

Fair Labor Standards Act

The Advanced Training

August 4, 2016



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Background

- The Fair Labor Standards Act (FLSA) is the federal law that governs
 - Overtime
 - Minimum Wage
 - Recordkeeping
 - Child Labor
- In early 2014, President Obama required the Department of Labor to update the FLSA regulations.
- New regulations were finalized on May 18, 2016 and are to be effective by **December 1, 2016**.



Current Regulations

verses

New Regulations



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	Current Regulations (2004 until December 1, 2016)	Final Rule (Effective December 1, 2016)
Salary Level	\$455 weekly	\$913 weekly
		40th percentile of full-time salaried workers in the lowest-wage Census region (currently the South)
HCE Total Annual Compensation Level	\$100,000 annually	\$134,004
		90th percentile of full-time salaried workers nationally
Automatic Adjusting	None	Every 3 years, maintaining the standard salary level at the 40th percentile of full-time salaried workers in the lowest-wage Census region, & the HCE total annual compensation level at the 90th percentile of full-time salaried workers nationally.
Bonuses	No provision to count nondiscretionary bonuses & commissions toward the standard salary level	Up to 10% of standard salary level can come from non-discretionary bonuses, incentive payments & commissions, paid at least quarterly.
Standard Duties Test	Test for exempt duties.	No changes.



USC Implementation Date:

October 16, 2016



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FLSA Provisions that Limit Impact for Higher Ed

Teachers are not subject to the new salary level requirement

- Exempt if **primary** duty is teaching, tutoring, instructing or lecturing
- Ex. - Professors, Adjunct Instructors, Clinical Professors

****Practicing physicians and attorneys are not subject to the salary basis test.****



FLSA Provisions that Limit Impact for Higher Ed

Athletic Coaches and Assistant Coaches

- May be exempt if **primary** duty is **teaching**, which may include instructing athletes in how to perform their sport
- If duties include primarily recruiting athletes or doing manual labor, they are not considered teachers.



FLSA Provisions that Limit Impact for Higher Ed

Academic Administrative Personnel

- Administrative personnel that help run higher ed institutions and interact with students outside the classroom, i.e. Department Heads, Academic Counselors & Advisors, Intervention Specialists & others with similar responsibilities are subject to a special salary threshold. They are not entitled to overtime if they are paid at least as much as the entrance salary for teachers at their institution.



Higher Education Workers Impacted

Postdoctoral Researchers

- Subject to the new salary threshold of \$47,476 annually if engage ***only*** in research activities and ***primary job is not teaching***.
- If primary job is teaching, they will ***not*** be eligible for overtime.

Non-Academic Administrative Employees

- For those who do not meet the provision for academic administrative employees (i.e. Admission Counselors & Recruiters) they will be eligible for overtime if do not meet the new salary threshold of \$47,476 annually. If meet the new salary, they ***must*** still pass the duties test.



Impact on the Workplace

- All employees determined to be non-exempt will be required to report their work time in ITAMS.
- All hours worked over 40 in a work week must be compensated (either comp time or paid overtime).
- Analyze each situation to determine the best approach.
 - Adjust the salary for those close to the threshold (if applicable)
 - Limit the hours employees can work
 - Adjust work schedules



Impact on the Workplace

(cont.)

- Some employees may perceive a loss of status and flexibility.
- Newly affected employees may have a difficult time adjusting to the requirement to complete tasks within a normal workday.
- Loss of productivity
- Answering incidental emails or phones calls after hours could result in overtime.



Possible Scenarios



Scenario 1

Non-Exempt Nathan normally works at 1600 Hampton in Columbia but on Thursday must work in Greenville for a special one day assignment. Do we need to pay Non-Exempt Nathan for some or all of his travel time?



THE ANSWER

If Non-Exempt Nathan regularly works at a fixed location in one city and has to work a special one day assignment in another city and returns home the same day, the time spent traveling to and from the other city is work time, except the employer may deduct that time the employee would normally spend commuting to the regular work site.



Scenario 2

Non-Exempt Nancy has a work related conference/meeting held at an offsite location. The meeting starts at 11am and concludes the next day after lunch at 1pm. The travel time to the meeting is 2 hours. What is considered work time?



