

## Fair Labor Standards Act FAQ

- 1. Q. What is the Fair Labor Standards Act (FLSA)?**

**A.** The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.
- 2. Q. What are the recent changes to the FLSA?**

**A.** Effective December 1, 2016, an employee must earn at least \$913 per week (\$47,476 annually) and meet the “Standard Duties” test for executive, administrative, or professional employees, as defined by the Department of Labor (DOL), to be ineligible for overtime pay. Currently, an employee must earn at least \$455 per week and meet the “Standard Duties” test to be ineligible for overtime pay. Other requirements remain the same.
- 3. Q. Why is the regulation being changed?**

**A.** In 2014, President Obama directed the Secretary of Labor to modernize the regulations governing overtime pay requirements. As a result, in July 2015, the DOL issued proposed rules changing certain aspects of the FLSA regulations. The new salary level is at the 40<sup>th</sup> percentile of earnings of full-time salaried workers in the lowest-wage Census Region. On May 18, 2016, the final regulations were announced and published.
- 4. Q. When are the changes effective?**

**A.** The announced changes are effective December 1, 2016.
- 5. Q. Will the salary levels be reviewed again?**

**A.** In order to prevent the salary level requirements from becoming outdated, the DOL is establishing mechanisms for automatically updating the salary and compensation levels every three years.
- 6. Q. Is the salary test prorated based on Full Time Equivalency (FTE)?**

**A.** No. Regardless of FTE, an employee must earn at least \$913 per week (\$47,476 annually) and meet the “Standard Duties” test for executive, administrative, or professional employees, as defined by the DOL, to be ineligible for overtime pay.
- 7. Q. What is the difference between a position being exempt from overtime and an Administrative Professional exempt position?**

**A.** These are two different exemptions from two different laws. Exemption from overtime (meaning ineligible for overtime) under the FLSA is based on the salary and duties test as mentioned above. In accordance with the Revised Code of Washington (RCW), for a position to be exempt from civil service, it must meet specific criteria identified in [RCW](#)

[41.06.070](#). Refer to the [Exemption Criteria](#) on the HRS website for additional information on Administrative Professional (AP) exemptions.

8. Q. **Can an Administrative Professional exempt position be eligible for overtime?**
- A. Yes. As explained above, exemption from Civil Service is different than exemption from overtime. Therefore, an Administrative Professional position may be eligible for overtime, and a Civil Service position may be exempt from overtime, depending on the salary and duties test.
9. Q. **Will this have an impact on employees who are already eligible for overtime pay?**
- A. There will be no change to employees who are currently eligible for overtime pay.
10. Q. **If an employee no longer meets the new salary requirement and becomes eligible for overtime, how will they be notified?**
- A. In November, employees will receive a letter from Human Resource Services notifying them that they are eligible for overtime and must begin completing a Time Report effective December 1, 2016.
11. Q. **When do employees eligible for overtime as a result of this change need to begin to track hours worked?**
- A. Employees newly eligible for overtime due to the FLSA salary test changes will begin tracking hours worked on a Time Report effective December 1, 2016. Refer to [BPPM 60.60](#) for more information on Time Report records attendance, leave and overtime.
12. Q. **Are overtime eligible employees required to take meal and break periods?**
- A. Overtime-eligible employees receive a minimum of a 30-minute unpaid meal break toward the middle of each work shift, no more than five hours after the beginning of the shift. Additionally, overtime-eligible employees receive a 15 minutes paid rest period for every four hours worked. Refer to [BPPM 60.59 - Overtime-Eligible Employees](#) for additional information regarding meal and break periods.
13. Q. **How many hours in a work week must overtime eligible employees work before they are paid overtime?**
- A. Overtime eligible employees must be paid overtime (1.5 times regular hourly rate) for all hours worked in excess of 40 hours within the work week. Leave with pay during employees' regular work schedule is not considered time worked for the purposes of overtime. Refer to [BPPM 60.59 - Overtime-Eligible Employees](#)
14. Q. **Can compensatory time be given to overtime eligible employees in lieu of overtime pay?**

- A. Yes, at the employee's request, an employer may approve compensatory time off in lieu of pay. For overtime-eligible part-time employees, work in excess of the regular part-time schedule up to 40 hours in one workweek is compensated as straight time and may not be accrued as compensatory time.

Refer to [BPPM 60.59 Overtime-Eligible Employees](#) for additional information on overtime compensation.

**15. Q. Can employees “volunteer” to work longer hours and not be paid?**

- A. No. Overtime eligible employees cannot “volunteer” to work longer hours without pay. They must be paid for all overtime (1.5 times regular pay) for all time worked above 40 hours within the work week in accordance with the FLSA and university policy.

**16. Q. If an employee works more than 40 hours in one week, can they adjust their hours worked the next week to avoid overtime?**

- A. No. An employee must be paid based upon the hours worked in a single week in accordance with the FLSA. Averaging of hours over 2 or more weeks is not permitted. Thus, an employee cannot be compensated at straight time for working 45 hours one week and 35 hours the next week, in order to average 40 hours per week.

**17. Q. What if employers do not comply with the new regulations?**

- A. The FLSA authorizes the Wage and Hour Division to assess employers civil money penalties (CMPs) of up to \$1,100 for each violation for repeated or willful violations of the minimum wage and overtime requirements of the Act.

CMPs are intended to discourage employers from future noncompliance and are not tied to the amount of the back wage liability incurred. They will ordinarily be assessed based on violations occurring within a two-year investigation period. Where violations are determined to be willful, the investigation will cover a three year period.

**18. Q. Where can I learn more about this?**

- A. You can learn more on the DOL website where you will find [DOL handouts and other helpful information](#) or you may contact HRS at 509-335-4521 or [hrs.wsu.edu/flsa](https://hrs.wsu.edu/flsa) or [Department of Labor & Industries](#).