FAIR LABOR STANDARDS ACT (FLSA)

FREQUENTLY ASKED QUESTIONS

Q: What is the Fair Labor Standards Act?

- The Fair Labor Standards Act (FLSA) requires employers to compensate all covered employees, or non-exempt employees, for all hours worked beyond 40 hours per workweek.

- The law also requires non-exempt employees to be paid at least the federal minimum wage, sets guidelines for employment of minors, and includes wage and hour record keeping requirements.

Q: What does the term “non-exempt” mean?

- Non-exempt means not exempt from the FLSA overtime rules. In other words, non-exempt salaried employees are those employees who must be paid an overtime premium of time-and-one-half for each hour worked in excess of 40 hours per week.

Q: What does the term “exempt” mean?

- Exempt means exempt from overtime. Exempt employees are salaried employees who do not receive overtime. In other words, exempt employees are required to fulfill the duties of their positions regardless of the number of hours worked.

Q: What is the effect of the new FLSA rules that the Department of Labor released on May 18, 2016 with respect to overtime eligibility?

- The Department of Labor (DOL) updated the minimum salary level above which certain “white collar” salaried workers can be considered exempt from the DOL overtime rules.

- Generally, the new rules require salaried employees who earn less than $47,476 per year to be paid overtime for all hours worked in excess of 40 hours in a workweek. There are certain exceptions that will be discussed below.

Q: How is the minimum salary level changing?

- The new DOL rule raises the minimum salary level from its previous amount of $455 per week (the equivalent of $23,660 a year) to $913 per week or $47,476 per year.
Q: When does the rule take effect?

- Employers must be in compliance with the new rule by December 1, 2016. Because Radford University’s payroll periods begin on the 10th and 25th of each month, we will need to be in compliance with the new rules with the pay period that begins on November 25th.

Q: Will the salary threshold of $47,476 be updated in future years?

- Yes, the Final Rule establishes a mechanism for automatically updating the salary level every three years, with the first update to take place in 2020.

Q: Are employees who earn more than $47,476 per year automatically exempt from the overtime rules?

- No, even if an employee satisfies the minimum salary threshold test of $913 per week or $47,476 per year, he or she must still meet what is known as the “duties” test to qualify as an exempt employee or an employee who is not required to be paid overtime for hours worked in excess of 40 hours in a workweek.

Q: What is the “duties” test?

- The FLSA provides that the employee’s primary job must involve certain types of work to meet the test for an executive, professional, or administrative exemption from the overtime rules. The rules are complex, but please refer to the DOL Wage and Hour Fact Sheet #17A for additional details about these exemptions. [https://www.dol.gov/whd/overtime/fs17a_overview.htm](https://www.dol.gov/whd/overtime/fs17a_overview.htm)

- The Office of Human Resources at Radford University determines whether an employee meets the executive, professional or administrative exemption test.

Q: What happens if an employee earns more than $47,476 per year but does not meet the “duties” test?

- If the duties test is not met, the employee must receive overtime for hours worked in excess of 40 hours in a workweek, even if the employee earns in excess of $47,476.

Q: Are there some employees at Radford University who earn more than $47,476 who are currently exempt from the overtime rules but who may become non-exempt or eligible for overtime on December 1st?

- Yes, Human Resources is reviewing position descriptions to ensure compliance with the new rule. We anticipate that some individuals who earn more than $47,476 per year will be reclassified from exempt or not eligible for overtime to non-exempt or eligible for overtime.

Q: If a 9-month employee earns at least $35,607 but less than $47,476, is this employee subject to the minimum salary threshold and the new overtime rules?

- No, it is permissible to annualize the salary for an employee who only works for a part of the year. As long as the annualized salary is $47,476 or greater, as it is in this case, the employee does not have to meet the new salary threshold test and is not required to be paid overtime.
Q: Are there any exceptions to the new salary threshold test and overtime rules for employees in higher education who earn less than $47,476?

- Yes, there are some limited jobs in higher education that are not subject to the new rules and that will therefore continue to be exempt from the overtime rules.

- **Teachers** are not subject to the salary threshold test. Therefore, an employee who qualifies as a “teacher” can earn less than $47,476 and not receive overtime.
  - *Adjunct professors* are teachers and are not subject to the minimum weekly salary threshold of $913 per week and are exempt from the overtime rules.
  - *Coaches* whose primary duty is instructing student-athletes in how to perform their sport are considered teachers and are also not subject to the new minimum salary threshold and overtime rules. However, the amount of time that a coach spends instructing student-athletes is relevant. For example, an instructor who spends more than half of his or her time recruiting and performing other unrelated non-teaching activities does not meet the teacher test. In this case, the coach is subject to the new minimum salary threshold.

