



University of Cincinnati

Department of Compensation

Frequently Asked Questions

1. What is the Fair Labor Standards Act?

The Fair Labor Standards Act (**FLSA**) of 1938 (29 USC § 201 et seq.) is the United States' federal wage and hour law, administered by the US Department of Labor (DOL). Among other things, it establishes the minimum wage and overtime pay, affecting employees in the private and government sectors. Everyone is "covered" but some employees are **exempt** from FLSA regulations and some are **nonexempt**. The FLSA requires compensation be provided for all hours recorded over 40 in a workweek for **nonexempt** employees.

2. What does it mean to be exempt or nonexempt?

Exempt employees are paid on an annual basis and are excluded from overtime payment. Nonexempt employees are paid hourly, must report hours worked, and are paid overtime for work done in excess of 40 hours/week. Exemption is based on qualifying for **all three** of the following tests:

- Salary Basis Test. Employee must be paid on an annual salary basis; AND
- Minimum Salary Threshold Test. Employees must be paid equal to or above a salary threshold amount that is **\$47,476** annually (effective December 1, 2016), AND

- Duty and Discretion Tests. Employee must qualify as an executive, administrator, professional, or computer professional.

3. What is changing?

The DOL changes will increase the Minimum Salary Threshold Test from \$23,660 annually to **\$47,476** per year (\$913 a week if working 100%). Employees will only be designated as exempt from overtime if they earn \$47,476 annually (\$913 a week) or more. The DOL finalized the rule in May 2016, with an effective date of **December 1, 2016**.

4. Who will be affected by the DOL's proposed change to the FLSA Rule?

If an employee's annual salary is below the new minimum salary threshold, the employee (unless he or she qualifies for one of the exceptions listed below) must be designated as nonexempt (hourly). An academic staff employee whose duties remain exempt, but with pay that falls below the new proposed salary threshold, will remain academic staff - but become academic staff nonexempt (and paid hourly).

5. Who is excluded from the DOL's proposed change to the FLSA Rule?

Teachers, lawyers, and doctors - as defined by the Fair Labor Standards Act and confirmed by UC Office of Human Resources - are exempt by definition and are not subject to the salary threshold test. To be properly designated as a teacher according to the DOL, an employee must have actual instructional duties. Faculty and instructional academic staff whose primary duties are teaching are exempt regardless of their salaries. Those who support teaching activities without actual teaching interaction are subject to the Fair Labor Standards Act.

In addition, *Academic Administrative employees* are not subject to the new salary threshold (29 CFR 541.600). These positions involve those "performing administrative functions directly related to academic instruction or training", which entails work related to the academic

operations and functions in a school rather than to administration along the lines of general business operations (Ex: *Academic Adviser, Academic Coordinator, Academic Evaluator, etc.*).

6. How does the proposed rule change affect staff members who work less than full time?

Let's answer this through an example: an employee has an annual salary of \$45,000 (which is *below* the new minimum salary threshold of \$47,476) but works a 0.75 appointment, and thus has an **annualized** salary of \$60,000 per year (which is above the new minimum salary threshold), under the DOL guidelines, the employee will now be nonexempt (hourly). In short, if the annual salary of an incumbent is below \$47,476 per year, the employee must be classified as nonexempt.

In other words, an employee's **annualized** salary (for those who work less than a 1.0 appointment) is **not** taken into consideration when factoring in FLSA exemption status.

7. Does the change from exempt to nonexempt affect an employee's leave accrual?

For exempt employees moving to non-exempt status, you will still accrue the same amount of leave time; however, you will accrue leave over 26 pay periods (bi-weekly) instead of 12 pay periods (monthly).

8. Can employees opt out of this change if they want to continue to be considered a salaried or exempt employee?

No. The FLSA is a federal law. The determination of an employee's FLSA status is governed by the requirements of the federal law - it is not an option.

9. How is time reporting different for a nonexempt employee than for an exempt employee?

Nonexempt (hourly) employees must report all time worked rather than accounting for leave used.

10. When is an employee entitled to overtime or compensatory time?

Overtime or Compensatory time must be provided for hours worked over 40 in a workweek. The computation of “40 hours worked” **does** include paid time out of the workplace (e.g., sick leave, vacation time, etc.). See HR Policy 14.03 entitled “**Overtime and Compensatory Time**” for more details related to Overtime and Compensatory Time.

