The **FLSA (Fair Labor and Standards Act) Overtime Rule 2016**

The **FLSA** is a federal law that establishes minimum wage, overtime pay, recordkeeping and youth employment standards for employees in the private sector and in Federal, State and local governments. The FLSA is not new – it was first approved in 1938.

- FLSA provisions are administered by the U.S. Department of Labor Wage and Hour Division, which announced a revised rule regarding overtime compensation on May 18, 2016. The rule applies to all businesses and organizations, including universities, in the United States.
- The revised rule increases the overtime exemption salary threshold from $23,660 to $47,476, and is associated to job ranges, not individual salaries. Individuals in jobs with salary ranges starting below the new minimum will be impacted.
- Certain faculty, researchers, teachers and coaches are not impacted; see Page 5 of the FLSA guidelines for higher education.
- The rule is effective Dec. 1; all System components will implement the rule Nov. 27, 2016, the first day of the payroll cycle to include Dec. 1.
- Find FLSA terminology and definitions.

**Impact of the FLSA Rule**

The rule will impact employee eligibility for FLSA compensatory time. Some employees who are currently exempt from FLSA compensatory time will become non-exempt.

- System campuses provide compensatory time rather than cash payment, with some exceptions. Exempt employees who have been earning State compensatory time will continue to do so.
- Note: the rule does not affect campus or component policies regarding office operations, schedules and working hours, overtime and compensatory time.

**Information, Concerns and Frequently Asked Questions**

**What is overtime or compensatory time?**

FLSA overtime is time worked beyond 40 hours during a 7-day work week, which is Sunday-Saturday. Campuses and components of the UNT System provide compensatory time (rather than payment) to eligible employees who accrue hours beyond 40 per work week.

Compensatory time is governed by policies at each location.

- **UNT (5.062)**
- **UNTHSC (5.611)**
- **UNT Dallas (5.018)**
- **UNT System Administration (3.602)**
Office and Working Hours policies are:

- **UNT** (5.013)
- **UNTHSC** (5.601)
- **UNT System Administration** (3.101)

**How do I know if I am affected or if I supervise an employee whose position is impacted by this change?**

- An FLSA Task Force comprised of representatives from campus leadership teams, Human Resources, Office of General Counsel, Finance, Information Technology and Communications has identified affected employees.
- Supervisors of impacted employees and impacted employees will be notified by Human Resources if there is a change in their FLSA status.
- Human Resources Talent Management offers FLSA-related training for employees at all locations beginning Nov. 7. Business Support Services offers training for timekeepers and others who approve time sheets.
- Campus Human Resources staff also are available to assist supervisors and employees:
  - **UNT** – Brandi Renton, director, Sycamore Hall, Room 119
  - **UNTHSC** – Dana Perdue, director, EAD, Room 280
  - **UNT Dallas** – Gary Finney, director, Building 1, Room 356
  - **UNT System Administration** – Gary Finney, director, UNT Dallas and System Human Resources.
  - Find a Human Resources staff directory; use the drop down Within Category panel to find your campus.

**Will some employees who are exempt from compensatory time now be designated as non-exempt? What should managers do if these workers view this as a demotion?**

- Yes, some exempt employees will become non-exempt, and will become eligible for FLSA compensatory time.
- Although non-exempt, some of these job classifications will still be listed as professional on government reports.
- Managers should listen to concerns and be empathetic, and explain that implementation of this FLSA rule is not a demotion. Both managers and co-workers may want to solicit ideas and encourage suggestions from employees about ways to manage workloads.
- At all System locations, we value employees and want to provide a positive work environment. We follow policies and state and federal law, of course, and fair compensation and management of compensatory time are critical to attracting talented employees and retaining an engaged and productive workforce that helps each campus succeed.
- All employees may attend Human Resources learning sessions about rule implementation, leadership and management classes and others available throughout the year.
Will employees who were already non-exempt but earning more than $47,476 now be exempt due to the threshold change?

- No. There are two tests to determine exemption. Salary is only one of the two criteria. If a job did not meet the exemption status before, despite being above the salary threshold, the job’s duties are the reason the job is non-exempt.

Why is an employee who was exempt now changed to non-exempt status even though he or she has a salary level more than $47,476?

- Jobs with salary ranges starting below $47,476 are non-exempt even if some incumbents have salaries more than the new threshold. FLSA status determinations are based on jobs, not individual salaries.

