

PURPOSE

The purpose of this policy is to ensure that the Gilmer 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:

All employees of the Board are expected to work their specified workweek each week. (See Appendix A of this policy)

Board employees may regularly and routinely be scheduled to work less than a 40-hour workweek; however, the board retains the right to request an employee to perform duties up to 40 hours during a workweek. (See #5)

All full time employees will be given a 30 minute duty free lunch break.

The length of the school day for licensed and professional staff will be a minimum of seven and one-half hours and will continue until professional responsibilities to students are completed. Administrative meetings, curriculum development, pupil supervision, assigned duties, parent conferences, group or individual planning and extra-curricular activities may require hours beyond the stated minimum.

Work schedules for all other employees will be defined by the superintendent or, his/her designee, and will be consistent with the Fair Labor Standards Act, West Virginia statutes, and provisions of this policy.

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. (See volunteer policy)

2. Workweek:

For the purpose 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.

Working hours for all non-exempt employees of the Board under the Fair Labor Standards Act, including paraprofessionals, aides, secretaries, bus operators, cooks, 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 Appendix B of this policy.

3. Attendance Expectations:

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.

Non-exempt employees who have not been granted prior approval by the appropriate authority to work overtime may not arrive at their workstations earlier than their scheduled starting time and must leave their workstations at their scheduled ending time. Failure to comply with this requirement may result in disciplinary actions, up to and including dismissal.

4. Time and Attendance Reports

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.

5. Additional Time and Overtime

The Board discourages additional time and overtime work by non-exempt employees unless absolutely necessary.

Overtime pay at one and one half times the regular hourly rate of pay will be paid to non-exempt employees for all hours worked over forty (40) hours in any one workweek. A workweek shall be defined as 12:00a.m. Monday to 11:59p.m. Sunday. It should be understood that a non-exempt employee who normally works less than forty (40) hours per week shall be compensated at the employee's regular rate for additional hours worked up to a total of forty (40) hours worked in a week. This will be defined as additional time worked.

A non-exempt employee shall not work additional time or overtime without the expressed written approval of the Superintendent or his/her immediate supervisor. The request must be submitted in writing using the appropriate form. In an emergency situation, verbal approval may be granted; however, a written request must be submitted within 24 hours following the verbal approval.

- Aides must get prior approval from their building principal.
- Bus Operators and Mechanics must get prior approval from Transportation Director.
- Cooks must get prior approval from their building principals and/or Food Service Director.
- Custodians must get prior approval from their building principals.
- Maintenance must get prior approval from the Superintendent.
- Secretaries must get prior approval from their building principals.

- All other non-exempt employees must get prior approval from their immediate supervisor.

Supervisory personnel must monitor additional time/overtime use on a weekly basis to ensure that all additional/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 40.

In computing the 40-hour workweek for overtime purposes, only actual hours worked will be counted. Time taken off work on paid or unpaid leave, including personal, annual, or military leave, 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 toward hours worked.

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.

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 school 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.

Pursuant to the provision of West Virginia Code 18-4-8(e), an employee whose regular work week is scheduled from Monday through Friday and agrees to perform any work assignments on a Saturday or Sunday must be paid for at least one-half day of work for each of the days he/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. For example, if an employee works one hour on Saturday he/she will be paid for half a day, but only the one hour actually worked will be used to compute any overtime due.

6. Computation of Overtime Pay

Overtime compensation will be paid for actual hours worked in excess of 40 during a given workweek, as defined in Section 2.

In computing the total number of overtime hours worked, time worked will be rounded to the nearest fifteen-minute increment. For example, one hour and 5 minutes will be rounded to one hour (1.0 hour) and 1 hour and 10 minutes would be rounded to 1 hour and fifteen minutes (1 and $\frac{1}{4}$ hour).

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 40 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.

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 extra-curricular and/or extra-duty assignment, overtime compensation will be computed using the following method.

- **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.

7. Compensatory Time:

Pursuant to the FLSA, compensatory time is an acceptable alternative to overtime compensation/additional time for a service employee by mutual agreement of employee and supervisor. All compensatory time must receive prior approval from the Superintendent or his/her designee (Immediate supervisors/principals). The employee's timesheet must list ALL compensatory time earned on the date of accrual and all compensatory time used on the date it was used. A running total of compensatory time must be maintained on the timesheet. For the purpose of computing overtime compensatory time off shall **not** be counted as hours worked in any work week.

