2016 Fair Labor Standards Act (FLSA) Changes

Toolkit for Faculty and Staff
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About This Toolkit

More university faculty and staff will be eligible for overtime pay under changes to the Fair Labor Standards Act (FLSA) that take effect on December 1, 2016. If you are impacted by these changes, this toolkit is designed to help you:

• Understand what you can expect as a result of a change in FLSA status
• Plan for key transition dates between now and December 1
• Prepare for changes in pay frequency and time reporting

If you have additional questions after reading these materials, please visit hr.umich.edu/2016-flsa-changes or contact your supervisor or human resources representative.

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A Brief Guide to the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) determines whether a position is eligible for overtime pay. An “exempt” position is not eligible for overtime pay. A “non-exempt” position is eligible and must receive overtime pay at time-and-one-half for any hours worked above 40 hours in one workweek.

Three Tests: Salary Basis, Duties and Salary Level

A position may be considered exempt under the FLSA if it meets three tests.

1. Employee must be paid on a salary basis, not an hourly basis
2. Duties must meet criteria for executive, professional, administrative, computer or outside sales activities
3. Compensation rate (pro-rated full-time rate if part-time) must be at least $47,476 annually (effective December 1, 2016)

If any one of the three tests is not met, the employee must be classified as non-exempt and eligible for overtime pay. Please note that exempt classification is an option, not a requirement under the law. A position that meets all three tests may still be classified as non-exempt.

FLSA Status at the University of Michigan

At U-M, FLSA status affects four areas of employment:

1. Eligibility for overtime pay for hours worked above 40 in one workweek
2. How time is reported
3. Biweekly or monthly pay frequency
4. Starting accrual rate for vacation or Paid Time Off (PTO)

Most other benefits are the same for non-exempt and exempt employees. See the following page for a detailed comparison of exempt and non-exempt employees at U-M.

What Counts Towards Overtime?

Only time worked is counted toward the 40 hours per week required for overtime pay for non-exempt employees. Exception time such as vacation, sick, PTO, holiday, military reserve duty, season days, educational time, funeral, extended sick, and time for jury duty does not count toward the 40 hours per week of time worked that is required for overtime pay.

(Note: Staff represented by a collective bargaining unit should consult their agreements concerning overtime.)
# Comparing Exempt and Non-Exempt FLSA Status at U-M

<table>
<thead>
<tr>
<th></th>
<th>NON-EXEMPT</th>
<th>EXEMPT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pay schedule</td>
<td>Biweekly (26 pay dates per year)</td>
<td>Monthly (12 pay dates per year)</td>
</tr>
<tr>
<td>Overtime pay*</td>
<td>Time-and-one-half for all hours worked above 40 in one workweek</td>
<td>Not eligible</td>
</tr>
<tr>
<td>Reporting work time</td>
<td>Report all hours worked</td>
<td>Do not report hours worked</td>
</tr>
<tr>
<td>Reporting exception time</td>
<td>Report exception time to the nearest tenth of an hour</td>
<td>Report exception time</td>
</tr>
</tbody>
</table>
| Vacation accrual rate| • 1 day per month when hired  
• 1.5 days per month after 5 years of service  
• 2 days per month after 8 years of service | 2 days per month when hired (does not increase)  |
| PTO accrual rate     | • 12.67 hours per month when hired  
• 16.67 hours per month after 5 years of service  
• 20 hours per month after 10 years of service | • 16 hours per month when hired  
• 20 hours per month after 5 years of service     |
| PTO accrual rate     | (U-M Health System staff hired after 07/01/15 only) | (U-M Health System staff hired before 07/01/15 only) |
| If employee works on a holiday | Paid time-and-one-half                                                      | Paid straight time                               |
| If employee reduces hours to part-time | No change in FLSA status                                                   | May require reclassification to non-exempt if comp-rate falls below $47,476 annually |

*Staff represented by a collective bargaining unit should consult their agreements concerning overtime.

