

Overtime: Separating Fact from Fiction

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Over the course of the past year, the OEA Legal Services office has received a large number of questions regarding overtime pay and the laws relating to wage payment and record keeping. The concerns range from whether time clocks can be required to the impact of having two different jobs within the same district. Hence, we've put together the following overview to answer a few questions and to dispel some existing myths.

The federal statute governing overtime and record keeping for hours worked is known as the Fair Labor Standards Act (FLSA) and was signed in 1938 by Franklin D. Roosevelt while our nation was in the throes of the Great Depression. Its purpose was to end oppressive hours and improve working conditions by setting minimum working standards for private sector employers. Its effectiveness was, and still is, a subject of great debate and it initially did not provide any protection to public sector employees. While Congress later amended the law in 1966 to apply to public employers, that provision was largely ineffectual until 1985 when the Supreme Court ruled that the FLSA fully applied to state agencies, including school districts.

As it now stands, the law applies to school support employees and sets minimum wage rates and overtime standards, among other things, though teachers are specifically exempted from the overtime requirements of the act. It is important to note, however, that the act may still apply to any nonteaching contracts the teacher holds (e.g. teachers who also drive a bus or perform other services that are traditionally nonexempt in nature).

For those positions which are considered "nonexempt," employers must keep track of a variety of records, including the employee's hours worked, rates of pay, overtime pay and payment date, among other items. These record keeping requirements have led to numerous disputes over how time is tracked, the most contentious of which is the time clock. While employers are not specifically required to keep a time clock, many opt to do so and it is important for employees to realize that the employer can require clocking in, even if it wasn't required in past years.

While employers can require clocking in, it is important to remember that the employer cannot modify the employee's time sheet to reduce hours, even if the employee wasn't authorized to work the extra time. Rather, an employer must pay the employee for the hours worked, though the employee may face discipline if he or she works additional hours after being instructed not to do so. Along those same lines, it is important for employees and employers alike to realize there is no such thing as "volunteering" extra time on the job: hourly workers are entitled to pay for all time worked.

Hence, any hourly worker who stays late to finish a project is entitled to payment for that time, especially when the supervisor has reason to know it is happening.

As most people know, employees are entitled to time and a half pay for hours exceeding forty per week. However, many mistakenly believe that any time over eight hours per day requires overtime pay. While this may be true under a local negotiated agreement, the FLSA only applies to those hours exceeding 40 per week. Additionally, an employee and employer can mutually agree to what is called compensatory time in lieu of overtime, i.e. for every hour of overtime, an employee earns an hour and a half of leave time. However, contrary to many existing practices, an employer can neither force compensatory time on an employee nor unreasonably deny a request to use earned compensatory time.

Another common misconception is that employers can avoid paying overtime if the employee has two different jobs with the same employer. To the contrary, if an employee works more than a combined 40 hours per week for all different contracts with the same employer, he or she is entitled to overtime. For example, presume an employee drives a bus for \$12 per hour 20 hours per week and is also a teacher's assistant for \$10 per hour for 20 hours per week. If the employee works an additional five hours as a teacher's assistant, putting her total hours worked for that employer at 45, the employee would be entitled to five hours of overtime under the FLSA. The rate used to calculate the overtime would be a composite/average rate of the two jobs, in this case \$11 per hour. Hence, overtime would be paid at 1.5 times \$11, or \$16.50 per hour.

The upside of this rule is that employers can't get away from overtime requirements by assigning individuals to two different jobs. The downside of asserting this right, however, is that many employers will then award the second contract to a different party at the end of its term. Unfortunately, the FLSA does not prohibit this practice and new guidelines from the department of labor even go so far as to encourage it.

While the FLSA offers broad protection for overtime payment, contrary to popular belief, it does not set an overall limit on the number of hours an employee can be required to work, nor does it set a specific workday. Unless a local contract states otherwise, an employer can assign employees mandatory overtime and can set a work schedule that is different than the traditional day or that varies from day to day, i.e. a flex schedule. Similarly, the FLSA does not require overtime pay for weekend or holiday work. If they exist, those requirements generally stem from local negotiated agreements.

The FLSA and the cases interpreting it are extremely complex and it is impossible in the limited space of this article to address it in its entirety. If you are experiencing problems related to overtime, compensatory time, or other wage related issues, be sure to contact your regional advocacy specialist immediately.