2016 Fair Labor Standards Act (FLSA) Changes

Toolkit for Managers and Supervisors
About This Toolkit

More university faculty and staff will be eligible for overtime pay under changes to the Fair Labor Standards Act that take effect on December 1, 2016. This toolkit is designed to help managers and supervisors to:

• Determine which employees are impacted by the changes
• Develop a strategy to comply with the new regulations that aligns with unit business needs
• Communicate effectively with impacted faculty and staff in a timely manner

Additional resources are available at hr.umich.edu/2016-flsa-changes or by email at umichflsa@umich.edu.

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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

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<th>NON-EXEMPT</th>
<th>EXEMPT</th>
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<tr>
<td><strong>Pay schedule</strong></td>
<td>Biweekly (26 pay dates per year)</td>
<td>Monthly (12 pay dates per year)</td>
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<td><strong>Overtime pay</strong></td>
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<td><strong>Reporting work time</strong></td>
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| **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**   | • 13.33 hours per month when hired  
• 17.33 hours per month after 5 years of service  
• 21.33 hours per month after 10 years of service | • 17.33 hours per month when hired  
• 21.33 hours per month after 5 years of service |
| **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).
New Overtime Eligibility Rules: Supervisor Overview

This overview is intended to help supervisors prepare to discuss the impact of upcoming FLSA changes with impacted individuals.

Background: What Has Changed?

The federal government announced new rules in May that increase the salary at which an employee may be considered “exempt” from earning overtime pay. As a result, more employees are eligible for overtime pay ("non-exempt"). Eligibility for overtime pay is determined by several tests of job duties and pay under the Fair Labor Standards Act (FLSA). As of December 1, 2016, the new salary threshold to be considered exempt under the FLSA is $47,476 annually, an increase from the previous threshold of $23,660. The Department of Labor will review the threshold for future adjustments every three years going forward.

University Approach

The university has adopted an approach that will provide flexibility to units in how to comply with the revised salary threshold while managing the impact to their budgets and administration. Units may decide to raise salaries to maintain exempt status or use new job codes that allow the same job to be designated as exempt or non-exempt under the FLSA based on salary. These guidelines were developed in collaboration with HR officers across the university with a goal of administrative simplicity. The option of using new job codes provides the opportunity for unit choice in how to comply with the regulations, offers a solution for current and future staff who fall below the threshold, as well as future increases to the salary threshold by the Department of Labor, and minimizes the impact on staff.

Who Will Be Impacted?

Full-Time Employees

Some full-time employees may be reclassified to non-exempt as of November 20, 2016 because of a unit decision to reclassify staff within a given job title or because their duties no longer meet the exemption test.

Part-Time Employees

Part-time employees with a compensation rate (pro-rated full-time rate) below $47,476 who are currently considered exempt under the FLSA will be reclassified to non-exempt as of November 20, 2016.

Post-doctoral Fellows and Research Faculty

Compensation for full-time post-doctoral fellows and research track faculty will be adjusted to meet the minimum threshold of $47,476 no later than December 1, 2016 to maintain exempt status.
What Employees Who Become Eligible for Overtime Can Expect

1. They will begin reporting all time worked in addition to exception time (overtime and time off) as of November 20, 2016.

2. They will be paid biweekly rather than monthly. The last monthly pay date will be November 30, 2016 (for November 1-19) and the first biweekly pay date will be December 9, 2016 (for November 20-December 3).

3. They will earn overtime pay at time-and-one-half for all hours worked above 40 in one workweek starting November 20, 2016.

4. They will not lose their vacation or PTO accrual rate, but will instead keep their current rate as a special policy exception until they achieve the required years of service to get the maximum accrual under the standard policy.

Considerations for Employees Who Become Eligible for Overtime

Impacted individuals may need to make personal financial adjustments to prepare for a biweekly pay schedule with 26 pay dates per year rather than a monthly pay schedule with 12 pay dates per year.

Direct Deposit Amounts or Fixed-Dollar Payroll Deductions
If employees currently 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), they will need to reduce these amounts to keep the monthly total the same.

Change Billing Cycles
Impacted individuals may also wish to request that creditors change their billing cycles if all bills are currently due at the end of the month. The university will provide a letter confirming that a staff member’s pay cycle has changed if verification is needed. Individuals should contact their human resources representative for assistance.

