

FAIR LABOR STANDARDS ACT (FLSA) 2019 UPDATE



Toolkit for Managers and Supervisors

LSU

Office of Human Resource Management

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ABOUT THIS TOOLKIT

This toolkit is designed to help Directors, Deans, Department Heads, Managers, and Supervisors to:

- Determine which employees are impacted by the changes to FLSA overtime rule taking effect January 1st, 2020.
- Develop a strategy to comply with the regulations that aligns with departmental needs.
- Communicate effectively with impacted employees in a timely manner.

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IMPORTANT CHANGES IN OVERTIME REGULATIONS

As a result of the 2019 changes to FLSA or *Fair Labor Standards Act*, on January 1, 2020, a new overtime rule is set to go into effect. This new rule will require employers to pay overtime to all employees making less than \$684 per week or \$35,568 annually for a full-time worker. Certain employee groups, who are covered under Department of Labor exemptions provided for groups such as teachers, coaches, and medical interns and residents are exempt from this new overtime rule.

EXECUTIVE SUMMARY

1. The new regulation affects employees making less than or \$684 per week or \$35,568 annually for a full-time worker. However, the overtime rule does not apply to groups who are covered under existing Department of Labor exemptions such as **teachers or instructors whose primary duty is teaching, instructing, or lecturing in the activity of imparting knowledge, graduate assistants, certain IT professionals, medical professionals (Veterinary Interns and Residents)**.
2. Affected employees will have their annual base salaries converted to an **hourly rate** by dividing their annual base salary by 2080. That number will be their official hourly rate.
3. Affected employees will be required to **enter their time in Workday**. All departments must keep records for the actual work hours of each employees earning less than \$35,568.
4. These employees will remain **Unclassified** and outside of the Civil Service rules and regulations. They are to be considered **Professional Non-Exempt** employees.
5. These employees will move from a monthly payroll cycle to a **bi-weekly payroll** cycle beginning December 21st, 2019.
6. Affected employees will be paid **1.5 times** their regular hourly rate for time worked in excess of 40 hours in an assigned and contiguous workweek. **Compensatory Time** can be substituted for overtime payments allowing that certain criteria is met.
7. Overtime and compensatory time must be **approved by the supervisor in advance of hours being worked**.
8. **Departments are responsible for financing** of overtime and compensatory time from their budget. They must account for their annual overtime needs within the annual budget construction process.

HISTORY

FLSA, or the Fair Labor Standards Act, establishes minimum wage, overtime pay, record keeping and youth employment standards affecting employees in the private sector and in federal, state, and local governments. On May 18, 2016, President Obama and Secretary Perez signed a Presidential Memorandum directing the Department of Labor to update the regulations defining which workers are protected by the FLSA's minimum wage and overtime standards. However, the US District Court for Eastern District of Texas granted an injunction prohibiting implementation and enforcement of the proposed rule on the grounds that the USDOL had exceeded its rule making authority. On September 24, 2019, the USDOL issued it's long-awaited proposed rule that would increase the minimum salary threshold to qualify for exemption from the overtime provisions of the FLSA from their current level of \$455 per week (\$23,660 annually) to \$684 per week (\$35,568 annually). This transition of employees from a monthly pay schedule to an hourly schedule is not a result of Workday, but rather a means to allow LSU to remain compliant with federal regulations.