The rate of compensatory time will be one hour for one hour if the time is additional time and does not exceed 40 hours in one workweek. For overtime compensatory time will be one and one half hours for each hour worked in excess of forty-hours (40) during the workweek, actual hours worked on paid school holidays, and any additional hours worked in excess of the normal working day in any week that contains a paid school holiday. A non-exempt employee shall not be permitted to accrue more than forty-hours (40). Additional time shall not accrue until the employee's accrued compensatory time is reduced to less than forty (40) hours of compensatory time. All compensatory time must be used during the school year within which it is earned (WV Code 21-5C-3).

An employee is permitted to use accrued compensatory time as paid time off with prior approval from their supervisor and if the use of such time does not unduly disrupt the operation of the school (WV Code 21-5C-3). Compensatory time may be taken in half-hour increments. **Substitutes are not to be called when employees are using compensatory time off. Substitute Personnel are not authorized for compensatory time off situations.**

The request to use compensatory time must be made in advance. Approval of such request is subject to scheduling, school system operations, work demands and the number of other personnel taking the same time off.

When an employee resigns or is discharged from employment with the Board of Education, accrued compensatory time shall be paid at a rate not less than (a) the average regular rate received by such employee during the last three years of his/her employment or (b) the final regular rate received by the employee, whichever is higher.

8. Violations

Any employee who violates any provision of the Board's additional time and overtime policy, or any regulations or procedures related thereto may be subject to disciplinary action including written reprimand, suspension or termination as determined by the Superintendent.

9. List of Exempt and Non-Exempt Positions:

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)

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.

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.

- a. 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 sub division 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.

- b. 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 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.
- c. Professional employee: In addition to salary requirements, primary duty must include (1) either work requiring knowledge of an advanced type customarily 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.
- d. “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.

If an employee primarily performs non-exempt work, overtime and minimum wage requirement 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.

Exempt employees are not covered by FLSA minimum wage and overtime provisions; however, they are covered by equal pay and record-keeping provisions.

FLSA provisions do not apply to the following “non-covered” persons: independent contractors, bona fide volunteers and trainees, such as student teachers.

Appendix A (Service Personnel Work Hours)

Work Week

Definitions:

Service and auxiliary personnel shall mean all non-teaching school employees not otherwise defined as teachers.

Regular full-time employee shall mean all employees employed by the Gilmer County Schools who have a regular position or job throughout their employment term. Then employment term shall be without regard to hours or method of pay and shall primarily be based upon ten (10) school months.

Normal Working Day:

1. Aides (Any Classification) – Seven (7) hours per day, excluding lunch, as determined by the building principal.
2. Bus Drivers – Seven (7) hours per day as determined by the immediate supervisor.
3. Cooks (Any Classification) – Seven (7) hours per day, excluding lunch, as determined by the building principal.
4. Custodians (Any Classification) – Seven (7) hours per day, excluding lunch, as determined by the building principal.
5. Multiclassification (Maintenance) – Seven (7) hours per day, excluding lunch, as determined by immediate supervisor.
6. Secretaries (Any Classification) – Seven (7) hours per day, excluding lunch, as determined by the building principal.
7. Supervisor of Maintenance/Mechanic – Seven (7) hours per day, excluding lunch, as determined by the immediate supervisor.

Appendix B (Exempt and Non-Exempt Categories)

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:	Position Codes
Superintendent	102
Associate/Assistant Superintendent	103
Directors/Coordinators	106-107
Treasurer/CSBO	108
Administrative Exemption	
Administrative Assistant	104
Principals	111-114
Assistant Principals	115-118
Head Teacher	119
Curriculum Specialist	201
Attendance Director	322
Director/Coordinator of Services	521
Supervisor of Maintenance	570
Supervisor of Transportation	650
Food Service Supervisor	670
Professional Exemption	
Librarian	203
Remedial Specialist	204
Counselor	205-208
Teacher	210-241
Dentist	306
Professional Accountant	308
Physician	315
Psychiatrist	317
Psychologist	318
Registered Nurse	319
School Nurse	320-321
Attendance Officer	323
Social Worker	324
Physical/Occupational Therapist	331,332
Dental Hygienist	403
Audiologist	405
Psychometrist	408
Non-Exempt Employees:	
Aide	501-504
Paraprofessional	515

Autism Mentor	519
Accountant/Auditor	522-525
Buyer	526
Braille or Sign Language Specialist	527
Clerk	528-533
Secretary	535-538
Receptionist	541
Computer Technicians	545-547
Draftsman	549
Media Worker	551, 557, 559
Inventory Supervisor	555
Accounts Payable Supervisor	560
Payroll Supervisor	561
Audio Visual Technician	574
Maintenance Worker	576-644
School Bus Operator/Truck Driver	652, 655, 659
Heavy Equipment Operator	657
Cafeteria Worker	672, 675-677
Custodians	681-684
Groundsman/Watchman	686, 688
Sanitation Plant Operator	690