Considerations for Supervisors With New Non-Exempt Employees

Managing Overtime
Managers and supervisors may need to set new expectations and change department schedules or behaviors in order to manage overtime according to their budgets. Overtime may occasionally be necessary and should be pre-approved by the supervisor; however, whether pre-approved or not, it must always be paid. A clearly defined approval process can assist you and your employees in managing both time and budget resources. Refer to SPG 201.38 Overtime Pay or hr.umich.edu/overtime for more information.
Mobile Devices

Mobile devices expand the opportunity for work to be performed outside of normal work hours. Employees who were previously classified as exempt may be used to responding to emails or calls after hours, but these activities must be counted as paid work time (and potentially overtime) for non-exempt employees. You may need to set a new expectation with employees about answering emails or calls outside of normal hours, or you may need to assess whether to provide mobile devices at all.

To Learn More

Contact your department human resources representative or umichflsa@umich.edu with any questions, or visit hr.umich.edu/2016-flsa-changes for additional information.
Considering Dual Job Codes for FLSA Compliance

Background

Together with unit advisors from all campuses, the university has developed an approach that will provide flexibility to units in how to comply with the revised FLSA salary threshold, including the option to use new “dual” job codes that allow the same job to be designated as exempt or non-exempt under the FLSA based on salary. This approach provides a solution to address both part-time and full-time staff whose comp-rate is below the FLSA salary threshold, as well as a sustainable model for future adjustments.

Assumptions

- Compliance with FLSA
- Duties meet FLSA exempt job test
  - Request an exempt duties test if uncertain
  - Move to non-exempt classification where duties test is not met
- Supervisors will track and approve all hours worked and exception time for non-exempt staff
  - Authorize and approve all overtime
- Supervisors will track and approve exception time for exempt staff
  - No additional pay for hours over 40 in a workweek

Goals Related to Budget Management

- Limit increases to base salaries; overtime can be managed
- Avoid readjusting salaries to meet new minimum FLSA threshold every three years
- Limit overtime costs

Approach to Dual Job Codes

- University Standard (Option A)
  - Staff with a comp-rate equal to or greater than the minimum FLSA threshold are assigned the exempt job code; those below are assigned the non-exempt job code

- Unit Standard (optional)
  - Unit develops a local standard to meet business needs
  - Take into account staff impact, budget, side-by-side issues and labor market analysis

Goals Related to People Management

- Maintain FLSA classification structure integrity
- Maintain compensation/internal equity within unit
- Maintain FLSA status consistency within unit
- Mitigate side-by-side issues
- Maintain work schedule flexibility

Option B

- Ensure comp-rate of all full-time staff in a job code is at or above the minimum threshold

Option C

- Reclassify all staff in a job code as non-exempt, including staff above the minimum threshold
# FLSA Exempt Comp-Rate for Part-Time Appointments Based on Full-Time Salary and Effort

**Notes:**
- Effective December 1, 2016, FLSA exempt status requires a comp-rate that is equal to or greater than $47,476. Comp-rate = full-time salary * effort.
- The FLSA exempt salary threshold will be revised by the federal government every three years going forward, beginning in 2020.

## Full-Time Salary Table

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Sample Employee Communication: Moving to Non-Exempt Status

Note: To modify the text below for use in your unit, download an editable Word version of this letter. Please provide the 2016 FLSA Changes Faculty and Staff Toolkit with this letter.

<<Date>>

<<FirstName>> <<LastName>>
<<Job Title>>
<<Department>>
<<Campus Address>> <<Campus Zip>>

Dear <<FirstName>> <<LastName>>,

Your position is one of several that have recently been reviewed for overtime eligibility as a result of changes to the Fair Labor Standards Act (FLSA) that were announced by the U.S. Department of Labor earlier this year. The FLSA determines eligibility for overtime pay based on certain tests of job duties and pay. The changes announced earlier this year raise the salary at which an employee may be considered “exempt” from earning overtime pay.

**Why this change will affect you:**
In order to comply with the new regulations, your position is now eligible for overtime pay (or “non-exempt”) under the FLSA. This change becomes effective November 20, 2016.

**How this change will affect you:**
As a non-exempt employee at the university, you will report all time worked as well as exception time (overtime and time off) and will earn overtime pay at time-and-one-half for all hours worked above 40 in one workweek starting November 20, 2016. You will also change to a biweekly pay schedule, with your first biweekly pay date on December 9, 2016.

Your current rate of pay, vacation or PTO accrual rate, benefits, job family and job title are not affected by this change.

**Resources and additional information**
Please review the enclosed details about this transition and visit hr.umich.edu/2016-flsa-changes for additional information. Thank you for your cooperation as we work to make this transition as smooth as possible.

Sincerely,
<<Supervisor or HR representative name>>
<<Department>>
Sample Employee Communication: Salary Adjustment

Note: To modify the text below for use in your unit, download an editable Word version of this letter.