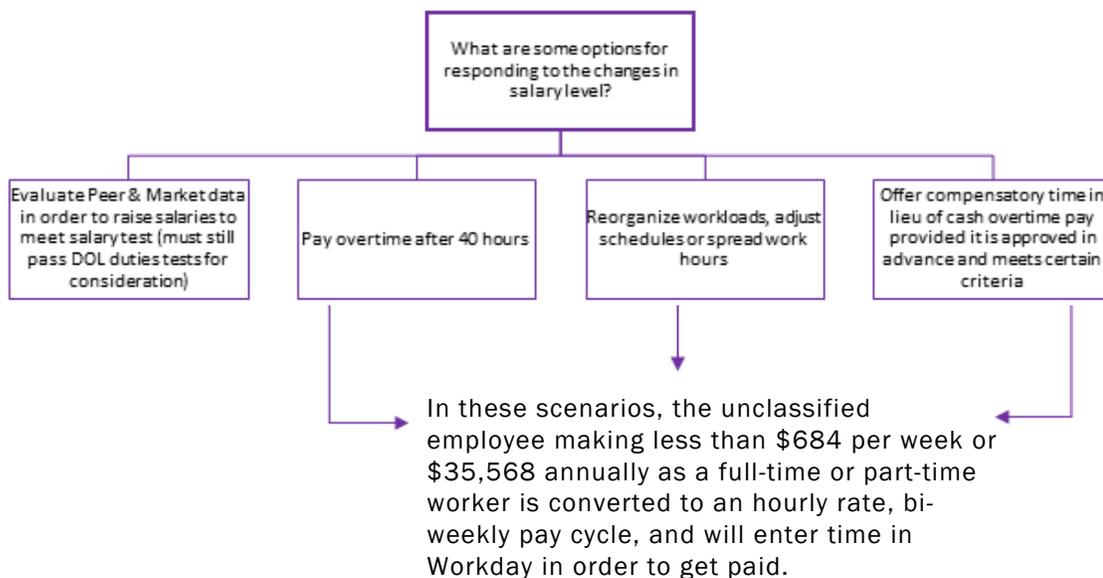
KEY POINTS FOR DEPARTMENTS

Based on the new federal FLSA regulations, LSU is required to reclassify employees making less than \$684 per week or \$35,568 annually from *exempt* to *nonexempt* status which affects your department in a few key ways:

1. Affected employees will now enter their time in Workday to get paid. **Timely manager approval** in Workday is required in order for the employee to get paid.
2. Affected employees will be paid **1.5 times** their regular hourly rate for time worked in excess of 40 hours worked in an assigned and contiguous workweek. **Compensatory Time** can be substituted for overtime payments allowing that certain criteria is met.
3. Each **department** is responsible for the financing of their overtime or compensatory time from their regular budget. Departments should account for their annual overtime needs within the annual budget construction process.
4. Departments should establish and inform each employee **in writing** who is being paid an annual base salary under \$35,568 of their regular work hours, work schedule, and hourly rate by December 1st, 2019.
5. Overtime or Compensatory time must be approved by the supervisor **in advance** of the hours being worked. The supervisor in a formal manner in advance of any change must approve work schedule deviations. Deviations from the standard 5 day, 40 hour workweek must be reviewed by HRM in advance to ensure compliance and to gauge budgetary impact.

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 be necessary but it should be pre-approved by the employee’s supervisor. However, whether or not the overtime was pre-approved, overtime must always be paid. A clearly defined approval process can assist you and your employees in managing both time and budget resources.



USING COMPENSATORY TIME

Compensatory Time can be substituted for overtime payments for professional, non-exempt employees with the following requirements.

1. Compensatory time must be credited at the same rate as overtime--1.5 times the hourly rate for time worked in excess of 40 hours.
2. Supervisors cannot force a non-exempt employee to forfeit or convert cash overtime into something else, and similarly cannot force a non-exempt employee to forfeit comp time or to convert it to sick time, vacation time, or other paid time off.
3. Non-exempt employees must agree beforehand to be compensated with compensatory time instead of cash overtime, either in a memorandum of understanding or other agreement, or via some other agreement or understanding arrived at with the employee before the work is performed.
4. Compensatory time has a number of distinct rules aligned with it and those rules must be followed. HRM will be distributing a full description of the rules governing compensatory time.
5. Managers cannot significantly infringe upon the use of compensatory time by employees. The use of compensatory time by employees subsequent to earning that time must occur in a reasonable time period following its accumulation.

Non-public safety workers are only allowed to accrue 240 hours of comp time. Police Officers are allowed to accrue 480 hours of comp.

COMP TIME AT TERMINATION

Employees must be paid for all accrued comp time upon the termination of their employment, regardless of reason.

