2016 Fair Labor Standards Act (FLSA) Changes

Toolkit for Managers and Supervisors
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About This Toolkit
More university staff will be eligible for overtime pay under changes to the Fair Labor Standards Act that take effect on December 1st, 2016. This toolkit is designed to help managers and supervisors to:

- Determine which employees are impacted by the changes
- Develop a strategy to comply with the new regulations that aligns with unit business needs
- Communicate effectively with impacted faculty and staff in a timely manner

Additional resources are available at http://webs.wichita.edu/?u=humanresources2&p=/classifications_compensation/flsa/ or by email at sarah.hunter@wichita.edu.

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A Brief Guide to the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) determines whether a position is eligible for overtime pay. An “exempt” position is not eligible for overtime pay. A “non-exempt” position is eligible and must receive overtime pay or compensatory time off at time-and-one-half for any hours worked above 40 in a standard workweek.

Three Tests: Salary Basis, Duties and Salary Level

A position may be considered exempt under the FLSA if it meets three tests.

1. An employee must be paid on a salary basis, not an hourly basis.
2. Duties must meet criteria for executive, professional, administrative, computer or outside sales activities.
3. Compensation rate must be at least $47,476 annually (effective December 1st, 2016)

If any one of these three tests is not met, the employee must be classified as non-exempt and eligible for overtime pay or compensatory time off. Please note that exempt classification is an option, not a requirement under the law. A position that meets all three tests may still be classified as non-exempt.

FLSA Status at Wichita State University

At Wichita State, FLSA status affects two areas of employment:

1. Eligibility for overtime pay or compensatory time worked above 40 in a standard workweek
2. How time is reported

Benefits are the same for non-exempt and exempt employees. See the following page for a detailed comparison of exempt and non-exempt employees at WSU.

What Counts Towards Overtime?

Only time worked is counted toward the 40 hours per week required for overtime pay or compensatory time off for non-exempt employees. Exception time such as vacation, sick, holiday, military reserve duty, funeral, shared leave and time for jury duty does not count toward the 40 hours per week of time worked that is required for overtime pay.
## Comparing Exempt and Non-Exempt FLSA Status at Wichita State University

<table>
<thead>
<tr>
<th></th>
<th>NON-EXEMPT</th>
<th>EXEMPT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pay Schedule</strong></td>
<td>Bi-weekly (26 pay periods per year)</td>
<td>Bi-weekly (26 pay periods per year)</td>
</tr>
<tr>
<td><strong>Overtime Pay</strong></td>
<td>Time-and-on half or compensatory time off for all hours worked above 40 in a standard work week</td>
<td>Not eligible</td>
</tr>
<tr>
<td><strong>Reporting Exception Time</strong></td>
<td>Report exception time to the nearest quarter of an hour</td>
<td>Report exception time in 4 hour increments</td>
</tr>
<tr>
<td><strong>Reporting Work Time</strong></td>
<td>Report all hours worked</td>
<td>Do not report hours worked</td>
</tr>
<tr>
<td><strong>Reporting Method</strong></td>
<td>Paper exception form, must be submitted every 2 weeks even if exception time was not used</td>
<td>Online exception form through self-service Banner</td>
</tr>
<tr>
<td><strong>Vacation Accrual</strong></td>
<td>6.77 hours per pay period, prorated for FTE</td>
<td>6.77 hours per pay period, prorated for FTE</td>
</tr>
<tr>
<td><strong>Sick Leave Accrual</strong></td>
<td>3.70 hours per pay period, prorated for FTE</td>
<td>3.70 hours per pay period, prorated for FTE</td>
</tr>
<tr>
<td><strong>If Employee Works a Holiday</strong></td>
<td>Paid time-and-one-half or earns compensatory time at the rate of time-and-one-half</td>
<td>Paid straight time</td>
</tr>
<tr>
<td><strong>If Employee Reduces Hours to Part-Time</strong></td>
<td>No change in FLSA Status</td>
<td>May require reclassification to non-exempt if the comp-rate falls below $47,476</td>
</tr>
</tbody>
</table>
New Overtime/Compensatory Time Eligibility Rules: Supervisor Overview

This overview is intended to help supervisors prepare to discuss the impact of upcoming FLSA changes with impacted individuals.

Background: What Has Changed?

The federal government announced new rules in May that increase the salary at which an employee may be considered “exempt” from earning overtime pay. As a result, more employees are eligible for overtime pay or compensatory time off (“non-exempt”). Eligibility for overtime pay is determined by several tests of job duties and pay under the Fair Labor Standards Act (FLSA). As of December 1st, 2016, the new salary threshold to be considered exempt under the FLSA is $47,476 annually, an increase in the previous threshold for future adjustments every three years going forward.

University Approach

The university has adopted an approach that will provide flexibility to departments on how to comply with the revised salary threshold while managing the impact to their budgets and administration. Departments may decide to raise salaries to maintain exempt status or chose to manage their employees’ new status as non-exempt.

Who Will Be Impacted?

Full-Time Employees

Some full-time employees will be reclassified to non-exempt on November 20th, 2016 because a department decides not to raise salaries to meet the new minimum threshold.

