FLSA (Fair Labor Standards Act)

SALARY THRESHOLD CHANGE

FAQs for Employees

Changes effective on January 1, 2020

What is the FLSA?
The FLSA (Fair Labor Standards Act) is a federal labor law. A key provision of the Act is that certain employees must be paid time and one-half for all overtime hours worked.

How does the university determine if my position is exempt or nonexempt (eligible for overtime pay) under the FLSA?
There are two tests, a duties test and a salary threshold test. Under the “duties” test, employees may be eligible for overtime pay if their position meets certain criteria with respect to the level of discretion and independent judgement required. Under the “salary threshold” test, employees who earn less than $684 per week (the equivalent of $35,568 per year) are eligible for overtime pay.

What do the terms exempt and nonexempt mean under the FLSA?
- Under the Fair Labor Standards Act (FLSA), every position is classified as either exempt or nonexempt. These designations are not specific to any one employment category across the board. Classified staff, university staff, and Research Assistants/Associates can all be either overtime exempt or nonexempt depending on the individual position’s job duties, pay frequency, and pay level.
- **Exempt** under the FLSA means the position is NOT eligible to receive overtime compensation.
- **Nonexempt** under the FLSA means the position is ELIGIBLE and must be compensated for overtime pay when more than 40 hours are worked in a given week.

Why is the new salary threshold change being implemented?
Periodically, our federal government revises the “salary threshold” level for exemption from overtime pay. This last occurred in 2016, and it will again occur effective January 1, 2020.

How will I know if my FLSA status has changed?
Your school/college/department HR team will notify you if your FLSA status changes.

If my FLSA changes from exempt to nonexempt, what does that mean?
It means that you are eligible to receive overtime or compensatory time for hours worked in excess of 40 hours/week **and you** must track work hours. Training will be provided by the department or school HR liaison for you and your supervisor regarding time tracking to ensure that you both understand what is expected.

What is overtime?
Overtime is any time worked over 40 hours in a workweek. Overtime is compensated at time and one-half the regular hourly rate for all hours worked over 40 hours in a workweek for nonexempt staff. Only actual work time counts toward the 40-hour threshold. Leave time does not count as work time under the FLSA (except for overtime-eligible essential services employees). Employees cannot waive their rights to overtime under the FLSA.

**How do I keep track of my time, now that I am nonexempt?**
By following these steps:
- If you use paper timesheets or MyLeave, you will need to record all hours worked on a daily basis.
- You and your supervisor must both certify time records each month. Certification means both have validated the hours identified were actually worked and that you did not perform any work off the record.
- If adjustments are needed and made to the time record, both you and your supervisor must sign off on the adjustment.
- If you work unauthorized overtime, you will still be paid for the overtime hours worked.

**Our department uses My.Leave for timekeeping. Can nonexempt employees use My.Leave?**
Yes, both exempt and nonexempt employees can use My.Leave for time tracking and leave reporting. EXEMPT employees use My.Leave to track only leave time taken, not hours worked. NONEXEMPT employees will use My.Leave to track hours worked each day and weekly overtime earned in addition to reporting leave taken.

In My.Leave, the nonexempt employee is able to use regular hours when using compensatory time. Just like the accrual of comp time, the deduction of comp time needs to be kept outside of the system. Unfortunately, the system doesn’t keep a running balance of comp time earned, but it is possible when reviewing an employee’s timesheet to go back and calculate how much was earned and how much was used.

Check with your school/college/department if you use a different timekeeping system to understand appropriate tracking of hours for nonexempt employees.

**Does overtime and additional straight time need to be approved prior to the time being worked?**
Yes, your supervisor needs to pre-approve any additional time you work. If you work overtime or additional straight hours without approval, you will still be paid for your time worked. This includes evening, weekends, and after-hours work.

**As a nonexempt employee, if I arrive early or stay late for work reasons, do I need to modify my work schedule later that week to avoid working overtime?**
This is dependent on business needs. You should discuss adjustments to your work schedule with your supervisor when work responsibilities require you to work additional hours. Supervisors are responsible for determining work schedules and approving overtime in advance.

**I regularly check my email after work hours, and now I am nonexempt. Can I continue this practice?**
Since you are now a nonexempt employee, any time worked counts toward work hours and must be recorded to be paid. If you are checking your email and/or responding to work cell phone calls or text messages after work hours, you need to record this time, as it counts as worked time.

At times I need to attend meetings or participate in training required for my job. Is this counted as work time?
Mandatory training or meetings are work time. Voluntary training during normal work hours is work time. If the meeting or training time is 1) outside normal work hours, 2) voluntary, 3) NOT job related, AND 4) no other work is currently performed, the time is not counted as work time (all 4 criteria must be met).

Currently I am paid on a monthly/salaried basis and am exempt from overtime. If my FLSA status changes to nonexempt status, will I be paid on an hourly basis?
You will continue to be paid on a monthly salaried basis, based on time worked in the work week (designated by percent of time), and you need to record the number of hours worked daily and complete a timesheet each month or enter hours in My.Leave.

How do breaks and lunch time work for nonexempt employees?
- Scheduled meal periods are discretionary (but strongly encouraged).
- Meal periods (typically lasting at least 30 minutes) are not considered as work time and are not paid. Meal periods must be at least 20 minutes of uninterrupted, work-free time.
- Meal periods cannot be taken at the beginning or end of the workday.
- Work breaks are discretionary. Work breaks are paid time during the course of a regular work day.
- Work breaks cannot be taken at the beginning or end of the workday or used to extend a meal period.

I need to travel to a secondary location for my job, does this count as time worked?
Prior to traveling, check with your manager about what time is counted as worked time.

Does paid time off ever count toward work time in a given week?
Generally, No.
- Paid time off is not considered work time and is not included when calculating overtime eligibility for that week. This is for all types of paid time off (vacation, sick, jury duty, bereavement, etc.).
- If your position is considered an essential position, both work time and paid leave count as work time for overtime/compensatory time calculation. Workers in essential positions are considered essential to public health and safety, and have been designated as such by the department head.
I am a part-time employee, how does this impact me?
The minimum salary requirements are not annualized for part-time employees. If your percent of time is less than 100%, you will be eligible for overtime if your part-time salary is less than $35,568/year ($684/week).

- For example, if you work 20 hours per week and your 50% salary is $25,000/year, you are considered to be nonexempt, and eligible for overtime, even though your salary at 100% would be $50,000/year.

I am currently part-time and earn less than $35,568/year. At times, I work more than my percent of time, how does that affect my pay?
When you work more than your scheduled hours in a week, you are paid for the additional hours that you’ve worked at straight time up to 40 hours/week.

- For example, if you are scheduled to work 20 hours per week (50%) and work 30 hours in the work week, the additional 10 hours worked will be paid as straight time the following month.
  - The additional 10 hours are reported in CU Time along with any leave used. The department PPL (personnel payroll liaison) will use the earnings code XRG (extra regular hours). If you are using My.Leave, use the earnings code for additional regular hours.

- If you work 45 hours in a work week, you are paid for the additional 20 hours of straight time and 5 hours of overtime (paid salary or earning compensatory time).
  - The additional 25 hours are reported in CU Time along with any leave used. The department PPL will use the earnings code XRG (extra regular hours) for 20 hours and will use the earnings code OT for the 5 overtime hours.

What is compensatory time or comp time?
Public sector employers (including CU Denver and CU Anschutz Medical Campus) may provide time off (comp time) in lieu of cash payment for overtime. Comp time is therefore calculated the same as overtime—it is time and one-half the regular hourly rate for all hours worked over 40 hours in a workweek.