- The amount paid per hour will be the average of their hourly rate for the last three years of employment or their final hourly rate, whichever is higher.
- The amount of comp time accrued will not be counted toward the maximum accumulation of leave at the time of termination.
- Departments will need to finance the payout of compensatory time from within their annual budget.

UNDERSTANDING NEW OVERTIME ELIGIBILITY

Certain employee groups, who are covered under Department of Labor exemptions provided for groups such as teachers, IT professionals, and medical personnel are exempt from this new overtime rule. Departments should not assume any exemptions or exceptions to the overtime rules without verifying first through the University Office of Human Resource Management.

- **Medical personnel:** Veterinarian/Medical Interns and Residents (does not include technicians) are covered under the medical exemptions after legal review and consultation.
- **Teachers:** Teachers or instructors whose primary duty is teaching, instructing, or lecturing in the activity of imparting knowledge are exempt
- **Graduate assistants:** All Graduate Assistants (Service and Research), Teaching Assistants, Resident Assistants are exempt from this new overtime rule as are all Student Workers.
- **IT professionals:** Certain IT professionals are exempt if their positions meets certain salary range and duties test (i.e. duties related to design, development, analysis, creation, documentation, testing or modification of computer systems or programs).

DEPARTMENT OF LABOR EXEMPTIONS

Teaching Exemptions:

Classroom instruction and coaching qualifies for the teaching exemption. Counseling, admissions, and training are examples of functions that will not be exempt under the teaching exemption. The new rules do not affect instructional faculty (tenure track, clinical track and lecturers). Research faculty and librarians may be affected.

Not sure? HRM will work with each department and will provide a list before November 4th, 2019 to determine which employees are eligible under the new overtime rule.

POST- DOCTORAL AND RESEARCH FACULTY

Faculty whose primary duties are not instruction or teaching, i.e. faculty in research, clinical, or other tracks are not exempt. Similarly, post-doctoral fellows whose primary duty is not teaching or instructions are also not exempt.

FLSA 3 TESTS

FLSA determines whether or not 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 1.5 times for any hours worked over 40 hours in one work week.

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

1. An employee must be paid on a salary basis, not hourly basis.
2. Duties must meet criteria for duties test for executive, professional, administrative, computer or outside sales positions.
3. Compensation rate must be at least \$ 35,568 annually (effective January 1st, 2020)

If any one of the three tests is not met, the employee must be classified as nonexempt and eligible for overtime pay.

TALKING POINTS

These questions and answers are intended to assist you in answering your employee's questions and concerns as you communicate their new hourly rate, new overtime eligibility, impact of transitioning to a bi-weekly pay cycle, and how to enter hours in order to be paid.

Q: Can I opt out of this change?

A: An employee and employer cannot agree to waive any of the Federal Law's requirements.

Q: Will I still be considered unclassified/professional?

A: Yes, employees will remain unclassified/professional and outside the Civil Service directions. You will be considered unclassified, non-exempt employees.

Q: What does non-exempt status mean?

A: Employees whose jobs are governed by the FLSA are either "exempt" or "nonexempt." Nonexempt employees are entitled to overtime pay. Exempt employees are not.

Q: Will I still be paid monthly?

A: No, you will move to a bi-weekly payroll cycle effective December 21st, 2019. Your last monthly paycheck will be on December 23rd, 2019 which will include salary payment for December 1st-December 20th. The dates of December 21st-December 31st will be paid on the first bi-weekly payroll run for a paycheck of January 1st, 2020. Enclosed is a link to the [Payroll Wage Schedule](#).

Q: Will I still be paid as an annual salary?

A: No, employees earning less than \$35,568 per year must have their annual base salaries converted to an hourly rate by dividing their annual base salary by 2,080.

Q: Does my hourly pay rate include stipends, allowances, or additional compensation?

A: No, the official hourly rate does not include stipends for telephones, expense reimbursements, clothing allowances, benefits, additional compensation, supplemental compensation, etc.

Q: How will I keep track of my time?

A: You will be required to enter your time in Workday. View the online [job aids](#) and [videos](#) to learn how to enter time into Workday.

