



Sample  
Checklist  
Inside

## Is Your School District Ready for the 2020 Fair Labor Standards Regulations?

In August 2019, a teacher in South Carolina filed a class action lawsuit against her school district, claiming that the district violated state and federal wage and hour laws by requiring her and other teachers to work after hours at a sporting event concession stand without pay and by being forced to buy classroom supplies with her own money.<sup>1</sup> Although the lawsuit is only in its infancy, this litigation could be a harbinger of a broader trend of complaints against school districts for

Fair Labor Standards Act (“FLSA”) violations.

The FLSA has a broad impact on employers, as this law governs how employees are compensated through various rules that delineate minimum wage and overtime. Unless specifically exempted, employees covered by the FLSA must receive pay for hours worked in excess of 40 in a workweek at a rate not less than one and one-half their regular rates of pay – also known as overtime pay. The FLSA has teeth: not only can the U.S. Department of Labor (“DOL”) order payment of back wages, but it can impose penalties

<sup>1</sup> “A teacher suing her school district is alleging it made her pay for school supplies and work unpaid hours,” Business Insider, November 13, 2019, available at <https://www.businessinsider.com/south-carolina-teacher-is-suing-over-paying-for-school-supplies-2019-11>.

## SLRMA Celebrates a Milestone:

# 40 Checklists

With the publication of the October 2019 resource, *Protecting Students: Safety and Security in Schools*, SLRMA has produced 40 checklists! Thanks to all of our members for being a part of our organization throughout the years.

for wage and hour violations. In 2019, the DOL Wage & Hour Division (WHD) reported that WHD recovered a record \$322 million in wages owed to workers in FY 2019, and that more than \$1.4 billion in back wages were recovered in the last five years.<sup>2</sup> Moreover, the WHD has audited school systems in every state, finding FLSA violations in 60.8% of those school systems and education organizations resulting in an average of \$35,000 in back wages and fines.<sup>3</sup>

The FLSA has undergone myriad changes over the past several years. In 2014, the DOL was directed to revamp the regulations, then in 2016, the DOL raised the salary threshold for exempt status under the FLSA from \$455 to \$914 per week. The salary threshold does not apply to teachers, but the changes under the 2016 rule meant that many other school district employees previously classified as exempt would become non-exempt and thus entitled to overtime. Just prior to the 2016 rule's implementation, however, the rule was put on hold due to legal challenges. In September 2019, DOL issued a new rule changing the salary threshold for exempt status once again, to \$684 per week (or

\$35,568 per year). The new rule, which goes into effect January 1, 2020, also sets separate exempt status salary thresholds for employees in the U.S. territories; raises the salary threshold for the "highly compensated employee" exemption to \$107,432 per year; and permits nondiscretionary bonuses to be counted toward ten percent of the salary level if they are paid at least annually. The DOL intends to propose updates to these salary thresholds every four years. In contrast to the 2016 rule, the updates will *not* be automatic and will require notice and public comment periods.

Given the new rule that goes into effect on January 1, 2020 and the continuing threat of FLSA class action lawsuits, it is important to ensure that school district policies and practices are fully compliant with the FLSA. To help school districts verify their practices are in line with the changes, SLRMA is pleased to present the FLSA Compliance for School District Employers Self-Audit Checklist, 2020 Update.

We encourage SLRMA members to take an immediate and proactive approach to complying with FLSA. The 2020 FLSA Self-Audit Checklist provides you with an overview of the FLSA changes, then guides you through the key questions to ask in determining exempt vs. nonexempt status by each category of employees. SLRMA recommends that you consider how changes to your staffing and compensation practices may increase your liability under FLSA. For example, curtailing overtime authorization, asking employees to perform additional work at home, or increasing your reliance on volunteers for work previously done by paid employees all present the possibility of FLSA violations, if not handled correctly. In addition, districts may want to consider methods of reducing overtime costs, or restructuring jobs to reduce the need for overtime. Recordkeeping should be sufficient to meet FLSA requirements for employees newly reclassified as non-exempt. Your district can use this list as a jumping off point for establishing a comprehensive strategy for compliance with labor laws. As always, consultation with local counsel familiar with both FLSA and applicable state labor laws is highly recommended. Log onto SLRMA.org now and be prepared for 2020.

