not available to the employee, the employee shall notify the Superintendent within the five (5) day period.

Any employee so charged is subject to discipline, up to and including termination. However, the failure of an employee to notify his supervisor or the Superintendent of having been so charged shall result in that employee being recommended for termination by the Superintendent.

Any employee convicted of any criminal drug statute violation for an offense that occurred while at work or in the performance of official duties while off district property shall report the conviction within 5 calendar days to the superintendent. Within 10 days of receiving such notification, whether from the employee or any other source, the district shall notify federal granting agencies from which it receives funds of the conviction. Compliance with these requirements and prohibitions is mandatory and is a condition of employment.

Any employee convicted of any state or federal law relating to the possession, use or distribution of illegal drugs, other controlled substances or alcohol, or of drug paraphernalia, shall be recommended for termination.

Any employee who must take prescription medication at the direction of the employee's physician, and who is impaired by the prescription medication such that he cannot properly perform his duties shall not report for duty. Any employee who reports for duty and is so impaired, as determined by his supervisor, will be sent home. The employee shall be given sick leave, if owed any. The District or employee will provide transportation for the employee, and the employee may not leave campus while operating any vehicle. It is the responsibility of the employee to contact his physician in order to adjust the medication, if possible, so that the employee may return to his job unimpaired. Should the employee attempt to return to work while impaired by prescription medications, for which the employee has a prescription, he will, again, be sent home and given sick leave, if owed any; Should the employee attempt to return to work while impaired by prescription medication a third time the employee may be subject to discipline, up to and including a recommendation of termination.

Any employee who possesses, uses, distributes or is under the influence of a prescription medication obtained by a means other than his own current prescription shall be treated as though he was in possession, possession with intent to deliver, or under the influence, etc. of an illegal substance. An illegal drug or other substance is one which is (a) not legally obtainable; or (b) one which is legally obtainable, but which has been obtained illegally. The District may require an employee to provide proof from his physician and/or pharmacist that the employee is lawfully able to receive such medication. Failure to provide such proof, to the satisfaction of the Superintendent, may result in discipline, up to and including a recommendation of termination.

<http://www.dol.gov/asp/programs/drugs/workingpartners/materials/materials.asp>.

Legal References: 41 USC § 702, 703, and 706

Date Adopted:

Last Revised:

8.28F—DRUG FREE WORKPLACE POLICY ACKNOWLEDGEMENT

CERTIFICATION

I, hereby certify that I have been presented with a copy of the Pangburn District’s drug-free workplace policy, that I have read the statement, and that I will abide by its terms as a condition of my employment with District.

Signature _____

Date _____

8.29—REQUIREMENTS FOR PARAPROFESSIONALS

No Child Left Behind (NCLB) requires that Title I paraprofessionals who have any student instructional contact be “highly qualified.” This requires that, at a minimum, they shall have:

1. completed at least 2 years of study at an institution of higher education;
2. obtained an associate's (or higher) degree;
3. taken and passed the Parapro Assessment Test certifying they are highly qualified; or
4. satisfied any other state or federal requirement for paraprofessionals to be “highly qualified.”

New employees hired as paraprofessionals are required to have met the qualifications criteria as an initial condition for employment. Title I paraprofessionals who have any student instructional contact already employed by the district as of January 8, 2002 must be able to meet the qualifications criteria by January 1, 2006.

The superintendent shall determine if, in his or her opinion, a paraprofessional employed by the district prior to January 8, 2002 may be reasonably expected to satisfy the requirements imposed by NCLB or state requirements by January 1, 2006. No later than 30 days prior to each paraprofessional’s contract commencement date the superintendent shall notify paraprofessional employees deemed unlikely to satisfy NCLB and/or state requirements that they are being recommended for non-renewal. In the event that, subsequent to contract renewal, the superintendent determines the paraprofessional employee does not meet the definition of “highly qualified,” it shall be grounds for termination of the paraprofessional’s contract of employment.

An exception to the highly qualified requirements of NCLB is allowed for paraprofessionals who are proficient in English and a language other than English and who provide services primarily to enhance the participation of children in programs served under Title I by acting as a translator; or whose duties consist solely of conducting parental involvement activities consistent with the requirements of NCLB.

Legal Reference: 20 USC § 6319(c)(d)(e)

Date Adopted:

Last Revised:

8.30—NONCERTIFIED PERSONNEL REDUCTION IN FORCE

SECTION ONE

The School Board acknowledges its authority to conduct a reduction in force (RIF) when a decrease in enrollment or other reason(s) make such a reduction necessary or desirable. A RIF will be conducted when the need for a reduction in the work force exceeds the normal rate of attrition for that portion of the staff that is in excess of the needs of the district as determined by the superintendent.

In effecting a reduction in force, the primary goals of the school district shall be: what is in the best interests of the students; to maintain accreditation in compliance with the Standards of Accreditation for Arkansas Public Schools and/or the North Central Association; and the needs of the district. A reduction in force will be implemented when the superintendent determines it is advisable to do so and shall be effected through non-renewal, termination, or both. Any reduction in force will be conducted by evaluating the needs and long- and short-term goals of the school district in relation to the staffing of the district.

If a reduction in force becomes necessary, the RIF shall be conducted separately for each occupational category of classified personnel identified within the district on the basis of each employee's years of service. The employee within each occupational category with the least years of experience will be laid off first. The employee with the most years of employment in the district as compared to other employees in the same category shall be laid off last. In the event that employees within a given occupational category have the same length of service to the district the one with the earlier hire date, based on date of board action, will prevail.

All credited years of service must be verified by documents on file with the District by October 1 of the current school year. All non-certified employees shall receive a listing of the personnel within their category with corresponding point totals. Upon receipt of the list, each employee has ten (10) working days within which to appeal his or her assignment of points with the superintendent whose decision shall be final.

Total years of service to the district shall include non-continuous years of service; in other words, an employee who left the district and returned later will have the total years of service counted, from all periods of employment. Working fewer than 120 days in a school year shall not constitute a year. Length of service in a certified position shall not count for the purpose of length of service for a non-certified position. There is no right or implied right for any employee to "bump" or displace any other employee. This specifically does not allow a certified employee who might wish to assume a classified position to displace a classified employee.

Pursuant to any reduction in force brought about by consolidation or annexation and as a part of it, the salaries of all employees will be brought into compliance, by a partial RIF if necessary, with the receiving district's salary schedule. Further adjustments will be made if length of contract or job assignments change.¹ A Partial RIF may also be conducted in conjunction with any job reassignment whether or not it is conducted in relation to an annexation or consolidation.

If an employee is non-renewed under this policy, he or she shall be offered an opportunity to fill a vacancy for which he or she is qualified for a period of up to two (2) years. The non-renewed employee shall be recalled for a period of two (2) years in reverse order of the layoff to any position for which he or she is qualified. Notice of vacancies to non-renewed employees shall be by certified mail and they shall have 10 working days from the

date that the notification is received in which to accept the offer of a position. A lack of response or a non-renewed employee's refusal of a position shall end the district's obligation to replace the laid-off employee.

Option B²

The employees of any school district which annexes to, or consolidates with, the Pangburn District will be subject to dismissal or retention at the discretion of the school board, on the recommendation of the superintendent, solely on the basis of need for such employees on the part of the Pangburn District, if any, at the time of the annexation or consolidation, or within ninety (90) days after the effective date of the annexation or consolidation. The need for any employee of the annexed or consolidated school district shall be determined solely by the superintendent and school board of the Pangburn District.

Such employees will not be considered as having any seniority within the Pangburn District and may not claim an entitlement under a reduction in force to any position held by a Pangburn District employee prior to, or at the time of, or prior to the expiration of ninety (90) days after the consolidation or annexation, if the notification provision below is undertaken by the superintendent.

The superintendent shall mail or have hand-delivered the notification to such employee of his intention to recommend non-renewal or termination pursuant to a reduction in force within ninety (90) days of the effective date of the annexation or consolidation in order to effect the provisions of this section of the Pangburn District's reduction-in-force policy. Any such employees who are non-renewed or terminated pursuant to Section Two are not subject to recall. Any such employees shall be paid at the rate for each person on the appropriate level on the salary schedule of the annexed or consolidated district during those ninety (90) days and/or through the completion of the reduction-in-force process.

This subsection of the reduction-in-force policy shall not be interpreted to provide that the superintendent must wait ninety (90) days from the effective date of the annexation or consolidation in order to issue notification of his intention to recommend dismissal through reduction-in-force, but merely that the superintendent has that period of time in which to issue notification so as to be able to invoke the provisions of this section.

The intention of this section is to ensure that those Pangburn District employees who are employed prior to the annexation or consolidation shall not be displaced by employees of the annexed or consolidated district by application of the reduction-in-force policy.

Legal Reference: A.C.A. § 6-17-2407

Date Adopted:

Last Revised:

8.31—NONCERTIFIED PERSONNEL TERMINATION AND NON-RENEWAL

For procedures relating to the termination and non-renewal of noncertified employees, please refer to the Public School Employee Fair Hearing Act A.C.A. § 6-17-1701 through 1705. The Act specifically is not made a part of this policy by this reference.

A copy of the code is available in the office of the principal of each school building.

Legal reference: A.C.A. § 6-17-2301

Date Adopted:

Last Revised:

8.32—NONCERTIFIED PERSONNEL ASSIGNMENTS

The superintendent shall be responsible for assigning and reassigning noncertified personnel.

