Fair Labor Standards Act (FLSA)
Employee Frequently Asked Questions

About the FLSA

Q1. What is the Fair Labor Standards Act (FLSA)?
The Fair Labor Standards Act is a federal law that is enforced by the US Department of Labor (DOL). The FLSA defines the federal minimum wage, employee time recordkeeping requirements, and overtime pay requirements for eligible employees. The institution administers compensation in compliance with the FLSA.

Q2. Why is the Fair Labor Standards Act (FLSA) important to the institution?
The institution is subject to comply with the Fair Labor Standards Act (FLSA). It is our responsibility as an employer to make a good faith effort to ensure that our employees are classified appropriately and receiving the wages they earn. In addition, the institution has a fiduciary responsibility to mitigate risks in the form of financial penalty for non-compliance with the federal law.

Q3. What happens if the institution is not in compliance with the requirements of the FLSA?
All employers must make good faith efforts to be in compliance. Employers who willfully fail to comply may be subject to substantial financial penalties.

Q4. What do the terms “exempt” and “non-exempt” mean?
This is a legal designation based on the requirements established by the Department of Labor. Each job classification is designated as exempt or non-exempt from the provisions of overtime under the FLSA. All employees are considered non-exempt employees unless they satisfy the three-part test established by the Department of Labor for exemption.

- Exempt employees satisfy the three-part test established by the Department of Labor in order to be considered ‘exempt’ from earning overtime compensation. Exempt employees are not eligible for overtime compensation under the provisions of FLSA.
- Non-exempt employees are eligible for overtime compensation for any hours actually worked over forty (40) in a given workweek. Non-exempt employees must keep an accurate record of the number of daily hours worked, including the number of overtime hours, if any.

Q5. What are the criteria used to determine if a job classification can be designated as exempt?
The FLSA designation is determined by applying the following three tests from the Department of Labor. All three tests must be satisfied in order to be considered exempt:

- Salary Basis Test: employee receives a fixed salary each week that is not subject to reduction because of variations in the quality or quantity of work.
- Minimum Salary Test: employee receives a minimum salary of $47,476 ($913 per week) effective December 1, 2016.
- Job Duties Test: employee performs work that primarily involves certain executive, administrative, professional, or computer duties.
Q6. If I am a non-exempt employee, does that mean that I am paid hourly?
No. Non-exempt employees may be paid on a salary basis and receive overtime compensation for their hours worked beyond forty (40) in a workweek.

About the FLSA changes

Q7. What is changing under the FLSA and when?
Effective December 1, 2016, the Department of Labor is changing the minimum salary required to be considered exempt from overtime. The minimum salary will increase from $23,660 per year ($455 per week) to $47,476 per year ($913 per week).

Q8. Will employees who earn less than the new minimum salary threshold be changed to non-exempt?
Effective December 1, 2016, all employees who do not meet the new minimum salary threshold of $47,476 ($913 per week) will change to non-exempt.

Q9. If an employee earns more than the new minimum salary threshold, will they automatically be considered exempt?
No, all three parts of the FLSA exemption tests must be satisfied in order for the job classification to be considered exempt from the provisions of overtime. The Job Duties and Salary Basis tests must also be satisfied. In addition, each job classification is assigned an FLSA designation. If a job classification does not satisfy the three-part test, then everyone in the entire job classification is considered non-exempt.

Q10. How does this rule impact employees with part-time schedules?
Effective December 1, 2016 if an employee earns less than $913 in a workweek, including those on a part-time schedule, the employee will be non-exempt, regardless of whether the Salary Basis test and Job Duties test are satisfied. All three (3) tests must be satisfied to qualify for the FLSA exemption.

Q11. Will there be a change in job title for employees transitioning to non-exempt?
Job titles will not change upon transition to non-exempt. However, if it is determined that the non-exempt employee’s particular work structure or job duties do not align with their current job title, a change may be necessary.

Q12. Will there be any changes to benefits for employees transitioning to non-exempt?
There will be no changes to any benefit elections or leave accruals for employees transitioning to non-exempt. If you are paid overtime, payment is subject to normal retirement contributions and applicable taxes.