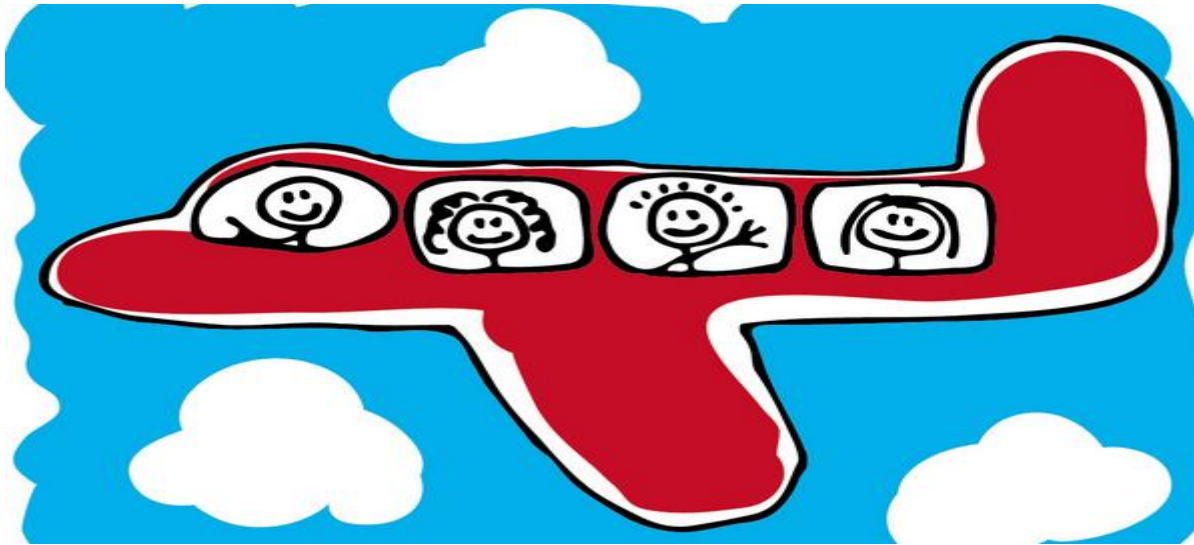


Non-Exempt Nancy should report to their office at their normal start time, leave to attend the meeting at 9am and return to their office at 3pm the next day. If Non-Exempt Nancy does not report to work before or after the conference meeting then leave time would need to be reported. Travel time is counted as work time as well as time in attendance at the conference/meeting and working lunches (excluding mingling and optional entertainment provided that occurs outside of normal work hours).



Scenario 3

On Friday, Non-Exempt Natalie has to take an overnight trip out of town for business. What is work time?



THE ANSWER

When Non-Exempt Natalie is traveling during her normal work hours, she gets paid. Natalie will also get paid during non-work hours, except when Natalie is a **passenger** on an airplane, train, boat, or bus. However, if Natalie is performing work while a passenger (i.e. checking emails, preparing for a meeting) then that would be considered work time.



Scenario 4

Non-Exempt Natalie decided she was going to drive on Friday to go to her conference. Her boss told her she would have to leave at the end of the business day (5pm). What is compensated?





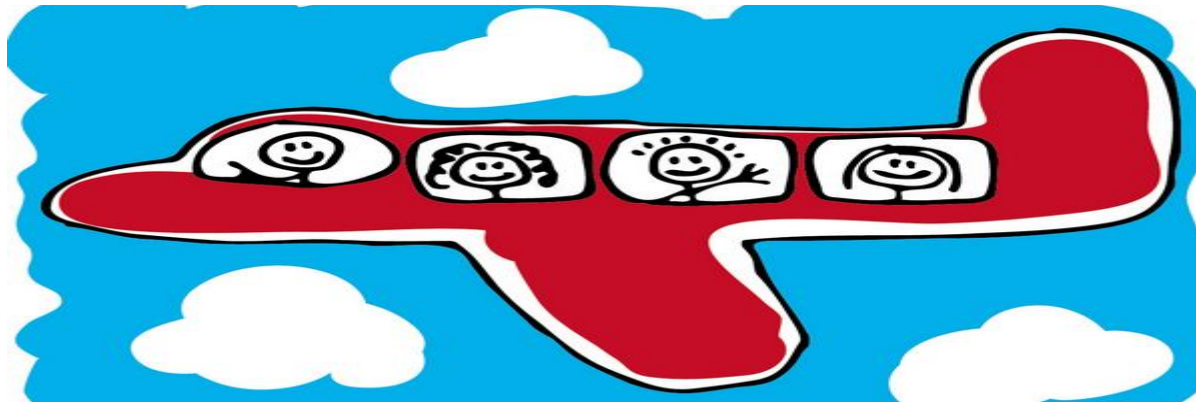
Since Natalie is driving herself to the conference after work on Friday, this is considered work time.