Date Adopted:

Last Revised:

8.33—NONCERTIFIED PERSONNEL SCHOOL CALENDAR

The superintendent shall present to the PPC a school calendar which the board has adopted as a proposal. The Superintendent, in developing the calendar, shall accept and consider recommendations from any staff member or group wishing to make calendar proposals. The PPC shall have the time prescribed by law and/or policy in which to make any suggested changes before the board may vote to adopt the calendar.

Legal Reference: A.C.A. § 6-17-2301

Date Adopted:

Last Revised:

SUPPORTING DOCUMENTS AND INFORMATION FOR POLICY—8.11

This information is offered to assist you in developing your noncertified overtime/comptime policies and is **not** to be included in your district's policy manual.

Important Points to be Considered in Finalizing Your Policy and Meeting FLSA Requirements

The most basic points of the requirements of the Fair Labor Standards Act (29 USCS § 201 et seq.) are:

- all covered employees shall be paid for **every** hour they work,
- employees shall receive time and a half for all hours over 40 worked in any week,
- employees shall be compensated for overtime on the paycheck immediately following the week in which it was earned,
- each employee shall know the number of hours they are expected to work in a “normal” workweek,
- meticulous records need to be kept of the hours each employee works each week,
- all employees are **hourly** employees unless they clearly meet the requirements for “exempt” employees as specified in the FLSA.

Covered employees are those who are not exempt. Exempt employees as a general rule are those who are required to have a certification as a condition of their employment. There are exceptions, but determinations should be done on a case by case basis. Employees may choose to have their wages paid over the school's full fiscal year. Each employee choosing to do so should have an itemization on his contract stating what his hourly wage is, how many hours per week he is expected to work, and what he can expect to earn if he were to work his normal workweek for the term of his contract. Any overtime earned in a pay period **must** be paid the following paycheck; overtime earnings cannot be worked into the 12 month payout. **Remember** that an announcement that no overtime will be permitted does **not** negate your obligation to pay for the unasked or unauthorized hours worked. A district's only option in such instances is to take disciplinary action.

For employees who have previously been salaried it may take some explaining to get them to be comfortable with being an hourly employee. By having the hourly wage and projected annual earnings listed on employees' contracts they can be shown that the change is not intended to lessen their net pay. Consider including such items as hourly rate of pay; starting date for the year; expected ending date for the year; expected number of hours for per day and per week; and expected annual earnings if all of the “normal” hours are worked.

It is important to distinguish between hours worked and hours not worked, but which have been compensated for, such as sick leave or personal leave. The FLSA refers to such compensation as “payments for hours not worked.” If an employee is sick for a day and receives compensation for that day (let's say it's 8 hours), the sick leave hours for which he is compensated do not count in the number of hours he has worked for the week. Thus, if the same employee worked 40 hours in the remainder of the workweek, his total hours **worked** for the week would be 40 and not 48.

As previously stated, the number of hours each employee is expected to work in their normal workweek has to be determined and stated as part of their contract. If an employee has a normal workweek of 30 hours and works 35 hours in a particular workweek, you have the option of paying him his regular rate for the 5 additional

hours or giving comptime at a one-to-one ratio. Overtime does not kick in unless an employee works more than 40 hours in a workweek.

For those districts which have previously been lax on keeping written records of how many hours each employee worked each and every week, the comptime policy will be a change from the way “it’s always been done.” Once again it is important to stress that the changes are merely a way to have the district in compliance with the law. The lawyers looking for clients are using lax record keeping as a means of getting their foot in the door. Once this happens, the time spent on keeping the records correctly in the first place will seem very tame by comparison.

There is a part of the Code of Federal Regulations (29 CFR § 516.2(c)) which was included in some information districts received from the DOL which makes a record keeping exception for employees on a “fixed schedule.” Lunch breaks are an example of why we are not recommending districts do this. Any lunch break less than 30 minutes in length has to be counted as time worked. With a written record of exactly what time an employee breaks for, and returns from lunch, there can be no subsequent question regarding whether the employee did, in fact, receive a duty free lunch break of at least 30 minutes. Consistency of enforcement for all employees can also help to smooth the transition.

Note: as stated in footnote #8 of the policy, the district is also required to keep certain records for exempt employees. 29 CFR § 516.2 –516.6 and (29 CFR § 553.50 states what records a district is required to keep and for how long. They are cited in the supplemental information that follows. The district also must display minimum wage posters in each work site. They can be downloaded from the DOL by going to <http://www.dol.gov/esa/regs/compliance/posters/flsa.htm>.

Bus Drivers

There is no specific mention of bus drivers in the policy, but among the implications of the FLSA is that bus drivers will receive different net pay (assuming they receive the same hourly rate of pay) based on the length of their routes which must be measured on a time basis. The hours bus drivers are required to spend inspecting, cleaning, or otherwise dealing with their bus before and/or after their route needs to be included in determining the hours they work in their normal workweek. For non-route purposes such as field trips and/or athletics, bus drivers have to be paid for all the time they are on the job. 29 CFR § 785.16(a) states, in part, “*Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use*

the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived.” A rule of thumb for the lower limit to qualify for such duty free time is 3 hours, but note that the code also states that the time must be able to be used *effectively for his own purposes*. It is highly recommended that you have signed agreements with your drivers regarding their on and off the clock hours for their road trips. Overnight trips are treated similarly. So long as the driver knows that they have **no** duty responsibilities you are not obligated to pay for those hours. Should you have any reason to unexpectedly need a driver’s services, you become obligated to pay them for their time.

Employees who work more than one job for the district are to be paid for the total hours worked each week in all their jobs combined. If their wages are different in one or more jobs, they are to be paid for the number of

hours worked at each wage. If they work more than 40 hours in a workweek, they are to be paid for the amount of overtime they work at each wage. To do this, take the total earned from the hours worked at each wage, divide that number by the total number of hours worked (which gives you the “blended” hourly rate), multiply the quotient by 1/2 and that is the total due in overtime wages for the week.

The hours worked by employees who work “occasionally or sporadically” for the district in a **different capacity** than their regular employment shall not be counted in their hours worked for overtime purposes. Occasional and sporadic is defined as infrequent, irregular, or occurring in scattered instances. Provided the employee does so entirely voluntarily and without any fear of reprisals for not doing so. Consult 29 USCS § 207(p) and 29 CFR § 553.31 in the supplemental information that follows for further clarification.

The following are the pertinent portions of the U.S. Code relating to minimum wage, overtime, and Department of Labor (DOL) inspection rights. Major portions of extraneous code have been deleted. The U.S. Code is the statute itself which is subsequently interpreted in the Code of Federal Regulations (CFR). The CFR is included in this document immediately following the U.S. Code. Refer to the U.S. Code to better understand references in the Code of Federal Regulations (CFR) supporting documents when sections are mentioned such as section 7(e). In the example cited, the reference is to 29 USCS § 207 (e), which is included in the following cites. For each section included, the heading in bold type will be shown as, for example, **Sec. 206**, which is actually 29 USCS § 206.

UNITED STATES CODE SERVICE

TITLE 29--LABOR

CHAPTER 8--FAIR LABOR STANDARDS

Sec. 206. Minimum wage

(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) except as otherwise provided in this section, not less than \$4.25 an hour during the period ending on September 30, 1996, not less than \$4.75 an hour during the year beginning on October 1, 1996, and not less than \$5.15 an hour beginning September 1, 1997; **ASBA note: 6-17-2203 stipulates that full time classified employees (those working 20 or more hours per week) shall receive not less than \$6.25/hour. This figure was increased by Act 1773 of 2003 to 6.38/hour.**

(d) Prohibition of sex discrimination

(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of

the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Sec. 207. Maximum hours

(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions

(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966--

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) Employment pursuant to collective bargaining agreement; employment by independently owned and controlled local enterprise engaged in distribution of petroleum products

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks; or

(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty-hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) of this section or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed;

(e) "Regular rate" defined

As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include--

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day of workweek because such hours are hours worked in excess of eight in a day or in excess of the

maximum workweek applicable to such employee under subsection (a) of this section or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium

rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a) of this section), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; or

(g) Employment at piece rates

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection--

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) of this section are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(h) Credit toward minimum wage or overtime compensation of amounts excluded from regular rate

(1) Except as provided in paragraph (2), sums excluded from the regular rate pursuant to subsection (e) of this section shall not be creditable toward wages required under section 206 of this title or overtime compensation required under this section.

(2) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) of this section shall be creditable toward overtime compensation payable pursuant to this section.

(o) Compensatory time

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only--

(A) pursuant to--

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than--

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee, whichever is higher.

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency--

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) of this section if--

(A) such employee is paid at a per-page rate which is not less than--

(i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,

(ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or

(iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

(B) the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee's attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court reporting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.

(7) For purposes of this subsection--

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(p) Special detail work for fire protection and law enforcement employees; occasional or sporadic employment; substitution

(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(3) If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(q) Maximum hour exemption for employees receiving remedial education

Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is--

(1) provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(2) designed to provide reading and other basic skills at an eighth grade level or below; and

(3) does not include job specific training.

Sec. 211. Collection of data

(a) Investigations and inspections

The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and

inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter. Except as provided in section 212 of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 of this title, the Administrator shall bring all actions under section 217 of this title to restrain violations of this chapter.

(b) State and local agencies and employees

With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and duties under this chapter, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Records

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 207(p)(3) of this title may not be required under this subsection to keep a record of the hours of the substitute work.

Sec. 213. Exemptions

(a) Minimum wage and maximum hour requirements

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities).

Sec. 216. Penalties

(b) Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer

who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) of this title.

