

FAIR LABOR
STANDARDS
ACT

MINIMUM
WAGE AND
OVERTIME

Unless an exemption applies, the School shall pay each of its employees not less than minimum wage for all hours worked.

29 U.S.C. 206(a)(1)

Unless an exemption applies, the School shall pay a FLSA non-exempt employee not less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 40 in any workweek.

29 U.S.C. 207(a)(1); 29 C.F.R. pt. 778

BREAKS FOR
NONEXEMPT
EMPLOYEES

The School shall count as hours worked rest periods of up to 20 minutes.

Coffee breaks or time for snacks are rest periods, not meal periods.

29CFR 785.18

The School shall not count as hours worked any bona fide meal periods of 30 minutes or more if the employee is completely relieved from duty. The employee is not relieved from duty if the employee is required to perform any duties, whether active or inactive, while eating. For example, an employee who is required to eat at his or her desk is working while eating. Employees may be required to stay on the TSD campus during their meal period. The time is not compensable if the employee is otherwise completely freed from duties during the meal period.

29 C.F.R. 785.19

BREAKS FOR
EXPRESSING
BREAST MILK

The School supports the practice of expressing breast milk and recognizes that employees have a right to express breast milk in the workplace. For employees who have a need to express breast milk, the School will make reasonable accommodations, including:

- Providing a reasonable amount of break time; and

- Providing a place, other than a multiple user bathroom, that shields from view and is free from intrusion by other individuals.

The School will not suspend, terminate, or discriminate against an employee who exercises this right.

Government Code 619

FLSA OVERTIME
ACCRUAL

Nonexempt employees may receive, in lieu of overtime compensation, FLSA overtime off at a rate of not less than one and one-half hours for each hour of overtime worked. (See Board Policy DEC)

REQUIREMENT
TO USE
ACCRUED
OVERTIME
LEAVE

Nonexempt employees must use accrued FLSA overtime leave prior to using other forms of leave unless one of the following exemptions apply:

- The absence is eligible for sick leave and the employee will use sick leave;
- The employee will use compensatory time that will expire within 60 days; or
- The time off is due to a worker's compensation claim.

Christensen v. Harris County (98-1167); 529 U.S. 576 (2000)

MANAGEMENT
OF OVERTIME
LEAVE
ACCRUALS

The School may limit the amount of overtime leave accrued by an employee. Managers may choose to require an employee to take an afternoon, day or week off sufficient to limit the number of hours worked to 40 hours.

Christensen v. Harris County (98-1167); 529 U.S. 576 (2000)

PAYMENT FOR
ACCRUED
TIME

The School will compensate nonexempt employees for accrued overtime in accordance with adopted procedures that may include automatic payment of overtime balances.

Compensation paid to an employee for accrued FLSA overtime shall be paid at the regular rate earned by the employee at the time the FLSA overtime was earned. An employee who has accrued FLSA overtime shall be paid for any unused FLSA overtime upon separation from employment at the rates set forth in 29 U.S.C. 207(o)(4).

Texas Government Code 659.015(c)

EXEMPT
EMPLOYEES

The minimum wage and overtime provisions do not apply to any employee employed in a bona fide executive, administrative or professional capacity.

29 U.S.C. 213(a)(1)

ACADEMIC
ADMINISTRATORS

The School shall designate as exempt those employees in positions which meet the definition of Academic Administrators and who are an “employee employed in a bona fide administrative capacity.”

The term “employee employed in a bona fide administrative capacity” includes an employee:

1. Compensated for services on a salary or fee basis at a rate of not less than \$450 per week exclusive of board, lodging, or other facilities, or on a salary basis that is at least equal to the entrance salary for teachers in the district by which employed; and
2. Whose primary duty is performing administrative functions directly related to academic instruction or training in a district or department or subdivision thereof.

“Performing administrative functions directly related to academic instruction or training” means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

Employees engaged in academic administrative functions include:

1. The superintendent or other Division Director of School programs and any other administrative staff responsible for such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program;
2. The principal and any assistant principals responsible for the operation of an elementary or secondary program;

3. Academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and
4. Other employees with similar responsibilities.

Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunchroom managers, or dietitians do not perform academic administrative functions, although such employees may qualify for another exemption.

29 C.F.R. 541.204

SALARY
BASIS

To qualify as an exempt executive, administrative, or professional employee, the employee must be compensated on a salary basis, unless the employee is a teacher. Subject to the exceptions listed in the rule, an employee must receive the full salary for any week in which the employee performs any work, without regard to the number of days or hours worked. *29 C.F.R. 541.600, .602(a), .603*

PARTIAL-DAY
DEDUCTIONS

Exempt employees shall maintain their exempt status when partial-day deductions are taken because an employee:

1. Did not seek permission to use accrued leave or permission was denied;
2. Has exhausted all accrued leave; or
3. Chooses to use leave without pay.

Deductions from the pay of a School employee for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

29 C.F.R. 541.710

TEACHERS

The School shall designate as exempt those employees in positions which meet the definition of an "employee employed in a bona fide professional capacity," including teachers.

The term “employee employed in a bona fide professional capacity” includes any employee with a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an elementary or secondary school system by which the employee is employed. The salary basis requirements do not apply to teaching professionals.

Exempt teachers include:

1. Regular academic teachers;
2. Teachers of Early Childhood Education or kindergarten or;
3. Teachers of gifted or disabled children;
4. Teachers engaged in drivers education instruction;
5. Career Technical Education teachers; and
6. Vocal/Signed or instrumental music instructors.

Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate, or journalism are engaged in teaching. Such activities are a recognized part of the schools’ responsibility in contributing to the educational development of the student.

Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the state to refer to different kinds of certificates. However, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the School.

29 C.F.R. 541.303

WAGE AND
HOUR
RECORDS

The School shall maintain and preserve payroll or other records for nonexempt employees containing the information required by the regulations under the FLSA.

29 C.F.R. 516.2(a)

PAYDAY LAW
EXEMPTION

The Texas Payday Law does not apply to the state or a political subdivision.

Labor Code 61.003

TEXAS SCHOOL FOR THE DEAF

COMPENSATION PLAN
WAGE AND HOUR LAWS

DEAB

Adopted: 08-07-15

Amended: 04-12-19