

Fair Labor Standards Act

Legislative Changes Updated

FLSA Final Rule

- ▶ Effective December 1, 2016
 - ▶ Raises minimum salary necessary for an employee to be exempt from overtime from the current \$455/week (\$23,660 annually) to \$913/week (\$47,476 annually);
 - ▶ Raises the minimum salary necessary for an employee to be exempt from overtime as a highly-compensated employee from \$100,000 annually to \$134,004 annually;
 - ▶ Provides for automatic updating of the salary thresholds every three years;
 - ▶ Allows employers to include nondiscretionary bonuses in an amount up to 10% of the minimum salary level;
 - ▶ **Makes no changes to the duties test**; and
 - ▶ Makes no changes to any of the other rules regarding compensable time and overtime.

Current	Dec. 1, 2016
\$455/week	\$913/week
\$23,660/year	\$47,476/year

Overtime Provisions that Remain Unchanged

- ▶ Public employers may continue to use compensatory time-off or “comp time” in lieu of cash overtime.
- ▶ Public employers may still use the 28-day work cycle of the 207(k) exempt for paying overtime to law enforcement officers and fire fighters.
- ▶ The fluctuating workweek will continue to be available as a method of paying overtime to those employees who sometimes work fewer than 40 hours per week and sometimes work more than 40 hours per week.
- ▶ Rules governing what time is compensable and what is not remain the same.

Position Classification Review

- ▶ All employee and respective salaries reviewed:
 - ▶ Those below new threshold \$47,476 - non-exempt automatically
 - ▶ Those above new threshold \$47,476 - HR to review with Department Heads against FLSA duties tests (executive, administrative, professional) and determine whether or not exempt
- ▶ Identified misclassified positions and created a plan to correct misclassified positions.
- ▶ Identified positions/employees whose exemption status is changing and identify classifications containing both exempt and non-exempt employees for Board review.
- ▶ Developed communication to Department Heads and staff who are effected by the FLSA changes to include how to properly account for time/comp time.

Misclassified Positions

- ▶ In review of all positions within the County, some position were misclassified as exempt when they did not meet a duties test and should have been classified as non-exempt.
- ▶ Corrective Action: Review timesheets for the last two years and correctly calculate compensatory time at a rate of 1 ½ hour of comp time for each hour worked over 40 hours in a work week. Under FLSA, the DOL enforces a two year statute of limitation thus the look back period to correct the misclassification is two years.

Misclassified Positions

Positions misclassified as exempt include:

- ▶ Director of GIS
- ▶ Chief Code Inspector
- ▶ Land Development Administrator
- ▶ Green Energy Project Manager
- ▶ District Manager - Soil Conservationist
- ▶ EH Program Coordinator
- ▶ EH Program Specialist
- ▶ EH Specialist
- ▶ Nutritionist II
- ▶ Social Worker II (Health)
- ▶ Medical Lab Technician II
- ▶ Medical Lab Assistant III
- ▶ Practical Nurse II
- ▶ Public Health Educator I
- ▶ Animal Control Officer Lead
- ▶ Animal Control Officer I
- ▶ Veteran's Service Officer

Misclassified Positions

Positions misclassified as non-exempt include:

- ▶ Active Routes to School Coordinator - meets requirements of professional exempt

Exemption Status Changes

- ▶ Positions below are moving from exempt to non-exempt based on not meeting the salary threshold portion of the duties test (executive, administrative, or professional):
 - ▶ Assistant Director: Housekeeping/Solid Waste
 - ▶ Business Officer I (Health)
 - ▶ Public Health Nurse II
 - ▶ Admin. Asst. II to DSS Director
 - ▶ Processing Unit Supervisor V (DSS)
 - ▶ Income Maintenance Supervisor II
 - ▶ Programming Supervisor
 - ▶ Andrews Park Caretaker
 - ▶ Outdoor Recreation Manager
 - ▶ Site Manager

Classification with Both Exempt and Non-Exempt

- ▶ Public Health Nurse II (2 Exempt, 2 Non-Exempt)
- ▶ Income Maintenance Supervisor II (1 Exempt, 1 Non-Exempt)

- ▶ Need to decide how to treat these classifications:
 - ▶ Either do nothing and have some individuals exempt and others non-exempt while serving in the same capacity, or
 - ▶ Treat the classification as non-exempt until all individuals are beyond the minimum salary threshold for exemption.

Things to Remember Under FLSA

- ▶ All employee must be paid for hours worked.
- ▶ FLSA requires non-exempt employees be paid overtime when the employee works over 40 hours in a work week. FLSA does not require exempt employees to be provided overtime payments or accrual of comp time.
- ▶ Comp time cannot be earned by part-time employees until they have worked over 40 hours in one week; part-time employees must be paid for all hours worked up to 40 hours then comp time can be earned in lieu of paid overtime - this will have budgetary impacts when permanent part-time employees work over there budgeted FTE.
- ▶ FLSA requires comp time to be paid out at the time of separation for non-exempt employees.
- ▶ FLSA provides a non-exempt employee can accrue up to 240 hours of comp time, any comp time in excess of 240 hour must be paid at overtime premium (Emergency Management and Public Safety can earn up to 480 hours of comp time).

Additional Information

- ▶ <https://www.dol.gov/whd/overtime/final2016/>
- ▶ <https://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/FLSA-Overtime-Rule-Resources.aspx>
- ▶ <https://www.sog.unc.edu/courses/course-materials/new-and-final-flsa-regulations>
- ▶ <https://www.sog.unc.edu/courses/course-materials/new-and-final-flsa-regulations>