Part-Time Employees

Part-time employees with a compensation rate below $47,476 who are currently considered exempt under the FLSA will be reclassified as non-exempt as of November 20, 2016.

What Employees Who Become Eligible for Overtime Can Expect

1. They will begin reporting all time worked in addition to exception time (vacation and sick leave) as of November 20, 2016.
2. They will need to use the paper exception report form every two weeks to report time, regardless of whether they used leave.

3. They will earn overtime pay or compensatory time off at time-and-one-half for all hours worked above the 40 in a standard work week beginning on November 20, 2016.

4. They will not lose their vacation or sick leave and will continue to accrue at rate they accrue currently.

**Considerations for Supervisors with New Non-Exempt Employees**

**Managing Overtime**

Managers and supervisors may need to set new expectations and change department schedules or behaviors in order to manage overtime and/or compensatory time off according to their budgets. Overtime and/or compensatory time may occasionally be necessary and should be pre-approved by the supervisor; however, whether pre-approved or not, it must always be paid. A clearly defined approval process can assist you and your employees in managing both time and budget resources.

**Mobile Devices**

Mobile devices expand the opportunity for work to be performed outside of normal work hours. Employees who were previously classified as exempt may be used to responding to emails or calls after hours, but these activities must be counted as paid work time (and potentially overtime or compensatory time) for non-exempt employees. You may need to set a new expectation with employees about answering emails or calls outside of normal work hours, or you may need to assess whether to provide them with work-only mobile devices.

**To Learn More**

Contact sarah.hunter@wichita.edu with any questions, or visit http://webs.wichita.edu/?u=humanresources2&p=/classifications_compensation/flsa/ for additional information.
Frequently Asked Questions about the 2016 FLSA Change

1. What is the FLSA?
FLSA stands for the Fair Labor Standards Act of 1938 (“the FLSA”), the statute which contains the federal wage and hour laws for which employers with workers within the United States must comply. The FLSA sets the criteria to determine which employees are entitled to overtime or compensatory time off based on duties performed, level of responsibility, decision-making authority, and level of compensation. The FLSA also establishes the rules that employers must follow relating to payment of overtime. Specifically, the FLSA requires that non-exempt employees receive pay for all hours worked and overtime pay (or compensatory time off) of 1.5 times their regular rate of pay for all hours worked over 40 in a fixed seven day period. All jobs worked by University employees are covered by the FLSA.

2. What does it mean to be exempt or non-exempt under the FLSA?
Exempt employees are employees who are ineligible for overtime pay for hours worked over 40 in a workweek (a workweek is a fixed seven consecutive calendar days). Exempt employees are expected to work as much time as is needed to complete work without an expectation of overtime or additional compensatory time off. As a result, exempt employees are paid on a salaried, not hourly, basis. In addition, in most cases (as discussed below), exempt employees must perform certain types of duties, as defined in the FLSA, in order to be exempt and salaried.

The term “non-exempt” refers to employees who are not “exempt” from federal overtime rules and who must receive pay for all hours worked and be paid “time and a half” (i.e., 1.5 times the employee’s regular rate of pay) or granted compensatory time off for all hours worked over 40 in a fixed seven day period. Due to overtime eligibility, non-exempt employees are paid on an hourly basis.

3. How do I know if a position is exempt or non-exempt?
Under the FLSA, with a few limited exceptions (these are discussed in FAQ 4), exempt status is determined based on meeting each of the following tests:

• Salary Basis Test. Employee must be paid on an annual salary basis; and
• Minimum Salary Test. For years, the FLSA’s minimum salary threshold has been $455 per week or $23,660 annually; however, that has changed (see FAQ 5); and
• Duty and Discretion Tests. The employee must perform duties that meet the DOL’s definition of an executive, administrative, professional, or computer professional. The requirements to
meet the duties and discretion tests are quite specific and are set forth in several fact sheets available on the Department of Labor’s web site at: http://www.dol.gov/whd/overtime/fact_sheets.htm

- Consistent with current practices and procedures, representatives from Human Resources are available to engage in job review audits to determine the appropriateness of classifications in order to assure compliance with the regulatory standards.

4. What are the limited exceptions of types of exempt employees who do not have to meet all three of the above requirements?
Physicians, lawyers, and employees whose primary duty is teaching meet the duties and discretion tests but who do not otherwise have to meet the FLSA minimum salary threshold to be considered exempt.

5. What is changing under the FLSA and when?
The FLSA “Minimum Salary Test” is changing. The United States Department of Labor has significantly increased the current minimum salary threshold of $455 per week or $23,660 annual to $913 per week or $47,476 per year. Effective December 1st, 2016, the new minimum salary for which an employee can be designated as exempt from overtime requirements will be $913 per week or $47,476 per year. The final rule provides for future automatic updates to the salary and compensation levels every three years beginning on January 1st, 2020.

