

Agenda

(a subset of the campus presentation for Waisman Center only)

- Legal Background and Effects of Moving from Exempt to Non-exempt
- Who is Not Affected
- Actions To Be Taken
- Communications
- Questions

DOL Salary Threshold Change



Current rule:
\$455/week
(\$23,660)

Final rule:
\$913/week
(\$47,476)

- On May 17, 2016, the U.S. Department of Labor announced a change to the FLSA rules, raising the salary threshold to \$47,476 annually (\$913 weekly) from \$23,660 annually (\$455 weekly).
- Effective December 1, 2016, all employees who earn less than \$47,476 annually or \$913 weekly will become non-exempt unless he or she qualifies for an exemption. **This is regardless of percent FTE.**
- Changes will be in HRS **effective on November 27, 2016.**

Six Guiding Principles

1. The university will comply with all laws and regulations regarding the Fair Labor Standards Act (FLSA) consistently throughout campus. Further, all options will abide by the EEOC including salary policies and practices without regard to age, color, disability, gender, marital status, national origin, race, religion, sexual orientation or veteran status.
2. OHR policies and procedures will serve as a baseline for compliance.
3. All options for compliance should be fiscally responsible and administratively feasible to implement and sustain, and can be informed by the practices of peer institutions.
4. Options will not result in the reduction of a current employee's base salary, a reduction in fringe benefits or a change in employment category.
5. The FLSA Workgroup will strive for consistent campus-wide options with room for division flexibility in service to the university mission.
6. Options for compliance will be transparent and communicated to the affected campus community.

What is the Difference Between Exempt and Non Exempt?

Exempt

- Salaried
- Paid based on an annual salary
- Leave accounted for in half-day increments
- Not eligible for OT/compensatory time

Nonexempt

- Hourly
- Paid based on an hourly rate for time worked
- Leave accounted for in 15 minute increments
- Eligible for OT/compensatory time

Employees who move from Exempt to Non-exempt

- Will no longer be paid on a salary basis and become hourly
- Must record their time and be compensated for all work time. Will receive premium overtime or compensatory time for all hours worked over 40.
- Must track their leave time in 15 minute increments

Employees who move from Exempt to Non-exempt (cont.)

- Paid biweekly instead of monthly
- No effect on vacation accrual for existing university staff exempt employees
- No effect on vacation accrual for affected academic staff employees

What Constitutes Work?

Overtime HR Policy 11.01 (Appendix A):

<https://kb.wisc.edu/ohr/policies/page.php?id=53322>

Appendix 1

Guide to Determining Hours Worked

Note: Activities that are always considered work time or non-work time under the FLSA are designated with an "X" in the following table. [Reference 29 C.F.R. Part 785, Ch. DWD 272, Wis. Adm. Code]

| Activity | Work Time | Non-Work Time |
|--------------------------------|---|---|
| Changing Clothes | If the employee is required to change before and after their shift, is not allowed to take the clothing home and is not required to launder it at home | If the employee is provided a uniform that can be worn to and from work and the employee is responsible for laundering |
| Charitable Work | If requested or controlled by the employer | If done voluntarily outside working hours |
| Compensatory Time Credits Used | | X |
| Holiday Time | | X |
| Meal Periods and Rest Periods | When the employee is not completely relieved from active or inactive duties or when the meal period is less than 30 minutes | Periods of 30 minutes or more when the employee is completely relieved from duty for the purposes of eating regular meals. The employee does not have to leave the premises to be considered relieved from duty |
| Medical Attention | During normal work hours for matters that are job-related and at the employer's discretion | Medical attention for matters that are not job-related |
| Residing on Premises | | When not on duty |
| Sick Leave | | X |
| Sleep Time | When the employee is required to be on duty for less than a straight 24-hour period | Not to exceed eight hours, where an employee is required to be on duty 24 hours or more, is furnished adequate sleeping facilities and can usually enjoy at least five hours of uninterrupted sleep. (Note: It is necessary that employer and employee agree that this is not work time.) |
| Tools | Caring for tools and machinery if part of the principal duties | |
| Training - General | Attendance is mandatory by the employer and/or Attendance is outside of the regular work hours if the employee understands or is led to believe that the employee's present working conditions or continuance of employment would be adversely affected by nonattendance | If all of the following criteria met: <ul style="list-style-type: none"> ■ Attendance is voluntary; ■ Attendance is outside the employee's regular working hours; ■ The training is not directly related to the employee's job; And ■ No productive work is performed during attendance |