<sup>2</sup> U.S. Department of Labor, Wage and Hour Division data, available at <https://www.dol.gov/whd/data/index.htm>.

<sup>3</sup> FLSA Investigations in K-12, Frontline Education, available at <https://www.frontlineeducation.com/pages/insights/flsa-investigations-k-12/>

## Recent Updates from the Newsroom Available on SLRMA.org

### U.S Secret Service Issues Findings on Targeted School Violence

**December 2, 2019**

The U.S. Secret Service National Threat Assessment Center (NTAC) recently published a study concerning targeted school violence incidents that occurred from 2008 to 2017. The findings of this report have significant implications for school safety and security. The study suggests that many of these incidents could have been prevented, and supports the importance of schools establishing comprehensive targeted violence prevention programs.

### If Gun Violence Comes to Your School, Will Your Security Plan be Bulletproof?

**October 10, 2019**

School districts can take many pro-active steps to prevent, prepare for, and respond in the event of violent acts or threats. SLRMA has pored through the most current and effective resources and created a new resource - Protecting Students: Safety and Security in Schools Checklist and Best Practices.

### Department of Education Issues Findings on Chicago Public Schools

**September 13, 2019**

Chicago Public Schools (CPS) and the U.S. Department of Education's Office for Civil Rights (OCR) entered into a resolution agreement related to OCR's investigation into 2,800 student-on-student and 280 adult-on-student sexual harassment complaints over a 4 year period. Among the findings are that CPS failed to respond promptly to complaints, failed to maintain adequate grievance procedures, and failed to appoint a Title IX coordinator.

## We want your feedback on SLRMA

Recently, members should have received an email asking for input on SLRMA checklists and resources through a brief online survey. Everyone who completes a survey will be entered for a chance to win a surprise give-away. Access to the survey can be reached from the members menu after logging in at SLRMA.org.

Feedback >>

## SLRMA Board of Directors



**Mr. John Spatz**  
Chair  
Executive Director  
Nebraska Association  
of School Boards



**Dr. Wade Pogany**  
Vice Chair  
Executive Director  
Associated School Boards  
of South Dakota



**Dr. John Heim**  
Treasurer  
Executive Director  
Kansas Association  
of School Boards



**Dr. Shawn Hime**  
Secretary  
Executive Director  
Oklahoma State School  
Boards Association



**Dr. Thomas Bertrand**  
Executive Director  
Illinois Association of  
School Boards



**NSBA Liaison**  
**Ms. Heather Dean**  
Chief Operating Officer  
National School Boards  
Association

Content provided by:



**Maree F. Sneed**  
Partner  
Hogan Lovells  
US, LLP  
(Washington, D.C.)



**Dr. Gillian Chapman**  
Superintendent  
Teton County  
School District  
(Jackson, WY)



**Dr. Jerry D. Weast**  
CEO  
Partnership for  
Deliberate  
Excellence, LLC  
(Potomac, MD)



**Dr. Troy Loeffelholz**  
Superintendent  
Columbus Public  
Schools  
(Columbus, NE)



**Cheryl L. Sandner**  
President and CEO  
Brokers' Risk  
(Chicago, IL)



**Theodore C. Hadley**  
SLRMA  
Chief Content Editor  
Counsel, Brokers' Risk  
(Chicago, IL)

## Top Downloads 2019

- 1) McKinney Vento Act Checklist 2018
- 2) Protecting Students: Safety and Security in Schools Checklist
- 3) Due Process Requirements for Out-of-School Suspension Checklist
- 4) Protecting Students in the Era of #MeToo Checklist
- 5) Hazing Prevention, Early Intervention and Response Checklist

SLRMA UPDATE | January 2020

© Copyright 2020 School Leaders Risk Management Association (SLRMA). All Rights Reserved.