How can we predict when compensatory time will be needed?

Managers should be aware of the time needed to complete department activities and usually should be able to anticipate a busy time or increased workload. Policies at all locations state that employees must notify supervisors if their work is likely to require more than 40 hours per week, and must request and receive approval for compensatory time prior to additional hours being worked.

- If compensatory-eligible time is regularly needed, the department manager should review department projects and activities and determine if restructuring or re-assignments are needed.
- Managers may find that workloads need review to determine if individuals and skills are properly allocated.
- If compensatory time is regularly accrued or used, it is the manager’s responsibility to encourage use of accrued compensatory time as soon as possible, so that employees can rest and re-charge.

Can non-exempt employees work more than 40 hours in a week whenever they believe it is required to get the job done?

- Yes; but only if the time is approved in advance by the manager. The supervisor also may adjust the employee’s work schedule within the same work week to manage accrual of compensatory time.
- Example: The work week is Sunday-Saturday. A non-exempt employee works 9 hours on Monday, Tuesday and Wednesday and Thursday, which is a total of 36 hours. The supervisor may allow the employee to work 4 hours on Friday to avoid accrual of compensatory time.

Can a supervisor adjust the schedule so that an employee works more than 40 hours during busy months without accruing compensatory time, and then works a reduced number of hours in less busy months?

- No. Compensatory time is calculated by the work week, which is Sunday-Saturday.
There are sometimes emergencies that arise that prevent pre-approval of compensatory time. How is this managed?

- Typically, the employee should contact the supervisor as soon as is possible regarding unanticipated overtime.
- The supervisor and the employee also should discuss how to handle future, possibly related or similar, emergencies or surprises.

Are non-exempt employees required to take a lunch break?

- Employees are encouraged to leave their desks and computers to take a break and refresh.

If a non-exempt employee does not leave the office while having lunch, is the meal time considered work time?

- Employees are encouraged to leave their desks and computers to take a break and refresh.
- No matter where an employee is physically located while eating, time spent for meal periods is only considered work time if the employee actually performs work during this time. Work could include answering the phone or responding to emails.

Is answering email while “off duty” considered work?

- Yes, time spent answering email that amounts to more than a few minutes is considered work time and must be reported.
- Supervisors and employees should avoid after-hours conversations or exchanges that normally can be completed during daily work hours. But when a deadline, crisis or emergency situation arises that requires discussion and response, including email or digital communications, time must be reported.
- Supervisors and employees may want to prepare a department guide and create procedures for responding to tight schedules, emergencies and deadlines, and how to report this accrued time.

Can an employee offer to work on his/her own time without any expectation of payment?

- No. Employees must be compensated for all hours actually worked.

Can a non-exempt employee decide to waive compensatory time?

- No, the requirement may not be waived under any circumstances due to federal and policy guidelines.

What if a non-exempt employee works and records compensatory time without permission?

Regardless of whether the time was approved, the employee must receive compensatory time for hours worked. However, the employee may be subject to disciplinary action for working when time was not approved in advance. Consult with your Campus Human Resources representatives (UNT, UNTHSC, UNT Dallas and System Administration) for more information.
Can a supervisor make adjustments in the schedule before compensatory time is accrued?

- A supervisor may adjust the schedule within the same work week (Sunday-Saturday). If an employee works more than eight (8) hours in one day, the supervisor may require the employee to work fewer hours on another day in the same workweek.
- Please note that the supervisor may not avoid compensatory time by adjusting the schedule in a different work week, i.e., a supervisor cannot have a non-exempt employee work 45 hours one week and 35 the next week without the employee accruing 1.5 CT for the 5 hours worked during week one.

Who decides whether overtime is paid or accrued as compensatory time?

- In most cases, non-exempt employees receive 1.5 hours of FLSA compensatory time for each additional (beyond 40 in a work week) hour worked.
- The department or unit head may request an exception to pay for overtime worked. At each System location, this requires the approval of a vice president or designated executive. Contact Campus Human Resources (UNT, UNTHSC, UNT Dallas and System Administration) at your location for assistance.
- Relevant policies: UNT (5.062), UNTHSC (5.611), UNT Dallas (5.018), UNT System Administration (3.602).

When can an employee use FLSA compensatory time?

