

# FLSA: Solutions to New and Old Issues



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# Fair Labor Standards Act

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# FLSA's Main Provisions

- Minimum wage
- Recordkeeping
- Overtime pay

# To be exempt an employee must

1. Be paid a weekly minimum
2. Be paid on a salary basis
3. Perform specific job duties

#1: will change – December 1, 2016

#2: no change

#3: no change, thankfully!

# Requirement #1: Minimum Weekly Salary Amount

- Currently: \$455/wk.  
(\$23,600/yr.)\*
- New Regulations 12/1/16
  - **\$913** per week
  - 52 weeks: \$47,476
  - ***The FLSA is a weekly deal***
  - Annual indexing to 40<sup>th</sup>  
percentile of national weekly  
earnings as determined by DOL's  
Bureau of Lab. Stats.

\*Teachers/Admins exempt

# Significance of Indexing

- Districts cannot set specific salary and know that employees will be exempt for the duration of the contract year
- Increases may happen in middle of the year
- May have to revise contract language to allow for indexing or include an indexing clause
- Lake Wobegon effect

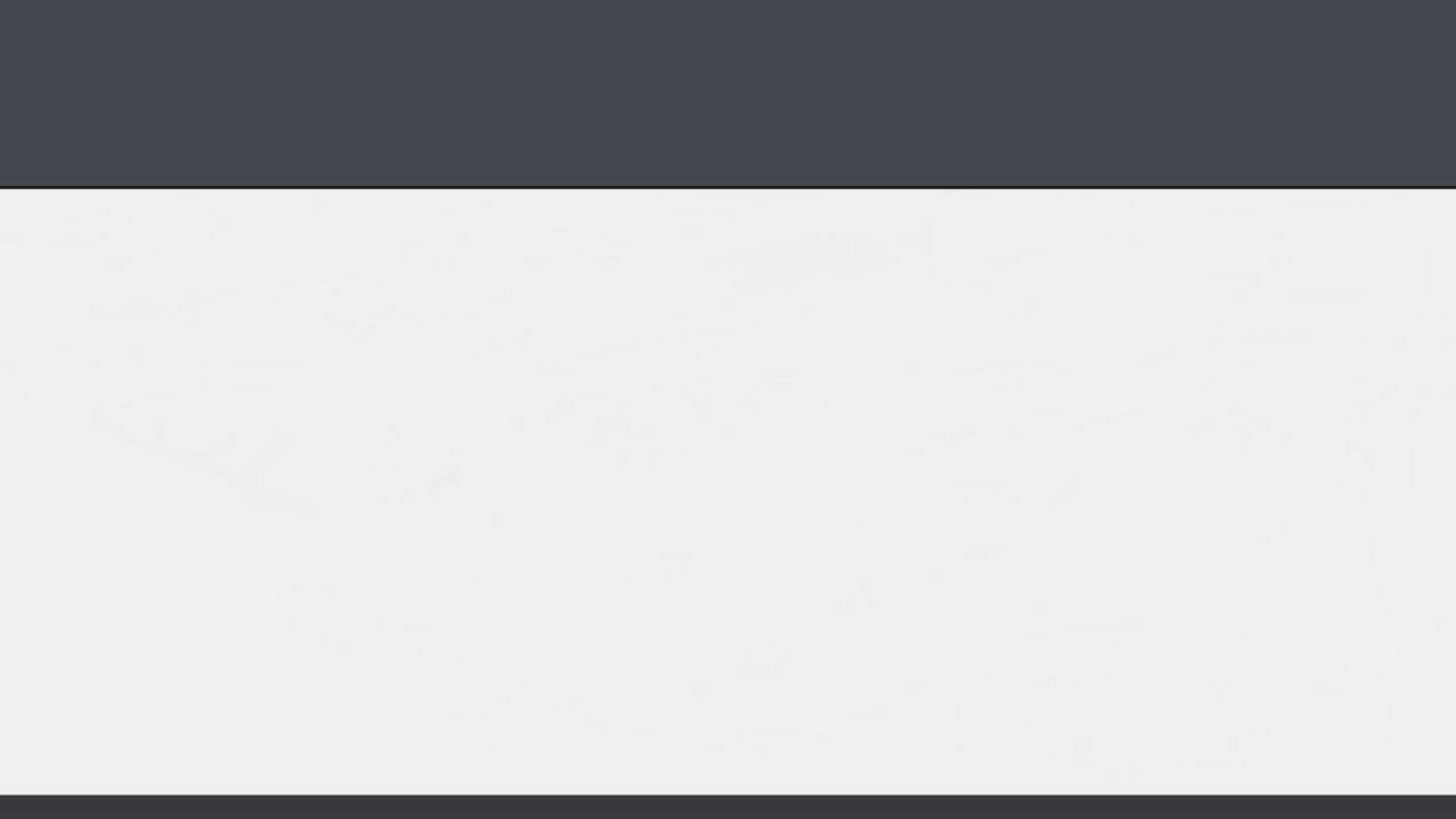
**Some employees don't like this...**

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# Here's what drives you crazy...

- Dual job/rate employees
- Classified coaches, especially dual job
- Formerly exempt employees who are now mad they get paid hourly...