The Mission of the School Leaders Risk Management Association (SLRMA) is to assist public school districts (K-12) with supplemental risk management support. We help you accomplish your own mission of risk avoidance in a number of ways.

- We provide pro-active, timely tools to help prevent unwanted and unwarranted school board legal liability claims.
- We keep members informed of the current legal issues that will likely affect your school district through our work with the Federal Legislation Insurance Committee (FLIC).
- We give members access to special reports featured in our Newsroom. The topics are specific to the School Board Legal Liability school boards face today and will in the future.

Members are equipped with an array of self-audits and checklists to help ensure you are in compliance with the latest requirements and guidelines which govern school boards and school districts. We are a not-for-profit and are governed by a Board of Directors. The Board consists of current Executive Directors of State School Boards Associations.

Checkout [slrma.org](http://slrma.org) to see all the benefits of membership.

## 2020 FLSA Self-Audit Checklist

### Are Salaried Employees Truly “Salaried” for FLSA Purposes?

- Where the regulations require that an employee, to be exempt, be compensated on a “salary” basis, the employee, with certain limited exceptions, must receive the same amount of minimum guaranteed salary for each work week in which the employee performs any work, regardless of the quality and quantity of his/her work.
- In addition, deductions can be made from exempt public school employees’ pay in some circumstances where deductions would not be permitted in the private sector. Pursuant to pay systems established by law or by a policy established to promote public accountability, deductions can be made for some partial-day absences that would not otherwise be permitted. Public school employees also can be furloughed for budgetary reasons without losing their exempt status.

	Yes	No
<ul style="list-style-type: none"> <li>• Are deductions from salary made in less <u>than full-day increments</u> for:</li> </ul>		
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>◆ Absences from work for personal reasons other than sickness or disability? <i>(Note: Deductions may be taken for full-day absences for personal reasons.)</i></li> </ul> </li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>◆ Absences due to sickness or disability? <i>(Note: Deductions may be taken for full-day absences for which the employee is compensated under a disability or workers’ compensation law or plan. Deductions may also be taken for unpaid leave taken under the Federal Medical Leave Act.)</i></li> </ul> </li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>◆ Disciplinary suspensions for workplace conduct rule infractions pursuant to a written policy applicable to all employees? <i>(Note: Deductions can be made from salaried employees’ pay for full-day suspensions, for example, for violations of policies prohibiting sexual harassment or workplace violence.)</i></li> </ul> </li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• Are deductions made for:</li> </ul>		
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>◆ Absences due to jury duty, attendance as a witness, or temporary military leave? <i>(Note: Such deductions are generally not permitted; however, offsets for compensation received for such services are permitted.)</i></li> </ul> </li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>◆ Penalties for infraction of safety rules relating to the prevention of serious danger in the workplace or to other employees? <i>(Note: Such deductions are generally permissible.)</i></li> </ul> </li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>○ Are employee’s attendance problems addressed by</li> </ul> </li> </ul>		
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>❖ Compensation penalties?</li> </ul> </li> </ul> </li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>❖ Discipline?</li> </ul> </li> </ul> </li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>

**Download the complete checklist at [SLRMA.org](http://SLRMA.org)**

	Yes	No
<ul style="list-style-type: none"> <li>◆ Proportionate deductions from initial or terminal week of employment in order to pay only for time actually worked during those weeks? (<i>Note: These deductions are also permissible.</i>)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• If the school district is subject to a law requiring, or has a policy allowing, employees to accrue personal or sick leave, deductions may be taken for certain types of leave. For example, does your district, pursuant to such a law or policy, take deductions when:</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>◆ Accrued leave has been exhausted?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>◆ The employee chooses to use leave without pay?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>◆ The employee did not seek or was denied permission to use leave?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• Are deductions taken when an exempt employee is furloughed for budgetary reasons?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• Any deductions for any other reasons? If so, please provide details:</li> </ul>		

**Download the complete checklist at [SLRMA.org](http://SLRMA.org)**