

## Fair Labor Standards Act/Overtime

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

### 1. GENERAL:

- a. As prescribed by the Pleasants County Board of Education Policy File 6.19, the length of the normal work day shall be seven hours and 45 minutes on instructional days and seven hours and 30 minutes on non-instructional days.
- b. Non-exempt employees are not permitted to volunteer to perform services for, or on behalf of, the school system if the volunteer duties involve the same types of duties that the employees normally perform as a part of their regular duties for the school district.

### 2. WORKWEEK:

- a. For purposes of the Fair Labor Standards Act, the workweek for all employees of the Board is defined as beginning at 12:00 a.m. Monday and ending at 11:59 p.m. Sunday.
- b. Working hours for all non-exempt employees of the Board under the Fair Labor Standards Act, including aides, secretaries, bus operators, and cafeteria, janitorial and maintenance personnel, will conform to federal and state regulations. The classification of all employee positions of the Board, as to whether they are exempt or non-exempt for the provision of the Fair Labor Standards Act, are shown in Section 8 of this policy.
- c. The **normal** workweek shall be 38.75 hours (5 days – 7 hours and 45 minutes).

### 3. ATTENDANCE EXPECTATIONS:

- a. All employees are expected to be present during their scheduled working hours. Absence without prior approval, chronic absences, habitual tardiness or abuses of designated working hours are all considered neglect of duty and will result in disciplinary actions, up to and including dismissal.
- b. Non-exempt employees who have not been granted prior approval by appropriate authority to work overtime are not authorized to arrive at their workstations and begin work earlier than their scheduled starting time and are not authorized to leave later than their normal ending time.

### 4. TIME AND ATTENDANCE REPORTS:

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

### 5. OVERTIME AND COMPENSATORY TIME:

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- a. The Board understands that there are times when overtime is necessary. Overtime work by non-exempt employees should occur only when absolutely necessary.
- b. A non-exempt employee shall not work overtime without the expressed written approval of his/her supervisor. The request must be submitted in writing using the appropriate form. In an emergency situation, verbal approval may be granted. However, a written approval must be submitted within 24 hours following the verbal approval.
  1. VIOLATIONS: Any exempt or non-exempt employee who violates any provision of the Board's overtime policy, or any regulations or procedures related thereto, may be subject to disciplinary actions, up to and including dismissal.
- c. Supervisory personnel must monitor overtime use on a weekly basis to ensure that all overtime worked is necessary. With the mutual agreement of the employee and the immediate supervisor, as required by the provisions of West Virginia Code §§18A-4-8a(8) and 18A-4-8(d), work schedules may be adjusted within a workweek to preclude the need for overtime. This is considered an adjusted workweek and would not be recorded as compensatory time, as long as the hours worked during the workweek do not exceed 38.75.
- d. In lieu of overtime compensation, non-exempt employees may receive compensatory time off at a rate of not less than one and one-half (1.5) hours for each one hour of overtime worked, if such compensatory time (1) is agreed to by the employee in writing before the overtime work is performed and (2) is authorized by the immediate supervisor.
- e. Employees will be allowed to use compensatory time within a reasonable period after requesting such use. Employees may accrue a maximum of 120 compensatory time hours (80 hours of actual work).
- f. All compensatory time earned must be used within 60 days after being earned and any compensatory time earned must be used before any personal, annual, or leave without pay is used. Any compensatory time that is not used within this time will be paid at the employee's current rate.
- g. Overtime will be paid for time worked over the normal workweek as defined in Section 2c of this policy. In computing the workweek for overtime purposes, only actual hours worked will be counted, except on non-instructional days when the employee has worked the required seven and one-half hours (7.5) as provided for in Section 1a of this policy. Work hours will be adjusted to reflect seven and three-quarters hours (7.75) for such days.

In the event an employee is "called out" by their supervisor due to an emergency situation a non-exempt employee will be compensated a minimum of two-hours of pay at the appropriate rate of pay.

Time taken off work on paid or unpaid leave, including personal, sick, or military leave, vacation, time off without pay, jury duty, or other absences from work, whether approved or unapproved, outside school environment days, and days canceled due to inclement weather (snow days) will not be counted as hours worked in computing the workweek for overtime purposes.

