

V. Compensation

A. Extra Duty Pay

Compensation for extra duty work is a mandatory subject of bargaining and extra duty compensation should be set forth in the collective bargaining agreement. Compensation for extra duty work may be creditable to the Teachers' Retirement System ("TRS"), the Illinois Municipal Retirement Fund ("IMRF"), the State Universities Retirement Systems of Illinois ("SURS") and Social Security, as applicable.

Some considerations about extra duty include:

- Teachers and other salaried employees do not earn FLSA overtime for extra duty work and such work is not subject to tenure acquisition or protection unless it involves an extended work year (for example, guidance counselors scheduled to work two additional weeks).
- Unless a collective bargaining agreement states otherwise, teachers may be involuntarily assigned extra duty work if it is reasonably related to the educational program and is not onerous, unreasonably time consuming, demeaning to the profession or assigned in a discriminatory manner.
- A series of one year extra duty contracts will generally not rise to the level of a property right. Unless a collective bargaining agreement provides otherwise, non-renewal of an extra duty assignment does not violate just cause discipline protections.

Absent contractual language or a clearly established past practice, extra duty positions can be filled by non-bargaining unit employees. Educational Support Professionals (ESP's) are generally subject to overtime requirements for extra duty assignments. ESPs may generally not *volunteer* to do the same work that they regularly perform, without compensation.

B. Vacation Pay

There is no statutory basis to provide for vacation pay. However, vacation pay is a mandatory subject of bargaining. For state university employees, the State University Civil Service Merit Board recommends standards for vacations. Any earned vacation pay, however, must be paid if unused at the termination of employment.

C. Annualized Wages

Many collective bargaining agreements allow both certified and hourly-paid ESPs who work nine or ten months to receive that pay over a 12-month period, thus "annualizing" such employee pay. The employees' total wages for nine or ten months are computed on an annual basis and the

employee is paid in equal installments over a 12-month period. Such salary procedures are generally done for the convenience of the parties and to allow for twelve-month equalization of pay.

For purposes of the Fair Labor Standards Act, annualizing salary does not convert non-exempt employees under the wage and hour laws to exempt salaried employees. The fact that an employee is paid on a salary basis is alone not enough to convert that person to exempt status. If the non-exempt employee works more than forty hours in a work week making the employee eligible for overtime compensation, adjustment must be made to the employee's salary to accommodate any overtime compensation to which the employee might be entitled. The employer cannot delay paying eligible employees overtime compensation based upon the annualizing of salary or paying a fixed monthly salary. Such overtime compensation must be paid in the next payroll period in accordance with overtime laws.

D. Overtime

The Fair Labor Standards Act ("FLSA") requires that employers pay non-exempt employees one and one-half times the regular rate of pay for hours **worked** in excess of 40 in a workweek. There is no requirement that overtime be paid if employees work over eight hours a day but less than 40 hours for the workweek, unless contractually agreed to. Paid holidays or other time the employee is paid but does not actually work, is not calculated into the workweek to determine overtime pay, unless contractually agreed. Executives, professionals and administrative employees are exempt from the overtime requirements provided that they meet certain tests under the FLSA.

Under both the FLSA and the Illinois Minimum Wage Law, issues arise concerning the calculation of hours. Wages must be paid for any time that the employer has "suffered or permitted" the work to be performed. For example, an employee may voluntarily continue to work at the end of a shift or may come in early prior to the beginning of the normal work time. If the employer knows or has reason to believe that such employee has worked beyond the normal work time, compensation is required. In most cases an employee is entitled to compensation if he or she is engaged in physical or mental exertion controlled or required by the employer. These include:

- Time spent by an employee changing clothes or washing up after, if that activity is required by the nature of an employee's job (such as, food service);
- On call time if it is primarily for the employer's benefit; and
- Meal breaks if the employee's time is spent primarily for the employer's benefit (that is, meals taken while monitoring the phone);

The following activities are normally **excluded** from work time:

- Time spent by an employee traveling to and from the actual place of the performance of the work. That is, commuting time is not hours of work. However, travel between work locations, such as different schools may be considered work time;
- Bona fide meal periods of 30 minutes or more if the employee's time is spent primarily for his own benefit. If an employee is not free from performing work duties (that is, a secretary answering the phone while on lunch) such time may be compensable; and
- Voluntary meetings or trainings not related to the employee's work and held outside of work hours.

E. Overpayment

As a general rule, money mistakenly overpaid to an employee must be paid back. To avoid such problems, employees should carefully examine their salary schedule placement, withholdings and other payroll documents to make sure they are getting the correct salary amount and that the correct deductions are being made. The employer may not, however, simply deduct an overpayment from future paychecks. It violates the Illinois Wage Payment and Collection Act for an employer to withhold money from a paycheck without first obtaining a judgment or the employee's concurrence. If the employee does not reach an agreement as to a repayment plan and the employer files suit to recover, the employee may be liable for fees and costs incurred in the bringing of the suit. Before overpayment issues arise, the parties may bargain on how far back overpayment and underpayment claims can be pursued.

F. Illinois Wage Payment and Collection Act

The Illinois Wage Payment and Collection Act ("IWPCA") covers all public and private school employees, except for state university employees. The Act provides for the prompt payment of wages and resolution of compensation disputes. According to the IWPCA:

- All wages earned by an employee during a semi-monthly or bi-weekly pay period must be paid no later than 13 days after the end of the pay period unless otherwise provided for in a collective bargaining agreement. Employees who are exempt under the FLSA may be paid up to 21 calendar days after the wage was earned;
- Certain deductions may be made from an employee's pay for such purposes as retirement plans, insurance, savings plans, credit unions, union dues, etc.;
- If employees are on strike, the employer must pay them all wages earned up to the strike on the next regular payday;
- Employees absent from work at the time for payment must be paid upon demand within five days of the payday. Payment can be made by mail if the employee so requests in writing;
- Deductions from wages are prohibited unless they are: (1) required by law (such as income taxes); (2) to the benefit of the employee (such as health insurance premiums,

union dues etc.); (3) made pursuant to a valid wage assignment or wage deduction order; or (4) made with the express written consent of the employee, given freely at the time the deduction is made ;

- Cash or other shortages may not be deducted from an employee's final wages. Acceptance of a paycheck from which such deductions have been withheld does not waive the employee's rights;
- All earned vacation must be paid as part of the employee's final compensation unless otherwise provided for in a collective bargaining agreement;
- At the time of termination of employment, final compensation must be made at separation, if possible, but in no case later than the next regularly scheduled payday; In case of a dispute over wages, the employer shall pay without condition or within the time set by this Act, all wages conceded to be due, and any release or restrictive endorsement on the paycheck shall be null and void;
- All wages must be paid in a form that the employee may readily convert to cash (without the need of a bank account) unless the employee volunteers to be paid by direct deposit into an account of the employee's choice; and
- The Department of Labor is authorized to assist any employee and act on his/her behalf in the collection of wages due him/her. An employee can file a claim with the Illinois Department of Labor in Springfield or Chicago. If a collective bargaining agreement exists, the Department of Labor will defer enforcement to the exhaustion of administrative remedies found in the agreement. A private right of action may be brought within five years of the occurrence.