Q: Is this considered a demotion?

A: No, the transition from exempt to nonexempt is necessary to comply with federal regulations, therefore in no way should this change be considered a demotion. This change will not adversely affect the actual or perceived value of an employee's work or the importance of their contributions to LSU.

Q: Will switching from exempt to non-exempt impact my annual and sick leave accruals?

A: No, it will not impact your annual and sick leave accruals. You will continue to accrue on monthly unclassified schedule.

Q: Will switching from exempt to non-exempt impact my benefit elections and retirement plans?

A: No, your benefit eligibility and retirement enrollment will not be affected. However, you may need to make adjustments to how much you have set up to contribute per paycheck to voluntary retirement and insurance elections.

Q: What happens if I work more than 40 hours per week?

A: Any hours worked in excess of 40 hours per week must be paid at the rate of 1.5 times your regular hourly rate.

Q: Can I work overtime and tell my supervisor later?

A: No, employees should have overtime approved by their supervisor in advance.

Q: What happens if I take time off during the week?

A: Time off does not count towards the 40 hours. This includes annual leave, sick leave, jury duty, military leave, unpaid leave, etc.

Q: Do breaks count towards the 40 hours?

A: No, breaks, including lunch breaks, do not count toward the 40 hours.

Q: Does commute time count towards the 40 hours?

A: No, commute time does not count towards the 40 hours.

Q: Can I receive comp time in place of overtime?

A: Yes, but it must be documented in writing, approved by your supervisor in advance, and you must agree to it in advance.

Q: Will I receive one hour of comp time for one hour of work time?

A: You will receive 1.5 hours of compensatory time for one hour of work time for any hours worked in excess of 40 hours per week.

Q: What happens to my comp time upon termination of employment?

A: Employees must be paid for all accrued compensatory time, regardless of the reason for termination.

Q: Can I save my comp time?

A: Compensatory time should be used before annual time and in a reasonable amount of time following its accumulation. Please refer to LSU Leave Guidelines, PS-12, for full details.

Q: Where can I get more information?

A: Complete information is available on LSU's [HRM website](#), on the [Department of Labor's Wage and Hour Division](#). Please contact hr@lsu.edu with any additional questions.

FAQ FOR SUPERVISORS, DEANS, DIRECTORS, DEPARTMENT HEADS

Q: Are there any groups of employees this new rule does not apply to?

A: Yes, the new rule does not apply to teachers, coaches, and certain IT professionals. Veterinarian/Medical Interns and Residents are covered under the medical exemptions after legal review and consultation. Departments should not assume any other exemptions/exceptions to the overtime rules without verifying first through the Office of Human Resource Management.

Q: Do the new FLSA rules affect faculty?

A: The new rules do not affect instructional faculty (tenure track, clinical track and lecturers). Research faculty and librarians may be affected.

Q: Are graduate assistants and student workers affected?

A: When instruction is the primary duty, the new rules do not apply and Teaching Assistants will not become eligible for overtime pay. Also, when research assistants are engaged in research in the course of obtaining a degree, they will not become eligible for overtime pay under the new rules.

Q: Who is going to let the employee know of this change?

A: While HRM is going to send out a series of informational materials, each department should establish and inform each employee **in writing** who is being paid an annual base salary under \$35,568 annually or \$684 per week of their regular work hours, work schedule, and hourly rate.

Q: Will these employees still be considered unclassified?

A: Yes, these employees would remain unclassified and outside the Civil Service directions. They will be considered professional, non-exempt employees.

Q: Will these employees still be paid monthly?

A: No, these employees will move to a bi-weekly payroll schedule.

Q: Will these employees still be paid through an annual salary?

A: No, Employees earning less than \$35,568 per year must have their annual base salaries converted to an hourly rate by dividing their annual base salary by 2,080. The hourly rate does not include stipends for telephones, expense reimbursements, clothing allowances, benefits, additional compensation, supplemental compensation, etc.

Q: How will employees keep track of their time?