(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207 of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in section 255(a) of this title, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

Sec. 218. Relation to other laws

(a) No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations (CFR) is intended to be the explanation of the code as enacted. The following are CFR excerpts relating to the Fair Labor Standards Act. As we did with the code itself, most of the extraneous portions have been omitted for sanity purposes. For each section included the heading in bold type will be shown as, for example, **Sec. 516.2**, which is actually 29 CFR § 516.2.

TITLE 29--LABOR

CHAPTER V--WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

RECORDS TO BE KEPT BY EMPLOYERS (29CFR 516.0 – 516.12)

Subpart A--General Requirements

Sec. 516.2 Employees subject to minimum wage or minimum wage and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Act.

(a) Items required. Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom section 6 or both sections 6 and 7(a) of the Act apply:

- (1) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records,
- (2) Home address, including zip code,
- (3) Date of birth, if under 19,
- (4) Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss., or Ms.) (Employee's sex identification is related to the equal pay provisions of the Act which are administered by the Equal Employment Opportunity Commission. Other equal pay recordkeeping requirements are contained in 29 CFR part 1620.)
- (5) Time of day and day of week on which the employee's workweek begins (or for employees employed under section 7(k) of the Act, the starting time and length of each employee's work period). If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek

beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice,

(6)(i) Regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the Act,

(ii) explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, and

(iii) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate" (these records may be in the form of vouchers or other payment data),

(7) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of 7 consecutive workdays),

(8) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation,

(9) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under paragraph (a)(8) of this section,

(10) Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions,

(11) Total wages paid each pay period,

(12) Date of payment and the pay period covered by payment.

(b) Records of retroactive payment of wages. Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division pursuant to section 16(c) and/or section 17 of the Act, shall:

(1) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(2) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour Division, and (i) preserve a copy as part of the records, (ii) deliver a copy to the employee, and (iii) file the original, as evidence of payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(c) Employees working on fixed schedules. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by paragraph (a)(7) of this section, the schedule of daily and weekly hours the employee normally works. Also,

(1) In weeks in which an employee adheres to this schedule, indicates by check mark, statement or other method that such hours were in fact actually worked by him, and

(2) In weeks in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.

Sec. 516.3 Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to section 13(a)(1) of the Act.

With respect to each employee in a bona fide executive, administrative, or professional capacity (including employees employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools), or in outside sales, as defined in part 541 of this chapter (pertaining to so-called "white collar" employee exemptions), employers shall maintain and preserve records

containing all the information and data required by Sec. 516.2(a) except paragraphs (a) (6) through (10) and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites. (This may be shown as the dollar amount of earnings per month, per week, per month plus commissions, etc. with appropriate addenda such as "plus hospitalization and insurance plan A," "benefit package B," "2 weeks paid vacation," etc.)

Sec. 516.4 Posting of notices.

Every employer employing any employees subject to the Act's minimum wage provisions shall post and keep posted a notice explaining the Act, as prescribed by the Wage and Hour Division, in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy. Any employer of employees to whom section 7 of the Act does not apply because of an exemption of broad application to an establishment may alter or modify the poster with a legible notation to show that the overtime provisions do not apply. For example: Overtime Provisions Not Applicable to Taxicab Drivers (section 13(b)(17)).

Sec. 516.5 Records to be preserved 3 years.

Each employer shall preserve for at least 3 years:

(a) Payroll records. From the last date of entry, all payroll or other records containing the employee information and data required under any of the applicable sections of this part, and

(b) Certificates, agreements, plans, notices, etc.

From their last effective date, all written:

- (1) Collective bargaining agreements relied upon for the exclusion of certain costs under section 3(m) of the Act,
- (2) Collective bargaining agreements, under section 7(b)(1) or 7(b)(2) of the Act, and any amendments or additions thereto,
- (3) Plans, trusts, employment contracts, and collective bargaining agreements under section 7(e) of the Act,
- (4) Individual contracts or collective bargaining agreements under section 7(f) of the Act. Where such contracts or agreements are not in writing, a written memorandum summarizing the terms of each such contract or agreement,
- (5) Written agreements or memoranda summarizing the terms of oral agreements or understandings under section 7(g) or 7(j) of the Act, and
- (6) Certificates and notices listed or named in any applicable section of this part.

(c) Sales and purchase records. A record of (1) total dollar volume of sales or business, and (2) total volume of goods purchased or received during such periods (weekly, monthly, quarterly, etc.), in such form as the employer maintains records in the ordinary course of business.

Sec. 516.6 Records to be preserved 2 years.

(a) Supplementary basic records: Each employer required to maintain records under this part shall preserve for a period of at least 2 years.

(1) Basic employment and earnings records. From the date of last entry, all basic time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part the pay period earnings or wages of those employees.

(2) Wage rate tables. From their last effective date, all tables or schedules of the employer which provide the piece rates or other rates used in computing straight-time earnings, wages, or salary, or overtime pay computation.

(b) Order, shipping, and billing records: From the last date of entry, the originals or true copies of all customer orders or invoices received, incoming or outgoing shipping or delivery records, as well as all bills of lading and all billings to customers (not including individual sales slips, cash register tapes or the like) which the employer retains or makes in the usual course of business operations.

(c) Records of additions to or deductions from wages paid:

(1) Those records relating to individual employees referred to in Sec. 516.2(a)(10) and

(2) All records used by the employer in determining the original cost, operating and maintenance cost, and depreciation and interest charges, if such costs and charges are involved in the additions to or deductions from wages paid.

Sec. 516.7 Place for keeping records and their availability for inspection.

(a) Place of records. Each employer shall keep the records required by this part safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be made available within 72 hours following notice from the Administrator or a duly authorized and designated representative.

(b) Inspection of records. All records shall be available for inspection and transcription by the Administrator or a duly authorized and designated representative.

Sec. 516.8 Computations and reports.

Each employer required to maintain records under this part shall make such extension, recomputation, or transcription of the records and shall submit to the Wage and Hour Division such reports concerning persons employed and the wages, hours, and other conditions and practices of employment set forth in the records as the Administrator or a duly authorized and designated representative may request in writing.

Sec. 516.9 Petitions for exceptions.

(a) Submission of petitions for relief. Any employer or group of employers who, due to peculiar conditions under which they must operate, desire authority to maintain records in a manner other than required in this part, or to be relieved of preserving certain records for the period specified in this part, may submit a written petition to the Administrator requesting such authority, setting forth the reasons therefor.

(b) Action on petitions. If, after review of the petition, the Administrator finds that the authority requested will not hinder enforcement of the Act, the Administrator may grant such authority limited by any conditions determined necessary and subject to subsequent revocation. Prior to revocation of such authority because of

noncompliance with any of the prescribed conditions, the employer will be notified of the reasons and given an opportunity to come into compliance.

(c) Compliance after submission of petitions. The submission of a petition or the delay of the Administrator in acting upon such petition will not relieve any employer or group of employers from any obligations to comply with all the applicable requirements of the regulations in this part. However, the Administrator will provide a response to all petitions as soon as possible.

Sec. 553.50 Records to be kept of compensatory time. (This section is from the comptime regulations, but for your convenience we have also included it here.)

For each employee subject to the compensatory time and compensatory time off provisions of section 7(o) of the Act, a public agency which is a State, a political subdivision of a State or an interstate governmental agency shall maintain and preserve records containing the basic information and data required by Sec. 516.2 of this title and, in addition:

- (a) The number of hours of compensatory time earned pursuant to section 7(o) each workweek, or other applicable work period, by each employee at the rate of one and one-half hour for each overtime hour worked;
- (b) The number of hours of such compensatory time used each workweek, or other applicable work period, by each employee;
- (c) The number of hours of compensatory time compensated in cash, the total amount paid and the date of such payment; and
- (d) Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time off. If such agreement or understanding is not in writing, a record of its existence must be kept.

COMPENSATORY TIME (29 CFR 553.1 – 553.106)

Subpart A--General

Sec. 553.3 Coverage--general.

- (a)(1) In 1966, Congress amended the FLSA to extend coverage to State and local government employees engaged in the operation of hospitals, nursing homes, schools, and mass transit systems.
 - (2) In 1972, the Education Amendments further extended coverage to employees of public preschools.
 - (3) In 1974, the FLSA Amendments extended coverage to virtually all of the remaining State and local government employees who were not covered as a result of the 1966 and 1972 legislation.
- (b) Certain definitions already in the Act were modified by the 1974 Amendments. The definition of the term "employer" was changed to include public agencies and that of "employee" was amended to include individuals employed by public agencies. The definition of "enterprise" contained in section 3(r) of the Act was modified to provide that activities of a public agency are performed for a "business purpose." The term "enterprise engaged in commerce or in the production of goods for commerce" defined in section 3(s) of the Act was expanded to include public agencies.

Section 7(o)--Compensatory Time and Compensatory Time Off

Sec. 553.20 Introduction.

Section 7 of the FLSA requires that covered, nonexempt employees receive not less than one and one-half times their regular rates of pay for hours worked in excess of the applicable maximum hours standards. However, section 7(o) of the Act provides an element of flexibility to State and local government employers and an element of choice to their employees or the representatives of their employees regarding compensation for statutory overtime hours. The exemption provided by this subsection authorizes a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, to provide compensatory time off (with certain limitations, as provided in Sec. 553.21) in lieu of monetary overtime compensation that would otherwise be required under section 7. Compensatory time received by an employee in lieu of cash must be at the rate of not less than one and one-half hours of compensatory time for each hour of overtime work, just as the monetary rate for overtime is calculated at the rate of not less than one and one-half times the regular rate of pay.

29 CFR 553.21 Statutory Provisions

Section 7(o) provides as follows:

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only--

(A) pursuant to--

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3). (240 hours for schools)

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than--

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee, whichever is higher.

