



## Understanding Overtime and Exemptions

Presented by: Desiree Serrano and Taylor Todd

Tulare County Office of Education | February 5, 2026

1

### Topics



Overtime Requirements

Exemptions to Overtime

Determining Hours Worked

Calculating Regular Rate of Pay

New Laws



LozanoSmith.com

2

2

# When is Overtime Due?

3

## What is the Fair Labor Standards Act?



- The Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 et seq., establishes minimum wage, overtime pay, and youth labor standards affecting full-time and part-time employees.
- Applies to both private sector and public employees.
- Requires non-exempt employees to be paid overtime at a rate of 1 ½ times their regular rate if the employee works over **40 hours in a workweek**.

***\*unless an alternate schedule has been approved as allowed by law.***



LozanoSmith.com

4

4

## California Overtime Laws

- Generally, California Labor Code rules for overtime do **not** apply to public employees.
- However, the Education Code specifically provides overtime or compensatory time off for classified employees.
- The Education Code defines overtime as “any time required to be worked in excess of **eight (8) hours in any one day and in excess of 40 hours** in any calendar week.”

*\*unless an alternate schedule has been approved as allowed by law*



LozanoSmith.com

5

5

## Education Code vs. FLSA

Overtime Earned for Hours Worked in Excess	Education Code	FLSA
	40 hours in a calendar week.	40 hours in a workweek.
	8 hours in a day.	
	If board adopted workday more than 7 hours but less than 8 hours a day and more than 35 hours but less than 40 hours a week, all time worked in excess.	



LozanoSmith.com

6

6

## Alternative Schedules Under The Education Code

- A district may establish alternative work schedules for some or all classes of employees. For example, employees may have a workweek that is different from the calendar week:
  - 10-hour day/4 day per week schedule, or
  - 9-hour day/80 hour per 2-week schedule.
- An employee only earns overtime if he works more than the established workday or workweek.
- Under FLSA, do not need alternate schedule, but cannot exceed 40 hours in one week.



LozanoSmith.com

7

7

## Overtime Exemptions

8

## Exemptions to Overtime



Education Code Requirements

FLSA White Collar Exemption

Volunteers



LozanoSmith.com

9

9

## Classified Positions Exempt from Overtime – Education Code

- **Designated classified employees:**
  - The board (or personnel commission) may designate certain classified positions to be exempt from overtime if they are supervisory, administrative, or executive.
- **The board (or personnel commission) must certify in writing that:**
  - The duties, flexibility of hours, salary, benefit structure, and authority of the positions or classes of positions are of such a nature that they should be set apart from those positions which are subject to the overtime provisions, and
  - Employees serving in such excluded positions or classes of positions will not be unreasonably discriminated against as a result of the exclusion.



LozanoSmith.com

(Ed. Code § 45130)

10

10

## Fair Labor Standards Act – White Collar Exemption

**Employees can be exempt from the FLSA overtime rules if:**

- **Duties Test** – The employee is serving in an executive, administrative or professional capacity, as defined by the FLSA.
- **Salary Level Test**– The salary is at or above the government-set salary level.
- **Salary Basis Test** – They are paid a fixed salary.



LozanoSmith.com

11

11

## Duties Test: Executive Exemption

Primary duty is management of an enterprise, a department, or subdivision thereof;

Customarily and regularly directs the work of two or more other employees; and,

Has the authority to hire and fire other employees, or whose recommendations as to hiring, firing, promotion, etc. are given particular weight.



LozanoSmith.com

12

12

## Duties Test: Administrative Exemption

Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer (district); and,

Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

This exemption also applies to those whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment, such as academic counselors.



LozanoSmith.com

13

13

## Duties Test: Professional Exemption

**Primary duty is the performance of work:**

- Requiring knowledge of an advanced type (defined as work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment) in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or
- Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.



LozanoSmith.com

14

14

## Salary Level Test

Salary level is the actual amount of weekly pay.