Q13. Will there be any changes to the regular paycheck schedule for employees transitioning to non-exempt?
There will be no changes to the regular paycheck schedule; however, any earned overtime pay will be paid in a separate check on a semi-monthly basis.
Q14. If my job is non-exempt, does that mean I can’t work as many hours as I want to get my work done?
If you are in a non-exempt job, your schedule will be set by your supervisor according to the agreed upon hours that you work in a week. **If you need more than forty (40) hours to complete a job or task, you must get approval from your supervisor in advance to work additional hours.**

Q15. If my job is transitioned to non-exempt, what time recording procedures should I follow?
Check with your supervisor or department time keeper to determine how you will need to track your time effective December 1, 2016. **As a non-exempt employee you are required to keep an accurate record of the number of daily hours worked, including the number of overtime hours, if any.**

Q16. What training is available for non-exempt employees?
Training will be available starting in November 2016 via the Knowledge Center. **All employees impacted by the new FLSA changes on December 1st will be required to complete the online training.**

**About Overtime**

Q17. What is the institution’s workweek?
The institution’s official workweek is defined as Monday at 12:00 a.m. through Sunday at 11:59 p.m. per **HOP Policy 4.6.5.**

Q18. How much will I be paid for working overtime?
The law requires the overtime pay rate to be 1.5 times the employee’s regular rate of pay. For example, a non-exempt employee who earns $10 per hour and who works 4 hours of overtime will earn 4 hours of overtime pay compensated at $15 per hour (1.5 times $10 per hour = $15 per hour). However, because our institution is a state government employer, our default method of compensating for overtime is providing FLSA compensatory time.

Q19. What is FLSA compensatory time (‘comp time’)?
Compensatory time, commonly referred to as ‘comp time’, is the institution’s default for overtime compensation under the provisions of the FLSA. Any hours actually worked in excess of forty (40) in a workweek will automatically be designated as FLSA comp time. FLSA compensatory time off must be provided at a rate of 1.5 hours of compensatory time for each hour of overtime actually worked.

For example, if a non-exempt employee works 44 hours in a single workweek (4 hours of overtime), he or she would be entitled to 6 hours (1.5 times 4 hours = 6 hours) of FLSA compensatory time off. When used, the FLSA comp time is paid at the regular rate of pay. FLSA comp time may be carried over from one year to the next, provided the accrual does not exceed the maximum limit of 240 hours.

A supervisor may request to pay overtime instead of comp time. If so, the supervisor will need to provide justification and follow payroll and departmental procedures to have overtime payments approved in lieu of comp time.
Q20. Is it okay for a non-exempt employee to volunteer to work additional hours without compensation?
No, non-exempt employees may not volunteer to work without compensation. By law, non-exempt employees must be compensated for all hours actually worked. Overtime must be compensated if the total hours worked are greater than forty (40) hours in a workweek. Employees must get supervisory approval in advance to work additional hours. Employees who work additional hours without prior approval are subject to disciplinary action.

Q21. If a non-exempt employee works overtime without prior approval, are they still eligible for overtime?
Non-exempt employees must be compensated for all hours actually worked. An employee’s supervisor should set clear expectations about workload, work schedule and overtime. If a non-exempt employee needs additional time to complete work during the workweek, he or she should receive supervisory approval in advance. Should the non-exempt employee have a pattern of working extra hours without approval, the actions may be addressed through the disciplinary process.

Q22. As a non-exempt employee, may I respond to work emails, texts, or phone calls, or do any other work outside of my normal work schedule?
No. As a non-exempt employee, you may not work (which includes responding to, or sending work-related emails or text messages or making work-related phone calls) at home or elsewhere outside of your regularly scheduled work hours without the prior approval of your supervisor. If you obtain the prior approval of your supervisor to work outside of your regularly scheduled work hours, that time will count toward your forty (40)-hour workweek.

Q23. Are breaks and lunch periods required and considered paid time?
Rest periods of short duration, usually 15 minutes or less, are not required by the FLSA or the state of Texas, but departments do have the discretion to allow employees to take short rest periods. Rest periods count as time worked under the FLSA, and as such, are considered paid time.

On the other hand, lunch periods of at least 30 minutes are not considered work time and employees are not compensated for taking a lunch period. Employees must be completely relieved of all work duties for at least 30 minutes during the lunch period.