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency--

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency. 29 USC 207(o)(5)(B)

(6) The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) of this section if--

(A) such employee is paid at a per-page rate which is not less than--

(i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,

(ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or

(iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

(B) the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee's attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court reporting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.

(7) For purposes of this subsection--

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

Sec. 553.22 "FLSA compensatory time" and "FLSA compensatory time off".

(a) Compensatory time and compensatory time off are interchangeable terms under the FLSA. Compensatory time off is paid time off the job which is earned and accrued by an employee in lieu of immediate cash payment for employment in excess of the statutory hours for which overtime compensation is required by section 7 of the FLSA.

(b) The Act requires that compensatory time under section 7(o) be earned at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by section 7 of the FLSA. Thus, the 480-hour limit on accrued compensatory time represents not more than 320 hours of actual overtime worked, and the 240-hour limit represents not more than 160 hours of actual overtime worked.

(c) The 480- and 240-hour limits on accrued compensatory time only apply to overtime hours worked after April 15, 1986. Compensatory time which an employee has accrued prior to April 15, 1986, is not subject to the overtime requirements of the FLSA and need not be aggregated with compensatory time accrued after that date.

Sec. 553.23 Agreement or understanding prior to performance of work.

(a) General. (1) As a condition for use of compensatory time in lieu of overtime payment in cash, section 7(o)(2)(A) of the Act requires an agreement or understanding reached prior to the performance of work. This can be accomplished pursuant to a collective bargaining agreement, a memorandum of understanding or any other agreement between the public agency and representatives of the employees. If the employees do not have a representative, compensatory time may be used in lieu of cash overtime compensation only if such an agreement or understanding has been arrived at between the public agency and the individual employee before the performance of work. No agreement or understanding is required with respect to employees hired prior to April 15, 1986, who do not have a representative, if the employer had a regular practice in effect on April 15, 1986, of granting compensatory time off in lieu of overtime pay.

(2) Agreements or understandings may provide that compensatory time off in lieu of overtime payment in cash may be restricted to certain hours of work only. In addition, agreements or understandings may provide for any combination of compensatory time off and overtime payment in cash (e.g., one hour compensatory time credit plus one-half the employee's regular hourly rate of pay in cash for each hour of overtime worked) so long as the premium pay principle of at least "time and one-half" is maintained. The agreement or understanding may include other provisions governing the preservation, use, or cashing out of compensatory time so long as these provisions are consistent with section 7(o) of the Act. To the extent that any provision of an agreement or understanding is in violation of section 7(o) of the Act, the provision is superseded by the requirements of section 7(o).

(b) Agreement or understanding between the public agency and a representative of the employees. (1) Where employees have a representative, the agreement or understanding concerning the use of compensatory time must be between the representative and the public agency either through a collective bargaining agreement or through a memorandum of understanding or other type of oral or written agreement. In the absence of a collective bargaining agreement applicable to the employees, the representative need not be a formal or recognized bargaining agent as long as the representative is designated by the employees. Any agreement must be consistent with the provisions of section 7(o) of the Act.

(2) Section 2(b) of the 1985 Amendments provides that a collective bargaining agreement in effect on April 15, 1986, which permits compensatory time off in lieu of overtime compensation, will remain in effect until the expiration date of the collective bargaining agreement unless otherwise modified. However, the terms and conditions of such agreement under which compensatory time off is provided after April 14, 1986, must not violate the requirements of section 7(o) of the Act and these regulations.

(c) Agreement or understanding between the public agency and individual employees. (1) Where employees of a public agency do not have a recognized or otherwise designated representative, the agreement or understanding concerning compensatory time off must be between the public agency and the individual employee and must be reached prior to the performance of work. This agreement or understanding with individual employees need not be in writing, but a record of its existence must be kept. (See Sec. 553.50.) An employer need not adopt the same agreement or understanding with different employees and need not provide compensatory time to all employees. The agreement or understanding to provide compensatory time off in lieu of cash overtime compensation may take the form of an express condition of employment, provided (i) the employee knowingly and voluntarily agrees to it as a condition of employment and (ii) the employee is informed that the compensatory time received may be preserved, used or cashed out consistent with the provisions of section 7(o) of the Act. An agreement or understanding may be evidenced by a notice to the employee that compensatory time off will be given in lieu of overtime pay. In such a case, an agreement or understanding would be presumed to exist for purposes of section 7(o) with respect to any employee who fails to express to the employer an unwillingness to accept compensatory time off in lieu of overtime pay. However, the employee's decision to accept compensatory time off in lieu of cash overtime payments must be made freely and without coercion or pressure.

(2) Section 2(a) of the 1985 Amendments provides that in the case of employees who have no representative and were employed prior to April 15, 1986, a public agency that has had a regular practice of awarding compensatory time off in lieu of overtime pay is deemed to have reached an agreement or understanding with these employees as of April 15, 1986. A public agency need not secure an agreement or understanding with each employee employed prior to that date. If, however, such a regular practice does not conform to the provisions of section 7(o) of the Act, it must be modified to do so with regard to practices after April 14, 1986. With respect to employees hired after April 14, 1986, the public employer who elects to use compensatory time must follow the guidelines on agreements discussed in paragraph (c)(1) of this section.

Sec. 553.25 Conditions for use of compensatory time ("reasonable period", "unduly disrupt").

(a) Section 7(o)(5) of the FLSA provides that any employee of a public agency who has accrued compensatory time and requested use of this compensatory time, shall be permitted to use such time off within a "reasonable period" after making the request, if such use does not "unduly disrupt" the operations of the agency. This provision, however, does not apply to "other compensatory time" (as defined below in Sec. 553.28), including compensatory time accrued for overtime worked prior to April 15, 1986.

(b) Compensatory time cannot be used as a means to avoid statutory overtime compensation. An employee has the right to use compensatory time earned and must not be coerced to accept more compensatory time than an employer can realistically and in good faith expect to be able to grant within a reasonable period of his or her making a request for use of such time.

(c) Reasonable period. (1) Whether a request to use compensatory time has been granted within a "reasonable period" will be determined by considering the customary work practices within the agency based on the facts and circumstances in each case. Such practices include, but are not limited to (a) the normal schedule of work, (b) anticipated peak workloads based on past experience, (c) emergency requirements for staff and services, and (d) the availability of qualified substitute staff.

(2) The use of compensatory time in lieu of cash payment for overtime must be pursuant to some form of agreement or understanding between the employer and the employee (or the representative of the employee) reached prior to the performance of the work. (See Sec. 553.23.) To the extent that the (conditions under which an employee can take compensatory time off are contained in an agreement or understanding as defined in Sec. 553.23, the terms of such agreement or understanding will govern the meaning of "reasonable period".

(d) Unduly disrupt. When an employer receives a request for compensatory time off, it shall be honored unless to do so would be "unduly disruptive" to the agency's operations. Mere inconvenience to the employer is an insufficient basis for denial of a request for compensatory time off. (See H. Rep. 99-331, p. 23.) For an agency to turn down a request from an employee for compensatory time off requires that it should reasonably and in good faith anticipate that it would impose an unreasonable burden on the agency's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services.

Sec. 553.26 Cash overtime payments.

(a) Overtime compensation due under section 7 may be paid in cash at the employer's option, in lieu of providing compensatory time off under section 7(o) of the Act in any workweek or work period. The FLSA does not prohibit an employer from freely substituting cash, in whole or part, for compensatory time off; and overtime payment in cash would not affect subsequent granting of compensatory time off in future workweeks or work periods. (See Sec. 553.23(a)(2).)

(b) The principles for computing cash overtime pay are contained in 29 CFR part 778. Cash overtime compensation must be paid at a rate not less than one and one-half times the regular rate at which the employee is actually paid. (See 29 CFR 778.107.)

(c) In a workweek or work period during which an employee works hours which are overtime hours under FLSA and for which cash overtime payment will be made, and the employee also takes compensatory time off, the payment for such time off may be excluded from the regular rate of pay under section 7(e)(2) of the Act. Section 7(e)(2) provides that the regular rate shall not be deemed to include. . . payments made for occasional periods when no work is performed due to vacation, holiday, . . . or other similar cause. As explained in 29 CFR 778.218(d), the term "other similar cause" refers to payments made for periods of absence due to factors like holidays, vacations, illness, and so forth. Payments made to an employee for periods of absence due to the use of accrued compensatory time are considered to be the type of payments in this "other similar cause" category.

Sec. 553.27 Payments for unused compensatory time.

(a) Payments for accrued compensatory time earned after April 14, 1986, may be made at any time and shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(b) Upon termination of employment, an employee shall be paid for unused compensatory time earned after April 14, 1986, at a rate of compensation not less than--

(1) The average regular rate received by such employee during the last 3 years of the employee's employment, or

(2) The final regular rate received by such employee, whichever is higher.

(c) The phrase last 3 years of employment means the 3-year period immediately prior to termination.

Where an employee's last 3 years of employment are not continuous because of a break in service, the period of employment after the break in service will be treated as new employment. However, such a break in service must have been intended to be permanent and any accrued compensatory time earned after April 14, 1986, must have been cashed out at the time of initial separation. Where the final period of employment is less than 3 years, the average rate still must be calculated based on the rate(s) in effect during such period.

(d) The term "regular rate" is defined in 29 CFR 778.108. As indicated in Sec. 778.109, the regular rate is an hourly rate, although the FLSA does not require employers to compensate employees on an hourly basis.

Sec. 553.28 Other compensatory time.

