

Fair Labor Standards Act Questions and Answers (FAQ's)

As of May 18, 2016, the US Department of Labor revised the Fair Labor Standards Act. The revisions will become effective December 1, 2016 nationwide. The UCF's Department of Human Resources is in the process of updating our policies and pay practices to implement the new regulations.

GENERAL INFORMATION:

What is the Fair Labor Standards Act (FLSA)?

The **Fair Labor Standards Act** is a Federal wage and hour law administered by the U.S. Department of Labor (DOL) since 1938. The law provides employees with wage and hour protections. It impacts employees in the private and public workforce by establishing minimum wage, overtime pay, and other wage and hour regulations.

Under the FLSA, employees are classified as **exempt** or **non-exempt**. Non-exempt employees are paid overtime for time worked in excess of 40 hours in any work week. Exempt employees are not paid overtime.

Current Rule

Under the FLSA guidelines, to qualify for an exempt status, the requirements of three tests must be met:

- **Salary Basis Test:**

An employee must receive a predetermined, fixed salary that is not subject to reduction due to variations in quality or quantity of work performed;

- **Minimum Salary Test:**

An employee must be paid a salary minimum as defined by the Department of Labor that is currently \$23,660 per year (\$455 per week); and

- **Duties Test:**

The primary job duties performed must involve the kind of work associated with exempt executive, administrative, professional or highly compensated employees as specifically defined by the FLSA. These exemptions are sometimes referred to collectively as the "white collar" exemptions because the work is performed in an office or other administrative setting.

What will change?

The US Department of Labor has issued a final ruling regarding the **Minimum Salary Test**. The minimum salary for an employee designated as exempt will change from \$23,660 per year (\$455 per week) to \$47,476 per year (\$913 per week). An employee who is paid less than \$47,476 per year will be entitled to overtime pay.

Also, the rule will raise the compensation exemption level for highly compensated employees from its previous amount of \$100,000 to \$134,004 annually.

What will not change?

The Department of Labor did not make changes to the "Duties Test", (i.e., what qualifies for an exempt Executive, Administrative, Professional, or highly compensated position) nor to the "Salary Basis Test" (i.e., who qualifies to receive a salary instead of hourly pay).

Why is the Department of Labor revising the overtime regulations of the Fair Labor Standard Act (FLSA)?

On March 13, 2014, President Obama signed a Presidential Memorandum directing the Department to update and modernize the regulations defining which white collar workers are protected by the FLSA's minimum wage and overtime standards.

The current salary level was established in 2004 and no longer helps to separate salaried employees who should get overtime pay for working extra hours from those who should be exempt.

Who will be affected by the Final Rule?

Many employees who are currently exempt (A&P and USPS exempt) who do not meet the salary threshold of \$47,476 may have the ability to earn overtime. Non-academic employees, employed by the higher education institutions, will be covered by the new rule.

Who will not be affected by the Final Rule?

Hourly workers (OPS, Student Assistants, etc.) are not impacted by the new rule. Generally, hourly workers are entitled to overtime regardless of how much they make if they work more than 40 hours in a week, therefore nothing changes. Blue collar employees and white collar employees who do not meet the "duties test" will continue to receive overtime pay.

Some pay provisions will not be affected, including:

- (a) Outside sales
There is no change to its provision that minimum pay is not required.
- (b) Computer professionals
There is no change to computer professionals being paid the hourly rate of \$27.63 per hour or more.
- (c) Licensed professionals
There is no change for professional employees (such as lawyers and doctors), who are not required to be paid a salary or minimum pay. (They may work on a fee basis.)
- (d) Certain retail employees. There is no change for retail employees paid on a commission under the Section 7(i) exemption.
- (e) Police, Fire Fighters, Paramedics, hazardous materials workers & other first responders and similar employees, regardless of rank or pay level.

How will the law affect employees who work less than full-time/ part-time?

A part-time or less than full-time employee will typically be non-exempt if the pay falls below the new minimum salary requirement \$47,476 per year (\$913 per week).

If I'm paid a salary, will I be exempt from overtime pay?

The fact that an employee is paid on a salary basis is not alone sufficient to exempt that employee from the FLSA's minimum wage and overtime requirements. A white collar employee's specific job duties and salary must meet all of the applicable requirements provided in the Department of Labor's regulations. Also, the "duties test" must be met even if the employee's salary exceeds the standard salary level.

If my job title is Assistant Director, Manager or Supervisor, will I be exempt from overtime pay?

A job title alone does not determine FLSA status. For the 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. Accordingly, the duties test must be met even if the employee's salary exceeds the standard salary level.

How will the new law affect higher education institutions?

Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing. Teachers include professors, adjunct instructors and teachers of skilled and semi-skilled trades and occupations. This applies equally to adjuncts or graduate teaching assistants based on their job duties, not just to those on the tenure track.