- h. Pursuant to the provisions of West Virginia Code §18A-4-8a(6), any service personnel who is required to work on any legal school holiday as described in West Virginia Code §18A-5-2, shall be paid at a rate of one and one-half times the employee's usual hourly rate.
- i. Pursuant to the provision of West Virginia Code §18A-4-8a(7), any full-time service personnel who is required to work in excess of his/her normal working day during any week which contains a legal holiday shall be paid at a rate of one and one-half times the employee's usual hourly rate for the additional hours or fraction of additional hours worked.

- j. Pursuant to the provision of West Virginia Code §18-4-8(e), an employee whose regular workweek is scheduled from Monday through Friday and agrees to perform any work assignments on a Saturday or Sunday is to be paid for at least one-half day of work for each day he or she reports for work, and if the employee works more than three and one-half hours on any Saturday or Sunday, the employee is to be paid for at least a full-day of work.

**NOTE: In computing the overtime rate for a workweek in which this provision applies, only the actual hours worked on a Saturday or Sunday and the pay related to those hours will be included in the overtime computations. The pay for hours not actually worked will be paid at the employee's regular rate.**

- k. Upon resignation, retirement, or termination, an employee will be paid for any unused compensatory time at a rate of compensation not less than: (A) the average regular rate received by such employee during the last three years of the employee's employment; or (B) the final regular rate received by such employee, whichever is greater.

#### **6. COMPUTATION OF OVERTIME PAY:**

- a. Overtime compensation will be paid or compensatory time awarded for actual hours worked in excess of 38.75 during a given workweek, as defined in Section 2.
- b. In computing the total number of hours worked on a daily basis, time worked will be rounded to the nearest fifteen-minute increment. For example, seven hours and fifty-two minutes will be rounded to seven and three-quarter hours, and seven hours and fifty-three minutes will be rounded to eight hours (8 hours).
- c. Overtime compensation will be paid at the rate of one and one-half times the employee's regular rate of pay for each hour worked in excess of 38.75 during a workweek. Generally, the regular rate will include all compensation earned by the employee during the workweek divided by the total number of hours worked.
- d. In situations where an employee performs two or more different duties during the workweek with differing regular compensation rates, such as his/her regular duty and an extra-curricular and/or extra-duty assignment, overtime compensation will be computed using one of the following methods:
  - 1. **Weighted average method** – This involves calculating the employee's regular rate of pay for the workweek by taking the weighted average of all jobs performed during the workweek. To find the weighted average, determine the employee's total earnings for the week and divide this total by the total number of hours worked on all jobs. Once the weighted average has been determined, overtime will be calculated at one and one-half times this average.
  - 2. **Separate rates method** - This involves calculating the employee's regular rate of pay for the workweek by computing the rate for each job separately. The overtime rate is based on the regular rate that applies to the type of work performed during the hours in excess of thirty-eight and three quarters. **This method is available for non-exempt workers only and before it can be used, the employer and employee must agree (prior to the additional work being performed).**

#### **7. NOTICE OF OVERTIME POLICY:**

- a. Non-exempt staff will be given notice of this policy, verbally and in writing, during meetings established for explanation and discussion. Training will include completing timesheets correctly, overtime requirements, compensable time, etc.

- b. Thereafter, explanation and instruction will be given to all full-time new hires upon completion of required paperwork for employment.

