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## **A Quick Guide to the Fair Labor Standards Act (FLSA) for South Dakota School Districts**

*(This information is provided as a guideline and should not be interpreted as legal advice)*

### **LIST OF 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 (4) main 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 \$913 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.  
  
For computer employees to qualify as exempt employees, they must be compensated either on a salary or fee basis at a rate not less than \$913 per week, if compensated on a weekly basis, or at a rate not less than or \$47,476 annually for a full-year worker.
- 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 fifty percent (50%) of the employee's time). (29 C.F.R. Part 541) "Highly compensated" employees must perform at least one (1) of these duties and meet the salary requirements as indicated below.
  1. Executive employee: Must be paid on a salary or fee basis and primary duty must include: (a) managing the enterprise in which he is employed or managing a recognized subdivision or department of the enterprise; AND (b) customary

regular direction of two (2) or more other employees AND (c) authority to hire and fire other employees or have hiring and firing recommendations carry significant weight. Superintendents, Assistant Superintendents, Treasurers/Chief School Business Officials and most Directors generally are covered by this exemption.

2. Administrative employee: In addition to salary requirements, primary duty must include: (a) 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 (b) work requiring the exercise of discretion and independent judgment with respect to matters of significance. Principals, Assistant Principals, Coordinators, and Supervisors generally are covered by this exemption.
  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 or artistic endeavor OR teaching in a school system/educational institution OR work requiring highly specialized computer knowledge (primary duty consists of applying designing systems, hardware or software.) "Learned professions" such as teaching, psychology, nursing (at the level of R.N. and above), counseling and accounting generally are covered by this exemption.
  4. "Highly Compensated" employee: Employee's salary is more than \$134,004 annually AND employee regularly performs one (1) 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 time doing hands-on maintenance, then he is most likely a "non-exempt" employee.
- 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 (1) category, but are listed under the following categories below to be consistent with school districts in other states.

**Executive Exemption:**

- Superintendents
- Associate/Assistant Superintendents
- Directors/Coordinators
- Treasurer/CSBOs

**Administrative Exemption:**

- Principals
- Assistant Principals
- Teachers
- Curriculum Specialists
- Attendance Directors
- Director/Coordinator of Services
- Supervisor of Maintenances
- Supervisor of Transportations
- Food Services Supervisors

Select administrative office roles may qualify for the administrative exemption. Administrative Assistants over insurance and benefits, curriculum, or the Administrative Assistant to the Superintendent may be eligible to qualify as exempt depending on their duties. However, typical secretarial/clerical work typically does not meet the administrative exemption duty test. The DOL offers these guidelines for employers to consider.

An employee may qualify for the administrative exemption if the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers. Thus, employees acting as advisors or consultants to their employer's clients or customers — as tax experts or financial consultants, for example — may be exempt.

***Discretion and Independent Judgment***

In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term must be applied in the light of all the facts involved

in the employee's particular employment situation, and implies that the employee has authority to make an independent choice, free from immediate direction or supervision.

Factors to consider include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval, and other factors set forth in the regulation. The fact that an employee's decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.

### ***Matters of Significance***

The term "matters of significance" refers to the level of importance or consequence of the work performed. An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer.

### **Final Note**

It should be noted that this exemption, more than most any other in education, can lead to incorrect classification of school district employees and potential lawsuits. School districts should enlist the help of professional consultants to conduct formal job analyses to determine if administrative employees meet the duty requirements for the administrative exemption.

If you have any questions, please feel free to contact our office.

Thank you.

Sincerely,



Scott R. Swier