(a) **Adjunct Instructors**

Adjunct instructors may also be exempt if they are employed as teachers in an educational establishment, where their primary duty is teaching, tutoring, instructing or lecturing. Like fulltime faculty members, adjunct or part-time instructors are not subject to the salary level or salary basis tests provided they have the primary duty of teaching.

(b) **Graduate Teaching Assistants**

Graduate teaching assistants who perform teaching as their primary duty remain exempt under the Final Rule.

(c) **Research Assistants**

Graduate and undergraduate students who are engaged in research under a faculty member's supervision in the course of obtaining a degree are in an educational relationship with the school and are therefore not in an employment relationship with the school or a research grant. These students are not entitled to overtime pay even if they work more than 40 hours per week and are paid less than the new salary level. This is applicable to students who are receiving a stipend for performing the research.

(d) **Postdoctoral Fellows**

Postdoctoral Fellows who perform research but not instruction are subject to the salary threshold for exemption from overtime; therefore, the new rule applies.

(e) **Resident Assistants**

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 and not subject to the FLSA's wage and hour requirements.

(f) **Students in an employment relationship**

An employment relationship will generally exist with regard to students whose duties are not part of an overall education program and who receive some compensation. As was already the case, these students are entitled to minimum wage and overtime compensation whether or not they earn above the new salary level.

How will the new rule affect academic administrative personnel?

Exempt academic administrative employees must have the primary duty of performing administrative functions directly related to academic instruction or training. Therefore, department heads, academic counselors and advisors, and other employees with similar responsibilities are not entitled to overtime compensation. For example, academic counselors who perform work such as administering school testing programs, assisting students with academic problems, and advising students concerning degree requirements would satisfy the duties test for this exemption.

Employees who work in higher education but whose work does not relate to the educational field are not performing academic administrative work. For example, if an employee's work relates to general business operations, building management and maintenance, human resources, or the health of students and staff, the employee may meet the requirements for a different white collar exemption.

To be exempt, academic administrative employees must either be paid on a salary or fee basis of not less than the salary level, **or** be paid on a salary basis at least equal to the entrance salary for teachers in the same educational establishment.

To the extent that this entrance salary is below the salary level established in the Final Rule, academic administrative employees will be exempt if their salary equals or exceeds the establishment's entrance salary for teachers.

UNIVERSITY OF CENTRAL FLORIDA Specific FAQ's

Will the University of Central Florida continue to administer Overtime and Special Compensatory time?

Effective November 18, 2016, Compensatory Overtime and Special Compensatory leave are no longer options. UCF will pay overtime for hours worked over 40 in a week.

Employees will have until June 30, 2018 to use their banked accrued time. Otherwise, the remaining balance will be paid as soon as administratively possible (after July 1, 2018).

In the event that a holiday, personal holiday, or Administrative leave results in an employee exceeding 40 hours, the additional hours are not counted toward overtime because the hours were not actually "worked". The excess hours will be paid at straight time.

*Employees who fall under the PBA (Police Benevolent Association) union are excluded from this policy.

Will Annual Leave accruals change?

Effective November 18, 2016, all A&P and USPS exempt positions that are changing to non-exempt:

- Will accrue annual leave at a rate of 6.0 hours per pay period.
- Will be eligible for a Personal Holiday.
- Will be eligible for 2 days of Bereavement leave.
- Will keep the time they have already accrued.

News Hires - A&P:

A&P non-exempt new hires (will be identified as Professional Non-Exempt employees) will accrue leave at a rate of 6.0 hours.

New Hires - USPS:

USPS non-exempt new hires will accrue leave at a rate of 4.0 with accrual rate increases based on the current non-exempt USPS leave accrual schedule.

How does the rule change affect employees who work less than full-time?

The salary threshold is not pro-rated for part-time work. For example, an employee with a 75% appointment and a salary of \$45,000 would be non-exempt even though his/her salary would be \$60,000 paid full time at the same rate.

Part-time, non-exempt employees who work in excess of their regular schedule will be compensated for extra hours worked at their regular rate until exceeding the 40 hour threshold at which time the overtime rate would be applied.

How often will the Department update the standard salary level?

The Department will update the standard salary requirements every three years, with the first update taking effect on January 1, 2020.

For additional information regarding the current Fair Labor Standard Act, go to:

https://www.dol.gov/whd/overtime/fs17a_overview.pdf

For additional information regarding the revised Fair Labor Standard Act, go to:

<https://www.dol.gov/whd/overtime/final2016/index.htm>

<https://www.dol.gov/whd/overtime/final2016/highered-guidance.pdf>

For a video presentation regarding the new revisions, go to:

<https://www.dol.gov/featured/overtime>