(a) Compensatory time which is earned and accrued by an employee for employment in excess of a nonstatutory (that is, non-FLSA) requirement is considered "other" compensatory time. The term "other" compensatory time off means hours during which an employee is not working and which are not counted as hours worked during the period when used. For example, a collective bargaining agreement may provide that compensatory time be granted to employees for hours worked in excess of 8 in a day, or for working on a scheduled day off in a nonovertime workweek. The FLSA does not require compensatory time to be granted in such situations.

(b) Compensatory time which is earned and accrued by an employee working hours which are "overtime" hours under State or local law, ordinance, or other provisions, but which are not overtime hours under section 7 of the FLSA is also considered "other" compensatory time. For example, a local law or ordinance may provide that compensatory time be granted to employees for hours worked in excess of 35 in a workweek. Under section 7(a) of the FLSA, only hours worked in excess of 40 in a workweek are overtime hours which must be compensated at one and one-half times the regular rate of pay.

(c) Similarly, compensatory time earned or accrued by an employee for employment in excess of a standard established by the personnel policy or practice of an employer, or by custom, which does not result from the FLSA provision, is another example of "other" compensatory time.

(d) The FLSA does not require that the rate at which "other" compensatory time is earned has to be at a rate of one and one-half hours for each hour of employment. The rate at which "other" compensatory time is earned may be some lesser or greater multiple of the rate or the straight-time rate itself.

(e) The requirements of section 7(o) of the FLSA, including the limitations on accrued compensatory time, do not apply to "other" compensatory time as described above.

Other Exemptions

Sec. 553.30 Occasional or sporadic employment-section 7(p)(2).

(a) Section 7(p)(2) of the FLSA provides that where State or local government employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime liability under the Act.

(b) Occasional or sporadic. (1) The term occasional or sporadic means infrequent, irregular, or occurring in scattered instances. There may be an occasional need for additional resources in the delivery of certain types of public services which is at times best met by the part-time employment of an individual who is already a public employee. Where employees freely and solely at their own option enter into such activity, the total hours worked will not be combined for purposes of determining any overtime compensation due on the regular, primary job. However, in order to prevent overtime abuse, such hours worked are to be excluded from computing overtime compensation due only where the occasional or sporadic assignments are not within the same general occupational category as the employee's regular work.

(2) In order for an employee's occasional or sporadic work on a part-time basis to qualify for exemption under section 7(p)(2), the employee's decision to work in a different capacity must be made freely and without coercion, implicit or explicit, by the employer. An employer may suggest that an employee undertake another kind of work for the same unit of government when the need for assistance arises, but the employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision.

(3) Typically, public recreation and park facilities, and stadiums or auditoriums utilize employees in occasional or sporadic work. Some of these employment activities are the taking of tickets, providing security for special events (e.g., concerts, sports events, and lectures), officiating at youth or other recreation and sports events, or engaging in food or beverage sales at special events, such as a county fair. Employment in such activity may be considered occasional or sporadic for regular employees of State or local government agencies even where the need can be anticipated because it recurs seasonally (e.g., a holiday concert at a city college, a program of scheduled sports events, or assistance by a city payroll clerk in processing returns at tax filing time). An activity does not fail to be occasional merely because it is recurring. In contrast, for example, if a parks department clerk, in addition to his or her regular job, also regularly works additional hours on a part-time basis (e.g., every week or every other week) at a public park food and beverage sales center operated by that agency, the additional work does not constitute intermittent and irregular employment and, therefore, the hours worked would be combined in computing any overtime compensation due.

(c) Different capacity. (1) In order for employment in these occasional or sporadic activities not to be considered subject to the overtime requirements of section 7 of the FLSA, the regular government employment

of the individual performing them must also be in a different capacity, i.e., it must not fall within the same general occupational category.

(2) In general, the Administrator will consider the duties and other factors contained in the definitions of the 3-digit categories of occupations in the Dictionary of Occupational Titles (except in the case of public safety employees as discussed below in section (3)), as well as all the facts and circumstances in a particular case, in determining whether employment in a second capacity is substantially different from the regular employment.

(3) For example, if a public park employee primarily engaged in playground maintenance also from time to time cleans an evening recreation center operated by the same agency, the additional work would be considered hours worked for the same employer and subject to the Act's overtime requirements because it is not in a different capacity. This would be the case even though the work was occasional or sporadic, and, was not regularly scheduled. Public safety employees taking on any kind of security or safety function within the same local government are never considered to be employed in a different capacity.

(4) However, if a bookkeeper for a municipal park agency or a city mail clerk occasionally referees for an adult evening basketball league sponsored by the city, the hours worked as a referee would be considered to be in a different general occupational category than the primary employment and would not be counted as hours worked for overtime purposes on the regular job. A person regularly employed as a bus driver may assist in crowd control, for example, at an event such as a winter festival, and in doing so, would be deemed to be serving in a different capacity.

(5) In addition, any activity traditionally associated with teaching (e.g., coaching, career counseling, etc.) will not be considered as employment in a different capacity. However, where personnel other than teachers engage in such teaching-related activities, the work will be viewed as employment in a different capacity, provided that these activities are performed on an occasional or sporadic basis and all other requirements for this provision are met. For example, a school secretary could substitute as a coach for a basketball team or a maintenance engineer could provide instruction on auto repair on an occasional or sporadic basis.

Sec. 553.31 Substitution--section 7(p)(3).

(a) Section 7(p)(3) of the FLSA provides that two individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked shall be excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under the Act. Where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.

(b) The provisions of section 7(p)(3) apply only if employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee substitute or "trade time" with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward by the employer, and (ii) exclusively for the employee's own convenience.

(c) A public agency which employs individuals who substitute or "trade time" under this subsection is not required to keep a record of the hours of the substitute work.

(d) In order to qualify under section 7(p)(3), an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. This requires that the agency be aware of the arrangement prior to the work being done, i.e., the employer must know what work is

being done, by whom it is being done, and where and when it is being done. Approval is manifest when the employer is aware of the substitution and indicates approval in whatever manner is customary.

Recordkeeping

Sec. 553.50 Records to be kept of compensatory time.

For each employee subject to the compensatory time and compensatory time off provisions of section 7(o) of the Act, a public agency which is a State, a political subdivision of a State or an interstate governmental agency shall maintain and preserve records containing the basic information and data required by Sec. 516.2 of this title and, in addition:

- (a) The number of hours of compensatory time earned pursuant to section 7(o) each workweek, or other applicable work period, by each employee at the rate of one and one-half hour for each overtime hour worked;
- (b) The number of hours of such compensatory time used each workweek, or other applicable work period, by each employee;
- (c) The number of hours of compensatory time compensated in cash, the total amount paid and the date of such payment; and
- (d) Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time off. If such agreement or understanding is not in writing, a record of its existence must be kept.

OVERTIME COMPENSATION (29 CFR 778.0 –603)

Subpart A--General Considerations

Sec. 778.5 Relation to other laws generally.

Various Federal, State, and local laws require the payment of minimum hourly, daily or weekly wages different from the minimum set forth in the Fair Labor Standards Act, and the payment of overtime compensation computed on bases different from those set forth in the Fair Labor Standards Act. Where such legislation is applicable and does not contravene the requirements of the Fair Labor Standards Act, nothing in the act, the regulations or the interpretations announced by the Administrator should be taken to override or nullify the provisions of these laws. Compliance with other applicable legislation does not excuse noncompliance with the Fair Labor Standards Act. Where a higher minimum wage than that set in the Fair Labor Standards Act is applicable to an employee by virtue of such other legislation, the regular rate of the employee, as the term is used in the Fair Labor Standards Act, cannot be lower than such applicable minimum, for the words "regular rate at which he is employed" as used in section 7 must be construed to mean the regular rate at which he is lawfully employed.

Subpart B--The Overtime Pay Requirements

Introductory

Sec. 778.100 The maximum-hours provisions.

Section 7(a) of the Act deals with maximum hours and overtime compensation for employees who are within the general coverage of the Act and are not specifically exempt from its overtime pay requirements. It prescribes the maximum weekly hours of work permitted for the employment of such employees in any workweek without extra compensation for overtime, and a general overtime rate of pay not less than one and one-half times the employee's regular rate which the employee must receive for all hours worked in any workweek in excess of the applicable maximum hours. The employment by an employer of an employee in any work subject to the Act in any workweek brings these provisions into operation. The employer is prohibited from employing the employee in excess of the prescribed maximum hours in such workweek without paying him the required extra compensation for the overtime hours worked at a rate meeting the statutory requirement.

Sec. 778.101 Maximum nonovertime hours.

As a general standard, section 7(a) of the Act provides 40 hours as the maximum number that an employee subject to its provisions may work for an employer in any workweek without receiving additional compensation at not less than the statutory rate for overtime. Hours worked in excess of the statutory maximum in any workweek are overtime hours under the statute; a workweek no longer than the prescribed maximum is a nonovertime workweek under the Act, to which the pay requirements of section 6 (minimum wage and equal pay) but not those of section 7(a) are applicable.

Sec. 778.104 Each workweek stands alone.

The Act takes a single workweek as its standard and does not permit averaging of hours over 2 or more weeks. Thus, if an employee works 30 hours one week and 50 hours the next, he must receive overtime compensation for the overtime hours worked beyond the applicable maximum in the second week, even though the average number of hours worked in the 2 weeks is 40. This is true regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, monthly or other basis. The rule is also applicable to pieceworkers and employees paid on a commission basis. It is therefore necessary to determine the hours worked and the compensation earned by pieceworkers and commission employees on a weekly basis.

Sec. 778.105 Determining the workweek.