6. Why is the Department of Labor revising its overtime regulations now?
On March 13, 2014, President Obama signed a Presidential Memorandum directing the Department of Labor to update and modernize the regulations defining which “white collar” workers are protected by the FLSA’s minimum wage and overtime standards. The salary level test is supposed to help identify salaried workers who are entitled to overtime pay when they work long hours. The current salary level was deemed to be outdated and is no longer effective in helping to separate salaried white collar employees who should get overtime pay for working extra hours from those who should be exempt.

7. Who does this change in the law affect and what changes will it mean?
This change will apply to all employees whose rate of pay is below the $913 per week or $47,476 per year except those employees who are physicians, attorneys, or whose primary duty is teaching. These employees will continue to be exempt from the minimum salary threshold. However, this means that other exempt employees who previously met the minimum salary threshold will be converted by law to non-exempt employee status and will need to track and account for hours worked on an hourly basis. These individuals will now also be eligible for compensatory time off for hours worked in excess of 40 in a workweek.

8. What impact will the change from being paid salaried to hourly (compensatory time off eligible) have on an employee’s benefits?
There will not be an impact on benefits eligibility/status due to a change from exempt to non-exempt under the FLSA.
9. How does this change affect an employee’s part-time status?
As is the case under current regulations, pay for part-time appointments (including those for part-time faculty) will not be prorated under the new regulations. If the part time employee’s salary falls below the new threshold, then the employee would be non-exempt unless working as a physician, an attorney or an employee whose primary duty is teaching. This is even if the full-time salary for that position is above the threshold.
For example, an employee might be hired on a .75FTE appointment to a position that would pay $60,000 for a 1.0 FTE. This person would receive a salary of $45,000. Since $45,000 is below the proposed new minimum salary threshold, the employee is non-exempt unless working as a physician, an attorney, or an employee whose primary duty is teaching.

10. Can employees opt out of this change (or supervisors opt an employee out of this change) if the employee wants to continue to be considered a salaried or exempt employee?
No. This change is being required by the United States Department of Labor and the University is obligated to follow the new requirement as a matter of law.

11. How is tracking work hours different for a non-exempt hourly-paid employee?
Non-exempt hourly-paid employees need to appropriately and accurately record all work time and non-work time (e.g., sick, vacation, etc.) on their time sheets. Non-exempt employees must be compensated for all hours worked including overtime hours at 1.5 times the employee’s regular hourly rate of pay and applicable University compensation related policies such as: call-in, on-call and shift differential, etc., apply.

12. How is overtime calculated?
Overtime is paid at a rate of 1.5 times an employee’s regular hourly rate of pay for the work week for all time worked over 40 hours in a fixed seven day period. The computation of “40 hours worked” does not include paid time out of the workplace (e.g., sick leave, vacation time, etc.)

13. Can a non-exempt hourly-paid employee still work early and late and/or be required to check emails and voicemail from home?
It is important to distinguish between tasks an employee is required to do because a supervisor requests it and tasks an employee may “desire” to do simply because it is the way the employee likes to work. As a rule of thumb, work schedules, including flexible work schedules, or arrangements to work from home on occasion, need to be managed and approved by an employee’s supervisor – just the same as when the employee was exempt. Whether an employee is required to check emails or messages or perform work from home also must be managed and approved by the employee’s supervisor. An employee should not presume that is permissible to do this work outside of the regular work day without prior approval from a supervisor. In addition, work performed outside of work which would result in overtime must be authorized in advance by an employee’s supervisor because all time worked must be accounted for and recorded as “time worked.”
14. Will conversion to non-exempt hourly-paid status result in a pay increase for that employee?
Salary increases will not occur due to the change in the FLSA’s minimum salary threshold unless deemed necessary or feasible by senior leadership.

15. How will the employee’s hourly rate be determined?
In most cases, an employee’s regular hourly rate will be determined by dividing current annual salary by the current annual standard hours. If the standard hours are 40 per week, that is the equivalent of 2080 hours in a year (40 hours/week x 52 weeks). So if an employee’s annual salary is $40,000 and the employee has a standard of 40 hours per week, $40,000 divided by 2080 equals the hourly rate of $19.23. If the employee works in excess of 40 hours in a week, then they will receive overtime pay of 1.5 times their regular hourly rate. The overtime rate in this example would be $28.85 per hour. In lieu of overtime payment, employees may earn compensatory time off at 1.5 times the number of hours of overtime they’ve accrued.

16. As a non-exempt hourly-paid employee, can I still attend professional conferences?
Yes. Professional development activities apply to exempt and non-exempt employees and there is no blanket prohibition on traveling or participation in professional development activities. However, non-exempt hourly-paid employees must account for the hours of their travel time, and for the hours of conference attendance. It is expected that this will be managed at the departmental level to avoid incurring unnecessary travel time. Additional information on this topic is available to supervisors. Please contact Human Resources for more specific detail.
The Reason Code for changing an employee from exempt to non-exempt is CTU.

Please write “Change in FLSA Law” in the comments box.

Indicate the position is currently exempt and the stop date is 11/19/2016.

Indicate the position will be non-exempt the effective date of 11/20/2016.

If the position has a stop date, please indicate it here.

Submit the OHR through your budget review officer and on to University Budget Director, as well as President/Vice President for approval. You are encouraged to submit the form well before the effective date.