



Frequently Asked Questions

- **What is the Fair Labor Standards Act (FLSA)?**

The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting all United States employees in the private sector and in Federal, State, and local governments, including Higher Education. Employees are either “exempt from overtime” or “non-exempt from overtime” pay based on FLSA regulations. The U.S. Department of Labor (DOL) administers the FLSA regulations.

- **What does it mean to be exempt or non-exempt?**

Exempt employees are not qualified to earn overtime pay regardless of the number of hours they work in any given week.

Non-exempt employees are required to be compensated for any hours worked in excess of forty hours in a seven day workweek as defined by their employer (at a rate of one and one-half times their regular rate of pay). Youngstown State University (YSU) defines a workweek as beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:590 p.m.

For an employee to be considered exempt, the FLSA established specific guidelines for select positions, such as teaching, and three tests had to be met for the majority of occupations.

- **What are the tests to determine if an employee is considered exempt?**

The following three tests must be met for an employee to be considered salaried exempt (exempt from overtime). If any of the three is not met, the employee would be classified as non-exempt:

- Salary Basis – employee must be paid on an annual salary basis, and
- Salary Level – employee must be paid equal to or above a salary threshold amount that was recently established at \$35,568 annually (previously \$23,660), and
- Job Duties – employee must qualify as an executive, administrator, or professional employee.

- **What is changing and why?**

A final ruling was issued by the DOL to change the criteria that establishes whether employees are eligible for overtime pay. The final rule focuses primarily on updating the salary level needed for employees to be exempt from overtime. The duties test has not been changed.

Based on regulations from 2004, in order for employees to be exempt from overtime requirements, they had to meet certain job duties-related tests and be paid on a salary basis at a rate of at least \$455 per week (\$23,660 per year). The new FLSA rule has changed the salary threshold to \$684 per week (\$35,568 per year).

- **Are there any special provisions for higher education institutions?**

Teachers: Teachers are exempt from overtime regardless of the salary threshold if their primary duty is teaching, tutoring, instructing, or lecturing. Teachers include professors, adjunct instructors, and teachers of skilled and semi-skilled trades and occupations.

Coaches: Coaches are typically exempt if their primary duty is teaching, which may include instructing athletes in how to perform their sport.

Students: Graduate and undergraduate students are exempt from overtime if they are engaged in research, their primary duty is teaching or serving as a teaching assistant, or students who serve as resident advisors in exchange for reduced room and board or tuition credit.

Academic Administrative Personnel: Help run higher education institutions and interact with students outside of the classroom such as department heads, academic counselors and advisors, intervention specialists and others with similar responsibilities who are paid at least as much as the entrance salary for teachers at their institution. For YSU, this lowers the threshold to \$744 per week (\$38,689 per year).

- **When is the effective date of the new rule?**

All changes will be effective January 1, 2020.

- **Who will be affected at YSU?**

These changes will only affect salaried exempt employees whose annual salary no longer meets the FLSA salary test. Prior to January 1, 2020, if you are a salaried exempt employee and you earn less than \$864 per week (\$35,568 per year), you will be converted to a salaried non-exempt employee. Salaried non-exempt employees are eligible to accrue overtime at a rate of one and one-half times for hours worked over 40 hours within a workweek.

- **Will my benefits change?**

No, your benefits will not change.

- **What else will be impacted by this change?**

Employees that are converted to salaried non-exempt will continue to be paid semi-monthly on the 15th and last day of the month. However, salaried non-exempt employees will complete a bi-weekly leave report. Hours will be tracked in the system on a bi-weekly basis in order to calculate hours worked within each of the 40 hour workweeks. Since overtime will accrue on a bi-weekly basis and employees will

continue to be paid on a semi-monthly basis, there may be a delay in seeing the overtime payment until the closest semi-monthly pay date. Time worked beyond the established work day must be pre-approved by your supervisor.

- **How does the FLSA change affect staff members who work less than full time?**

The FLSA regulations are based on how much an employee is paid on an annual basis. For example, an employee working at 50% FTE, earns \$30,000 annually. This employee's pay would be below the newly established threshold of \$35,568, therefore, becoming overtime eligible. In other words, there is no provision within the FLSA to annualize the salary as if the employee were working 100%. Employees that work less than 100% FTE will be converted to salaried non-exempt and subject to the recordkeeping requirements as stated above.

- **Can employees opt out of this change if they want to continue to be considered a salaried exempt employee?**

No, the FLSA is a federal law. The determination of an employee's FLSA status is governed by the requirements of the federal law - it is not an option.

- **Can a salaried non-exempt employee still work early and late? Can a salaried non-exempt employee check messages from home after work hours?**

The change of moving from salaried exempt to salaried non-exempt is focused on ensuring work hours are reported and compensated for, not when they are worked. Salaried non-exempt employees can still request variable workweek scheduling arrangements with their managers; however, all time worked must be recorded within the bi-weekly leave report. All current and future variable workweek scheduling arrangements will have to be revisited with your management, with an understanding as to when overtime is authorized.

- **Can salaried non-exempt employees still attend professional conferences?**

Yes, salaried non-exempt employees must account for the travel time and for the hours of conference attendance, but there is no prohibition on traveling or professional development.

- **Where can I get more information regarding the changes?**

Resources are available on the Department of Labor website (www.dol.gov) or you may contact Jenn Drennen, Director of Organizational Development at 330-941-3148, jldrennen@ysu.edu or Megan Massaro, Organizational Development Officer at 330-941-2107, mlmassaro@ysu.edu.