



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority  
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## LEGAL UPDATE

July 30, 2015

**To: Superintendents/Presidents/Chancellors, Member Community  
College Districts**

**From: Loren W. Soukup *LS*  
Associate General Counsel**

**Subject: Employee Overtime Requirements  
Memo No. 10-2015(CC)**

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With the start of the new school year, our office would like to remind districts about the common pitfalls associated with overtime rights of non-exempt employees, such as classified secretaries, bus drivers or custodians.

**1. Make sure that all of your employees have been properly classified as exempt or non-exempt under the Fair Labor Standards Act (FLSA).<sup>1</sup>**

All employees must be paid overtime unless they qualify for one of the three job category exemptions: executive, administrative, or professional. To determine whether an employee is exempt from overtime, districts must review the employee's primary job duties and determine whether they meet the FLSA exemption requirements.<sup>2</sup> The fact that an employee receives a salary is not determinative of whether they are exempt from overtime. Additional information about how to identify exempt employees can be found on the Department of Labor website: [http://www.dol.gov/whd/overtime/fs17a\\_overview.htm](http://www.dol.gov/whd/overtime/fs17a_overview.htm).

**2. Districts must keep accurate records regarding the time worked by every non-exempt employee.**

The FLSA requires that employers keep records showing the employee's name, time and day that the workday began and ended, the regular hourly rate, and total hours worked per week, including any overtime earned.<sup>3</sup> A timesheet which reflects a generic work schedule, such as 8:00 a.m. to 5:00 p.m. is not sufficient under the FLSA. While time clocks are not required, it is strongly recommended that districts use some form of a time keeping program to ensure that accurate records are kept.

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<sup>1</sup> 29 U.S.C. §§ 201 et seq.; 29 C.F.R. Part 541

<sup>2</sup> 29 U.S.C. §213(a)

<sup>3</sup> 29 CFR Part 516



**3. If the district allows a non-exempt employee to work overtime, even after directing that employee not to work overtime, the district is still required to pay the overtime worked by the employee.**

Districts will be responsible for paying overtime to any non-exempt employee who works overtime, regardless of whether the district has approved the overtime or is even aware that the employee is working overtime. To avoid this situation, it is recommended that districts adopt clear policies prohibiting unauthorized overtime and inform the employees of the policy requirements and that the district will enforce the policy through discipline, if necessary. In addition, it is imperative that districts keep accurate records of the time actually worked by non-exempt employees, so that districts can stay apprised of any overtime hours being worked.

**4. An employee who performs non-exempt work as his or her primary duty and who also works for the same employer in a different position is entitled to overtime if the total number of hours worked in both positions exceeds 40 hours per week.**

If the time worked in both positions exceeds 40 hours per week, the employee is entitled to a “blended” overtime rate based on how many hours are worked in each position. The “blended” overtime rate is calculated based on the weekly rate for both positions divided by the total number of hours worked. For example, the overtime rate for a non-exempt employee who also serves in a faculty/teaching capacity should be calculated as follows:

- Calculate the weekly rate for regular forty (40) hour assignment (Ex: \$646.00)
- Calculate weekly rate for the classroom hours taught (Ex: 3 hours @ \$13.44 = \$40.33)
- Add the weekly rate for the classroom hours to the weekly regular assignment rate; (Ex: \$646.00+\$40.33=\$686.33)
- Determine the average hourly wage (divide average weekly rate by total number of hours worked that week)  
Ex: \$686.33 divided by 43 hours=\$15.96
- Determine overtime wage (average hourly wage divided by 2)  
(Ex: \$15.96 divided by 2=\$7.98 blended overtime hourly rate)
- To determine weekly overtime (overtime wage multiplied by number of hours worked over 40)  
Ex: \$7.98 x 3 hours=\$23.94
- Add the overtime wage to the total weekly amount owed for both assignments;  
(Ex: \$686.33+\$23.94=\$710.27)

**5. Use caution in allowing non-exempt employees to volunteer to lead extracurricular/athletic activities without pay.**

The FLSA does provide a narrow overtime exception for “occasional and sporadic work.” This exempted work must be voluntary and truly occasional and sporadic. Regular part-time jobs, including adjunct faculty and stipend assignments, where the employee works scheduled hours, will not qualify under this exemption. In addition, the exempted work must be substantially different than the work regularly performed by the employee. Some examples of “occasional and sporadic” work include a custodian collecting tickets at an athletic event or a secretary helping to prepare food for a district banquet. It is recommended that districts provide written notice to all



volunteers confirming that they are intending to volunteer for the position and are working without any expectation of being paid.

In addition, non-exempt employees who also perform athletic coaching duties will not be entitled to overtime for work performed as a coach provided the non-exempt employee receives no compensation or is only paid expenses, reasonable benefits, or a nominal fee to perform the services.

**6. Failure to comply with the FLSA can result in civil and criminal penalties, including back pay for unpaid overtime, liquidated damages, attorneys' fees, litigation costs, and up to \$10,000 in fines for a first-offense willful violation.**

These penalties can be brought against the district and the individual administrators and they are generally not covered by the district's insurance coverage. To avoid these penalties, districts should provide frequent training to administrative and supervisory employees on the requirements of the FLSA.

Please contact our office if you would like assistance with the classification of your employees or if you have questions regarding this or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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