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LEGAL UPDATE

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To: Superintendents, Member School Districts (K-12)
From: Kaitlyn Schwendeman, Schools Legal Counsel *KAS*
Subject: Changes to FLSA Minimum Salary for Exempt Employees
Memo No. 11-2020

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Effective January 1, 2020, the U.S. Department of Labor began enforcing an increase to the total annual compensation necessary for an employee to be an exempt employee under the Fair Labor Standards Act (“FLSA”). We are issuing this guidance to address concerns raised regarding the application of this change to school districts.

Most importantly, there have been no changes to the application of FLSA to teachers. **Teachers are exempt employees under the FLSA, whether or not they meet minimum compensation levels prescribed in the FLSA, so long as they either: (a) possess a teaching certificate, or (b) are engaged with a primary duty of teaching, tutoring, instructing or lecturing.**¹

For other, non-teaching employees, the FLSA generally applies a three-part test to determine whether the employee is exempt or not:

- (1) The employee must be paid on a salary basis; that is, their weekly pay may not be subject to deduction based on the quality of work or the amount of time worked; and
- (2) The employee must meet the minimum salary level of \$684 per week (equivalent to an annual salary of \$35,568); and
- (3) The employees’ primary duty must involve the kind of work associated with exempt executive,² administrative,³ or professional employees.⁴

An employee may also qualify as exempt if they make at least \$107,432 (at least \$684 of which must be paid weekly on a salary or fee basis), and customarily and regularly perform at least one of the duties of an exempt executive, administrative, or professional employee.⁵

¹ 29 C.F.R. § 541.303.
² 29 C.F.R. § 541.100.
³ 29 C.F.R. § 541.200.
⁴ 29 C.F.R. § 541.300.
⁵ 29 C.F.R. § 541.601.



Please take note of the above minimum salary amounts, as these numbers are an increase from previous requirements, and are effective January 1, 2020.

Within the K-12 setting, the following list of representative positions would likely be exempt, so long as they meet the minimum salary level, based on typical duties assigned to these positions:

- Superintendent
- Assistant/Associate Superintendent
- Chief Business Officer, or related titles
- Director of Human Resources
- School Nurse
- Principal
- Assistant/Vice Principal
- Dean of Students
- Director of Special Education
- Director of Information Technology
- School Psychologist
- Speech/Language Pathologist
- Social Worker
- Office Manager
- Director of Food Services
- Director of Facilities
- Executive Assistant to the Superintendent
- Department Chairpersons
- Counselors

This is not an exhaustive list, and districts may have additional positions which may be properly categorized as exempt or may have some of the above positions not qualify as exempt, depending on salary level and job duties.

Going forward, we recommend that all districts engage in a review to ensure that all positions categorized as exempt (other than teachers) meet the new minimum salary level. In addition, if your district has questions regarding whether a specific position may be categorized as exempt, please contact any attorney in our office for assistance.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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