<<Date>>

<<FirstName>> <<LastName>>
<<Job Title>>
<<Department>>
<<Campus Address>> <<Campus Zip>>

Dear <<FirstName>> <<LastName>>,

Your position is one of several that have recently been reviewed for overtime eligibility as a result of changes to the Fair Labor Standards Act (FLSA) that were announced by the U.S. Department of Labor earlier this year. The FLSA determines eligibility for overtime pay based on certain tests of job duties and pay. The changes announced earlier this year raise the salary at which an employee may be considered “exempt” from earning overtime pay to $47,476, effective December 1, 2016.

Why this change will affect you:
Your position is currently classified as “exempt” from earning overtime pay under the FLSA based on your duties and exceeding the current minimum exempt salary threshold of $23,660. To maintain exempt status for your position going forward, your salary will be increased to meet the new minimum salary requirement.

How this change will affect you:
As of <<date>>, your salary will be <<$XX,XXX>>, an increase from your current salary of <<$XX,XXX>>.

Resources and additional information
For information about the 2016 FLSA changes, visit hr.umich.edu/2016-flsa-changes.

Sincerely,

<<Supervisor or HR representative name>>
<<Department>>
Frequently Asked Questions for Managers and Supervisors

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.

What should I discuss with my employees who are becoming eligible for overtime?
Managers and supervisors may need to set new expectations and change department schedules or behaviors in order to manage hours worked within budgets. It is important to clearly communicate any new unit standards or business processes to newly non-exempt employees, especially if their duties will not be changing. Considerations include:

- Guidelines for using mobile devices outside of normal work hours to respond to calls or emails
- Expectation to seek approval for overtime
- How to track and report time worked and exception time
- Adjustments to work schedules when work must occur outside of normal business hours

Communicating a clearly defined overtime approval process to your non-exempt employees can assist you in managing both time and budget resources. However, while non-exempt employees should seek pre-approval before working overtime, it is important to remember that all overtime must be paid, whether pre-approved or not.

Are there exceptions to the new salary threshold under the FLSA?
Yes. Salaried employees not subject to the salary threshold test include instructional faculty (including lecturers), physicians and lawyers. In addition, academic advisors are subject to a different salary threshold requirement.

I am in the process of hiring new staff. What should I say and what should I put in offer letters about the position’s FLSA status?
New non-exempt job codes will be available as of October 1, 2016 so that new hires may be classified appropriately. If the salary will ultimately determine the FLSA status of the open position, the job posting should state that the position is subject to FLSA review and that the classification and exemption status could change as a result. Offer letters to candidates made prior to October 1 should also state that the position is subject to FLSA review and that the classification and exemption status could change as a result.

Can my employees be paid for overtime but remain on a monthly pay schedule?
No. The university pays all non-exempt employees on a biweekly cycle. Note: For employees who are not in the timekeeping system, such as those in Primary job titles, additional hours worked will have to be tracked locally and paid through an alternate mechanism if their compensation rate puts them in non-exempt status.

What if an employee has a regular exempt job as well as a temporary appointment?
Temporary appointments are considered non-exempt. Only the employee’s salary in the regular position should be used to determine compliance with the FLSA salary threshold; do not combine the two salaries for evaluating FLSA status in the employee’s regular position.
The employees in my unit are used to having flexibility in their work hours. Can this continue if some or all of them become non-exempt?
Yes. Special or alternate scheduling is allowed within the same workweek. For example, if an employee normally works 8 hours a day, and has a personal appointment on Monday that only allows him to work 6 hours, the supervisor and employee can agree that the employee will make up the 2 hours later in the same workweek. Another example would be if a typical schedule is 8 hours a day during the day, and the department needs an employee to work a special event for 4 hours during the evening. The schedule may be changed to give the employee 4 hours of time off at another time during the same workweek.

Can non-exempt employees telecommute?
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.

Does an employee need to be paid for overtime if I did not approve it?
Yes. If overtime hours are worked by non-exempt employees, even if unapproved, they must be paid. Therefore, it’s important to establish overtime rules and communicate them to everyone in your unit. The guidance for affected staff reiterates that they should seek approval before working any overtime, but you can help by establishing rules in your unit for seeking approval in advance for projects or events that may be deadline driven and require additional hours. Since more employees in your unit may now be paid for overtime than may have previously been the case, you will need to consider this impact when planning your salary budget.

Does time spent answering emails or using a mobile phone for work outside of normal hours count towards overtime for non-exempt employees?
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.

Can I require overtime for non-exempt employees?
Yes. Supervisors can require overtime work when necessary and with pay. Whenever possible, you should give advance notice to employees.

