

FAQs for Managers about the New Overtime Rule

- **What are the new regulations to the Fair Labor Standards Act (FLSA)?**

The new regulations will increase the minimum salary requirement for employees to be considered exempt from \$23,660 a year (\$455 per week) to \$47,476 a year (\$913 per week). This means anyone making below \$47,476 a year will be considered non-exempt and guaranteed overtime pay.

The salary threshold for Highly Compensated Employees will increase from \$100,000 per year to \$134,004 per year, but these employees still must satisfy a minimal duties test.

- **When does the new ruling take effect?**

The new rules are to be made effective by December 1, 2016.

- **Are there any employees who are not subject to the new salary threshold?**

Yes, doctors, teachers and attorneys are not subject to the new salary threshold.

- **Are there any exemptions for institutions of higher education?**

Yes, administrative personnel that help run higher education institutions and interact with students outside the classroom, such as department heads, academic counselors and advisors, intervention specialists and others with similar responsibilities are subject to a special salary threshold that does not apply to white-collar employees outside of higher education. Instead, they are not eligible for overtime if they are paid at least as much as the entrance salary for teachers at their institution. For the university, the salary threshold will be **\$41,300 per year** or **\$795 per week**.

- **What are some examples of non-academic administrative personnel?**

Employees who work in higher education but whose work does not relate to the educational field are not performing academic administrative duties. If the employee's work relates to general business operations, building management and maintenance, human resources or the health of the students and staff, the employee may meet the requirements for a different exemption. Examples of non-academic administrative personnel would be admission counselors, recruiters, administrative assistants, etc.

- **What is overtime?**

All hours worked in excess of 40 hours in one workweek. For Law Enforcement, the work period is a 28-day work period and overtime applies to all hours worked in excess of 171 in one work period.



Overtime may be in the form of wages or compensatory time. An employee who is eligible for overtime will be compensated at one and one-half times his/her regular rate of pay or granted compensatory time at a rate of one and one-half hours for each hour of overtime worked.

- **What is the regular rate of pay for an employee?**

The regular rate of pay for an employee includes but is not limited to base pay, salary supplements, shift differentials and on-call pay.

- **How does this affect me as a supervisor or manager?**

If an employee is making less than \$47,476 a year and eligible for overtime he/she will be required to record all hours worked in the university's timekeeping system. This may mean more employees in your area will need to input hours worked and send to you for approval.

- **What are my responsibilities as a supervisor or manager based on this new law?**

As a supervisor or manager of non-exempt employees, you are responsible for seeing that employees accurately record the time they work and receive overtime when it is due.

- **How do I ensure that employees are recording all time that they worked?**

Recording all hours worked in the university's timekeeping system may be new to employees. Setting good communication and expectations work hand-in-hand when it comes to overtime. Supervisors and managers will need to be attentive to employees and the hours they work to ensure compliance. For example, stopping at the normal quitting time, but spending another 15 minutes putting things away, or sending a few last minute emails is still considered working.

It is important for employees to understand the following:

- Employees must receive approval to work overtime.
- Employees must accurately record all overtime in the university's timekeeping system.
- Employees cannot work overtime out of the "goodness of their hearts".

- **What happens if an employee works overtime without prior approval from their supervisor or manager?**

Non-exempt employees are entitled to overtime pay or compensatory time whether the overtime was approved or not. The department is liable for any overtime. If an employee continues to work overtime without receiving approval, then the employee can be disciplined according to [University Policy HR 1.39](#). Please contact the Employee Relations office at 803-777-7550 to engage in the progressive discipline process.



- **Will this law affect employees who have dual or multiple positions?**

Yes, employees who have dual or multiple positions will be impacted as well as the department that is liable for overtime in these positions. According to the Fair Labor Standards Act, an employee can only have one FLSA status of either exempt or non-exempt. If the primary position is non-exempt, then any other positions held by the same employee will also be considered non-exempt.

- **Are there any options in reducing overtime costs for my department?**

Yes, depending on the services offered by your department, you may wish to stagger the time when employees start or change their schedules during busier times. For example, instead of having all employees work from 8:30 a.m. – 5:00 p.m., you may have some work from 8:00 a.m. – 4:30 p.m. and others from 9:00 a.m. – 5:30 p.m. If you have an event that is later in the evening, you may want employees to start at a later time than their normal start time.

- **What if a non-exempt employee must travel during the workday? Is travel time counted towards hours worked?**

All authorized travel that takes place within the normal work hours on any day of the week, including Saturday and Sunday, is counted as hours worked.

Normal travel from home to the regular place of employment and vice versa is not considered work hours.

Regular meal period time is not considered hours worked.

- **How do I pay non-exempt employees for travel time when they are required to stay overnight in another city?**

FLSA regulations are clear on this issue. Travel time associated with overnight stays generally is considered compensable work time when the business travel cuts across a non-exempt employee's normal work hours, regardless of what day of the week the travel takes place.

The regulations also provides that when an employee's "tour of duty" is 24 hours or longer, up to eight hours of sleeping time during the shift can be excluded from overtime compensation under the following conditions:

- There is an express agreement that excludes sleeping time.
- Adequate sleeping facilities for an uninterrupted night's sleep are provided.
- At least five hours of sleep are possible during the scheduled sleeping periods.
- Interruptions to perform duties are considered time worked.



- **We have non-exempt employees that live on the premises. What is considered work time and what is compensable?**

Employees who are required to live on the employer's premises during their off-shift hours, but who are free during their off duty time to sleep, eat, watch television, exercise, play or engage in other personal endeavors is not considered compensable work time.

With regards to sleep time, up to eight hours of sleeping time can be excluded from overtime compensation under the following conditions if there is an express agreement that excludes sleeping time, adequate sleeping facilities for an uninterrupted night's sleep are provided, at least five hours of sleep are possible during the scheduled sleeping periods, and interruptions to perform duties are considered time worked. If the employee cannot get at least 5 hours of uninterrupted sleep, then the entire time must be counted as hours worked.

- **Does room and board count toward the \$47,476 threshold?**

No, room and board do not count toward the \$47,476 threshold.

- **We have a part-time exempt employee and their salaries are prorated based upon the number of agreed upon hours. The prorated salary is below the \$47,476 threshold. Will this person now be considered non-exempt?**

To meet the exemption status under the white collar exemption regulations, the employee must be paid at least \$913 per week and meet the duties test. It doesn't matter whether the employee is full-time or part-time, the standard salary level is \$913 per week.

- **What about employees who work a 10.5 month schedule but paid over 12 months?**

The salary threshold may be prorated for partial year employees whose salary is paid throughout the year. If a 10.5 month employee receives a paycheck over 12 months, then the amount of the check may be prorated over the actual 10.5 month time frame. For example if a 10.5 month employee makes \$45,000 for 10.5 months but paid over 12 months, the weekly 10.5 amount is \$1000 per week (\$45,000/45 weeks) even though the 12 month weekly salary is \$865.38. It is imperative that the employee performs no work outside of their 10.5 month time frame.

- **Can the employee's salary be increased to \$47,476 to meet the salary threshold?**

If the employee's salary is between \$45,000 and \$47,475, then the employee's salary may be increased to \$47,476 as long as the duties test is met. This would be called a special pay increase and may be completed on PBP 4/5 action form.



- **Can the employee's salary be increased to \$41,300 to meet the salary threshold for the academic administrative personnel?**

If the employee's salary is between \$39,150 and \$41,299, then the employee's salary may be increased to \$41,300 as long as the duties test is met. This would be called a special pay increase and may be completed on PBP 4/5 action form.