Current Regulations	
Salary Level	<ul style="list-style-type: none"> <li>\$684 weekly (\$35,568 annually for a full-year worker)</li> </ul>
Highly Compensated Employee (HCE) Total Annual Compensation Level	<ul style="list-style-type: none"> <li>\$107,432 annually (including at least \$684 per week paid on a salary or fee basis)</li> </ul>



LozanoSmith.com

15

15

## Salary Basis Test

- Exempt employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis.
- Exempt employee receives the full salary for any week in which the employee performs any work without regard to the number of days or hours worked.
- General Rule: Employers may not make deductions from an exempt employee's salary (i.e., for operating requirements).
  - An employer may make deductions as allowed by law.
  - Use of accrued leave is not a deduction from pay.



LozanoSmith.com

16

16

## Salary Basis Test: Public Employee Exception

Public employers may make deductions for full day and partial day absences for personal or sick leave if:

- The employee accrues personal leave and sick leave off by statute, ordinance, or regulation or by policy or practice established pursuant to principles of public accountability.
- Accrued leave is not used by an employee because:
  - Permission for its use has not been sought or has been sought and denied;
  - Accrued leave has been exhausted; or
  - The employee chooses to use leave without pay.



LozanoSmith.com

17

17

## Deductions Prohibition: What are the Consequences for Improper Deductions?

- Improper deductions from salary will result in a loss of the exemption.
- Overtime must be paid during the time period in which the improper deductions were made.
- Isolated or inadvertent improper deductions will not result in loss of the exemption, if the employer reimburses the employees for such improper deductions.



LozanoSmith.com

18

18

## Deductions Prohibition, Salary Basis Test – Safe Harbor

- Safe harbor for improper salary deductions if employer:
  - Has a clearly communicated policy that prohibits the improper pay deductions, including a complaint mechanism.
  - Reimburses employees for any improper deductions; and
  - Makes a good faith commitment to comply in the future.
- If the employer continues to make improper deductions after receiving employee complaints it will be barred from using the safe harbor.



LozanoSmith.com

19

19

## Volunteers



A volunteer is not an employee for purposes of overtime.

If an employee also serves the district as a volunteer, the hours spent volunteering do not count towards overtime.



LozanoSmith.com

20

20

## Requirements for Volunteer Status

### A Volunteer Must:

- Perform service for civic, humanitarian, charitable reasons, without promise or receipt of compensation;
- Not be compensated; and
- Not be employed by employer to perform similar services for the same public agency.



LozanoSmith.com

21

21

## Volunteer : Same Type of Service with the Same Employer

May an instructional aide volunteer in the classroom?

May an office aide volunteer to take tickets at a sporting event?

May a bus driver volunteer as a coach?

May the bus driver volunteer to drive the team bus to the games?



LozanoSmith.com

22

22



## Volunteers: Exceptions to No Compensation Rule

### Volunteers May Receive:

- Allowable expenses;
- Reasonable benefits; and
- Nominal fees.

**LS** LozanoSmith.com 23

23

## Nominal Fees

- May not be tied to productivity or a substitute for compensation.
- Factors considered:
  - How much distance is traveled and time and energy expended?
  - Is the volunteer only available at certain times or around the clock?
  - Does the volunteer provide services as needed or throughout the year?
  - Does the amount paid to the volunteer vary according to the amount of time spent or the success of the program?
- If the fee does not exceed 20 percent of what the district would otherwise pay to hire a full-time coach for the same services, there is a presumption that the fee is nominal.

**LS** LozanoSmith.com 24

24

## Mr. P and the Nominal Fee?

Mr. P was employed by the school district as a security officer. Mr. P also served as a coach of a high school golf team. He received mileage for travel associated with coaching and a stipend of \$2,073 per season. Mr. P estimated he spent about 400 hours coaching per year.

- Is this a nominal fee?



LozanoSmith.com

25

## One Big Beautiful Bill Act - Overtime

26

## One Big Beautiful Bill Act - Overtime

- Signed into law July 4, 2025.
- “No tax on overtime rule.”
- Effective for 2025 through 2028, individuals who receive qualified overtime compensation may deduct the pay that exceeds their regular rate of pay that is required by the FLSA and that is reported on a Form W-2, Form 1099, or other specified statement furnished to the individual.



LozanoSmith.com

27

27

## One Big Beautiful Bill Act – Overtime (Cont.)



- Employers are required to file information returns with the IRS and furnish statements to taxpayers showing the total amount of qualified overtime compensation paid during the year.
- Qualified Overtime: only the portion of overtime pay that is mandated by the FLSA.
  - The “half” portion of “time-and-a-half.”
  - Does not include overtime from state law.