An employee's workweek is a fixed and regularly recurring period of 168 hours--seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under the Fair Labor Standards Act, a single workweek may be established for a plant or other establishment as a whole or different workweeks may be established for different employees or groups of employees. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act. The proper method of computing overtime pay in a period in which a change in the time of commencement of the workweek is made, is discussed in Secs. 778.301 and 778.302.

Sec. 778.106 Time of payment.

There is no requirement in the Act that overtime compensation be paid weekly. The general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends. When the correct amount of overtime compensation cannot be determined until some time after the regular pay period, however, the requirements of the Act will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practicable. Payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may payment be delayed beyond the next payday after such computation can be made. Where retroactive wage increases are made, retroactive overtime compensation is due at the time the increase is paid, as discussed in Sec. 778.303. For a discussion of overtime payments due because of increases by way of bonuses, see Sec. 778.209.

Sec. 778.107 General standard for overtime pay.

The general overtime pay standard in section 7(a) requires that overtime must be compensated at a rate not less than one and one-half times the regular rate at which the employee is actually employed. The regular rate of pay at which the employee is employed may in no event be less than the statutory minimum. (The statutory minimum is the specified minimum wage applicable under section 6 of the Act, except in the case of workers specially provided for in section 14 and workers in Puerto Rico, the Virgin Islands, and American Samoa who are covered by wage orders issued pursuant to section 8 of the Act.) If the employee's regular rate of pay is higher than the statutory minimum, his overtime compensation must be computed at a rate not less than one and one-half times such higher rate. Under certain conditions prescribed in section 7 (f), (g), and (j), the Act provides limited exceptions to the application of the general standard of section 7(a) for computing overtime pay based on the regular rate. With respect to these, see Secs. 778.400 through 778.421 and 778.601 and part 548 of this chapter. The Act also provides, in section 7(b), (i), (k), and (m) and in section 13, certain partial and total exemptions from the application of section 7(a) to certain employees and under certain conditions. Regulations and interpretations concerning these exemptions are outside the scope of this part 778 and reference should be made to other applicable parts of this chapter.

Sec. 778.108 The "regular rate".

The "regular rate" of pay under the Act cannot be left to a declaration by the parties as to what is to be treated as the regular rate for an employee; it must be drawn from what happens under the employment contract (*Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446). The Supreme Court has described it as the hourly rate actually paid the employee for the normal, nonovertime workweek for which he is employed--an "actual fact" (*Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419). Section 7(e) of the Act requires inclusion in the "regular rate" of "all remuneration for employment paid to, or on behalf of, the employee" except payments specifically excluded by paragraphs (1) through (7) of that subsection. (These seven types of payments, which are set forth in Sec. 778.200 and discussed in Secs. 778.201 through 778.224, are hereafter referred to as "statutory exclusions.") As stated by the Supreme Court in the *Youngerman-Reynolds* case cited above: "Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary 'regular rate' in the wage contracts."

Sec. 778.110 Hourly rate employee.

(a) Earnings at hourly rate exclusively. If the employee is employed solely on the basis of a single hourly rate, the hourly rate is his "regular rate." For his overtime work he must be paid, in addition to his straight time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of 40 in the week. Thus a \$6 hourly rate will bring, for an employee who works 46 hours, a total weekly wage of \$294 (46 hours at \$6 plus 6 at \$3). In other words, the employee is entitled to be paid an amount equal to \$6 an hour for 40 hours and \$9 an hour for the 6 hours of overtime, or a total of \$294.

(b) Hourly rate and bonus. If the employee receives, in addition to his earnings at the hourly rate, a production bonus of \$9.20, the regular hourly rate of pay is \$6.20 an hour (46 hours at \$6 yields \$276; the addition of the \$9.20 bonus makes a total of \$285.20; this total divided by 46 hours yields a rate of \$6.20). The employee is then entitled to be paid a total wage of \$303.80 for 46 hours (46 hours at \$6.20 plus 6 hours at \$3.10, or 40 hours at \$6.20 plus 6 hours at \$9.30).

Sec. 778.115 Employees working at two or more rates.

Where an employee in a single workweek works at two or more different types of work for which different nonovertime rates of pay (of not less than the applicable minimum wage) have been established, his regular rate for that week is the weighted average of such rates. That is, his total earnings (except statutory exclusions) are computed to include his compensation during the workweek from all such rates, and are then divided by the total number of hours worked at all jobs. Certain statutory exceptions permitting alternative methods of computing overtime pay in such cases are discussed in Secs. 778.400 and 778.415 through 778.421.

Sec. 778.116 Payments other than cash.

Where payments are made to employees in the form of goods or facilities which are regarded as part of wages, the reasonable cost to the employer or the fair value of such goods or of furnishing such facilities must be included in the regular rate. (See part 531 of this chapter for a discussion as to the inclusion of goods and facilities in wages and the method of determining reasonable cost.) Where, for example, an employer furnishes lodging to his employees in addition to cash wages the reasonable cost or the fair value of the lodging (per week) must be added to the cash wages before the regular rate is determined.

Subpart C--Payments That May Be Excluded From the "Regular Rate"

Sec. 778.200 Provisions governing inclusion, exclusion, and crediting of particular payments.

The Statutory Provisions:

(a) Section 7(e). This subsection of the Act provides as follows: (e) "Regular rate" defined

As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include--

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day of workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) of this section or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a) of this section), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; or

(b) Section 7(h). This subsection of the Act provides as follows:

Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) shall be creditable toward overtime compensation payable pursuant to this section.

(c) Only the statutory exclusions are authorized. It is important to determine the scope of these exclusions, since all remuneration for employment paid to employees which does not fall within one of these seven exclusionary clauses must be added into the total compensation received by the employee before his regular hourly rate of pay is determined.

Sec. 778.208 Inclusion and exclusion of bonuses in computing the ``regular rate.''

Section 7(e) of the Act requires the inclusion in the regular rate of all remuneration for employment except seven specified types of payments. Among these excludable payments are discretionary bonuses, gifts and payments in the nature of gifts on special occasions, contributions by the employer to certain welfare plans and payments made by the employer pursuant to certain profit-sharing, thrift and savings plans. These are discussed in Secs. 778.211 through 778.214. Bonuses which do not qualify for exclusion from the regular rate as one of these types must be totaled in with other earnings to determine the regular rate on which overtime pay must be based. Bonus payments are payments made in addition to the regular earnings of an employee. For a discussion on the bonus form as an evasive bookkeeping device, see Secs. 778.502 and 778.503.

Sec. 778.216 The provisions of section 7(e)(2) of the Act.

Section 7(e)(2) of the Act provides that the term "regular rate" shall not be deemed to include "payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment ..." However, since such payments are not made as compensation for the employee's hours worked in any workweek, no part of such payments can be credited toward overtime compensation due under the Act.

Sec. 778.217 Reimbursement for expenses.

(a) General rule. Where an employee incurs expenses on his employer's behalf or where he is required to expend sums solely by reason of action taken for the convenience of his employer, section 7(e)(2) is applicable to reimbursement for such expenses. Payments made by the employer to cover such expenses are not included in the employee's regular rate (if the amount of the reimbursement reasonably approximates the expenses incurred). Such payment is not compensation for services rendered by the employees during any hours worked in the workweek.

(b) Illustrations. Payment by way of reimbursement for the following types of expenses will not be regarded as part of the employee's regular rate:

(1) The actual amount expended by an employee in purchasing supplies, tools, materials, or equipment on behalf of his employer.

(2) The actual or reasonably approximate amount expended by an employee in purchasing, laundering or repairing uniforms or special clothing which his employer requires him to wear.

(3) The actual or reasonably approximate amount expended by an employee, who is traveling "over the road" on his employer's business, for transportation (whether by private car or common carrier) and living expenses away from home, other travel expenses, such as taxicab fares, incurred while traveling on the employer's business.

(4) "Supper money", a reasonable amount given to an employee, who ordinarily works the day shift and can ordinarily return home for supper, to cover the cost of supper when he is requested by his employer to continue work during the evening hours.

(5) The actual or reasonably approximate amount expended by an employee as temporary excess home-to-work travel expenses incurred (i) because the employer has moved the plant to another town before the employee has had an opportunity to find living quarters at the new location or (ii) because the employee, on a particular occasion, is required to report for work at a place other than his regular workplace.

The foregoing list is intended to be illustrative rather than exhaustive.

(c) Payments excluding expenses. It should be noted that only the actual or reasonably approximate amount of the expense is excludable from the regular rate. If the amount paid as "reimbursement" is disproportionately large, the excess amount will be included in the regular rate.

(d) Payments for expenses personal to the employee. The expenses for which reimbursement is made must in order to merit exclusion from the regular rate under this section, be expenses incurred by the employee on the employer's behalf or for his benefit or convenience. If the employer reimburses the employee for expenses normally incurred by the employee for his own benefit, he is, of course, increasing the employee's regular rate thereby. An employee normally incurs expenses in traveling to and from work, buying lunch, paying rent, and the like. If the employer reimburses him for these normal everyday expenses, the payment is not excluded from the regular rate as "reimbursement for expenses." Whether the employer "reimburses" the employee for such expenses or furnishes the facilities (such as free lunches or free housing), the amount paid to

the employee (or the reasonable cost to the employer or fair value where facilities are furnished) enters into the regular rate of pay as discussed in Sec. 778.116. See also Sec. 531.37(b) of this chapter.

Sec. 778.218 Pay for certain idle hours.