## To Learn More

For more information, visit [hr.umich.edu/flsa](http://hr.umich.edu/flsa) or the U.S. Department of Labor’s Wage and Hour Division at [dol.gov/whd/flsa](http://dol.gov/whd/flsa).
Faculty and Staff Guide to Becoming Eligible for Overtime

In order to comply with revised Fair Labor Standards Act (FLSA) regulations announced by the federal government in May 2016, your position will be considered eligible for overtime pay (or “non-exempt” under the FLSA) as of November 20, 2016. This overview provides a summary of how this change will impact you, a timeline of key dates and a guide to common considerations.

How This Change Will Affect You

Overtime
You will become eligible for overtime pay effective November 20, 2016. As of November 20, you must record all hours worked, including overtime hours, and you will receive additional pay for overtime at one-and-one-half times your regular rate of pay for all hours worked above 40 in one workweek. If your supervisor has not specifically requested that you work overtime, you will need to obtain approval before doing so. Learn more about overtime pay at hr.umich.edu/overtime.

Rate of Vacation or PTO Accrual
Your current rate of monthly vacation or Paid Time Off (PTO) accrual will not change as a result of your new overtime eligibility. You will continue to accrue vacation time or PTO at the same rate in effect for monthly paid staff. Staff who have less than the required years of service to get the maximum accrual rate in the non-exempt accrual schedule will have their current accrual rate “grandfathered” as a special policy exception tied to this implementation project.

Please note that campus and the Health System have different time off plans. If you move from a campus job to a Health System job in the future, or vice-versa, you will receive in your new job the same grandfathered accrual rate that employees in that organization receive. If you move into a position covered by a collective bargaining agreement, the accrual rate will be governed by the collective bargaining agreement in effect at that time.

Pay Schedule
You will move to a biweekly pay schedule as a result of the change in your FLSA status. You will receive your last monthly paycheck on November 30, 2016. It will include pay for November 1 through November 19. You will receive your first biweekly paycheck on December 9, 2016. It will include pay for November 20 through December 3.

Time Reporting
You will begin reporting your time worked in addition to exception time (overtime and time off) as of November 20, 2016. Exception time is reported to the nearest one-tenth of an hour.
What Will Not Change
Your current rate of pay, benefits, job family, job title and rate of vacation or PTO accrual are not affected by this change.

Key Transition Dates

Nov. 1-19, 2016  Last monthly pay period; record monthly exception time as normal
Nov. 20, 2016    Start of first biweekly pay period; begin recording time worked and exception time
Nov. 30, 2016    Last monthly pay date (reflects Nov. 1 - Nov. 19)
Dec. 3, 2016     End of first biweekly pay period
Dec. 9, 2016     First biweekly pay date (reflects Nov. 20 – Dec. 3)

What You Need to Do

You will need to work with your supervisor, timekeeper or human resources representative to make sure that you know how to report time correctly starting November 20, 2016. You should also discuss with your supervisor how this change may impact scheduling of regular and overtime hours.

In addition, you may want to consider whether you would like to make any personal financial adjustments to prepare for a biweekly pay schedule (26 pay dates per year) rather than a monthly pay schedule (12 pay dates per year). Your direct deposit authorizations will not change with your pay frequency unless you take action to change them.

Direct Deposit Amounts or Fixed-Dollar Payroll Deductions
You will receive 26 biweekly paychecks per year under your new biweekly pay schedule. If you have currently chosen to make any fixed-dollar direct deposits or payroll deductions that come out of every paycheck (such as deposits to a savings account or contributions to a 403(b) Supplemental Retirement Account), you will need to reduce these amounts to keep the monthly total the same.

Change Billing Cycles
You may also wish to request that your creditors change your billing cycles if all your bills are currently due at the end of the month. The university will provide you with a letter confirming that your pay cycle has changed if you need verification for any of your creditors. If you need a letter of verification, please contact your human resources representative.