Can I request or require that a non-exempt employee work over 40 hours in a week and offer “comp time” (unpaid time off taken in a later workweek) instead of pay for overtime?
No. U-M does not recognize “comp time,” and, according to FLSA regulations, non-exempt staff are to be paid for overtime hours worked. Other forms of payment, such as compensatory time off, are not to be used.
Depending on your operation, you may need to adjust your salary budgets. Remember that rearranged work schedules may be an option in lieu of overtime, as long as the hours worked do not exceed 40 in a single workweek. These types of schedules provide flexibility for both the unit and the employee. If an employee's hours worked exceed 40 in a single workweek, they must be paid overtime. Please talk with your human resources representative if you want to further explore special or alternate scheduling options.

If I require evening work in my unit for an event or other function, can I reduce a non-exempt staff member’s daytime hours and replace them with evening work as long as they don’t work more than 40 hours in a workweek?
Yes, you can adjust the work hours of an employee to meet needs. Advance notice of such changes should be given to the employee if possible. You can rearrange hours from day to day within the same week, but the regulations do not provide you with the discretion to move hours from one week to the next without incurring overtime for the week in which the hours worked exceed 40 (even if the hours worked in the preceding week were less than 40). Note: The university's shift differential policy may apply if evening hours are involved in a rearranged work schedule (see SPG 201.55, Shift Premium).

How will vacation and PTO accrue for new employees or for employees who change their FLSA status after December 1?
Vacation and PTO will accrue at the standard rates based on the appointment (years of service and FLSA status).

How are employees on leaves of absence or extended sick time impacted by the 2016 FLSA changes?
A staff member on a leave of absence, using extended sick time, or on a workbreak during the implementation period may be identified for reclassification to non-exempt (with grandfathered vacation or PTO). The reclassification will be processed when the staff member returns from leave.

Are seasonal employees impacted by the 2016 FLSA changes?
The revised FLSA salary threshold is $47,476 annually or $913 per week. Seasonal employees may be considered exempt under the FLSA if they make at least $913 during the weeks that they are employed (and their duties meet the exemption test). Seasonal lecturers are not subject to the FLSA salary threshold if their primary duty is instructional.

What happens if employees move from full-time to part-time?
After December 1, 2016, if an exempt employee moves from full-time to part-time, he or she must be reclassified as non-exempt if the change causes the compensation rate to fall below $47,476. Managers should be sure to discuss this implication with any employee considering a reduced schedule. Note: Grandfathering of vacation or PTO accruals will not apply for individuals who change FLSA status after the December 1 effective date of the new regulations.

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


New FLSA Regulations: Addressing “Side-by-Side” Issues

Salary will play a more significant role in determining exempt and non-exempt status under the Fair Labor Standards Act (FLSA) due to the revised exempt salary threshold that goes into effect on December 1, 2016. As a result, it will be more likely that a U-M staff member could work alongside another individual who performs similar work but is classified differently under the FLSA.

FLSA Status and Salary Differences

- A goal of this implementation project was to allow U-M units the flexibility to comply with the increased exempt salary threshold in different ways, according to their budgets and business needs.
- Both university policy and the FLSA regulations allow the same job to be classified as non-exempt in one department and exempt in another, as well as within the same department, provided that the job meets the duties and salary criteria to be considered exempt.
- Some people perform work at the university but are employed by another organization, including certain researchers and temporary staff. In these instances, the employing organization may take a different approach to complying with the new FLSA regulations.

Vacation/PTO Accrual Differences

- Rates of vacation or PTO accrual are determined by university policy, not by the FLSA. These policies did not change in response to the recent FLSA regulation changes.
- The university made a special policy exception tied to this implementation project to “grandfather” the current accrual rate for only those staff members who have less than the required years of service to get the maximum accrual rate in the non-exempt accrual schedule and who were reclassified to non-exempt for the December 1 effective date. These individuals would otherwise have been negatively impacted by a reduction in their vacation or PTO accrual rate.

Scheduling, Timekeeping and Pay Frequency Differences

- Pay frequency and timekeeping procedures are determined by university policy, not by the FLSA. The university pays all non-exempt employees on a bi-weekly cycle. Non-exempt employees report both time worked and exception time so that overtime pay can be calculated appropriately.
- Supervisors are responsible to set schedules to meet business needs and budget goals, limiting overtime when possible.

Exempt vs. Non-Exempt Status

- The FLSA is designed to protect employees and ensure that standards are in place with respect to pay and hours worked.
- For individuals impacted by these changes, there may be a period of adjustment to new timekeeping and pay procedures, as well as changes in scheduling and flexibility related to a new FLSA status. New overtime pay eligibility and the “grandfathered” vacation/PTO accrual rates (for those who have less than the required years of service to get the maximum rate in the non-exempt accrual schedule) may help address staff concerns.
- We highly value the contributions of all our faculty and staff, and welcome feedback and questions at umichflsa@umich.edu.