

# Key Labor Rules You Need to Know



## Shelby County Public Schools

- Approximately 7000 students
- About 1000 contracted employees
- 12 schools



Susan Barkley, CPA, CSFM  
Director of Finance  
[susan.barkley@shelby.kyschools.us](mailto:susan.barkley@shelby.kyschools.us)

Department  
Of Labor  
Concerns

**Which employees are subject to overtime and other regulations of the Fair Labor Standards Act?**

- Exempt or nonexempt, that is the question
- Three tests:
  - Salary level – if more than \$455/week, exempt
  - Salary basis – if a guaranteed minimum amount will be paid in any work week when they perform any amount of work, exempt
  - Duties – if perform exempt job duties, exempt
- Must meet all three tests to be exempt



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**Exempt job duties:**

- Regularly supervise two or more other employees, and also
- Management is the primary duty of the position, and also
- Has some genuine input into the job status of others employees (hiring, firing, assignments, etc.)
- Consider actual job duties – titles are irrelevant, classified vs. certified is irrelevant



## Department Of Labor Concerns

### Management duties include:

- Interviewing, selecting, training staff
- Handling employee complaints, disciplining staff
- Determining work techniques
- Apportioning work among staff
- Planning work
- Determining equipment to be used, or materials needed
- Planning budgets
- Monitoring work for legal or regulatory compliance
- Providing for safety in the workplace

## Department Of Labor Concerns

### Exempt professional job duties – three main categories

- “learned professions” – see next slide for a list
- Work that is predominantly intellectual, requires specialized education, involves the exercise of discretion and judgment
- “creative professional” such as actor, musician, writer



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Some “learned professions” are specifically exempt:

- Lawyers
- Doctors
- Dentists
- **Teachers**
- Architects
- Clergy
- **Registered nurses** (but not LPNs)
- Accountants (but not bookkeepers)



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Concerns

Exempt administrative job duties are:

- Office or nonmanual work, which is
- Directly related to management or general business operations, and
- A primary component of which involves the exercise of independent judgment and discretion about
- Matters of significance

## Department Of Labor Concerns

Examples of exempt administrative jobs:

- “staff” rather than “line” employees
- They “keep the business running”
- Administrative employees provide support to the operational or production employees
- Some computer-related jobs – see next slide



## Department Of Labor Concerns

### Exempt computer-related job duties

Computer systems analyst, programmer, software engineer, or other similarly skilled worker performing:

- Systems analysis to determine hardware, software, or system specs
- Design, documentation, analysis, creation, modification of systems or programs



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**What if the employee has multiple jobs or sets of job duties?**

- The primary job dictates whether they are exempt or nonexempt
- Ex: Teacher who works extra hours as a custodian = exempt for all work



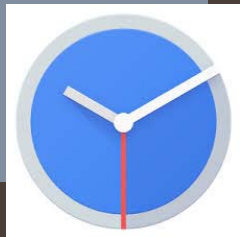
Now it's Time  
for a Super  
Fun Quiz!



## EXEMPT or NONEXEMPT?

- Finance Officer on classified pay scale
- School bookkeeper on classified pay scale
- Teacher who works 10 extra hours at the gate
- Transportation Director on classified pay scale
- Registered nurse
- School nurse with an LPN
- 60% custodian/40% cook
- 60% custodian/40% teacher at the tech school
- Computer network engineer
- Superintendent's administrative assistant

## Department Of Labor Concerns



### Compensable Time

- We must pay for actual time worked
  - Timesheets must reflect actual time worked
  - Beware of "8:00-4:00" every day on the time sheet
  - Taking work home, answering emails, phone calls, etc. all counts as time worked
- Nonexempt employees cannot volunteer their time
  - They can volunteer for a *different* job
- Any time worked without permission still must be paid to the employee
  - Address the issue through the evaluation process

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Of Labor  
Concerns

**Other situations that are considered time worked:**

- “On call” time - if required to be on-site or so close that the time can’t be used effectively
- Waiting time
  - Is the employee **engaged to wait** or **waiting to be engaged**? Engaged to wait = time worked
- Meal periods – if required to perform any duties while eating (active or inactive)
- Travel time – usually is time worked but check the rules if overnight travel

Now it’s Time  
for a Super  
Fun Quiz!