- In general, non-exempt employees may choose when to take FLSA compensatory time, with supervisor approval and discussion of department operations.
- Non-exempt employees keep their rights to FLSA compensatory time until they use it or are paid for it. Upon leaving employment, the employee will be paid for remaining time or, with department head approval, remain on the payroll through the end of the calendar month in which employment ends.
- Policies: UNT (5.062), UNTHSC (5.611), UNT Dallas (5.018), UNT System Administration (3.602).

I’m a part-time employee. Why am I considered non-exempt if I am in an exempt title and my full-time effort (FTE) salary is above the minimum salary threshold?

- The Department of Labor has been firm in its interpretation that FLSA exemption is affected by actual pay, rather than Full Time Effort pay. This aspect of the FLSA is not changing, and as such, part-time employees who might be exempt when working full-time can become non-exempt due to part-time actual pay below the minimum salary threshold.
- For example, an employee in an exempt title paid $50,000 FTE would be non-exempt if working at 50 percent effort, or $25,000 actual pay.

Can my supervisor raise my pay to make me exempt?

- Exempt and non-exempt status is derived from job title, grade and classification, plus organizational and market factors.
- Departments cannot raise an employee’s pay to the new FLSA threshold solely to make the employee exempt.
If my job is now non-exempt, do I have to track my time differently?

- All time worked must be recorded. But be aware of work that may result in accrual of compensatory time. According to policy, you will need approval from your supervisor before compensatory time is accrued.

If I’m an exempt employee, and my co-worker(s) are moved from exempt to non-exempt status, will I have to take on more of their work so they avoid earning comp time?

- Managing a department workload requires planning and supervisory skills. Managers may contact Campus Human Resources or Talent Management for tips and training about workforce planning.
- The FLSA rule does not affect campus policies regarding office hours and operation or other campus policies related to managing workloads.

My supervisor will not allow overtime to be accrued, but my workload requires more hours. What do I do?

- Managing a department workload requires planning and supervisory skills. Managers may contact Campus Human Resources (UNT, UNTHSC, UNT Dallas and System Administration) or Talent Management for tips and training about workforce planning.
- The FLSA rule does not affect campus policies regarding office hours and operation, or other campus policies related to managing workloads.

Can I appeal a change in my FLSA status?

- No. The FLSA rule is a federal law that cannot be appealed.
- If you have questions about your status, please discuss them with your supervisor.
- If you have questions about submitting time, leave balances including compensatory time recording or payroll, contact Business Support Services, 1-855-868-4357.
- Human Resources Talent Management has scheduled training sessions beginning Nov. 7, 2016 at all locations. (Log in to SharePoint with your EUID to register for classes)
- Talent Management also offers Supervisory Building Blocks, a certificate program to provide knowledge and tools for managers, and leadership development learning sessions. Sessions also may be found on the SharePoint site.

When can an employee use State (1.0) compensatory time?

- Non-exempt employees earn State (1.0) compensatory time when the total of their hours worked, paid leave and holidays for a workweek are greater than 40, but the actual number of hours physically worked does not exceed 40.
- State (1.0) compensatory time must be used within 12 months after the end of the workweek in which it was earned.
- Policies: UNT (5.062), UNTHSC (5.611), UNT Dallas (5.018), UNT System Administration (3.602).
Is there a different salary threshold for Postdoctoral Research Associates or other titles related to conducting research in a higher education setting?

- No. Research positions must meet the job duties tests and salary threshold to be exempt.
- Find information in the rule’s higher education guide.

My grant doesn’t have funding that allows for paid or compensatory time. Do I still have to approve accrued time?

- Yes, all institutions are required to comply with the FLSA and must manage compensatory time, regardless of the source of funding. Grant holders are advised to keep employee leave balances low by allowing staff to take time off.
- If a federal compensatory time pay is required, the Principal Investigator may need to request funds through normal campus protocols.

How does the rule impact employees with on-call duties; those traveling to/from a conference; those supervising students away from campus; or those traveling to/from System locations?

The rule does not affect campus or location policies regarding these scenarios. Please refer to these policies for guidance:

Compensatory Leave and Overtime

- [UNT](5.062)
- [UNTHSC](5.611)
- [UNT Dallas](5.018)
- [UNT System Administration](3.602)

Office and Working Hours

- [UNT](5.013)
- [UNTHSC](5.601)
- [UNT System Administration](3.101)

More Questions?

Contact Campus Human Resources offices at your location:

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