

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

June 7, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: First Reading-Compliance with Fair Labor Standards Act-5:35

This is a new policy that Millburn currently does not have. It goes over job classifications, compensation, overtime, suspension without pay, and implementation of the policy.

We ask that you use this as your first reading period and then put this on the next BOE meeting agenda for a second reading and approval.

## General Personnel

### Compliance with the Fair Labor Standards Act <sup>1</sup>

#### Job Classifications

The Superintendent will ensure that all job positions are identified as either “exempt” or “non-exempt” according to State law and the Fair Labor Standards Act (FLSA) and that employees are informed whether they are “exempt” or “non-exempt.” <sup>2</sup> “Exempt” and “non-exempt” employee categories may include certificated and non-certificated job positions. All non-exempt employees, whether paid on a salary or hourly basis, are covered by minimum wage and overtime provisions.

#### Workweek and Compensation

The workweek for District employees will be 12:00 a.m. Saturday until 11:59 p.m. Friday. <sup>3</sup> Non-exempt employees will be compensated for all hours worked in a workweek including overtime. For non-exempt employees paid a salary, the salary is paid for a 40-hour workweek even if an employee is scheduled for less than 40 hours. <sup>4</sup> “Overtime” is time worked in excess of 40 hours in a single workweek.

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**The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.**

<sup>1</sup> State or federal law controls this policy’s content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, or terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right.

The Illinois Minimum Wage Law, 820 ILCS 105/4a, covers all school employees, although many are exempt from overtime requirements. The federal Fair Labor Standards Act (FLSA) also covers school employees (29 U.S.C. 201 *et seq.*). The law offering the greatest benefits to employees will control specific issues.

School districts in several states are experiencing widespread action by non-exempt employees to recoup unpaid overtime wages. Many of these actions have been successful because the school district did not strictly comply with overtime requirements or recordkeeper’s requirements. See:

29 C.F.R. Part 785, Hours Worked ([www.dol.gov/dol/allcfr/ESA/Title\\_29/Part\\_785/toc.htm](http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_785/toc.htm)).

29 C.F.R. Part 516, Records to Be Kept by Employers ([www.dol.gov/dol/allcfr/ESA/Title\\_29/Part\\_516/toc.htm](http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_516/toc.htm)).

School officials are strongly encouraged to seek assistance from their attorney when making decisions involving wage and hour issues.

<sup>2</sup> “Exempt” employees are exempt from overtime requirements. An exempt employee, according to Illinois law, is “any employee employed in a bona fide executive, administrative or professional capacity, . . . , as defined by or covered by the Federal Fair Labor Standards Act of 1938 and the rules adopted under that Act, as both exist on March 30, 2003, but compensated at the amount of salary specified [in the current rules].” 820 ILCS 105/4a. By referring to the definitions in the former federal rules, the Illinois legislature rejected the U.S. Department of Labor’s effort to expand the number of employees who are exempt from overtime requirements. To qualify for exemption in Illinois, employees generally must meet certain tests regarding their job duties and be paid on a “salary basis” at not less than \$455 per week. To check compliance, districts should review their list of exempt employees with their attorneys.

<sup>3</sup> Employers must identify the workweek, but may designate any 7-day period. **Boards should ascertain what is currently used as a workweek to avoid inadvertently adopting a policy containing a different designation.** The workweek in this sample policy allows supervisors to adjust employee schedules at the end of the week if an employee was required to work the weekend.

<sup>4</sup> Setting the workweek at 40 hours avoids having to pay an employee additional “straight time” compensation for the extra hours up to 40.

## Overtime

The School Board discourages overtime work by non-exempt employees. A non-exempt employee shall not work overtime without his or her supervisor's express approval. <sup>5</sup> All supervisors of non-exempt employees shall: (1) monitor overtime use on a weekly basis and report such use to the business office, (2) seek the Superintendent or designee's written pre-approval for any long term or repeated use of overtime that can be reasonably anticipated, (3) ensure that overtime provisions of this policy and the FLSA are followed, and (4) ensure that employees are compensated for any overtime worked. Accurate and complete time sheets of actual hours worked during the workweek shall be signed by each employee and submitted to the business office. The business office will review work records of employees on a regular basis, make an assessment of overtime use, and provide the assessment to the Superintendent. In lieu of overtime compensation, non-exempt employees may receive compensatory time-off, according to Board policy 5:310, *Compensatory Time-Off*. <sup>6</sup>

## Suspension Without Pay

No exempt employee shall have his or her salary docked, such as by an unpaid suspension, if the deduction would cause a loss of the exempt status. <sup>7</sup> Certificated employees may be suspended without pay in accordance with Board policy 5:240, *Professional Personnel - Suspension*. Non-certificated employees may be suspended without pay in accordance with Board policy 5:290, *Educational Support Personnel - Employment Termination and Suspensions*.

## Implementation <sup>8</sup>

The Superintendent or designee shall implement the policy in accordance with the FLSA, including its required notices to employees. In the event of a conflict between the policy and State or federal law, the latter shall control.

LEGAL REF.: 820 ILCS 105/4a.  
Fair Labor Standards Act, 29 U.S.C. §201 et seq., 29 C.F.R. Parts 516, 541, 548, 553, 778, and 785.

CROSS REF.: 5:240 (Suspension), 5:290 (Employment Termination and Suspensions), 5:310 (Compensatory Time-Off)

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<sup>5</sup> Employees must be compensated for all time worked, even if it is unauthorized overtime. However, employees who intentionally work unauthorized overtime may be subject to disciplinary action.

<sup>6</sup> Optional. The FLSA regulates the use of *comp-time* (29 C.F.R. §§553.22-553.28). Before offering comp-time, a board must have a compensatory time-off policy or the topic must be covered in an applicable collective bargaining agreement. See 5:310, *Compensatory Time-Off* and 5:310-E, *Exhibit - Agreement to Receive Compensatory Time-Off*.

<sup>7</sup> Docking an exempt employee's salary (e.g., for a disciplinary suspension) may result in the loss of the exemption unless the deduction was specifically authorized. Teachers, however, are not covered by this restriction.

<sup>8</sup> The FLSA is administered by the Wage and Hour Division of the U.S. Department of Labor. Its website contains compliance guidance, posters, and e-tools ([www.dol.gov/esa/whd/flsa/index.htm](http://www.dol.gov/esa/whd/flsa/index.htm)).