LozanoSmith.com

28

28

# Determining Hours Worked

29

29

## Workweek – Ed. Code versus FLSA

	Education Code	FLSA
<b>Determining Hours Worked</b>	<ul style="list-style-type: none"> <li>Calendar week</li> </ul>	<ul style="list-style-type: none"> <li>Overtime is determined by a workweek</li> <li>A workweek is a fixed and regular recurring period of 168 hours, seven consecutive 24-hour periods.</li> <li>Not required to coincide with the calendar week.</li> </ul>



LozanoSmith.com

30

30

## What Hours Count Towards Overtime?



All work suffered or permitted.

Does not matter whether the employer requested the work.



LozanoSmith.com

31

31

## Hours Worked and Vacation



### Education Code

Must be included as hours worked:

- Vacation
- Holidays
- Other paid leaves of absence

### FLSA

Excluded from hours worked:

- Vacation
- Holidays



LozanoSmith.com

32

32

## Hypothetical

Jenny is an 8-hour employee that works 40 hours per work week. Last week, Jenny worked a total of 44 hours in a seven-day period. However, Monday was a holiday.

- Do the 4 hours count as overtime?
- What if Monday was not a holiday but instead, Jenny called in sick on Monday?



LozanoSmith.com

33

## Is On-Call Time Hours Worked?

- Employee is required to remain on call on the employer's premises.
- Employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached.
- Evaluate:
  - The degree to which the employee is free to engage in personal activities.
  - The agreement between parties.



LozanoSmith.com

34

34

## Hours Worked: Travel



Travel to and from work.

Travel during the workday.



LozanoSmith.com

35

35

## Exceptions to Hours Worked

- Occasional or sporadic work does not count towards overtime.
- To qualify:
  - Must be occasional and sporadic, means infrequent, irregular, or occurring in scattered instances.;
  - Work performed must be in a different capacity than employee's normal position;
  - Part-time basis; and
  - At the employee's option – freely and without coercion.



LozanoSmith.com

36

36

# Overtime Compensation

37

## Overtime Compensation

1 ½ Regular rate of pay for each hour of overtime.

Compensatory Time of 1 ½ hours for each hour worked.



LozanoSmith.com



38

## Regular Rate of Pay (RROP)

- The regular rate of pay includes “all remuneration for employment paid to, or on behalf of, the employee,” subject to a number of exclusions set forth in § 207(e) of the FLSA.
- Regular rate of pay is not necessarily the same as the employee’s hourly rate.



LozanoSmith.com

39

39

## Calculating RROP

If employee only receives an hourly rate, it is simple:

- Custodian receives \$12/hour, works 42 hours a week
- $\$12 \times 42 = \$504$  (Standard weekly pay)
- $2 \times (12 \times .5 = 6) = \$12$
- $\$504 + 12 = \$516$



LozanoSmith.com

40

40



## Regular Rate of Pay - Different Rates of Pay

- Employees paid on a salary basis.
- Employees with Different Rates of Pay.
  - A. Blended rate:
    1. 30 hours as Custodian at \$12/hour and 15 hours as bus driver at \$17/hour.
      - a.  $(30 \times \$12 = \$360) + (15 \times \$17 = \$255) = \$615$
      - b.  $\$615/45 \text{ hours} = \$13.67$  blended hourly RROP
      - c.  $5 \times (\$13.67 \times .5 = \$6.81) = \$34.05$
      - d.  $\$615 + \$34.05 = \$649.05$
  - B. **OR** district may enter an agreement with employee to pay the rate for the work performed as overtime.



LozanoSmith.com

41

41

## What is Included in RROP

Regular Rate Includes	Regulate Rate Excludes
Longevity pay	Gifts not dependent on hours worked
Shift differentials	Discretionary bonuses
Bilingual pay	Irrevocable payments to a third-party trustee or third person pursuant to bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees. (But see Flores case.)
Bonuses authorized by a CBA	
Retroactive pay increase	
Vacation and holidays? (Ed. Code, not FLSA)	



LozanoSmith.com

42

42

## Regular Rate of Pay - Cash in Lieu



- *Flores v. City of San Gabriel* (9<sup>th</sup> Cir. June 2016)
- The Court held that the cash-in-lieu payments must be included in the hourly “regular rate.”
- FLSA allows employer to exclude from the regular rate of pay contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees.