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Scenario 5

While Non-Exempt Natalie left on Friday to go out of town on business, Non-Exempt Ned had to leave on Sunday. Non-Exempt Ned normally works Monday thru Friday from 8am-5pm. What is compensated?



THE ANSWER

Any travel time that occurs between 8 a.m. and 5 p.m., even though Non-Exempt Ned is traveling on Sunday is considered work time.

There is no obligation under federal law to pay for travel time before 8 a.m. or after 5 p.m. So, if Non-Exempt Ned doesn't start his travel until 6 p.m. on Sunday, no compensation is required





However, if Non-Exempt Ned is reviewing notes on the plane or preparing for his meeting, then it is compensable.

If Non-Exempt Ned flies from 10 a.m. to 4 p.m., all this time is compensable as it corresponds to his normal scheduled work time.



Scenario 6

Non-Exempt Nora resides on our premises. Do we have to pay her while she sleeps?



THE ANSWER

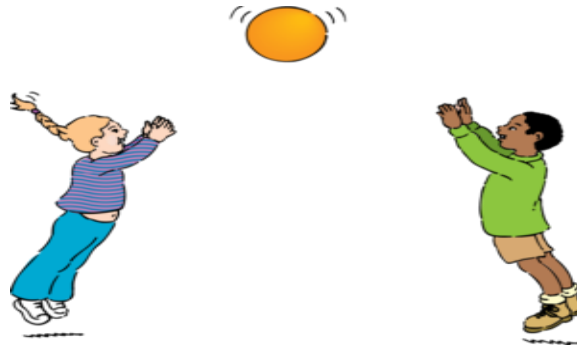
No, you don't have to count the time Non-Exempt Nora sleeps as work time as long as the following conditions are met:

- 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.



Scenario 7

What about the other times Non-Exempt Nora is living on the premises but is not considered working? Do we have to pay for that time as worked?



THE ANSWER

If Non-Exempt Nora is on her off duty time (complete freedom from all duties) and free to eat, watch television, exercise, play or engage in other personal endeavors, then that time is not considered work time.



Scenario 8

If Non-Exempt Nancy checks her emails and responds to email after 5pm, is this considered work time?





Yes, if Non-Exempt Nancy is checking and/or responding to emails after 5pm, then this is considered work time.

Also, if the employee is checking email, answering phone calls during their lunch break, this is considered work time as well.



Scenario 9

What happens if Non-Exempt Nancy worked overtime but didn't receive approval from her Manager/Supervisor?





Non-Exempt Nancy is entitled to payment or compensatory time for any hours worked whether overtime was approved or not. The Manager/Supervisor will need to discuss and communicate with Non-Exempt Nancy about approval for overtime and if it continues, seek guidance from Employee Relations at 777-7550.



Scenario 10

Ned is currently exempt in his primary job and also has dual employment. However, Ned will become Non-Exempt Ned based on the FLSA new rules. What happens to his dual employment?



THE ANSWER

Non-Exempt Ned will now become non-exempt in his dual position and is entitled to overtime if he works over 40 hours in a work week. Both positions count towards the 40 hours in one work week.



Scenario 11

Non-Exempt Nadia has a recruiting fair in the morning and another in the evening. Is the whole day counted as compensable time?



THE ANSWER

It depends. If Non-Exempt Nadia is working throughout the entire day and then traveling to the second fair, it is compensable time. If between the two recruiting fairs, she has down time for at least an hour to run personal errands, this time would not be compensable.





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