Time  
Worked?  
YES or NO

- Bookkeeper coming in early to work even though the principal didn't approve it
- Bookkeeper calling subs at home before regular work hours
- Bookkeeper responding to emails while at the mall
- IA responsible for student supervision during her lunch break
- Teacher who works at his desk during his lunch break
- Bus driver at a football game waiting to take kids home

Time  
Worked?  
YES or NO

- School cook volunteering to cook for the awards banquet
- School cook volunteering to perform custodial duties for the awards banquet
- Maintenance worker who is on call but not required to be on-site or within 10 minutes of the building
- Snow day with no job duties for an IA
- Hours worked by a secretary in secret, after being disciplined for working extra hours
- Travel for a custodian to get from home to work
- Travel for an LPN from one work site to another during the day

Department  
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Concerns

**Overtime**

- Applicable only to nonexempt employees
- Time **worked** in excess of **40** hours in a **work week** must be paid as time and a half (overtime)
- Holiday, sick day, personal day are not included in time worked
- It must be paid even if the OT is not approved in accordance with board policy
- If the work week includes multiple rates of pay:
  - Weighted average method
  - Specific rates method



Department  
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Concerns



**Words of caution:**

- FLSA applies only to nonexempt staff
- It's ok to pay more than FLSA requires, but it's never ok to pay less
- Burden of proof is on the employer
- All hours worked count toward the 40, even if not approved
- All hours worked must be paid at a rate not less than minimum wage

## IRS Concerns

### Employee or Independent Contractor

- Worker classification depends on facts and circumstances of each situation
  - Behavioral – do we control or have the ability to control what the worker does and for how long?
  - Financial – are the business aspects controlled by us or the worker?
  - Type of relationship – are benefits given, is it a continuing relationship?
- It is determined by job, not by person



## IRS Concerns

### Factors that indicate **EMPLOYEE**

- Training is provided by the district
- A continuing relationship
- The work is integrated into the district's business operations
- The district sets the work hours
- District requires substantially full time work
- District requires regular reports
- Payment by the week or month
- Payment of travel or other business expenses
- The district furnishes equipment, materials

## IRS Concerns

### Factors that indicate **INDEPENDENT CONTRACTOR**

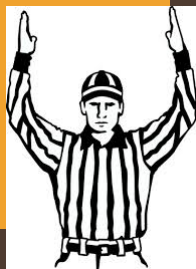
- Service is offered to the general public
- They work for more than one entity at a time
- They can hire their own assistants
- They incur liability if services are prematurely terminated
- They can realize a profit or loss on the work



## IRS Concerns

### Employee or Independent Contractor

- Almost everyone we pay is considered to be an employee per IRS regulations and we are required to pay them through payroll
- Game officials assigned by KHSAA are independent contractors
  - Even if they also work as a teacher in your district
- When in doubt, **EMPLOYEE**



## District Concerns



- All compensation must be in accordance with the board-approved salary schedule
- All compensation must be paid through district payroll; wages cannot be paid directly by a school
- Boosters cannot pay staff directly; they can donate funds to the district toward that cost; all amounts must be in accordance with salary schedule

## District Concerns

- Be careful with the rate of pay for stipends
- Be aware of DWT for retirees
- Pay the rate for the job being performed, not necessarily the person's regular rate of pay
- Contract vs. "up to"
- Is the compensation on the salary schedule? example: AP Coordinator test fee

## District Concerns



Staff cannot be paid twice for the same hour worked

- Example: teacher covering as a sub during his planning period; hours must be outside regular work day if paid
  - FLSA does not require additional payment
- Example: Flat rate for tournament work; work must be performed outside regular contracted day
- Example: employee must use a noncontract day if being paid by an outside entity for work that day

## District Concerns

Administrators need to be very careful about promising payment or specific amounts of pay without confirmation from HR/Finance

- Teachers and other nonexempt staff are not entitled to additional pay under FLSA
- If they promised a rate above the salary schedule, don't pay it

## District Concerns

- Staff on disability cannot do any work
- Retirees cannot work for 90 days if returning in the same retirement system
- Certified retirees returning in a classified position must have Form 30E each year