Managing Overtime

**Available on the Waisman Center website under Human Resources:
(should you choose to implement this in your work unit)**

- New Overtime Request pre-approval procedure
- New Overtime Request form

Work Performed as a Volunteer

Work performed as a Volunteer

- I. A person is a volunteer only if the following criteria are met:
 1. The person receives no compensation; or the person is paid expenses, reasonable benefits, or a nominal fee, in any combination, to perform the services.
 - a) Payment of expenses includes reimbursement for out-of-pocket expenses incidental to providing volunteer services (e.g., payment for the cost of meals and transportation).
 - b) Benefits would be considered reasonable, for example, when individual volunteers are included in group insurance or retirement funds that are commonly or traditionally provided to volunteers of the agency.
 - c) The total amount of payments (expenses, benefits, fees) must be examined to determine volunteer status.
 2. If an employee is performing volunteer work for UW–Madison, both of the following conditions must be met:
 - a) The services are in a different general occupational category than that of the employee’s regular employment.
 - b) **The services are not closely related to the actual duties performed by, or responsibilities assigned to, the employee.”**

You CANNOT Volunteer your work

Per [Regulations 29 C.F.R. §553.103](#) regarding Public Sector Volunteers and [UW-Madison Overtime](#) policy

Who Will Not Be Affected?

Teacher Exemption

- Faculty, instructional academic staff and graduate students whose primary duties are teaching are exempt regardless of salary.
 - [Primary duty](#) is activity of imparting knowledge: Teaching, Tutoring, Instructing or lecturing
 - Coaches
 - Teaching Assistants (grad students)
- See [Exemption Definitions](#)

Who Will Not Be Affected? (Cont.)

Doctors & Lawyers Exemption

- Academic staff and graduate students whose primary duties are doctors or lawyers are exempt regardless of salary.
 - Employees who hold a valid license or certificate permitting the practice of law or medicine are exempt if they actually engage in such practice.
 - An employee who holds the requisite academic degree for the general practice of medicine is also exempt if he or she is engaged in an internship or resident program for the profession
- See [Exemption Definitions](#)

Who Will Not Be Affected? (Cont.)

“Non-Employees”

- Individuals in titles that are considered “non-employees” under the FLSA
 - Graduate students (Research Assistants) engaged in research under a faculty member’s supervision in the course of obtaining a degree do not have an employment relationship with the UW-Madison
 - Graduate students receiving fellowships/scholarships
- [List of Titles Excluded from FLSA Reports](#)

Who Will Not Be Affected? (Other)

Camp Counselor Exemption

- Individuals employed by a non-profit educational conference center that does not operate for more than seven months in any calendar year
- Position is the ONLY employment the individual has with UW-Madison during the camp's operation
- Not subject to FLSA minimum wage and/or overtime provisions

What Needs to Be Done?

- The Office of Human Resources has identified all exempt employees whose annual salary is less than \$47,476
- Employees in titles in the [List of Titles Excluded from FLSA Reports](#) have been omitted from the report
- Remaining employees must be reviewed to determine action to be taken

Possible Actions

- Employee becomes non-exempt
- Employee remains exempt due to:
 - Professional Exemption (Teacher, Doctor, Lawyer, Academic Administrator, Camp Counselor)
 - Change in compensation
 - Raise to FLSA Minimum
 - Increase in FTE
 - Raise in accordance with Pay Adjustment Policy
 - Multiple Jobs
 - Other

Possible Actions (cont.)

Change in Compensation

- Raise to Minimum
 - [Considerations for Raise to Minimum](#)
 - [Break Even Calculator](#)
- Increase in FTE
- Raise in Accordance with [Pay Adjustment Policy](#)

Multiple Jobs

- Person can only have one FLSA status per employer
- [Multiple Jobs Reports](#)

Other

- Provide explanation (Ex. Termination, transfer, etc.)