LozanoSmith.com

43

43

## Regular Rate of Pay - Cash in Lieu (Cont.)

In the Flores case, since cash payments made up more than 40% of the City’s total plan contributions, the court found the payments were not “incidental.”

Thus, the entire flexible benefit plan failed to meet the FLSA definition of a bona fide plan and all amounts paid into it needed to be included in the regular rate of pay, not just the cash-in-lieu payments.



LozanoSmith.com

44

44

## Regular Rate of Pay with Extra Compensation

Custodian works 45 hours a week. Employee is paid \$12 an hour. He receives an extra \$1 an hour for night shift hours. Of the 45 hours, employee worked 8 hours on night shift. Employee also earns \$500 cash in lieu per pay period. A pay period is two weeks.

$$\text{RROP} = (\text{All hours worked} \times \text{hourly rate}) + \text{Shift differential} + \text{Cash in lieu earned during that workweek} / \text{All hours worked}$$



LozanoSmith.com

45

45

## Regular Rate of Pay with Extra Compensation (Calculations)

Calculating RROP		Weekly Pay	
\$12x45	\$540	(\$17.73 x .5) x 5	\$44.35
\$1x8	\$8		\$798
\$500/2	\$250		
		Total	\$842.35
Total	\$798		
\$798 / 45	\$17.73 RROP		



LozanoSmith.com

46

46

## Compensatory Time Off



By prior agreement, overtime may be compensated by giving the employee 1½ hours of compensatory time off (CTO) for every hour of overtime worked.

CTO shall be taken by the employee within 12 calendar months after the month it is earned.

An employee may only accrue up to 160 overtime hours (240 comp time hours). Any additional overtime must be paid in cash.



LozanoSmith.com

47

47

## Records That Must be Maintained

- Regular hourly rate of pay for any workweek in which overtime compensation is due.
- Hours worked each workday and each workweek.
- Total daily or weekly straight-time earnings.
- Total overtime earnings for the workweek.
- All additions to or deductions from the employee's wages, along with amounts, dates, and nature of additions and deductions.
- Total wages paid each pay period.
- Date of payment and pay period covered by the payment.

\*\*\*The last two items must also be kept for employees exempt under the White-Collar Exemption.



LozanoSmith.com

48

48

# Questions?

49



## Thank you from Lozano Smith!

Together with you, we are impacting communities and lives through:

- Professional development
- Volunteer projects
- Sponsorships and award programs
- Scholarships

#BlueHatProject  
#LozanoSmithFoundation



LozanoSmith.com

50

50



## Lozano Smith Podcast

Balancing law and public agency applications.

**Stay informed on your time!**

### Check out the latest episode:

E101 From Absences to Action: Attendance, Truancy, and Special Education Obligations



[lozanosmith.com/podcast.php](https://lozanosmith.com/podcast.php)

*Subscribe on your favorite app or device.*

51

51

For more information or questions about the presentation, please feel free to contact:



### Desiree Serrano

Attorney at Law

213.929.1066

dserrano@lozanosmith.com



### Taylor Todd

Attorney at Law

559.431.5600

ttodd@lozanosmith.com



Or any of the attorneys in one of our 8 offices.

52

52

## Connect with us on social media for the latest updates.



@LozanoSmith

**Disclaimer:** These materials and all discussions of these materials are for instructional purposes only and do not constitute legal advice. If you need legal advice, you should contact your local counsel or an attorney at Lozano Smith. If you are interested in having other in-service programs presented, please contact [clientservices@lozanosmith.com](mailto:clientservices@lozanosmith.com) or call (559) 431-5600.

**Copyright © 2026 Lozano Smith**

All rights reserved. No portion of this work may be copied, distributed, sold or used for any commercial advantage or private gain, nor any derivative work prepared therefrom, nor shall any sub-license be granted, without the express prior written permission of Lozano Smith through its Managing Partner. The Managing Partner of Lozano Smith hereby grants permission to any client of Lozano Smith to whom Lozano Smith provides a copy to use such copy intact and solely for the internal purposes of such client. By accepting this product, recipient agrees it shall not use the work except consistent with the terms of this limited license.

4875-5359-9137

53