FLSA (Fair Labor Standards Act)

SALARY THRESHOLD CHANGE

FAQs for Supervisors and PPLs
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 an employee’s 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, the 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.

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 will my employees know if their FLSA status changes?
Central HR will provide template letters to the schools/colleges/department HR team that will be customized for each employee impacted. Individual employee letters will be distributed the week of December 16th, and need to be returned promptly, as the changes are effective January 1, 2020.

If an employee’s FLSA changes from exempt to nonexempt, what does that mean?
Employees will be eligible to receive overtime or compensatory time for hours worked in excess of 40 hours/week and must track work hours. Training will be available with the department or school HR liaison for employees and supervisors regarding time tracking to ensure that employees and supervisors understand what is expected of them.

As a supervisor, what are my responsibilities regarding overtime-eligible employees?
Supervisors need to ensure that their employees understand what overtime is and understand the department’s requirements for tracking work hours and requesting and approving overtime. Time records need to be kept and signed off as accurate each pay period by both the employee and the supervisor. Supervisors need to ensure that their employees understand that they cannot waive their right to overtime: They are not able to volunteer to do work and not track it and not be paid for it. This is a direct violation to the FLSA and will cause significant fines and back-pay to the department and the CU organization. Supervisors need to help their employees manage work expectations within the 40-hour workweek or allow overtime compensation when it is needed to manage deadlines.

How does this effect part-time employees?
The minimum salary requirements are not annualized for part-time employees. An employee whose percent of time is less than 100% will be eligible for overtime if their part-time salary is less than $35,568/year ($684/week).
  ▪ For example, if an employee works 20 hours per week and their 50% salary is $25,000/year, they would be eligible for overtime, even though their salary at 100% would be $50,000/year.

How does pay for part-time employees that earn less than $35,568/year work?
Part-time employees that work more than their scheduled hours in a week will need to be paid for the additional hours that they’ve worked at straight time up to 40 hours/week.
  ▪ For example, if an employee that is scheduled to work 20 hours per week (50%) works 30 hours in the work week, the additional 10 hours worked will need to be paid as straight time the following month.
    ○ The additional 10 hours will need to be 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 the same employee works 45 hours in a work week, they will need to be paid for the additional 20 hours of straight time and 5 hours of overtime (paid salary or earning compensatory time).
    ○ The additional 25 hours will need to be 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 use the earnings code OT for the 5 overtime hours.
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 local HR Director 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, supervisors need to pre-approve any additional work time. Employees that work overtime or additional straight time without approval will still be paid for their time worked. This includes evening, weekends, and after-hours work.

Does paid time off ever count towards 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.).
- For positions that are 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.

Can work schedules be modified to avoid overtime?
This is dependent on business needs. Supervisor and employees should discuss adjustments to their work schedule when work responsibilities require employees to work additional hours. Supervisors are responsible for determining work schedules and approving overtime in advance.

Can employees continue to check email after work hours as a nonexempt employee?
As a nonexempt employee, any time worked counts toward work hours and must be recorded to be paid. If an employee checks their email and/or responds to work cell phone calls or text messages after work hours, this counts as worked time.

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.
In what circumstances must travel time be counted as work time?
Travel time is compensable depending on the nature of the travel.

*Home-to-work travel.* Traveling from home before the regular workday begins and returning home at the end of the workday is ordinary home-to-work travel, and is not considered work time, even when a company vehicle is used. If an employee is required to work at home first and then travel to an office, the travel time is considered work time.

*Special one-day assignment in another city.* An employee who normally works at a fixed location but travels to a different city for a work-related assignment and then returns home the same day is considered working while traveling. The department may deduct the time that the employee would normally spend commuting to the regular work site.

*Travel that is all in the day’s work.* Time spent traveling by an employee as part of their principal activity, such as travel from job site to job site during the workday, is work time. Home to the first job site is not work time.

*Travel away from the home community.* Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is work time when it cuts across the employee’s normal workday. The paid time includes not only the hours worked on regular working days during normal working hours but also travel time during corresponding hours on non-working days, and any other hours that an employee actually performs work. The time spent by an employee who travels outside regular working hours as a passenger on public transportation, such as an airplane, train, etc., may be considered work time at the department’s discretion.

Is meeting/training time 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).

Does the employee still get paid on the current pay cycle if their FLSA status changes to nonexempt status?
Employees will continue to be paid on a monthly salaried basis, based on time worked in the workweek (designated by percent of time) and will need to record the number of hours worked daily and complete a timesheet each month or enter hours in My.Leave.

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.