

Fair Labor Standards Act (FLSA) Changes Frequently Asked Questions

The Fair Labor Standards Act (FLSA) establishes wage and hour regulations for employers. The Department of Labor (DOL)'s Wage and Hour Division (WHD) administers FLSA regulations and recently revised rules to the executive, administrative and professional exemptions from overtime payment under the Fair Labor Standards Act.

Current FLSA Regulations

Under the current regulations, a position must satisfy three criteria to qualify as exempt from overtime:

1. The incumbent in the position must be paid on a salaried basis (the salary basis test);
2. The salary must be at least \$455/week, or \$23,660 annually (the minimum salary requirement or salary threshold);
3. The position's "primary duties" must be consistent with executive, professional or administrative positions as defined by DOL (the primary duties test).

New FLSA Regulations

The DOL published new regulations on May 18, 2016. There were no changes made to the salary basis test or duties test. However, changes to the minimum salary threshold include:

- **Significant increase to the minimum salary threshold.**
The current threshold a worker must be paid in order to be overtime-exempt is \$23,660. The new rule increases the threshold to \$913/week, or \$47,476 annually.
- **Increase to highly compensated employee threshold.**
The total annual compensation threshold for exempt highly compensated employees increases to \$134,004 from \$100,000.
- **The thresholds increase automatically.**
For the first time ever, the salary threshold will be tied to an automatic escalator-every three years, so it keeps pace with inflation.

When are the changes going to take affect?

The DOL expects regulations to be in effect by December 1, 2016. Efforts are underway to implement new regulations at the University and meet the December 1 compliance deadline.

What is FLSA exempt versus non-exempt status?

Employee eligibility for overtime pay is determined by regulations under the Fair Labor Standards Act (FLSA). Various tests of duties and salary threshold determine whether a position is considered "exempt" or "non-exempt," which refers to whether the job is exempt from overtime pay or not. Employees in non-exempt positions must be paid for overtime worked and are generally required to report time worked more frequently and in more detail than those in exempt jobs.

How many people at OSU are affected?

Over 800 of the university's faculty and staff are directly affected due to salaries that fall below the new wage threshold. They work in more than 200 different job titles. Additionally, some employees with salaries above the threshold who are in one of the impacted job classifications could be affected if that classification moves from exempt to non-exempt.

What about part-time staff?

For the purpose of FLSA, the pro-rated full-time rate (known as the comp rate) needs to be above the \$47,476 salary threshold to meet the exemption status. Therefore, hours worked must be tracked in situations in which the compensation rate falls below the new threshold.

Will staff benefits be grandfathered for positions that are re-classified to non-exempt?

Yes. Rates of vacation accrual are determined by university policy and are not determined by FLSA regulations. Staff members whose positions are reclassified to non-exempt will retain their rate of vacation accrual. They will begin reporting hours on a bi-weekly basis and paid accordingly.

Does exemption status affect pay and benefits at OSU?

Exemption status has an impact on overtime pay and time reporting.

- Overtime for Non-exempt Employees: Non-exempt staff must record all hours worked, including overtime hours, and will receive additional pay for overtime. Therefore, supervisors should approve overtime before extra hours are worked.
- Time Reporting: Non-exempt staff record all hours on a biweekly schedule. Applicable comp time or overtime hours are recorded and paid accordingly.

How and when will affected employees be notified of any changes?

Communications are underway with executives and leaders in affected units and detailed communications will be available in the coming months for individuals directly affected. This will include training on how to report time for any individuals in jobs being reclassified who may not have previously reported time worked.

Do the new FLSA rules affect faculty?

The new rules do not affect instructional faculty (tenure track, clinical track and lecturers). Research faculty and librarians may be affected.

Are post-doctoral researchers affected by the new FLSA rules?

Post docs are affected by the new rules (unless the **primary** duty is teaching).

Are graduate research assistants (GRA) and graduate teaching assistants (GTA) affected?

When instruction is the primary duty, the new rules do not apply will not become eligible for overtime pay. When research assistants are engaged in research in the course of obtaining a degree, they will not become eligible for overtime pay under the new rules.

Do all monthly employees making less than the threshold have to change to hourly?

There are a few provisions for higher education which identify personnel that would be unaffected by the rule, including teachers, doctors and lawyers. Academic administrative personnel who help run the institution and interact with students outside the classroom such as academic counselors, intervention specialists and others with similar responsibilities are subject to a special salary threshold specific to higher education.

Will employees have the option of accruing compensatory time rather than taking pay at the overtime rate?

Yes, state and local government employers can pay their nonexempt employees at least 1 ½ hours of paid compensatory time off for each hour of overtime worked rather than paying a premium rate for the overtime. Keep in mind an agreement or policy needs to be in place for an employee to accrue compensatory time. This can be a one-time agreement provided in departmental regulations, orientation or at time of hire, just as long as the agreement is made known prior to the work being performed and the employee understands all over time will be handled accordingly in the future.

Where can I get more information?

Complete information on the new rule is available from the [Department of Labor's Wage and Hour Division](#). Please contact Human Resources osu-hr@okstate.edu with any additional questions.