FAIR LABOR STANDARDS ACT (FLSA)

Frequently Asked Questions

GENERAL QUESTIONS ABOUT FLSA

1. What is the Fair Labor Standards Act?

   The Fair Labor Standards Act (FLSA) requires employers to compensate all covered employees, or non-exempt employees, for all hours worked beyond 40 hours per workweek.

   The law also requires non-exempt employees to be paid at least the federal minimum wage, sets guidelines for employment of minors, and includes wage and hour record keeping requirements.

2. What does the term “non-exempt” mean?

   Non-exempt means not exempt from the FLSA overtime rules. In other words, non-exempt employees are those employees who must be paid an overtime premium of time-and-one-half for each hour worked in excess of 40 hours per week.

3. What does the term “exempt” mean?

   Exempt employees are employees who do not receive overtime. In other words, exempt employees are required to fulfill the duties of their positions regardless of the number of hours worked.

4. What is the effect of the new FLSA rules that the Department of Labor (DOL) released on May 18, 2016 with respect to overtime eligibility?

   The DOL updated the minimum salary level above which workers can be considered exempt from the DOL overtime rules.

   Generally, the new rules require employees who earn less than $47,476 per year to be paid overtime for all hours worked in excess of 40 hours in a workweek.

   There are some limited jobs in higher education that are not subject to the new rules and that will therefore continue to be exempt from the overtime rules which include:

   1.

   2.

   3.

   4.
Teachers are not subject to the salary threshold test. Therefore, an employee who qualifies as a “teacher” can earn less than $47,476 and not receive overtime.

- **Adjunct faculty** are teachers and are not subject to the minimum weekly salary threshold of $913 per week and are exempt from the overtime rules.

- **Coaches** whose primary duty is instructing student-athletes in how to perform their sport are considered teachers and are also not subject to the new minimum salary threshold and overtime rules. However, the amount of time that a coach spends instructing student-athletes is relevant. For example, an instructor who spends more than half of his or her time recruiting and performing other unrelated non-teaching activities does not meet the teacher test. In this case, the coach is subject to the new minimum salary threshold.

**Undergraduate students** engaged in research under a faculty member’s supervision in the course of obtaining a degree are not subject to the new minimum salary threshold and overtime rules.

**Graduate teaching assistants and research assistants** engaged in research under a faculty member's supervision in the course of obtaining a degree are also not subject to the minimum salary threshold and overtime rules.

**Student residential assistants** enrolled in bona fide educational programs who receive reduced room or board charges or tuition credits from the university are not generally considered employees under the FLSA; therefore, they are not subject to the FLSA’s overtime requirements.

5. **How is the minimum salary level changing?**

   The new DOL rule raises the minimum salary level from its previous amount of $455 per week (the equivalent of $23,660 a year) to $913 per week or $47,476 per year.

6. **When does the rule take effect?**

   Employers must be in compliance with the new rule by December 1, 2016.

7. **Will the salary threshold of $47,476 be updated in future years?**

   The new rule establishes a mechanism for review of the salary level every three years, with the first update expected to take place in 2020.
8. Are employees who earn more than $47,476 per year automatically exempt from the overtime rules?

No, even if an employee satisfies the minimum salary threshold test of $913 per workweek or $47,476 per year, he or she must still meet what is known as the duties test to qualify as an exempt employee.

9. What is the duties test?

The FLSA provides that the employee’s primary job must involve certain types of work to meet the test for an executive, professional, or administrative exemption from the overtime rules. Additional information about the rules is available at https://www.dol.gov/whd/overtime/fs17a_overview.htm.

The Department of Human Resources determines whether a position meets the executive, professional, computer or administrative exemption test.

10. What happens if an employee earns more than $47,476 per year but does not meet the “duties” test?

If the duties test is not met, the employee must receive overtime for hours worked in excess of 40 hours in a workweek, even if the employee earns in excess of $47,476.

11. Are there some employees who earn more than $47,476 who are currently exempt from the overtime rules but who may become non-exempt on December 1, 2016?

Yes, HR is reviewing position descriptions to ensure compliance with the new rule. We anticipate that some individuals who earn more than $47,476 per year will be reclassified from exempt to non-exempt.

