

Fair Labor Standards Act Q&A – Hours Worked & Hours Paid Non-Exempt Employees

1. What is FLSA?

The federal Fair Labor Standards Act (FLSA) defines and protects employees' rights in areas such as minimum wage, overtime rulings, child labor laws and the administration of compensation. The United States Department of Labor, Wage and Hour Division, enforces and administers FLSA.

2. What is “Exempt” and “Non-Exempt”?

FLSA classifies positions as Exempt or Non-Exempt from overtime eligibility. Exempt employees are not eligible for overtime. Non-Exempt employees are eligible for overtime.

Per FLSA “salary test” regulations, employees who earn less than \$23,660 per year are considered Non-Exempt, regardless of the position title, classification and/or FTE.

Other positions may be considered Exempt if they meet the Executive, Administrative, or Learned Professional requirements as outlined below:

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| Executive Duties | 1) Primary duty is management of an enterprise (>50%); 2) Customarily and regularly directs the work of 2 or more employees; AND 3) Has the authority to hire and fire. |
| Administrative Duties | 1) Non-manual work related to the management or general business; AND 2) Regular exercise of discretion and independent judgment with respect to matters of significance (i.e. decisions regarding future course of the organization, ability to bind the company in contracts; etc). |
| Learned Profession | Requires advanced knowledge in a field of science or learning (i.e. Doctors, lawyers) |

3. What is overtime?

Only non-exempt employees are eligible for over-time.

FLSA overtime is defined as any hours worked over 40 in a workweek, regardless of FTE or work schedule.

4. How is overtime compensated?

Overtime may be compensated with pay or time off at a later date (compensatory time off). An employee may request to accumulate “comp time” in lieu of overtime payment. Under no circumstances may a supervisor require an employee to accrue comp time, nor can a supervisor deny overtime payment.

Calculations are as follows:

Overtime Payment Overtime hours worked * hourly pay rate * 1 ½ = overtime payment
Comp Time Overtime hours worked * 1 ½ = hours to be taken off at a later date

Scenario: Tony works 45 hours and is paid \$8.00/hr. Tony will receive for his overtime hours either paid overtime or comp time as follows:

Payment 5 hours * \$8.00 * 1 ½ = \$60.00 OR
Comp Time 5 hours * 1 ½ = 7.50 hours off at a later date

5. Does overtime have to be approved by a supervisor?

Yes. Employees are required to obtain supervisory approval prior to working overtime.

However, if an employee inadvertently or deliberately works unapproved overtime, the employee must still be compensated. FLSA requires all hours to be recorded and compensated, regardless if the hours worked were approved and/or scheduled hours.

Continued unnecessary and/or unauthorized overtime may suggest that the employees work schedule may need to be adjusted to meet the demands of the position, the employees work load may need to be reviewed, the employee's performance may be a concern, or progressive discipline may be necessary for abuse of unapproved overtime.

6. Can an employee volunteer time or waive their right to overtime/comp time?

No. Employees may not volunteer to work extra hours to perform work for University of Missouri. In addition, employees may not waive their right to overtime payment or compensatory time off.

7. How much comp time can be accumulated and when must it be used?

FLSA limits the accumulation of comp time to 240 hours (160 overtime hours). Departments may establish lower limits if necessary in order to limit the financial liability caused by compensatory time balances.

8. When must compensatory time off be taken?

Time off must be approved by a supervisor. FLSA does not mandate when accumulated comp time must be taken. In addition, supervisors may not require specific dates to take off using comp time. Supervisors may, however, establish a deadline for when comp time balances must be reduced.

9. When must compensatory time off be taken?

Unused accumulated comp time will be paid to the employee at the time the employee leaves his/her non-exempt classification or leaves employment, whichever comes first.

10. What if an employee works over their "FTE"?

Employees must record all hours worked and will be paid for hours recorded up to 40 per week, regardless of their FTE.

Personnel budgets are based on FTE. Therefore, it is important for employees and supervisors to establish a work plan for the year in order to avoid spending over the allotted personnel budget for the fiscal year.

11. Are employees eligible for paid breaks?

FLSA does not regulate paid breaks.

Please refer to your county council personnel manual to determine break eligibility.

12. Are employees eligible for unpaid meal breaks?

FLSA does not regulate meal breaks.

Please refer to your county council personnel manual to determine break eligibility.

13. Are employees paid for sleeping time (i.e. at conferences, camps, etc)?

Sleeping time does not count as hours worked under FLSA.

14. What time is paid for Non-Exempt employees who travel as part of their job?

FLSA travel regulations are multifaceted. Supervisors will need to consider the following in order to determine what time is compensated under FLSA travel regulations:

1. Is the travel work related?
2. Is the travel same day (there and back in one day)?
3. Is the travel by vehicle or plane?
4. What hours is the employee traveling by vehicle and/or plane?
5. Is the employee the driver, designated drivers assistant, or working while in the vehicle or plane?
6. What are the travel times and what is the employees 'regular work schedule'?
7. What events are required at the conference, and what events are optional?

For a full understanding of when to pay non-exempt employees who travel, please consult with the Department of Labor or an HR professional .

15. What responsibilities do supervisors have for ensuring the administration of compensation meets FLSA regulations?

Supervisors, or any approved designee, have the responsibility for:

1. Ensuring all hours worked and all paid time off for non-exempt employees are recorded accurately on a timesheet.
2. Ensuring timesheets are submitted for payment by the established timesheet deadline.
3. Ensuring accurate and up-to-date compensatory time off records (accumulated hours, comp time used, and balances).
4. Establishing and/or approving employees work schedules.
5. Approving overtime hours and requests for time off.
6. Ensuring travel time is compensated according to FLSA regulations.