A: Employees will be required to enter their time in Workday. Assigned Managers must approve their employee's time in a timely manner before payroll wage deadlines in Workday in order for these employees to get paid. Enclosed is the [Payroll Wage Schedule](#) for review.

OVERTIME PAY

Q: What happens if an employee works more than 40 hours per week?

A: Any hours worked in excess of 40 hours per week must be paid at the rate of 1.5 times the employee's regular hourly rate.

Q: Can employees work overtime and tell me later?

A: No, employees should have overtime approved by their supervisor in advance. Each department should establish and inform each employee in writing who is being paid an annual base salary under \$35,568 of his or her regular work hours, work schedule, and hourly rate.

Q: Where will the funding for this overtime pay come from?

A: Each department is responsible for the financing of their overtime or compensatory time from their regular budget.

Q: Does this new rule apply to my employees working 12 hour shifts?

A: Yes, organizations utilizing 12 hour shifts are obligated to follow the new rules.

Q: How should I handle changes in an employee's work schedule?

A: Any changes in a work schedule should be approved by the supervisor in a formal manner in advance.

Q: What should I do if I know I will need my employees to work overtime?

A: Departments should account for their annual overtime needs within the annual budget construction process.

Q: What should I do if an employee's workday is going to deviate from the standard five day, 40 hours a week schedule?

A: It must be reviewed by HRM in advance to ensure compliance and to gauge budgetary impact.

Q: What happens if an employee has time off during the week?

A: Time off does not count towards the 40 hours. This includes annual leave, sick leave, jury duty, military leave, unpaid leave, etc.

Q: Do breaks count towards the 40 hours?

A: No, breaks, including lunch breaks, do not count toward the 40 hours.

Q: Does commute time count towards the 40 hours?

A: No, commute time does not count towards the 40 hours.

COMPENSATORY TIME

Q: Can employees receive comp time in place of overtime?

A: Yes, but it must be documented in writing, approved by the supervisor in advance, and the employee must agree to it in advance.

Q: Can I decide to give my employees comp time instead of overtime?

A: Yes, if the employee agrees to it in advance and you document it advance. You cannot force a non-exempt employee to forfeit compensatory time or to convert it to sick time, vacation time, or other PTO.

Q: Will my employees receive one hour of comp time for one hour of work time?

A: No, employees will receive 1.5 hours of compensatory time for one hour of work time for any hours worked in excess of 40 hours per week.

RESOURCES

Communication/Training Resource	Deadline	Format	Audience
Overview, Toolkit & FAQ- <i>Affected Employees</i>	11/6	Direct Email/Website	Affected Employees
Overview, Toolkit & FAQ- <i>Department Heads, Directors, Deans</i>	11/6	Direct Email/Website	Department Heads, Directors, Deans
Overview, Toolkit & FAQ- HR Specialists	11/6	Direct Email/Website	HR Specialists
HRM Website Info Hub	Ongoing	Website	All LSU Community
HRM Newsletter Update (Direct Email) for HR Specialists	12/2	Direct Email	HR Contacts/Specialists
Workday Instructions to Timekeepers and HR Specialists	11/6	Direct Mail	Timekeepers/Specialists
Workday Instructions for Affected Employees	11/6	Direct Mail	Affected Employees
Presentation at HR Analyst Meeting- <i>November</i>	11/13	Presentation	HR Analysts/ Originators
Payroll Guidelines/Checklist for Affected Employees	11/6	Direct Email/Website	Affected Employees
Compensatory Time Guidelines	12/4	Direct Email/Website	Affected Employees
<i>Entering Time</i> Video and online training resources	12/4	Direct Email/Website	Affected Employees
Comprehensive Toolkit	11/6	Direct Email/Website	Affected Employees
Workday Working Group - Presentation	10/20	Presentation	Lead Cost Center Managers/HR Specialists

Additional Resources:

U.S. Department of Labor: Wage and Hour Division
[Final Rule: Overtime](#)

U.S. Department of Labor
[Fact Sheet](#)

US Department of Labor Guidance for Higher
 Education [Fact Sheet](#)