

LEGAL ROUTES™

Your roadmap to pupil transportation law and compliance™

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Federal Overtime Rules Drive School Bus Operations

A 1938 law, the Fair Labor Standards Act (29 U.S.C. § 206 et seq.) has become a major area of litigation for school districts within the last several years.

Since 2000, Fair Labor Standards Act (“FLSA”) lawsuits have been filed by about 6,000 plaintiffs in 105 Mississippi districts, as reported by a June 2003 article in National School Board’s Association’s *Inquiry and Analysis*.

In Alabama, all 128 school systems have been forced to review how they’ve paid support personnel after a Lawrence County school district wrestled with FLSA compliance issues.

A March 2003 Indiana case – *Hiner v. Penn-Harris-Madison School Corporation* (2003 U.S. Dist. LEXIS 5921) – really hits home with a clear demonstration of how FLSA issues can plague transportation operations. This article will explore specifics of these issues, and some of the other FLSA concerns that can send you running to the Maalox bottle.

The basics of overtime compensation

FLSA dictates, among other provisions, when non-exempt employees are due overtime compensation. This federal law provides that persons covered by the Act – like school bus drivers, schedulers, mechanics, and most other non-administrative transportation positions – may not work more than 40 hours in a 7 day period without receiving overtime pay in the amount of one and one-half times their regular pay, or, in some cases, compensatory time.

Public employers may give “comp” time instead of overtime pay when the parties have agreed in advance; private contractors may not. When “comp” time is used to meet the requirements of FLSA, an individual must get one and one-half hours off work for each hour of overtime s/he put in.

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Truth AND Consequences of Federal Overtime Rules

The truth

- Overtime is an issue when an employee covered by FLSA (“non-exempt employee”) works more than 40 hours in any given week.
- School district and contractor transportation employees are non-exempt employees unless they are administrators or independent contractors as defined by FLSA.
Note: This is an over-simplification and you should seek advice from the Department of Labor, your Human Resources department, or your own counsel for specific information.
- FLSA protection for employees is a mandate, not a choice. Employees cannot opt out.

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