

Fair Labor Standards Act (FLSA)

What is the Fair Labor Standards Act (FLSA)?

FLSA is a labor law that contains information on minimum wage provisions, equal pay, child labor restrictions, recordkeeping, and other federal employment and compensation related issues. Mandatory compliance is required for the protection employees. A major component of the FLSA is the requirement for employees who are subject to the Act (Non-Exempt Employees), being compensated for hours worked in excess of 40 in a week. It impacts SHRA, EHRA, faculty, post-doc, graduate student, student worker, and temporary employees. It creates two statuses for purpose of minimum wage and overtime. The two statuses are Non-Exempt and Exempt.

What does it mean to be Non-Exempt?

Jobs do not meet exemption criteria, as listed below. Pay is dependent on the total hours worked and paid leave used and they are eligible for Compensatory time or Overtime. In addition, the employee must maintain records of time worked. See WolfTime link for additional information on timekeeping records.

<https://wolftime.hr.ncsu.edu/frequently-asked-questions/>

What does it mean to be Exempt?

Jobs meet the exemption criteria, as listed below. Employees are paid the same salary regardless of number of hours worked above or below 40 hours per week. Exempt employees are not eligible for compensatory time or overtime. They are not required to maintain a record of time worked.

Who determines FLSA Status?

University Human Resources Classification and Compensation determines the FLSA status of a position. Classification and Compensation reviews the position description to determine if the salary and duties tests are met.

How does University Human Resources determine if a position is Exempt or Non-Exempt?

FLSA status is not determined by the position title or classification. It is determined by three prescribed Department of Labor tests. If the position fails any of these tests they are considered Non-Exempt. Exemption Tests are:

1. Salary Basis Test-The employee must be paid on a salary basis that is not subject to reduction based on the quality or quantity of work, rather than, for example, on an hourly basis;
2. Salary Level Test-The employee must receive a salary at a rate not less than \$455 (Currently pending revision by the federal government) per week; and
3. Duties Test- The employee's primary duty must involve the kind of work associated with the exempt status sought, such as executive, administrative, professional work, creative professional or computer employee "duties test".

Are there any positions that do not require salary and duties tests to determine FLSA status?

There are special cases that do not require the salary and duties tests:

Always Exempt from FLSA (Exempt)

- Roles instructional/teaching in nature (including coaches whose primary duty is instructing athletes in performance of a sport); graduate teaching assistants; resident advisors (who receive room and board); some academic administrators.
- Employees who are highly compensated (\$134,004+).
- Outside Sales, obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer regularly engaged away from the employer's place or places of business.

Always Subject to FLSA (Non-Exempt)

- FLSA-covers Blue Collar, non-management employees in production, maintenance, construction and similar occupations are entitled to minimum wage and overtime premium pay under the FLSA, no matter how highly paid they might be.
- The exemptions also do not apply to first responders (police officers, fire fighters, paramedics, etc.) regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; performing surveillance; pursuing, restraining and apprehending suspects or other similar work.

How are position duties evaluated?

FLSA status is based on the position and not the incumbent's skill sets.

FLSA reviews are performed on the positions essential and primary duties. Primary duties are the principal, main, major or most important duties that the employee performs. Determination of an employee's primary duties must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

Exempt duties require discretion and Independent judgement; the extent of the employee's authority either to take action in the employer's name without prior approval or to take action that may deviate from established policy. As well as, matters of significance; level of importance or consequence of the work performed. Matters of significance are based on the position's scope of responsibility within unit operations and not on how the incumbent's level of performance effects business operations.

What is overtime?

Overtime is defined under FLSA as time worked over the threshold is 40 hours per workweek. Overtime is paid at time and one-half the "regular hourly rate." This rate is a complex calculation, which includes payment for longevity, shift premiums, and similar pay supplements.

Hours worked in excess of 8 hours in a day is not considered overtime. For individuals who work part-time schedules, overtime is not accrued until they work over 40 hours. See WolfTime link for additional information on how overtime is processed.

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Can overtime be compensated with compensatory (comp) time?

The State of North Carolina policy requires NCSU to give time off in lieu of pay, wherever possible, for hours worked beyond 40 in a workweek. See the WolfTime link for additional information on how compensatory time is processed.

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What areas of employment does the FLSA Act not regulate?

There are a number of employment practices, which the FLSA does not regulate. These includes:

1. Vacation, holiday, severance, or sick pay;
2. Meal or rest periods, holidays off, or vacations;
3. Premium pay for weekend or holiday work;
4. Pay raises or fringe benefits;
5. Discharge notice, reason for discharge, or immediate payment of final wages to terminated employees;
6. Pay stubs or W-2s

Dependent on the situation, we follow the governance provided by the State of North Carolina university/college/division or departmental policy that apply. However, all employers covered by the FLSA must comply with the Act's nursing mother provision.

Are supervisors liable if they do not comply with FLSA requirements?

Non-compliance puts the university at risk for lawsuits, back pay, and the loss of grant opportunities. Supervisors are responsible for compliance as well as control of overtime costs.