(a) **General rules.** Payments which are made for occasional periods when the employee is not at work due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, where the payments are in amounts approximately equivalent to the employee's normal earnings for a similar period of time, are not made as compensation for his hours of employment. Therefore, such payments may be excluded from the regular rate of pay under section 7(e)(2) of the Act and, for the same reason, no part of such payments may be credited toward overtime compensation due under the Act.

(b) **Limitations on exclusion.** This provision of section 7(e)(2) deals with the type of absences which are infrequent or sporadic or unpredictable. It has no relation to regular "absences" such as lunch periods nor to regularly scheduled days of rest. Sundays may not be workdays in a particular plant, but this does not make them either "holidays" or "vacations," or days on which the employee is absent because of the failure of the employer to provide sufficient work. The term holiday is read in its ordinary usage to refer to those days customarily observed in the community in celebration of some historical or religious occasion; it does not refer to days of rest given to employees in lieu of or as an addition to compensation for working on other days.

(c) **Failure to provide work.** The term "failure of the employer to provide sufficient work" is intended to refer to occasional, sporadically recurring situations where the employee would normally be working but for such a factor as machinery breakdown, failure of expected supplies to arrive, weather conditions affecting the ability of the employee to perform the work and similarly unpredictable obstacles beyond the control of the employer. The term does not include reduction in work schedule (as discussed in Secs. 778.321 through 778.329), ordinary temporary layoff situations, or any type of routine, recurrent absence of the employee.

(d) **Other similar cause.** The term "other similar cause" refers to payments made for periods of absence due to factors like holidays, vacations, sickness, and failure of the employer to provide work. Examples of "similar causes" are absences due to jury service, reporting to a draft board, attending a funeral of a family member, inability to reach the workplace because of weather conditions. Only absences of a nonroutine character which are infrequent or sporadic or unpredictable are included in the "other similar cause" category.

Subpart D--Special Problems

Sec. 778.303 Retroactive pay increases.

Where a retroactive pay increase is awarded to employees as a result of collective bargaining or otherwise, it operates to increase the regular rate of pay of the employees for the period of its retroactivity. Thus, if an employee is awarded a retroactive increase of 10 cents per hour, he is owed, under the Act, a retroactive increase of 15 cents for each overtime hour he has worked during the period, no matter what the agreement of the parties may be. A retroactive pay increase in the form of a lump sum for a particular period must be prorated back over the hours of the period to which it is allocable to determine the resultant increases in the regular rate, in precisely the same manner as a lump sum bonus. For a discussion of the method of allocating bonuses based on employment in a prior period to the workweeks covered by the bonus payment, see Sec. 778.209.

Sec. 778.308 The overtime rate is an hourly rate.

(a) Section 7(a) of the Act requires the payment of overtime compensation for hours worked in excess of the applicable maximum hours standard at a rate not less than one and one-half times the regular rate. The

overtime rate, like the regular rate, is a rate per hour. Where employees are paid on some basis other than an hourly rate, the regular hourly rate is derived, as previously explained, by dividing the total compensation (except statutory exclusions) by the total hours of work for which the payment is made. To qualify as an overtime premium under section 7(e)(5), (6), or (7), the extra compensation for overtime hours must be paid pursuant to a premium rate which is likewise a rate per hour (subject to certain statutory exceptions discussed in Secs. 778.400 through 778.421).

Sec. 778.315 Payment for all hours worked in overtime workweek is required.

In determining the number of hours for which overtime compensation is due, all hours worked (see Sec. 778.223) by an employee for an employer in a particular workweek must be counted. Overtime compensation, at a rate not less than one and one-half times the regular rate of pay, must be paid for each hour worked in the workweek in excess of the applicable maximum hours standard. This extra compensation for the excess hours of overtime work under the Act cannot be said to have been paid to an employee unless all the straight time compensation due him for the nonovertime hours under his contract (express or implied) or under any applicable statute has been paid.

Sec. 778.316 Agreements or practices in conflict with statutory requirements are ineffective.

While it is permissible for an employer and an employee to agree upon different base rates of pay for different types of work, it is settled under the Act that where a rate has been agreed upon as applicable to a particular type of work the parties cannot lawfully agree that the rate for that work shall be lower merely because the work is performed during the statutory overtime hours, or during a week in which statutory overtime is worked. Since a lower rate cannot lawfully be set for overtime hours it is obvious that the parties cannot lawfully agree that the working time will not be paid for at all. An agreement that only the first 8 hours of work on any days or only the hours worked between certain fixed hours of the day or only the first 40 hours of any week will be counted as working time will clearly fail of its evasive purpose. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be compensated unless authorized in advance, will not impair the employee's right to compensation for work which he is actually suffered or permitted to perform.

Sec. 778.318 Productive and nonproductive hours of work.

(a) Failure to pay for nonproductive time worked. Some agreements provide for payment only for the hours spent in productive work; the work hours spent in waiting time, time spent in travel on the employer's behalf or similar nonproductive time are not made compensable and in some cases are neither counted nor compensated. Payment pursuant to such an agreement will not comply with the Act; such nonproductive working hours must be counted and paid for.

(b) Compensation payable for nonproductive hours worked. The parties may agree to compensate nonproductive hours worked at a rate (at least the minimum) which is lower than the rate applicable to productive work. In such a case, the regular rate is the weighted average of the two rates, as discussed in Sec. 778.115 and the employee whose maximum hours standard is 40 hours is owed compensation at his regular rate for all of the first 40 hours and at a rate not less than one and one-half times this rate for all hours in excess of 40. (See Sec. 778.415 for the alternative method of computing overtime pay on the applicable rate.) In the absence of any agreement setting a different rate for nonproductive hours, the employee would be owed compensation at the regular hourly rate set for productive work for all hours up to 40 and at a rate at least one and one-half times that rate for hours in excess of 40.

(c) Compensation attributable to both productive and nonproductive hours. The situation described in paragraph (a) of this section is to be distinguished from one in which such nonproductive hours are properly counted as working time but no special hourly rate is assigned to such hours because it is understood by the parties that the other compensation received by the employee is intended to cover pay for such hours. For example, while it is not proper for an employer to agree with his pieceworkers that the hours spent in downtime (waiting for work) will not be paid for or will be neither paid for nor counted, it is permissible for the parties to agree that the pay the employees will earn at piece rates is intended to compensate them for all hours worked, the productive as well as the nonproductive hours. If this is the agreement of the parties, the regular rate of the pieceworker will be the rate determined by dividing the total piecework earnings by the total hours worked (both productive and nonproductive) in the workweek. Extra compensation (one-half the rate as so determined) would, of course, be due for each hour worked in excess of the applicable maximum hours standard.

Sec. 778.321 Decrease in hours without decreasing pay--general.

Since the regular rate of pay is the average hourly rate at which an employee is actually employed, and since this rate is determined by dividing his total remuneration for employment (except statutory exclusions) for a given workweek by the total hours worked in that workweek for which such remuneration was paid, it necessarily follows that if the schedule of hours is reduced while the pay remains the same, the regular rate has been increased.

HOURS WORKED (29 CFR 785.1 – 785.50)

Subpart A--General Considerations

Sec. 785.1 Introductory statement.

Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) requires that each employee, not specifically exempted, who is engaged in commerce, or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce, or in the production of goods for commerce receive a specified minimum wage. Section 7 of the Act (29 U.S.C. 207) provides that persons may not be employed for more than a stated number of hours a week without receiving at least one and one-half times their regular rate of pay for the overtime hours. The amount of money an employee should receive cannot be determined without knowing the number of hours worked. This part discusses the principles involved in determining what constitutes working time. It also seeks to apply these principles to situations that frequently arise. It cannot include every possible situation. No inference should be drawn from the fact that a subject or an illustration is omitted. If doubt arises inquiries should be sent to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210, or to any area or Regional Office of the Division.

Subpart B--Principles for Determination of Hours Worked

Sec. 785.7 Judicial construction.

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer of his business." (Tennessee Coal, Iron &

Railroad Co. v. Muscoda Local No. 123, 321 U. S. 590 (1944)) Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that "an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer." (Armour & Co. v. Wantock, 323 U.S. 126 (1944); Skidmore v. Swift, 323 U.S. 134 (1944)) The workweek ordinarily includes "all the time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place". (Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946)) The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Sec. 785.34.

Sec. 785.9 Statutory exemptions.

(a) The Portal-to-Portal Act. The Portal-to-Portal Act (secs. 1-13, 61 Stat. 84-89, 29 U.S.C. 251-262) eliminates from working time certain travel and walking time and other similar "preliminary" and "postliminary" activities performed "prior" or "subsequent" to the "workday" that are not made compensable by contract, custom, or practice. It should be noted that "preliminary" activities do not include "principal" activities. See Secs. 790.6 to 790.8 of this chapter. Section 4 of the Portal-to-Portal Act does not affect the computation of hours worked within the "workday". "Workday" in general, means the period between "the time on any particular workday at which such employee commences (his) principal activity or activities" and "the time on any particular workday at which he ceases such principal activity or activities." The "workday" may thus be longer than the employee's scheduled shift, hours, tour of duty, or time on the production line. Also, its duration may vary from day to day depending upon when the employee commences or ceases his "principal" activities. With respect to time spent in any "preliminary" or "postliminary" activity compensable by contract, custom, or practice, the Portal-to-Portal Act requires that such time must also be counted for purposes of the Fair Labor Standards Act. There are, however, limitations on this requirement. The "preliminary" or "postliminary" activity in question must be engaged in during the portion of the day with respect to which it is made compensable by the contract, custom, or practice. Also, only the amount of time allowed by the contract or under the custom or practice is required to be counted. If, for example, the time allowed is 15 minutes but the activity takes 25 minutes, the time to be added to other working time would be limited to 15 minutes. (Galvin v. National Biscuit Co., 82 F. Supp. 535 (S.D.N.Y. 1949) appeal dismissed, 177 F. 2d 963 (C.A. 2, 1949))

(b) Section 3(o) of the Fair Labor Standards Act. Section 3(o) gives statutory effect, as explained in Sec. 785.26, to the exclusion from measured working time of certain clothes-changing and washing time at the beginning or the end of the workday by the parties to collective bargaining agreements.