12. I’m an Administrative/Professional Faculty member. Could the FLSA changes affect me?

Yes, job classifications do not determine exempt status. For an exemption to apply, an employee’s specific job duties and salary must meet all of the applicable requirements provided in the Department Of Labor’s regulations.

QUESTIONS ABOUT HOURS WORKED AND BENEFITS

1. May an employee volunteer to stay late to complete work, or complete work in the evening, or on weekends, and not be compensated?

No. An employee who is eligible for overtime cannot volunteer to work “off the clock” and is not permitted to waive his or her rights under the FLSA.
2. **Does overtime have to be authorized by a supervisor prior to an employee working over 40 hours?**
   Yes. Overtime must be pre-approved by a supervisor. Failure to request approval is a violation of policy and may result in disciplinary action.

3. **If an employee works beyond his/her scheduled hours, or does work at home without prior authorization, must the employee still be paid for these hours?**
   Yes, if the employee works without authorization, or does not receive prior permission to work overtime, he/she must still be paid for these hours.

   It is the duty of management to exercise control to see that work is not performed beyond scheduled hours without prior approval and to counsel the employee and to initiate progressive disciplinary action if the process has not been followed.

4. **May an employee’s hours be adjusted within the same workweek to avoid the employee earning overtime for hours worked beyond 40 in the workweek?**
   Yes. An employee, with supervisory approval, may adjust his/her schedule during the workweek to offset extended workdays.

   Alternatively, the employer may require that the employee adjust his or her schedule. For example, if an employee needs to work into the evening (e.g., three hours later than normal hours), it might be possible to have the employee come into work three hours later on another day as long as the change does not disrupt the business operations of the office and the adjustment occurs in the same workweek.

5. **If non-exempt employees work during lunch will it count towards the 40 hour workweek?**
   Yes. Non-exempt employees may not work during their lunch break. If they do, the time counts as hours worked.

   Performance of any work duties, such as answering phones or emails during lunch break, is considered hours worked.

6. **Will the proposed rule impact employees who use electronic devices, such as smartphones or laptops, for work-related purposes outside of regular work hours?**
   Yes, performance of any work duties, such as answering phones or emails during off hours, is considered hours worked.
7. If I am a passenger on a bus or plane trip that takes place outside the normal workday and if I perform work while traveling as a passenger, what time is considered working time?

If you engage in work activity while the trip is in progress, you should only count the time spent actually working as hours worked. Otherwise, any travel as a passenger that occurs outside the normal workday is not considered working time.

8. Is travel from my normal office to an off-campus location or special worksite (such as an “away” game or an event) or to meetings, lectures, training programs, or similar activities during my usual workday considered working time?

Yes. Travel from your office to any other location during the workday in fulfillment of your job duties is working time.

9. If a non-exempt employee is required to travel away from home, are there special rules with respect to how to account for hours worked?

Yes, special rules apply with respect to travel. In general, employees count as hours worked any time spent actually working. If the employee is relieved from duty for a portion of the day such that the time is long enough to permit the employee to use the time effectively for his or her own purposes, then this time when the employee is relieved from duty is not considered work time.

Please visit the Department of Labor’s (DOL) Fact Sheet #22: Hours Work or the DOL – FLSA Hours Worked Advisor for more information regarding travel time.

http://webapps.dol.gov/elaws/whd/flsa/hoursworked/screenEE49.asp

10. Does the new rule change my benefits?

No, the new rule does not impact state benefits.

Should you have any additional questions regarding FLSA compliance, please contact the following representatives in the Department of Human Resources.

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Phone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nadine Faulcon-Johnson</td>
<td>Director of Total Compensation and Staffing</td>
<td>(757) 683-3067</td>
</tr>
<tr>
<td>David Hawkins</td>
<td>Compensation Manager</td>
<td>(757) 683-3060</td>
</tr>
<tr>
<td>Rakim Reid</td>
<td>Compensation Analyst</td>
<td>(757) 683-4399</td>
</tr>
</tbody>
</table>

Revised November 8, 2016