## 8. EXEMPT AND NON-EXEMPT POSITIONS

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

- a. There are four types of FLSA exemptions: **executive, administrative, professional employees and "highly compensated" employees** (29 Code of Federal Regulations (C.F.R.) Part 541)
- b. Exempt employees generally must be paid on a "salaried" or fee basis, earn at least \$455 per week, and meet one of the "duties" tests below. The salary and salary basis requirements of the FLSA, however, do not apply to bona fide teachers.
- c. Employees who are exempt under the executive, administrative or professional exceptions must "primarily" perform executive, administrative or professional duties (i.e., generally at least 50% of the employee's time). (29 C.F.R. Part 541) "Highly compensated" employees must perform at least one of these duties.
  1. Executive employee - Must be paid on a salary or fee basis and primary duty must include: (1) managing the enterprise in which he/she is employed or managing a recognized subdivision or department of the enterprise; AND (2) customary regular direction of two or more other employees AND (3) authority to hire and fire other employees or have hiring and firing recommendations carry significant weight. Includes superintendents, assistant superintendents, treasurers/chief school business officials and most directors.
  2. Administrative employee - In addition to salary requirements, primary duty must include: (1) either performing office or non-manual work directly related to management policies or general operations of the employer OR performing functions in the administration of a school system (or department or subdivision) in work directly related to the academic instruction or training AND (2) work requiring the exercise of discretion and independent judgment with respect to matters of significance. Includes principals, assistant principals, coordinators, and supervisors.
  3. **Professional** employee - In addition to salary requirements, primary duty must include (1) **either** work requiring knowledge of an advanced type customarily acquired by a long course of specialized study (work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion) OR work requiring invention, imagination or talent in a recognized field of artistic endeavor OR teaching in a school system/educational institution OR work requiring highly specialized computer knowledge  
(primary duty consists of applying or designing systems, hardware or software.) Includes "learned professions" such as teaching, psychology, nursing (at the level of R.N. and above), counseling and accounting.
  4. "Highly Compensated" Employee - Employee's salary is more than \$100,000 annually AND employee regularly performs one or more of the exempt duties of an executive, administrative or professional employee AND primary duty is non-manual office work.
- d. **If an employee primarily performs non-exempt work**, overtime and minimum wage requirements may apply. For example, if the director of maintenance spends most of his /her time doing hands-on maintenance, then he/she is most likely a "non-exempt" employee.

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- e. Exempt employees are not covered by FLSA minimum wage and overtime provisions. However, they are covered by **equal pay and record-keeping** provisions.
- f. FLSA provisions do not apply to the following "non-covered" persons: independent contractors, bona fide volunteers and trainees, such as student teachers.

The following list represents some of the common categories of school district employees under the exemptions as well as a list of common categories of non-exempt employees. Certain positions, such as superintendent, may qualify under more than one category, but are listed under the following categories below to be consistent with school districts in other states:

### **Executive Exemption:**

Superintendent  
Directors, Coordinators  
Treasurer/CSBO

### **Administrative Exemption:**

Principals  
Assistant Principals  
Director of Transportation  
Director/Supervisor of Maintenance

### **Professional Exemption:**

Librarian  
Remedial Specialist  
Counselor  
Teacher  
Speech/Language Pathologist  
Psychologist  
Attendance Officer  
Temporary part-time coaches who  
are not regular employees

### **Non-Exempt Employees:**

Aide  
Autism Mentor  
Secretary  
Accounts Payable Supervisor  
Chief Mechanic  
Maintenance Crew Leader  
Maintenance Foremen  
General Maintenance  
Htg & Air Cond. Mechanic  
Mechanic  
Bus Operator  
Cafeteria Mgr. Cooks  
Custodian

An employee's "primary duty" is critical in determining whether the employee is exempt from the requirements of the FLSA. In most cases, the primary duty consumes the majority (over 50 percent) of the employee's time. All employees who are determined to be non-exempt must be compensated for all hours

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worked on behalf of the employer at the federal minimum wage, and compensated for all hours worked beyond 38.75 in a workweek at time and a half of their regular rate of pay for that workweek.

Consequently, all hours worked by non-exempt service personnel on behalf of the school system must normally be included in the computation, including the attendance of meetings and workshops, travel between work assignments, extra-curricular and extra-duty assignments, such as extra bus runs, working in an after school program, or coaching, and taking work home in the evenings or on weekends. The

employer is responsible for maintaining a weekly record (timesheet) of ALL hours worked by non-exempt employees to ensure that the requirements of the FLSA are followed.

On the other hand, employees who are determined to be exempt from the FLSA, such as teachers, are exempt from all requirements, including minimum wage and overtime and the employer is not required to maintain a record (timesheet) of hours worked.

Personnel who are employed on a temporary, part-time basis and whose "primary duty" for the district meets the "white-collar" exemption tests, such as a certified coach, are considered to be exempt, since

coaches are considered teachers. The salary and salary basis requirements of the FLSA do not apply to bona fide teachers.

Personnel employed on a temporary, part-time basis as athletic trainers, however, are not considered teachers and, therefore, may not meet the "white-collar" exemption tests. The salary and salary basis requirements do apply to athletic trainers, as well as all exempt personnel other than teachers. To be exempt, an employee must be compensated on a salary or fee basis at a rate not less than \$455 per week and must meet the other tests described in Section 8b for a learned professional.

