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### Technical Correction - Volume 35, No. 2 - July 2023

#### 6700 - FAIR LABOR STANDARDS ACT ("FLSA")

#### Statement of Policy

It shall be the policy of the \_\_\_\_\_ Board of Managers to comply with the provisions of the Fair Labor Standards Act of 1938.

#### Definitions of Terms Applicable to this Policy:

- A. **"Employ"** means to suffer or permit work.
- B. **"Exempt Employees"** means an employee who is exempt from the FLSA minimum wage and overtime provision. These employees may include executive, administrative, professional, and computer employees earning at least a specified minimum salary.
- C. **"FLSA"** means the Fair Labor Standards Act of 1938 as amended by 29 U.S.C. Section 201 et seq. and the regulations implementing this Act found, in part, at 29 C.F.R. Part 541.
- D. **"Non-Exempt Employee"** means an employee who is not exempt from the FLSA minimum wage and overtime provisions.
- E. **"Primary Duty"** means the principal, main, major, or most important duty that the employee performs. Determination of an employee's primary duty shall be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.
- F. **"Salary Basis"** means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis.
- G. **"Workday"** means the period between the time on any particular day when an employee commences ~~his/her~~ the employee's "principal activity" and the time on that day at which ~~she~~ the employee ceases such principal activity or activities. The workday may therefore be longer than the employee's scheduled shift, hours, tour of duty, or production time.
- H. **"Workweek"** means the seven (7) day period of time beginning on \_\_\_\_\_ at \_\_\_\_\_ and continuing to the following \_\_\_\_\_ at \_\_\_\_\_ ~~[i.e., Sunday 12:00 a.m. to Saturday 11:59 p.m.]~~

#### Minimum Wage

It is the policy of the \_\_\_\_\_ Board to pay at least the minimum wage required by the FLSA to all covered, non-exempt employees, unless an employee's individual contract or the terms of an applicable collective bargaining agreement provide for greater benefits than mandated by the FLSA or Indiana law.

#### Recordkeeping Responsibilities

It shall be the responsibility of all non-exempt employees to record and submit an accurate account of their time worked each week on approved forms or via electronic or machine timecards. An employee's misrepresentation or failure to submit an accurate account of their time worked may subject the employee to discipline up to and including discharge.

Non-exempt employee time records shall be verified by a supervisor who has personal knowledge of the hours worked by the employee. It shall be a violation of this policy for a supervisor to ask a non-exempt employee to record fewer hours than were actually worked by the employee.

A non-exempt employee's time record is an official school record and ~~will~~ shall be maintained for a period of not less than three (3) years.

### Overtime

Overtime for hourly non-exempt employees shall be paid at a rate of one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of forty (40) hours worked.

Overtime may be authorized only by a supervisor and ~~will~~ shall be used primarily to address circumstances of an emergency or temporary nature. Non-exempt employees who work overtime without prior approval from a supervisor may be subject to disciplinary action up to and including discharge.

### Joint/Dual Employment

Joint/Dual Employment exists when:

- A. an employee is employed in two (2) wage positions or a salaried and a wage position with the \_\_\_\_\_ Cooperative, and
- B. at least one of the positions is non-exempt:
  1. If one of the positions is exempt, the hours may not have to be added together to calculate the number of overtime hours worked. To determine this, the duties of the two (2) positions ~~must~~ shall be combined as if one (1) position. If the percentage of time spent performing non-exempt duties exceeds fifty percent (50%), the employee is considered non-exempt and hours worked shall be added together for the two (2) positions.
  2. If both positions are non-exempt, hours worked are cumulative, and overtime shall be paid after forty (40) hours are worked in a workweek in one (1) or a combination of positions.
  3. If the two (2) positions are paid at different rates, a weighted average shall be used as the regular rate for determining overtime compensation due.

Joint employment does not exist when the employee independently seeks employment with another cooperative or another state agency.

### Volunteers

The FLSA requires that non-exempt employees ~~must~~ shall be compensated for all hours they are required or permitted to work. Thus, even though employees volunteer to work beyond their normally scheduled hours, the employer ~~must~~ shall compensate employees for those hours worked. An individual is considered to be a volunteer only if the following conditions are met:

- A. Services are performed for which no compensation is received beyond expenses of a nominal fee; and
- B. Services rendered are not the same type services that the individual is employed to perform for the school employer.

**Example:** A custodial employee wishing to volunteer as a lay coach for a sport team. This individual is not considered an employee while volunteering.

### Exemptions

Certain school employees shall be exempt from the overtime and minimum wage provisions of the FLSA and shall therefore be exempt employees for the purposes of this policy. Exempt employees may ~~include~~, include but are not limited to, the following categories:

- A. Executive;
- B. Administrative;
- C. Learned Professionals; and
- D. Computer Employees.

The tests for these exemptions can be found in the administrative guidelines that accompany this policy.

### Deduction from Exempt Employees Pay

The ~~Corporation~~ Cooperative reserves the right to make deductions from the pay of otherwise exempt employees under the following circumstances:

- A. when the employee is absent from work for one (1) or more full days for personal reasons other than sickness or disability;
- B. for absences of one (1) or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy, or practice or providing compensation for salary lost due to illness;
- C. to offset amounts employees receive as jury or witness fees or military pay against the salary due for that particular week;
- D. for penalties imposed in good faith for infractions of safety rules of major significance; and
- E. for unpaid disciplinary suspensions of one (1) or more full days imposed in good faith for workplace conduct rule infractions.

The ~~Corporation~~ Cooperative shall not be required to pay the full salary in the initial or terminal week of employment, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.

In addition to the foregoing, exempt employees who accrue personal leave and sick leave may have their pay reduced or may be placed on unpaid leave for absences due to personal reasons of less than one (1) full day when leave is not used by the employee because:

- A. permission to use leave has not been sought or permission has been sought and denied;
- B. the employee's accrued leave has been exhausted; or
- C. the employee chooses to use leave without pay.

Deductions from the pay 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 accordingly.

The ~~Corporation~~ Cooperative recognizes ~~that that~~, with limited legally permissible exceptions, no deductions ~~should~~ shall be taken from the salaries of exempt employees. If an exempt employee believes that any improper deduction has been made from their salary, the exempt employee ~~should~~ shall report the matter immediately to the Director or Business Manager. If the deduction is deemed inappropriate, the exempt employee ~~will~~ shall be promptly reimbursed promptly for the entire amount of the ~~deduction~~ deduction, and the ~~Corporation~~ Cooperative will make a good faith commitment to avoid any recurrence of the error.

Cross References:

Policy 1425 Nursing Mothers  
 Policy 3425 - Nursing Mothers  
 Policy 4425 - Nursing Mothers

29 U.S.C. Section 201 et seq.  
 29 U.S.C. 207(r)  
 29 C.F.R. Part 541

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Legal                      29 U.S.C. Section 201 et seq.  
                                  29 C.F.R. Part 541

Cross  
 References              Policy 1425 - NURSING MOTHERS  
                                  Policy 3425 - NURSING MOTHERS  
                                  Policy 4425 - NURSING MOTHERS