- **Undergraduate students** engaged in research under a faculty member's supervision in the course of obtaining a degree are not subject to the new minimum salary threshold and overtime rules.

- **Graduate teaching assistants and research assistants** engaged in research under a faculty member's supervision in the course of obtaining a degree are also not subject to the minimum salary threshold and overtime rules.

- **Student residential assistants** enrolled in bona fide educational programs who receive reduced room or board charges or tuition credits from the university are not generally considered employees under the FLSA; therefore, they are not subject to the FLSA’s overtime requirements.

Q: When is overtime due for non-exempt or overtime eligible employees?

- Under the FLSA, hours worked over 40 in a workweek are considered overtime. Any non-exempt employee who works beyond 40 hours in a workweek must be compensated at a rate of time-and-one-half.

Q: May an employee volunteer to stay late to complete work, or complete work in the evening, or on weekends, and not be compensated?

- No. An employee who is eligible for overtime cannot volunteer to work “off the clock” and is not permitted to waive his or her rights under the FLSA.

Q: Does overtime have to be authorized by a supervisor prior to an employee working over 40 hours?

- Yes. Overtime must be pre-approved by a supervisor. Failure to request approval is a violation of policy and may result in disciplinary action.
Q: If an employee works beyond his/her scheduled hours, or does work at home without prior authorization, must the employee still be paid for these hours?

- Yes, if the employee works without authorization, or does not receive prior permission to work overtime, he/she must still be paid for these hours.

- It is the duty of management to exercise control to see that work is not performed beyond scheduled hours without prior approval and to counsel the employee and to initiate disciplinary action if the process has not been followed.

Q: May a salaried non-exempt employee accrue “comp. time” or “flex. time” that the employee can use in future pay periods in lieu of receiving overtime pay?

- No. Radford University does not have an overtime leave policy. All hours worked over 40 in a workweek must be paid at a rate of time-and-one-half.

Q: Do exempt employees accrue comp time?

- Generally, no. Exempt employees do not accrue compensatory time unless they work on a holiday or are required to work during an authorized closing. Exempt employees are required to fulfill the duties of their positions regardless of the number of hours worked.

Q: May an employee’s hours be adjusted within the same workweek so the employee stays within the 40 hour standard?

- Yes. An employee, with supervisory approval, may adjust his/her schedule during the workweek to offset extended workdays. Alternatively, the employer may request that the employee adjust his or her schedule. For example, if an employee needs to work into the evening (e.g., three hours later than normal hours), it is possible to have the employee come into work three hours later on another day as long as the change does not disrupt the business operations of the office, or cause a hardship on the employee.

- There is one important caveat. The FLSA rules require that the adjustment must occur in the same workweek, since each workweek stands alone. Radford’s work week begins on Saturday at 12 a.m. and ends Friday at 11:59 pm.

Q: How can I determine if staff development/training and committees are considered compensable activities, if they occur outside of the employee’s normal work hours?

- In order for training, or a meeting, to not be considered compensable work time, all of the following four (4) criteria must be met:
  1) Attendance must occur outside the employee’s work hours;
  2) Attendance must be voluntary;
  3) The employee must do no productive work while attending (productive to the employer); and
  4) The training, or meeting, should not be directly related to the employee’s job

- If any of the above conditions are not met, the time is treated as hours worked.
Q: May non-exempt employees work through lunch?

- No. Non-exempt employees must be completely relieved of duties during meal periods. If they are not, the time counts as hours worked.

- Performance of any work duties, such as answering phones, or emails during meal periods, is considered hours worked.

- Employees who work at least six consecutive hours shall be afforded a lunch period (meal break) of at least 30 minutes except in situations where shift coverage precludes such lunch breaks.

Q: If a non-exempt employee is required to travel away from home, are there special rules with respect to how to account for hours worked?

- Yes, special rules apply with respect to travel.

- In general, employees count as hours worked any time spent actually working. If the employee is relieved from duty for a portion of the day such that the time is long enough to permit the employee to use the time effectively for his or her own purposes, then this time when the employee is relieved from duty is not considered work time.

- Please refer to the Travel FAQ for non-exempt employees, for more guidance about how to record hours worked, while traveling.

Q: If an Administrative or Professional (A/P) Faculty employee is reclassified as non-exempt or overtime eligible, will the employee’s leave benefits be impacted?

- No, if an A/P Faculty employee becomes eligible for overtime, this employee will be “grandfathered” in the current benefit plans for A/P Faculty. However, if this employee leaves the university, the position will be reviewed for proper reclassification. If the classification for A/P is changed to non-exempt, the employee must enter all hours worked and leave taken on their timesheet in order to capture any overtime worked.

Q: Who can I contact with additional questions about FLSA compliance?

- Please contact your assigned HR Generalist or the Office of Human Resources at 831-5008.