

# Compensation for Administrators, Teachers, and Staff

## Introduction

Each year AACCS member schools ask numerous questions concerning compensation issues. In many cases, these questions relate to the laws governing the minimum wage requirements or the issue of paying male and female employees at the same wage rate.

The two federal laws that address these issues are the Fair Labor Standards Act (the "FLSA") and the Equal Pay Act (the "EPA"). Congress passed the FLSA to restrict child labor, to establish a minimum wage and 40-hour work week, and to require overtime pay of "time and a half" when certain employees work more than 40 hours per week. Congress passed the EPA to require employers to pay employees "equal pay for equal work," regardless of the employees' sex.

This Legal Report will address the most commonly-asked questions relating to the FLSA and the EPA. These questions deal primarily with compensation of school employees, not church employees. Within the context of the school, we will look at questions concerning salaried employees, hourly employees, and volunteers. We also will consider the issue of paying "similarly-situated" male and female employees at different wage rates.

## Discussion

### A. The Fair Labor Standards Act

The majority of schools in the AACCS operate under the "umbrella" of a local church ministry. In some situations, the lines can become blurred with respect to whether an employee is employed by the church or by the school. This can make a difference under the FLSA. The reason is that many churches may not be subject to the provisions of the FLSA; on the other hand, schools (including Christian schools) are subject to the minimum wage and overtime provisions of the FLSA.

#### **Question # 1: Does the FLSA apply to administrators, teachers, and staff?**

The minimum wage and overtime provisions of the FLSA apply only to those individuals who are considered to be "employees" as defined in the FLSA. Even if an individual is an "employee" under the FLSA, however, that individual may be "exempt" from certain provisions of the FLSA. Although we cannot address every possible situation in this Report, we will attempt to set forth some general principles on the issue of applying the FLSA to administrators, teachers, and staff.

- As a general rule, the minimum wage and overtime provisions of the FLSA do not apply to school administrators.
- In addition, most teachers are defined as "professional employees" under the FLSA, and therefore, are "exempt" from the provisions of the Act. For that

reason, the minimum wage and overtime provisions of the FLSA do not apply to most teachers.

- On the other hand, most staff workers who do not have administrative or decision-making responsibilities - employees such as school secretaries, bus drivers, lunch room workers, and maintenance personnel - are "employees" under the FLSA and are not exempt from the Act. For that reason, the school should compensate these individuals in accordance with the minimum wage and overtime provisions of the FLSA.

### **Question #2: Does the FLSA apply to preschool and day care workers?**

The Department of Labor, which enforces the ELSA, does not consider pre-school and day care workers to be "teachers" under the provisions of the FLSA. The Department takes this position even if the pre-school program incorporates educational activities designed to prepare young children for kindergarten. Given these facts, here are some general principles relating to pre-school and day care workers.

- Employees in pre-schools and child care facilities who primarily provide "custodial care" for children are not exempt from the FLSA. In particular, the Department of Labor takes the position that these employees are providing "baby-sitting" care rather than educational instruction for children, and therefore, they are not exempt under the "professional employee" definition of the FLSA. Accordingly, schools should meet the minimum wage and overtime requirements for these workers.
- Although some pre-school programs provide educational programs for young children, the Department takes the position that these programs fall within the provisions of the FLSA. For that reason, schools should meet the minimum wage and overtime requirements for all preschool and child care workers, even if these workers are providing educational activities for the young children in their care.

### **Question # 3: Does the FLSA apply to volunteer workers?**

Generally speaking, the FLSA does not apply to "volunteer" workers. Please keep in mind, however, that a true "volunteer" does not receive any type of compensation (in the form of money or otherwise) for his or her work. An individual who receives any type of compensation is not a "volunteer" for purposes of the FLSA. Accordingly, the FLSA applies to volunteer workers as follows:

- A true "volunteer" worker is not an employee under the FLSA. For that reason, the minimum wage and overtime provisions of the FLSA do not apply to true "volunteers."
- On the other hand, an individual who is working with the expectation of receiving any form of compensation (in the form of money or otherwise) is not a "volunteer" worker under the FLSA. For example, if a parent works at the school in exchange for free tuition, this parent is not a "volunteer" for purposes of the

FLSA. The free tuition will be considered as compensation to the parent, and the minimum wage and overtime provisions of the FLSA will come into play.

- In addition, an individual cannot be an "employee" and a "volunteer" for the same position. Under this scenario, an "employee" who otherwise is subject to the FLSA (such as a school secretary) cannot work 40 hours a week and then "volunteer" an additional 10 hours per week in the same job. Instead, this employee must be paid minimum wage for the first 40 hours worked in a given week, and "time and a half" for the remaining 10 hours that he or she works during that same week.

**Question #4: What is the minimum wage requirement under the FLSA?**

As of the date of this Report, the federal minimum wage requirement was \$5.15 per hour. Accordingly, those employees who fall within the provisions of the FLSA should be making the equivalent of \$5.15 multiplied by the number of hours worked in a given week (up to 40 hours). After an employee works 40 hours in a given week, he or she is entitled to overtime pay of one and one-half times his or her regular rate of pay. To avoid paying overtime, simply keep your employees' schedules at 40 hours or less per week.

**Question #5: What records are schools required to keep under the FLSA?**

Under the FLSA, employers are required to keep track of the wages paid to a "non-exempt" employee and the hours worked by that employee. This record-keeping requirement applies only to "non-exempt" employees under the provisions of the FLSA, and therefore, does not apply to administrators or most teachers. Although the FLSA does not require that the necessary wage and hour information be included on a particular form, the following information should be retained by the school for all "non-exempt" employees.

- Day and hour when the workweek begins
- Total hours worked each workday and each workweek
- Total daily or weekly earnings
- Total overtime hours worked in a given workweek
- Hourly pay rate for any week when overtime is worked
- Total overtime pay for a given workweek
- Total wages paid each pay period
- Date of payment and pay period covered
- Deductions from or additions to wages

## **B. The Equal Pay Act**

Congress passed the EPA to require employers (including Christian schools) to pay employees "equal pay for equal work." According to the EPA, a school may not pay a male employee more money than a female employee who is doing the same job. Of course, the reverse would be true as well. In other words, according to the EPA, if a male employee and a female employee are performing the same job, then the pay must be the same.

**Of course, under the EPA, a school may pay male and female employees at different rates if the compensation is based on factors other than sex.** For example, a school could pay a male employee at a higher rate of compensation if the pay is based on years of experience or level of education. As a result of the EPA, schools should not pay male employees more money simply because such employees are the "head of their household."

## **C. Review your local state compensation laws**

After you are comfortable that your school is in compliance with the FLSA and the EPA, you should have a local attorney check the laws in your state to make sure that your school is in compliance with any additional state laws relating to compensation issues. Generally speaking, if your school is in compliance with the federal statutes, few problems should arise. Nevertheless, your state may have separate state laws that cover compensation issues not addressed in the FLSA or the EPA.

## **Conclusion**

The Fair Labor Standards Act and the Equal Pay Act are federal laws that apply to Christian schools. These laws are enforced by the Wage and Hour Division of the Department of Labor, which has offices throughout the country.

The minimum wage law should not be looked at as a burden to your ministry. Even though schools work on a tight budget, the money spent to pay teachers and staff is money well spent. As you know, without the commitment and sacrifice of these individuals, Christian education would not be present in our society. In addition, Scripture exhorts us to treat employees fairly when it states in Luke 10:7 that "the labourer is worthy of his hire."