Salary Threshold Population Spreadsheet

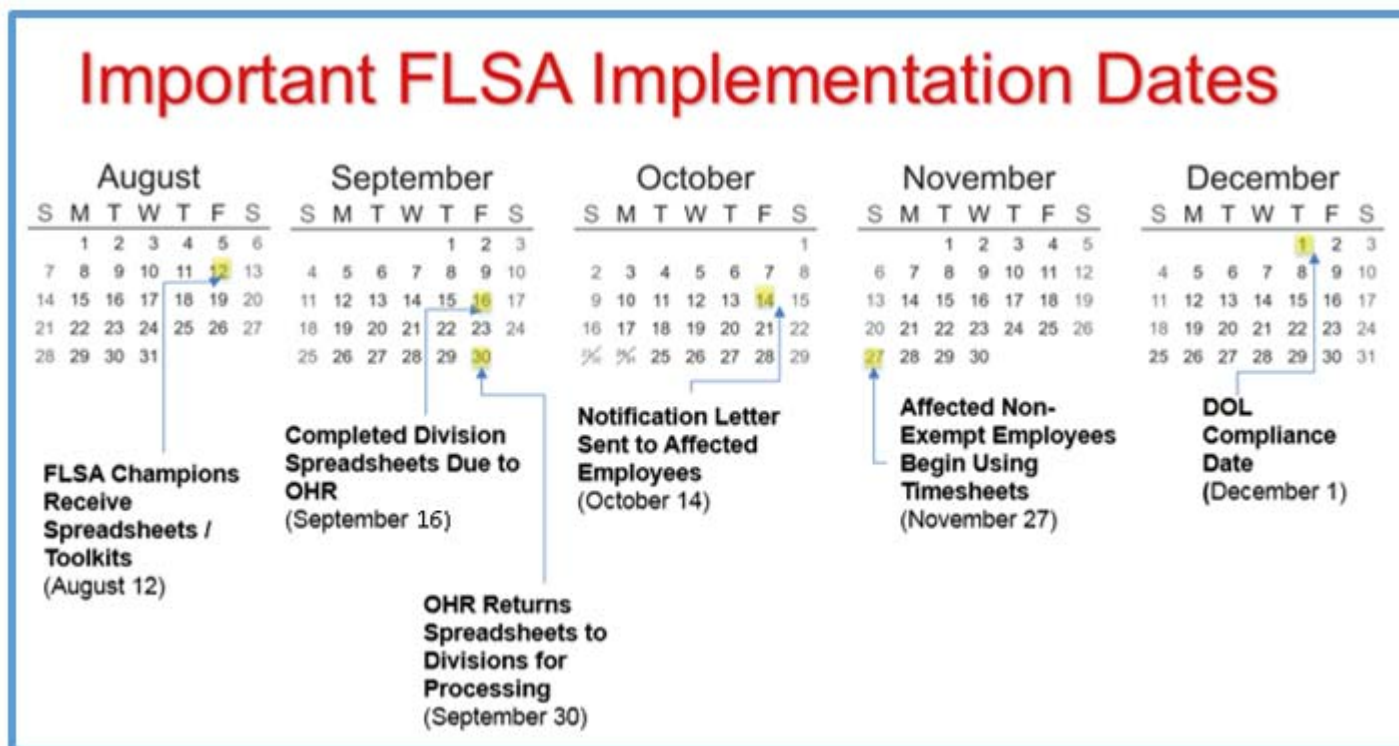
- A list of your employees who are affected
- Final spreadsheets must be sent to Waisman Center HR by Wed 9/14 3:00 pm

Three (3) FLSA Compliance Options

1. Limit nonexempt work to 40 hours per week. Employees must complete their tasks within 40 hours per week and are not permitted to work overtime.
2. Pay overtime or award compensatory time. Employees are provided overtime through payment or compensatory 'time off' at a rate of 1.5 hours per hour worked over 40 hours per week. HRS is modified to track and pay overtime for non-exempt academic staff; this involves switching to a bi-weekly payroll.
3. Raise salary of exempt employees to (or above) the FLSA minimum of \$47,476.

Note: Central funding will not be provided to address FLSA compliance

Timeline



OHR & FLSA Work Group Communication

- OHR: Initial communication will be university-wide to all employees (Inside UW)
- FLSA Work Group: Develop template memos to notify employees impacted by the change
- OHR: Four Employee Forums will be held in late October – Early November.
 - One forum will be exclusively for Post-Degree Training employees

HRS

- UW-Madison continues to meet with UW System Human Resources and UW Service Center on programming changes in HRS
- Programming changes are in development to allow for a biweekly timesheet for non-exempt academic staff with full integration of absence management
 - Timesheet will calculate overtime similar to non-exempt university staff
- Compensatory time bank will be available for A-basis non-exempt academic staff
- OHR will continue to update HRS Coordinators

Questions?

[FLSA Website](https://www.ohr.wisc.edu/compensation/flsa.aspx)

<https://www.ohr.wisc.edu/compensation/flsa.aspx>

[FLSA Frequently Asked Questions \(FAQ\)](https://www.ohr.wisc.edu/compensation/flsa-faq.aspx)

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