## Pleasants County Board of Education Regular Duty Time Sheet

Department: \_\_\_\_\_ Workweek: \_\_\_\_\_

Employee Name: \_\_\_\_\_ Soc. Sec. No.: \_\_\_\_\_

Day of the Week	Date	Beg. Time (Hour/Min)	Mid-Day Stop Time (Hour/Min)	Mid-Day Start Time (Hour/Min)	Ending Time (Hour/Min)	Type of Leave Used	(Finance Ofc. Use Only) Hrs. Wrkd.	(Finance Ofc. Use Only) Lv. Hrs.	
Monday									
Tuesday									
Wednesday									
Thursday									
Friday									
Saturday									
Sunday									
<b>Total Hours</b>									

### Extra-Duty Time Sheet

Day of the Week	Date	Type of Duty	Beg. Time (Hour/Min)	Mid-Duty Stop Time (Hour/Min)	Mid-Duty Start Time (Hour/Min)	Ending Time (Hour/Min)	(Finance Ofc. Use Only) Hrs. Wrkd.
Monday							
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Sunday							
<b>Total Extra-Duty Hours Worked</b>							

I hereby certify that this is a true and accurate representation of all hours that I have worked on behalf of the Board of Education during the designated workweek.

**Employee's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

I hereby certify to the best of my knowledge that this is a true and accurate representation of all hours worked by this employee on behalf of the Pleasants County Board of Education during the designated workweek.

**Supervisor's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Notes: Any changes must be initialed by both employee and supervisor.**

# APPENDIX II

## PLEASANTS COUNTY BOARD OF EDUCATION

### AGREEMENT TO RECEIVE COMPENSATORY TIME OFF

Pursuant to the Fair Labor Standards Act (FLSA), I understand that I will earn compensatory time at a rate of one and one-half (1.5) hours for each hour of overtime worked. I further understand that I may not earn more than 120 hours of compensatory time (80 hours of actual overtime work), that I must take the time earned within 60 days after it is earned, and that I must take the time before using any personal, annual, or leave without pay. I also understand that if I am unable to use all compensatory time earned during the allotted time due to the work requirements, that I will receive compensation for the unused compensatory time at my current regular hourly rate of pay, but may be disciplined for failure to comply with the Board's overtime policy.

I hereby knowingly agree and consent to the use of compensatory time in lieu of overtime pay for time worked in excess of 38.75 hours in the workweek beginning Monday, \_\_\_\_\_.

Number of hours worked in excess of 38.75: \_\_\_\_\_ (Copy of time sheet must be attached.) Number of hours earned in compensatory time (hrs. worked times 1.5): \_\_\_\_\_

\_\_\_\_\_  
Employee's Signature Date

\_\_\_\_\_  
Supervisor's Signature (or designee) Date

Date(s) and hours of compensatory time used: \_\_\_\_\_

\_\_\_\_\_  
Employee's Signature Date

\_\_\_\_\_  
Supervisor's Signature (or designee) Date



# APPENDIX III

## PLEASANTS COUNTY EMPLOYEE VOLUNTEER AGREEMENT

I, \_\_\_\_\_, of my own free will, volunteer my time and service to participate \_\_\_\_\_ as for\_ School. My time and service in this volunteer capacity are given without promise, expectation or receipt of any form of compensation, benefits or other remuneration for this service.

I understand and agree that my volunteer participation is not being performed in the course and scope of my regular employment at \_\_\_\_\_ School, and that my participation in this activity is not in any way required by \_\_\_\_\_ School or the Pleasants County Board of Education.

I acknowledge and agree that my volunteer services do not involve the same or similar type of services I perform as an employee of the Pleasants County Board of Education. I further acknowledge and agree that my volunteer services are not closely related to my duties and responsibilities as an employee.

I understand that my participation as a volunteer may be terminated at any time, without cause, and that I may withdraw from participation at any time for any reason and that my withdrawal will not affect my continued employment with the Board of Education.

This agreement will continue in force until terminated.

\_\_\_\_\_

Volunteer's Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Authorized School Official

\_\_\_\_\_

Date

**APPENDIX IV**

**Approval to Work Overtime**

Approval is hereby given for \_\_\_\_\_ to work \_\_\_\_\_

hours of overtime on \_\_\_\_\_. Reason for overtime includes

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

Completed form to be submitted to Superintendent.

\_\_\_\_\_  
Superintendent's Signature

\_\_\_\_\_  
Date

Amended: February 14, 2008

Amended: March 10, 2015

Amended: June 14, 2018

Reviewed: February 6, 2020

Reviewed: December 5, 2023