

From the Headlines

The Montana Legislative Audit Division Report recently revealed that more than 70 school bus drivers have criminal histories. Now is the time to download and use SLRMA's Avoiding Discrimination Claims When Using Criminal History in Employment Decisions.

In December, Nebraska School Activities Association issued a policy statement protecting transgender students' right to participate in school activities, including sports. Download SLRMA's Self-Audit Checklist for School Compliance with Title IX for Athletics Programs to determine how your School's athletic programs matchup to what Federal law requires.

A major east coast school district determined that 40% of all discipline cases involved students with disabilities despite being only 14% of the student population. Use SLRMA's Disciplining Students with Disabilities: Self-Audit Checklist and Best Practices On the Use of Restraint and Seclusion to ensure your school is in compliance.



Avoid Overtime Headaches by Reviewing Your School's Compliance with The Fair Labor Standards Act.

The numbers are shocking. Although there have not been significant changes to the Fair Labor Standards Act (FLSA) since SLRMA first introduced its FLSA Self-Audit Checklist for School District Employers in 2009, the Department of Labor has significantly increased its enforcement of the FLSA's provisions.

Between 2008 and 2012, the amount of back wages collected by the Department of Labor under FLSA has jumped over 51% from \$185,287,827 to \$280,697,546. Similarly, the hours spent enforcing FLSA by the Department of Labor has jumped over 56% from just over 880,000 hours to over 1.37 million hours. An analysis of the Department of Labor's press releases demonstrates that it has recovered at least \$3.6 million since January 2013.

The Department of Labor's enforcement activities have focused on whether an employee is exempt or non-exempt from the mandates of the FLSA and whether an employee should be considered an "independent contractor." Consequently, this 2013 edition of the FLSA checklist contains an expanded discussion of exempt versus non-exempt employees and adds a section specifically addressing independent contractors.

Fair Labor Standards Act (FLSA) Checklist

Non-exempt vs. Exempt Employees

Are your Teachers Truly Exempt?

- | | <u>Yes</u> | <u>No</u> |
|--|------------|-----------|
| <ul style="list-style-type: none">• Is the employee's primary duty teaching, tutoring, lecturing, or instructing students in Pre-Kindergarten through 12th grade on a full-time, part-time, substitute, or hourly basis? (<i>Note: Teachers are exempt even if they do not meet the salary requirements applicable to other exempt employees.</i>) | | |
| <ul style="list-style-type: none">• Does the employee possess a teaching certificate or, if the school district does not require certification, is the employee employed as a teacher? | | |

Are Your Academic Administrators Truly Exempt?

- | | <u>Yes</u> | <u>No</u> |
|---|------------|-----------|
| <ul style="list-style-type: none">• Is the employee's primary duty performing administrative functions directly related to academic instruction, rather than general business operations? (<i>Note: superintendents, assistant superintendents, principals, vice-principals, and academic counselors who administer academic tests or advise on degree requirements may fall into this category.</i>) | | |
| <ul style="list-style-type: none">• Does the employee earn a salary or fee of at least \$455 per week (or \$23,660 per year) or a salary at least equal to the entrance salary for entry level teachers in the school district? | | |
| <ul style="list-style-type: none">• For each such position, please attach a written description of actual duties. | | |

Are Your Other Administrators Truly Exempt?

- | | <u>Yes</u> | <u>No</u> |
|---|------------|-----------|
| <ul style="list-style-type: none">• Does the employee earn a salary or fee of at least \$455 per week (or \$23,660 per year?) | | |
| <ul style="list-style-type: none">• Is the employee's primary duty the performance of office or non-manual work directly related to the management or general business operations of the school district or the school district's customers? (<i>Note: Administrative jobs related to matters such as building management and maintenance, student health, and food service, for example, may fall into this category.</i>) | | |

This is a small sample of the 2013 FLSA Update Self Audit Checklist.

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One major factor which led to the civil penalties in the cases filed this year was the failure of the employers to maintain adequate records regarding exempt and non-exempt employees. A school must know the difference between exempt and non-exempt employees. Thus, the self-audit on exempt and non-exempt employees is set forth first in the checklist and then followed by the record keeping checklist. Finally, the SLRMA Editorial Board has added explanatory notes and provided examples throughout the checklist to assist your school in answering the questions appropriately and thoroughly for compliance with the FLSA.

Recent Dispatches in the Newsroom



Log In and Download the Recent Case Summaries That Impact Your School District and Find Out What You May Be Missing

May

Douglas v. Rochester City School District

Terminated teacher sought recovery for harassment and hostile work environment based on race, gender and retaliation for filing charges with the EEOC. The Federal Court of Appeals in New York found that plaintiff could not recover for hostile work environment based on isolated incidents of boorish or offensive use of language and she could not establish the perpetrator engaged in such behavior towards the plaintiff because of her race or gender. This case illustrates what a plaintiff must establish to obtain a recovery for race or gender hostile work environment.

April

Muskrat v. Deer Creek Public Schools

Federal Appellate Court in Oklahoma found that parents will not have to always exhaust their administrative remedies prior to filing suit on the alleged damages sustained by a special needs student. Moreover, random and innocuous physical discipline of student was not so severe or disproportionate that school violated the student's constitutional rights.

March

G. C. vs. Owensboro Public Schools

Kentucky Federal Appeals Court determined that the school violated student's 4th Amendment rights when it conducted an unreasonable search of the student's phone without justification. In addition, the expulsion of the student without a hearing constituted a violation of the student's Due Process rights.

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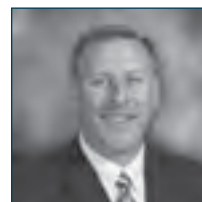
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Since January 2013, the U.S. Department of Labor has collected over \$3.6 million in back wages and penalties from employers who failed to track overtime, improperly classified non-exempt employees and failed to maintain the appropriate paperwork. The Department of Labor's time spent investigating and securing these awards has increased by over 56%. What is your school district doing to avoid becoming a target?

**Download and use SLRMA's
2013 Fair Labor Standards Act: Self-Audit Checklist for
School District Employers.**