

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 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 salaried employees are those employees who must be paid an overtime rate of time-and-one-half for each hour worked in excess of 40 hours per workweek.

3. What does the term “exempt” mean?

Exempt means exempt from earning overtime. Exempt employees are paid for the job, not hours worked.

4. How can I confirm whether I am currently exempt or non-exempt?

Your exempt or non-exempt status is indicated on your EWP. To access your EWP you will log into [Careers](#). [Instructions for viewing your own EWP](#) are available.

Under state policy, all wage positions are non-exempt.

Your salary is reported in **Payline**.

5. What is our workweek?

The workweek established by UMW is from 12:01 a.m. Monday through midnight on Sunday.

6. 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 salaried workers can be considered exempt from the DOL overtime rules.

Generally, the new rules require salaried 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:

- **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 professors** 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.
- **Post-Doc fellows** who are not working towards a degree may or may not be subject to the new rules.
 - If the post-doc’s primary duty is teaching, he or she will qualify for the “teacher” **exemption** and not be subject to the overtime rules.
 - However, if the post doc’s primary duty is research and not teaching, the post-docs are subject to the minimum salary threshold test and the overtime rules. In other words, if the post doc’s salary is not increased to \$47,476 through the grant, he or she will be eligible for overtime.
- **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.

7. How is the minimum salary level changing?

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

8. When does the rule take effect?

The new rule will be effective with the pay period that begins on November 10th, 2016.

9. 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.

10. 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's regulations.

11. 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.

12. 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.

The Office of Human Resources, in consultation with supervisors, determines whether an employee meets the executive, professional, computer or administrative exemption test.

13. How will I know the outcome of the review of my position?

HR will provide written notice to all employees whose positions have been impacted by the new rule.

14. Will my compensation change?

All non-exempt employees will receive overtime for approved hours physically worked beyond 40 hours in the workweek. Salary adjustments may be required in some cases to ensure compliance with the new rule.

15. 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.

16. 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 November 10, 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.

17. I'm paid a salary and my job title is manager. Am I exempt?

Job titles 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's regulations.

18. When is overtime earned for non-exempt employees?

Under the FLSA, hours worked over 40 in a workweek are considered overtime. Any non-exempt employee who works beyond 40 hours in a workweek must be compensated at a rate of time-and-one-half.

19. May a non-exempt employee volunteer to stay late to complete work, complete work from home, or work on weekends and not be compensated for any hours worked beyond 40 in a workweek?

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.

20. Will I have to clock in and out using MyTime?

To ensure proper pay for hours worked, all non-exempt employees will be required to clock in when they arrive to work and clock out of MyTime at the end of the work day. New non-exempt employees will be notified and provided times to attend MyTime training.

21. Q. If I'm an Administrative/Professional Faculty member and my position changes to non-exempt will I be required to clock in and out of MyTime each day?

To ensure proper pay for hours worked, all non-exempt employees will be required to clock in when they arrive to work and clock out of MyTime at the end of the work day. New non-exempt employees will be notified and provided times to attend MyTime training.

22. Does overtime have to be authorized by my supervisor prior to me working over 40 hours in a workweek?

Yes. Overtime must be pre-approved by your supervisor. Failure to request approval is a violation of policy and may result in disciplinary action.

23. 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. However, employees will be subject to disciplinary action if they work beyond 40 hours in a workweek without prior approval.

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

24. Do exempt employees accrue compensatory leave (comp time)?

Some exempt employees may be eligible to earn compensatory leave on an hour-for-hour basis with supervisor approval.

Exempt employees must have proper authorization from the supervisor prior to working hours that will result in earning compensatory leave. Compensatory leave expires twelve months from the date it is earned. Any compensatory leave not used within the twelve month period will be forfeited.

25. Can non-exempt employees accrue compensatory leave (comp time)?

A non-exempt employee is eligible to earn compensatory leave only when the hours worked in a workweek are 40 hours or less. If a non-exempt employee works more than 40 hours, overtime will be earned.

Example:

A non-exempt employee who works ten hours on Monday, calls out sick on Tuesday, and works eight hours on Wednesday, Thursday, and Friday will receive two hours of compensatory leave for the extra hours worked on Monday, rather than overtime, because the employee did not actually work over 40 hours during the workweek (used sick leave on Tuesday).

26. 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.

27. How can I determine if staff development/training and committees are considered compensable activities if they occur outside of the employee's normal work hours?

In order for training, or a meeting, to not be considered compensable work time, all of the following four (4) criteria must be met:

1. Attendance must occur outside the employee's work hours;
2. Attendance must be voluntary;
3. The employee must do no productive work while attending (productive to the employer); and
4. The training, or meeting, should not be directly related to the employee's job.

If any of the above conditions are not met, the time is treated as hours worked.

28. 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.

29. 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.

30. 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. Visit the DOL Travel Worksheet for more information: <https://www.dol.gov/whd/regs/compliance/whdfs22.pdf>.

31. Does the new rule change my benefits?

No, the new rule does not impact state benefits.

32. Who can I contact with additional questions about FLSA compliance?

Please contact the Office of Human Resources at 540-654-1214.