# So, let's talk solutions

- "Accrual" method
- "Blended Average" method
- "Fluctuating Workweek" method
- Compensatory Time (aka "Comp Time")

# Activity Bus Custodian

- Works 45 hours as custodian Mon. – Fri.
  - Paid \$20 per hour
- Works 10 hours driving activity bus on Friday and Saturday nights
  - Paid \$16 per hour
- Total hours per week: 55

# Activity Bus Custodian

## ■ ACCRUAL PAY

- 29 CFR §778.419: requires written agreement
- Not the FLSA default

## ■ Pay for custodial work

- Regular: 40 hrs x \$20/hr = \$800/wk
- OT: 5 hrs x \$30/hr = \$150/wk

## ■ Overtime only for bus driving

- 10 hrs x \$24/hr (1.5 x \$16) = \$240

## ■ Total Weekly Pay: **\$1,190**

# Activity Bus Custodian

■ **ACCRUAL: \$1,190**

■ Compared to **BLENDED RATE** (FLSA default):

- 45 hrs x \$20 = \$900/wk

- 10 hrs x \$16/hr = \$160/wk

■ Total: \$1060/wk

■ Blended Hourly:  $\$1060 / 55 \text{ hrs} = \$19.27$

■  $\$19.27 \times 0.5 \times 15 = \$144.53$  in OT

■ Weekly Pay **BLENDED RATE: \$1,204.53**

# Fluctuating Workweek Method

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# Fluctuating Workweek Method

- Many employees now may be non-exempt
- Must track hours, must pay overtime
- **District can still pay a weekly salary amount**
- Overtime paid based on regular rate for the week
  - $\text{Weekly Wage} \div \text{Hours Worked} = \text{Rate for the Week}$
- Weekly Wage includes all “straight time”
- Must pay the “and a half” for overtime
- **“Bobby, this is confusing, examples please...”**

# Formerly Exempt Custodian

- Former salary at \$40,000
- 12-month employee
- Works 40-50 hours/week
- Can't afford to increase pay \$8,000+ to keep exempt
- $\$40,000 \div 52 \text{ weeks} = \$769.23$
- New Weekly Salary: \$700



# Underpaid Custodian: 40 hours

- \$700 weekly salary
- Week 1: works 40 hours
- **Gross Pay: \$700**
  
- Note: \$700 is the minimum pay for *any* week in which the employee works
- If the employee works 1 hour, they get paid
- Part of the tradeoff for diminishing returns in OT
- This is just like paying a salary!

# Underpaid Custodian: 45 hours

- \$700 weekly salary
- Week 2: works 45 hours
- Weekly rate:  $\$700 \div 45 = \$15.56$  per hour
- Straight Time: \$700
- Overtime
  - Overtime rate:  $\$15.56 \times 0.5 = \$7.78$
  - Overtime hours: 5
  - Overtime pay:  $5 \times \$7.78 = \$38.90$
- **Gross Pay: \$738.90**

# Underpaid Custodian: 50 hours

- \$700 weekly salary
- Week 3: works 50 hours
- Weekly rate:  $\$700 \div 50 = \$14.00$  per hours
- Straight Time: \$700
- Overtime
  - Overtime rate:  $\$14.00 \times 0.5 = \$7.00$
  - Overtime hours: 10
  - Overtime pay:  $10 \times \$7.00 = \$70.00$
- **Gross Pay: \$770.00**

# Other Considerations

- Rate for that week can't be less than \$7.25/hr. for the straight time wages
- Works well with varying hour, varying rate employees
  - Regular employees who drive bus
  - Classified employees who coach
- Must agree in writing—updated contracts if you haven't already
- Recordkeeping and reporting won't be the same each week, so warn your bookkeeper...

# Compensatory Time

- Allowed if:
  - 1.5 hours per overtime hour worked
  - Employees agree to it in advance
  - Agreement in writing
- Can't accumulate over 240 hours
- Employer can require employees to take comp. time (*Christensen v. Harris County*, 529 U.S. 576 (2000))
- Can pay cash for comp. time "at any time"
- No clear answer on negotiability (if you bargain w/ them)
- Adds additional "hours of service" for PPACA purposes

# The dreaded classified coach...

2. Employee shall be compensated a total of \$\_\_\_\_\_ for his/her service as \_\_\_\_\_.
3. Employee shall work for no more than a total of \_\_\_\_ hours [Take total compensation for the activity and divide by minimum wage—delete this bracketed information in final contract.] in his/her capacity as \_\_\_\_\_ pursuant to this Assignment. Employee shall be required to log his/her coaching hours and to submit those hours to the Superintendent each pay period. The hours must reflect which duty the Employee was performing when the hours were logged.
4. Employee shall not work for **a total** of more than 40 hours in any given work week without the express approval of the Superintendent or Superintendent's designee.

# The dreaded classified coach...

5. **[SELECT ONE OF THE TWO OPTIONS, AND INSERT HERE]**

**[OPTION 1]** In the event Employee receives permission and works more than 40 total hours in a given work week, Employee hereby agrees to the use of compensatory time in lieu of overtime pay, at the District's discretion. The Employee agrees to accept compensatory time off in lieu of overtime compensation at a rate equal to one and one-half hours of time off for each hour of employment for which overtime compensation would otherwise be required.

**[OPTION 2]** In the event Employee receives permission and works more than 40 total hours in a given work week, Employee agrees to receive overtime compensation at one-and-one-half times the rate in place during the overtime hours worked.

# The dreaded classified coach...

- Any system (accrual, blended average, fluctuating workweek) will have OT headaches if you continue to pay on a stipend...
  - Where is the OT coming from: coaching stipend or regular pay
- You could pay hourly for classified coaches
  - They're not a member of the bargaining unit
  - Will create political issues
- Consider the fluctuating workweek method for classified coaches, factoring in:
  - Regular duty estimated pay
  - Coaching stipend
  - Overtime



# Questions?

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