Subpart C--Application of Principles

Sec. 785.11 General.

Work not requested but suffered or permitted is work time. For example, an employee may voluntarily continue to work at the end of the shift. He may be a pieceworker, he may desire to finish an assigned task or he may wish to correct errors, paste work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time. (Handler v.

Thrasher, 191, F. 2d 120 (C.A. 10, 1951); Republican Publishing Co. v. American Newspaper Guild, 172 F. 2d 943 (C.A. 1, 1949; Kappler v. Republic Pictures Corp., 59 F. Supp. 112 (S.D. Iowa 1945), aff'd 151 F. 2d 543 (C.A. 8, 1945); 327 U.S. 757 (1946); Hogue v. National Automotive Parts Ass'n. 87 F. Supp. 816 (E.D. Mich. 1949); Barker v. Georgia Power & Light Co., 2 W.H. Cases 486; 5 CCH Labor Cases, para. 61,095 (M.D. Ga. 1942); Steger v. Beard & Stone Electric Co., Inc., 1 W.H. Cases 593; 4 Labor Cases 60,643 (N.D. Texas, 1941))

Sec. 785.12 Work performed away from the premises or job site.

The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked.

Sec. 785.13 Duty of management.

In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

Waiting Time

Sec. 785.14 General.

Whether waiting time is time worked under the Act depends upon particular circumstances. The determination involves "scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the employee was engaged to wait or they may show that he waited to be engaged." (Skidmore v. Swift, 323 U.S. 134 (1944)) Such questions "must be determined in accordance with common sense and the general concept of work or employment." (Central Mo. Tel. Co. v. Conwell, 170 F. 2d 641 (C.A. 8, 1948)).

Sec. 785.15 On duty.

A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, fireman who plays checkers while waiting for alarms and a factory worker who talks to his fellow employees while waiting for machinery to be repaired are all working during their periods of inactivity. The rule also applies to employees who work away from the plant. For example, a repair man is working while he waits for his employer's customer to get the premises in readiness. The time is worktime even though the employee is allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employee is unable to use the time effectively for his own purposes. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employee is engaged to wait. (See: Skidmore v. Swift, 323 U.S. 134, 137 (1944); Wright v. Carrigg, 275 F. 2d 448, 14 W.H. Cases (C.A. 4, 1960); Mitchell v. Wigger, 39 Labor Cases, para. 66,278, 14 W.H. Cases 534 (D.N.M. 1960); Mitchell v. Nicholson, 179 F. Supp, 292,14

W.H. Cases 487 (W.D.N.C. 1959))

Sec. 785.16 Off duty.

(a) General. Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.

(b) Truck drivers; specific examples. A truck driver who has to wait at or near the job site for goods to be loaded is working during the loading period. If the driver reaches his destination and while awaiting the return trip is required to take care of his employer's property, he is also working while waiting. In both cases the employee is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Washington, DC to New York City, leaving at 6 a.m. and arriving at 12 noon, and is completely and specifically relieved from all duty until 6 p.m. when he again goes on duty for the return trip the idle time is not working time. He is waiting to be engaged. (Skidmore v. Swift, 323 U.S. 134, 137 (1944); Walling v. Dunbar Transfer & Storage, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); Gifford v. Chapman, 6 W.H. Cases 806; 12 Labor Cases para. 63,661 (W.D. Okla., 1947); Thompson v. Daugherty, 40 Supp. 279 (D. Md. 1941))

Sec. 785.17 On-call time.

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. (Armour & Co. v. Wantock, 323 U.S. 126 (1944); Handler v. Thrasher, 191 F. 2d 120 (C.A. 10, 1951); Walling v. Bank of Waynesboro, Georgia, 61 F. Supp. 384 (S.D. Ga. 1945))

Rest and Meal Periods

Sec. 785.18 Rest.

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (Mitchell v. Greinetz, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); Ballard v. Consolidated Steel Corp., Ltd., 61 F. Supp. 996 (S.D. Cal. 1945))

Preparatory and Concluding Activities

Sec. 785.19 Meal.

(a) Bona fide meal periods. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty

for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (Culkin v. Glenn L. Martin, Nebraska Co., 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); Thompson v. Stock & Sons, Inc., 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); Biggs v. Joshua Hendy Corp., 183 F. 2d 515 (C. A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); Walling v. Dunbar Transfer & Storage Co., 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); Lofton v. Seneca Coal and Coke Co., 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); Mitchell v. Tampa Cigar Co., 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); Douglass v. Hurwitz Co., 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

(b) Where no permission to leave premises. It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

Lectures, Meetings and Training Programs

Sec. 785.27 General.

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

- (a) Attendance is outside of the employee's regular working hours;
- (b) Attendance is in fact voluntary;
- (c) The course, lecture, or meeting is not directly related to the employee's job; and
- (d) The employee does not perform any productive work during such attendance.

Sec. 785.28 Involuntary attendance.

Attendance is not voluntary, of course, if it is required by the employer. It is not voluntary in fact if the employee is given to understand or led to believe that his present working conditions or the continuance of his employment would be adversely affected by nonattendance.

Traveltime

Sec. 785.34 Effect of section 4 of the Portal-to-Portal Act.

The Portal Act provides in section 4(a) that except as provided in subsection (b) no employer shall be liable for the failure to pay the minimum wage or overtime compensation for time spent in "walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities." Subsection (b) provides that the employer shall not be relieved from liability if the activity is compensable by express contract or by custom or practice not inconsistent with an express contract. Thus traveltime at the commencement or cessation of the workday which was originally considered as working time under the Fair Labor Standards Act (such as underground travel in mines or walking from time clock to work-bench) need not be counted as working time unless it is compensable by contract, custom or practice. If compensable by express contract or by custom or practice not inconsistent with an express contract, such traveltime must be counted in

computing hours worked. However, ordinary travel from home to work (see Sec. 785.35) need not be counted as hours worked even if the employer agrees to pay for it. (See *Tennessee Coal, Iron & RR. Co. v. Musecoda Local*, 321 U.S. 590 (1946); *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 690 (1946); *Walling v. Anaconda Copper Mining Co.*, 66 F. Supp. 913 (D. Mont. (1946).)

Sec. 785.35 Home to work; ordinary situation.

An employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different job sites.

Normal travel from home to work is not worktime.

Sec. 785.37 Home to work on special one-day assignment in another city.

A problem arises when an employee who regularly works at a fixed location in one city is given a special 1-day work assignment in another city. For example, an employee who works in Washington, DC, with regular working hours from 9 a.m. to 5 p.m. may be given a special assignment in New York City, with instructions to leave Washington at 8 a.m. He arrives in New York at 12 noon, ready for work. The special assignment is completed at 3 p.m., and the employee arrives back in Washington at 7 p.m. Such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment. It was performed for the employer's benefit and at his special request to meet the needs of the particular and unusual assignment. It would thus qualify as an integral part of the "principal" activity which the employee was hired to perform on the workday in question; it is like travel involved in an emergency call (described in Sec. 785.36), or like travel that is all in the day's work (see Sec. 785.38). All the time involved, however, need not be counted. Since, except for the special assignment, the employee would have had to report to his regular work site, the travel between his home and the railroad depot may be deducted, it being in the "home-to-work" category. Also, of course, the usual meal time would be deductible.

Sec. 785.38 Travel that is all in the day's work.

Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time. However, if the employee goes home instead of returning to his employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked. (*Walling v. Mid-Continent Pipe Line Co.*, 143 F. 2d 308 (C. A. 10, 1944))

Sec. 785.41 Work performed while traveling.

Any work which an employee is required to perform while traveling must, of course, be counted as hours worked. An employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to

ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when he is permitted to sleep in adequate facilities furnished by the employer.

Adjusting Grievances, Medical Attention, Civic and Charitable Work, and Suggestion Systems

Sec. 785.42 Adjusting grievances.

Time spent in adjusting grievances between an employer and employees during the time the employees are required to be on the premises is hours worked, but in the event a bona fide union is involved the counting of such time will, as a matter of enforcement policy, be left to the process of collective bargaining or to the custom or practice under the collective bargaining agreement.

Sec. 785.43 Medical attention.

Time spent by an employee in waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when he is working constitutes hours worked.

Sec. 785.44 Civic and charitable work.

Time spent in work for public or charitable purposes at the employer's request, or under his direction or control, or while the employee is required to be on the premises, is working time. However, time spent voluntarily in such activities outside of the employee's normal working hours is not hours worked.

Subpart D--Recording Working Time

Sec. 785.48 Use of time clocks.

(a) Differences between clock records and actual hours worked. Time clocks are not required. In those cases where time clocks are used, employees who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for such periods provided, of course, that they do not engage in any work. Their early or late clock punching may be disregarded. Minor differences between the clock records and actual hours worked cannot ordinarily be avoided, but major discrepancies should be discouraged since they raise a doubt as to the accuracy of the records of the hours actually worked.

(b) "Rounding" practices. It has been found that in some industries, particularly where time clocks are used, there has been the practice for many years of recording the employees' starting time and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that the employees are fully compensated for all the time they actually work. For enforcement purposes this practice of computing working time will be accepted, provided that it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.