To Learn More

Contact your supervisor or department human resources representative with any questions, or visit hr.umich.edu/2016-flsa-changes or its.umich.edu/report-biweekly-time for additional information.
Frequently Asked Questions About FLSA Changes for Faculty and Staff

Note: FAQs will be monitored and updated periodically. Please refer to hr.umich.edu/2016-flsa-changes and hr.umich.edu/overtime for the most up-to-date information.

How long will I keep my current vacation or PTO accrual rate? What if I change jobs?
Vacation accrual for non-exempt positions is the same as exempt positions after 8 years of university service. PTO accrual for non-exempt positions is the same as exempt positions after 10 years of university service. If your university service already exceeds 8 years (for the vacation plan) or 10 years (for the Health System PTO plan), then this change in FLSA status does not require special "grandfathering" of your accrual rate. If your service is less than 8 years (for the vacation plan) or 10 years (for the Health System PTO plan), your current accrual rate will be maintained through a special "grandfathering" rule until you hit the required years of service to get the maximum accrual under standard policy.

If you move between campus and the Health System, your vacation or PTO will be grandfathered at the current rate for employees of your new work location.

When will my monthly vacation or PTO accrual be credited? Is it available for use immediately?
Vacation/PTO time is available for use at the beginning of the biweekly pay period that includes the first of the month in which it is accrued.

Does the change in pay schedule affect my direct deposit?
Any direct deposit authorizations you have set up will continue after your pay frequency changes. However, if you have any fixed-dollar amounts being sent to a financial institution each pay date, you may want to adjust the amount. For example, if you currently have $50 per paycheck deposited to a savings account ($50 per month total on your currently monthly pay cycle), you may want to lower the dollar amount. Starting December 9, you will be paid at least two times per month, so you’d be sending $100 per month to savings if you did not lower the per-paycheck amount. If you know the annual amount you want to save, divide the total by 26 (the number of checks you will receive each year) and you will have the new per-paycheck fixed-dollar amount.

How will my payroll deductions be affected?
Deductions for non-exempt employees are taken as follows (see next page). For instance, if your medical insurance co-premium is $30 per month, the first two checks of each month will have $15 deductions taken from each to cover your total monthly contribution to medical insurance.
## Schedule of Payroll Deductions for Non-Exempt Employees

<table>
<thead>
<tr>
<th>Deductions Taken from Every Paycheck (26 per year)</th>
<th>Deductions Taken from First Two Paychecks per Month (24 per year)</th>
<th>Deductions Taken from Second Paycheck of the Month (unless otherwise indicated)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Basic Retirement Plan contribution</td>
<td>• Health plan</td>
<td>• Gifts to United Way</td>
</tr>
<tr>
<td>• 403(b) Supplemental Retirement Account contribution</td>
<td>• Dental plan</td>
<td>• Parking</td>
</tr>
<tr>
<td>• 457(b) Deferred Compensation Plan contribution</td>
<td>• Vision plan</td>
<td>• Athletic tickets</td>
</tr>
<tr>
<td>• Gifts to the university</td>
<td>• Life insurance</td>
<td></td>
</tr>
<tr>
<td>• Garnishments</td>
<td>• Long-term disability</td>
<td></td>
</tr>
<tr>
<td>• Tax levies</td>
<td>• Long-term care insurance</td>
<td></td>
</tr>
<tr>
<td>• Friend of the Court deductions</td>
<td>• Flexible spending accounts</td>
<td></td>
</tr>
<tr>
<td>• Miscellaneous deductions for non-benefit items</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Health plan</td>
<td></td>
<td></td>
</tr>
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<td>• Flexible spending accounts</td>
<td></td>
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</tbody>
</table>

### Will the change in pay frequency impact my retirement plan contributions?

Your contribution and the U-M match under the Basic Retirement Plan will automatically adjust to deduct according to your new biweekly pay rate.