11. How is overtime calculated?

All nonexempt (hourly) employees who report over 40 hours in a defined workweek must be compensated for all hours in pay status. Nonexempt employees must be compensated at a premium rate (time and a half) for all hours worked over 40 in a defined workweek. Paid leave time **does** count towards the total hours worked in a defined week.

12. For a Staff employee, does being paid hourly mean being paid on the biweekly payroll?

Yes. Nonexempt (hourly) Staff will move to bi-weekly payroll, and work hours will have to be reported on a **daily** basis. More information will be available as we move closer to the full implementation date of December 1, 2016.

13. Can a nonexempt employee still work early and late? Can a nonexempt employee check messages from home after work hours?

The central change in moving from exempt to nonexempt is in how hours are reported, not when they are worked. Nonexempt (hourly) employees can still make alternative scheduling arrangements with their supervisors but all time worked must be recorded as “time worked.” Any alternative scheduling arrangements will have to be made with the individual school/college/ division for which the employee works.

14. Will some employees receive a pay increase for the purpose of maintaining the employee’s exempt status?

Divisions will continue to follow their existing process for pay adjustments. There is no additional funding to accommodate the Fair Labor Standards Act rule change.

15. Can nonexempt employees still attend professional conferences?

Yes. Nonexempt (hourly) employees must account for the travel time and for the hours of conference attendance, but there is no prohibition on traveling or professional development.

16. Are instructional Staff and other employees (e.g., teaching assistants) whose primary duty is teaching or instructing subject to the minimum salary threshold?

No. Instructional academic staff and others who qualify as “teachers” are not subject to the minimum salary threshold. To be exempt from FLSA overtime requirements as a teacher under 29 CFR § 541.303, the following two tests must be met:

- The employee’s primary duty must be imparting knowledge by teaching, tutoring, instructing, or lecturing, and
- The employee must be employed by an educational establishment.

Teachers who earn less than the minimum salary (including part-time teachers) are exempt as long as their primary duty is teaching.

17. How will these changes affect Athletic Coaches?

Athletic coaches and assistant coaches may fall under the exemption if their primary duty is teaching, which may include instructing athletes in how to perform their sport. If, however, their duties primarily include recruiting athletes or doing manual labor, they are not considered teachers. A coach could primarily be responsible for instructing athletes but also spend some time recruiting or doing manual labor and still be considered ineligible for overtime.

18. Where can I find information related to travel time?

Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked. More information from the Department of Labor in reference to travel time can be found [here](#).

19. How will these changes affect Postdoctoral Fellows?

Postdocs who do not generally teach enough to meet criteria for exemption, are eligible for overtime pay. Postdocs, such as those in the Humanities, whose primary role is teaching, could be exempt from overtime. In general, if a postdoc does not teach, they would be eligible to receive overtime pay.

20. When determining when an employee is exempt or nonexempt, what does the DOL mean by “primary duty?”

The term "primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as

a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to:

- the relative importance of the major or most important duty as compared with other types of duties;
- the amount of time spent performing the major or most important duty;
- the employee's relative freedom from direct supervision

21. Who makes the final determination on what is an employee's exemption status?

Human Resources reviews each position description after working in consultation with supervisors to identify position duties and conduct the exemption test for final exemption status (exempt or non-exempt).

22. If an employee holds more than one job, can the employee have more than one FLSA status designation?

No. Under the FLSA, the University of Cincinnati is defined as the employer and all work done for UC is taken into account in order to determine whether the employee is exempt or nonexempt.

For example: Employee X, whose total salary is below the minimum salary threshold, holds a part-time instructional academic staff position as a lecturer (exempt). The employee also holds a part-time position as a nonexempt (hourly) recreational specialist. If Employee X's primary duty (or the principal, main, major or most important duty that the employee performs) is teaching as a lecturer, then the employee's designation is exempt because teaching is the employee's primary duty, and the employee qualifies for the "teacher" exemption regardless of salary.

If the primary duty is determined to be work as a recreational specialist, however, the FLSA designation will be nonexempt (hourly) because total

salary is under the minimum salary threshold *and* because the primary duty is nonexempt (hourly).

23. If an employee holds more than one job, how does one determine whether or not they are below the minimum salary threshold?

Under the FLSA, the University of Cincinnati is defined as the employer. All compensation earned in *all* positions at UC is added together to determine total compensation. If the total compensation earned from all UC positions does not meet the annual threshold, the employee is nonexempt (hourly).

For additional questions, please e-mail hrcomp@uc.edu or contact the following HR Compensation employees:

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