



Washoe County School District

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MEMO

TO: All Administrators, Administrative Secretaries and Timekeepers

FROM: Doug Owen, Chief Human Resources Officer
Anthony Spotts, Interim Director of Labor Relations

DATE: June 10, 2024

**RE: **ADVISORY: WORK HOURS AND COMPENSATION -
EDUCATION SUPPORT PROFESSIONALS (CLASSIFIED)
EMPLOYEES (CORRECTED)****

This is a reminder of our responsibilities relative to work hours and compensation for Education Support Professional (ESP) employees. Under the Fair Labor Standards Act (FLSA), which governs most of these areas, failure to comply can result in substantial financial penalties to the District. Furthermore, administrators who do not comply with this law may be held personally liable. You may have read in some national media publications about a number of sizable lawsuits related to certain municipalities not complying with this law.

A copy of the language in the Agreement between the WCSD and Washoe Education Support Professionals (WESP) in regards to work hours and overtime is attached to this memorandum.

ADMINISTRATIVE APPROVAL OF OVERTIME, ADDITIONAL TIME AND COMPENSATORY TIME

Overtime should only be requested when it is essential to the operation of the department or school. Please note that approving an employee to work past his/her regular work schedule represents an additional cost to the budget and, considering that our ESP staff comprise the second-largest group of employees in the District, the impact on the general fund could be substantial. We encourage each administrator, therefore, to consider this when determining if an employee should be approved to work overtime and consult with their Associate Chief/Department Head as appropriate.

COMPENSABLE WORK HOURS

Work hours, as defined by the FLSA, is broadly defined to include **ALL** hours that an ESP employee is “suffered or permitted to work” for the District. In other words, ESP employees must be compensated for all the time that they work. For example, if an employee normally works from 9:00 a.m. to 1:00 p.m., and on a given day the employee is allowed to work until 1:30 p.m., s/he must be compensated for the extra 30 minutes s/he worked in addition to the regular four (4) hours. Obviously, the employee must secure prior approval of the appropriate administrator before working the additional hours or overtime. Overtime is defined as any hours worked above an

employee's scheduled workday. The employee and the administrator may be able to offset this overtime by "flexing" the time during the same payroll period, by allowing for less hours on another day(s), while not allowing total hours **worked** in a week to exceed 40. Any time worked over and beyond the employee's normal work schedule must be reported through Time and Attendance reporting if the time is not flexed during the payroll period.

Because of the dedication of ESP employees, they may be willing to work past their regularly scheduled workday without charging such time to the District. The law clearly states that under these circumstances the employee must be compensated. Even if the employee wants to "volunteer" the time, the employee must be compensated for the time, if it is related to the work they regularly perform. Compensation may come in the form of paid overtime or compensatory time off (CTO). Please note that this would not include truly voluntary participation in school events held outside the normal workday, as long as the work being performed is **substantially** different than the work the employee performs in his/her regular job.

Overtime should only be approved when it is essential to the operation of the department or school. When it is essential, however, ESP employees should not be made to feel that they are being unprofessional when they request or expect to be compensated for the overtime hours they work, either with paid overtime or CTO. The spirit and letter of FLSA requires the District to compensate ESP employees for all the time they work, and administrators are required to ensure ESP employees are compensated for such time.

Any overtime or comp time that is earned by the employee **must** be put into the payroll system as soon as possible. No overtime or comp time should be kept "off the books" in documentation at the school level. It must all go into Timecard Online.

LUNCH AND REST BREAKS

An employee **must** be given a paid, 10-minute break for each 4-hour period of work. In addition, employees are entitled to an unpaid, 30-minute meal period for each 8-hour period of work (NRS 608.019). Lunch and rest breaks for ESP employees are defined in the Agreement under Article 17. Generally speaking, rest breaks are usually between ten (10) to fifteen (15) minutes and **are paid**; lunch breaks are usually between thirty (30) minutes to one (1) hour and are **not paid**. For example, if an employee is scheduled to work seven (7) hours per day, the employee would be eligible for two (2) ten uninterrupted (10) minute paid breaks, and at the minimum, a 30-minute, non-paid lunch break. The lunch break should not be included as a part of an employee's paid work hours. A seven (7) hour employee with a 30-minute lunch break, for example, could be scheduled to work from 8:00 a.m. to 3:30 p.m. or 9:00 a.m. to 4:30 p.m.

For employees who work in student-facing positions such as Paraeducational Aide, Clinical Aide, Library Aide, etc. it is advised that administrator to build breaks and lunch into the work schedule to ensure the employee is available during the full duration of student contact hours.

If an employee is working overtime, they are entitled to an additional ten-minute break for every four-hour period of work.

Article 17.2:

“An employee regularly scheduled to work seven (7) continuous hours or more shall be provided two (2) uninterrupted paid rest periods of at least ten (10) minutes. This is in addition to the uninterrupted non-paid period of at least one-half (1/2) hour.

An employee regularly scheduled to work four (4), five (5), or six (6) continuous hours shall be provided one (1) uninterrupted paid rest period of at least fifteen (15) minutes.”

OVERTIME AND COMPENSATORY TIME OFF

When an employee is going to work overtime, or additional hours, in excess of his/her regularly scheduled work schedule and/or in excess of 40 hours, s/he must receive **prior** approval from the appropriate administrator. There may be emergency situations that occur when prior approval is not possible; however, this should be the exception. A determination should be made at that time if the employee will utilize the time as paid overtime or if the employee will have the time credited to CTO (if over 40 hours). The Agreement states that the desires of the employee must be considered in making this determination. If the employee is approved to charge the time to paid overtime, it should be recorded as such on the Time and Attendance reporting sheet.

If an ESP employee works more than 40 hours during a workweek (for purposes of computing overtime the District considers the period of Saturday through Friday as a workweek), hours **worked** do include paid holidays (11.4.1). This does not include Vacation or Comp Time Off, but it does include holidays. **All** hours **worked** over 40 must be compensated at time-and-one-half. For example, if an employee had worked ten (10) hours per day Monday through Thursday (40 hours), and the employee worked ten (10) hours on Friday, the ten (10) hours on Friday must be paid at time-and-one-half. Under this scenario, the employee would be paid for a 40 hours at his/her regular rate of pay and 10 hours at time-and-one half (total of 55 hours for the week), or paid for 40 hours and have 15 hours credited to CTO. This overtime/CTO **must** be taken or paid out within nine (9) months. The CTO may be utilized during any break period and must be used immediately following completion of his/her work schedule. CTO must be exhausted prior to vacation leave being used during break periods.

Please note that certified staff and administrators are exempt from the overtime provisions of the FLSA.

CTO is time that an employee may use (if accrued) and be paid for in lieu of working. If the employee is approved to charge time off to CTO, it should be recorded on the Time and Attendance reporting sheet. If an employee is approved to use CTO on a given day and the employee, for example, normally works eight (8) hours per day, the employee could have eight (8) hours charged

to accrued CTO and be paid for the day, even though the employee did not work on that given day. The CTO would be recorded as such on the Time and Attendance reporting sheet.

I hope this memorandum provides direction to you regarding the proper procedure for compensating ESP employees. It is important that the above stated procedures are followed. If you have any questions regarding the above, please feel free to contact your Human Resources Technician.

Thank you for all you do for our students.

Enc.

cc: Leadership Team
Lisa Mae Woods, Payroll Manager
Human Resources Staff
Lisa Romero, NSEA UniServ Director
Megan Lytle, President, WCSPOA