The contributions to your **403(b) Supplemental Retirement Account (SRA)** and **457(b) Deferred Compensation Plan account**, if you have either or both, are fixed amounts that are deducted each time you are paid, rather than as a monthly total. To maintain the same monthly total, you will need to reduce the current amounts by one-half. Otherwise, the total amount taken each month will double from your current monthly amount since it will be deducted with each biweekly paycheck. It will be deducted three times during the two months each year with three biweekly paydates. Note: Take extra care if you plan to make any year-end adjustments to your SRA or 457(b) contributions, in light of your new pay schedule and **annual contribution limits**.

You can make changes to your contributions in Employee Self-Service > Benefits in Wolverine Access.

### I want my creditors to change my billing cycles so everything isn’t due at the end of the month anymore.

**What if my creditors want proof that my pay dates have changed before they will change my billing cycles?**

The university will provide you with a letter confirming that your pay cycle has changed if you need verification for any of your creditors. If you need a letter of verification, please contact your human resources representative.

### Once I start getting paid on a biweekly basis, will I still get paid if I don't submit my time report on time?

You must report hours worked and exception time (time off and overtime) for each biweekly pay period before the pay period cutoff. If an unusual event occurs and you are unable to submit your time report before the deadline, you will be paid for your base hours. However, the Payroll Office will not be able to process exception time without your time report. Any exception time will be processed in a future weekly or biweekly payroll. Therefore, you need to submit biweekly time reports prior to the cutoffs to avoid a delay in pay for all hours worked within the pay period and to ensure your leave balances are up-to-date.
Can I telecommute as a non-exempt employee?
Any telecommuting arrangement should be evaluated on a case-by-case basis. Several factors for evaluation include: the type of work performed, including collaboration and level of interaction with others; the employee’s ability to work independently with little direct or daily supervision; and the supervisor’s ability to monitor and evaluate the employee. Additionally, there need to be clear expectations about work schedules and accurate tracking of hours worked for non-exempt employees.

Can non-exempt employees have flexibility in their work hours?
Yes. Special or alternate scheduling is allowed within the same workweek. For example, if you normally work 8 hours a day, and have a personal appointment on Monday that only allows you to work 6 hours, you and your supervisor can agree that you will make up the time later in the same workweek. Another example would be if your typical schedule is 8 hours a day during the day, and your department needs you to work a special event for 4 hours during the evening. Your schedule may be changed to give you 4 hours of time off at another time during the same workweek. Note: Special or alternate schedules must be within a single workweek.

Will I be paid overtime if my supervisor did not approve it?
Yes. If non-exempt employees perform work, they must be paid for it. However, supervisors have discretion to establish overtime approval processes. If an employee continues to work overtime without supervisor approval, then the supervisor could begin taking possible disciplinary action with the employee.

Does time spent answering emails or using a mobile phone for work outside of normal hours count towards overtime?
For non-exempt employees who respond to emails or calls outside of normal work hours or while on lunch breaks on a “regular” basis, that time is counted as work time for overtime purposes. If a non-exempt person responds to emails or calls “very occasionally,” then court cases have considered that to be “de-minimis” and therefore not counted for overtime purposes. However, supervisors have discretion to establish overtime approval processes. If an employee continues to work overtime without supervisor approval, then the supervisor could begin taking possible disciplinary action with the employee.

What if I work on my lunch break?
Departmental lunch breaks, when unpaid, are at least 30 minutes (uninterrupted) and are scheduled by the department. During this time, a staff member cannot be required to continue to perform job duties unless he or she is paid for the work time. When the lunch period is a paid portion of the regularly scheduled work day, it can’t exceed 20 minutes. In these cases, staff members are expected to eat lunch as time and work schedule permit.

Can a supervisor require overtime?
Yes, overtime can be required. Supervisors are encouraged to give as much notice as possible to staff members.

Can I waive overtime as a non-exempt employee?
No, employees don’t have the option of waiving the legal requirements.