

Exempt Employees Transitioning to Non-Exempt Frequently Asked Questions (FAQ)

Q: What is the Fair Labor Standards Act (FLSA)?

A: The Fair Labor Standards Act (FLSA) is a federal law that is administered by the U.S. Department of Labor (DOL) which is intended to protect workers against certain unfair pay practices of work regulations. FLSA establishes exemption status, minimum wage, overtime pay, recordkeeping, and child labor laws. Employees are either “exempt” or “non-exempt” from FLSA regulations. This designation indicates eligibility for overtime pay when overtime is worked. FLSA requires employers to pay employees overtime pay (one and one-half times the employee’s regular rate of pay) for all hours worked over 40 in a workweek unless the employee is “exempt” from overtime as defined in the regulations.

Q: How is the FLSA exemption status (i.e., non-exempt or exempt) determined for my job?

A: The DOL has established exemptions (i.e., exempt from overtime) for employees who meet certain tests regarding their job duties, being paid on a salary basis and minimum salary threshold.

Q: Was there a recent change to the FLSA exemption tests?

A: The DOL released a final rule on September 24, 2019 which raises the minimum salary threshold from \$23,660 annually (\$455/week) to \$35,568 annually (\$684/week). There are no changes to the salary basis or duties tests.

Q: Why did the DOL change the minimum salary threshold?

A: The DOL made the change to the regulations in an effort to extend overtime protection to more workers and “to help build real, lasting economic security for more hardworking Americans.” A change to the regulations has not been made since 2004.

Q: When is this change effective?

A: The final rule goes into effect on January 20, 2020. Due to the University’s pay periods, the change will be effective on the pay period that begins on December 29, 2019 (paycheck date of January 24, 2020).

Q: Why is my job no longer classified as exempt?

A: To be classified as exempt, a job must meet all three (3) of the following FLSA exemption tests:

- Must be paid on a salary basis (not subject to a reduction in hours worked)
- Salary must meet the new minimum threshold of \$35,568 annually (\$684/week)
Note: the salary level test doesn’t apply to certain groups of jobs
- Primary duty must meet one of the FLSA exemption tests

Q: How does this change affect me?

A: Your job was identified as one that meets the criteria for evaluation using the FLSA exemption tests for salary basis and the duties test as described in the question above. As stated above, a job must meet all three of the FLSA exemption tests so there are several reasons why your job may be transitioning from exempt to non-exempt:

- Your annual salary is below the new minimum threshold; and/or
- The primary duties of your job does not meet the FLSA exemption tests

Q: If I am not a full time employee, is the minimum salary threshold prorated?

A: No, the FLSA requirements do not allow the minimum salary threshold to be prorated. Employees must earn the minimum salary threshold in order to be exempt from the FLSA requirements, regardless of how many days or hours they work per week.

Q: Is my base pay rate changing?

A: No, your annual base pay rate will be converted to an hourly rate which is your annual rate divided by the number of full-time hours worked per year, which is typically 2,080 hours for a full-time employee. For example, if your annual salary is \$32,240, your hourly rate would be \$15.00 (\$32,240/2,080).

Q: Are grant-funded positions impacted by the rules change?

A: Yes, funding source does not affect the exemption status.

Q: Are teaching faculty and lecturers impacted by the rules change?

A: Teachers are exempt under FLSA regulations, regardless of their annual/weekly salary, if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge. The University's faculty and lecturers who meet the primary duty requirement qualify as exempt under the teaching exemption and are not affected by the changes.

Q: I am paid a salary and my job title is manager. Am I exempt from overtime pay?

A: Job titles do not determine exempt status, and the fact that an employee is paid on a salary basis does not alone provide sufficient grounds to exempt the employee from the FLSA's minimum wage and overtime regulations. For an exemption to apply, an employee's specific job duties and salary must meet all of the applicable requirements provided in the DOL's regulations.

Q: Why are some employees in my department not being transitioned to non-exempt?

A: There are several reasons why other employees may not be transitioning to non-exempt:

- If the employee's job meets all three (3) of the FLSA exemption tests, the employee would continue to be classified as exempt.
- If the employee's job meets the salary basis and duties test, but the annual salary is slightly below the minimum threshold, it may have been determined that the annual salary could be increased to the minimum threshold in order to meet all three (3) of the FLSA exemption tests.

Q: Can I or my department opt out of the FLSA changes if we want to handle things differently?

A: No, these changes are federal law that apply to all employees working in the United States.

Q: What will I do differently related to hours worked beginning on December 29, 2019?

A: Beginning on that date, you must record all of your hours worked using the method outlined for non-exempt employees in your department. Non-exempt employees record time worked and time-off in quarter hour (15 minute) increments instead of in four (4) and eight (8) hour increments. Your leader can provide you with more detailed information and you can reference information related to timekeeping on the Payroll Timekeeping website at [Payroll Timekeeping](#). It is strongly encouraged that you record your time on a daily basis so you have a better understanding of when you are approaching overtime.

Q: Do I record my time differently if I am classified as a USS or a UP employee?

A: The classification of USS or UP does not affect or correspond to exempt or non-exempt status. A USS or UP employee could potentially be in an exempt or non-exempt status. All non-exempt employees record time using the same methodology as described above.

Q: When is an employee entitled to overtime?

A: Non-exempt employees earn overtime (time and one-half) when they physically work more than 40 hours in a workweek (Sunday – Saturday). Please note that some departments allow employees to accrue compensatory time (comp time) at a rate of one and one-half hours for each overtime hour worked, in lieu of overtime pay in accordance with FLSA regulations for employees of state or local government agencies.

If an employee works more than eight (8) hours in a day, they do not earn overtime. If a workweek includes a paid holiday or an employee uses other leave time, the employee would only earn overtime if they physically work more than 40 hours in the workweek.

Q: Am I required to gain approval before I work overtime?

A: Yes, leaders are required to approve any work for non-exempt employees that is in excess of their regular work schedule. Your leader will let you know how your department manages requests and approval to work over 40 hours in a workweek.

Q: What activities are considered “work time”?

A: The courts have held that work time under the FLSA includes all time spent performing job related activities which genuinely benefit the employer, which the employer “knows or has reason to believe” are being performed by an employee, and which the employer does not prohibit the employee from performing. These can include activities performed during “off-the-clock” time, at the job location or elsewhere, whether “voluntary” or not.

Q: Can my leader refuse to pay or ask me to record my hours worked over 40 in a different workweek or pay period?

A: No, you must record all hours worked on your timesheet when you actually work them. Your leader will set expectations with you on the approval process you must obtain to be authorized to work over 40 hours in a workweek. Your leader can hold you accountable for not following proper procedures.

Q: I typically work more than 40 hours in a workweek. Am I able to continue to do this by volunteering the hours over 40 in a workweek?

A: No, you are not able to volunteer your time for hours over 40 in a workweek. Any time you are performing work for the University, even something as simple as checking e-mail from home or working through your lunch period, it is considered work time and must be recorded.

Q: Can my hours be “flexed” over a specific time period to avoid overtime?

A: Hours can only be flexed during the same workweek that they are worked in, not spread over the next workweek or over multiple workweeks.

Q: Now that my job is being changed to non-exempt, does the University no longer consider me to be a “professional” employee?

A: Absolutely nothing has changed regarding the value and importance of the work you perform or how the University values your contribution. The University is simply complying with the change in the FLSA regulations that relates the way you must be paid.

Q: If I have a question not covered in this FAQ document, who do I contact?

A: You should first contact your leader as they may be able to answer your question. If your leader is not able to answer your question, you can send your question to totalrewards@wichita.edu.