

Frequently Asked Questions about FLSA-Required Changes

WHAT IS THE FLSA?

FLSA is the acronym for the Fair Labor Standards Act. Originally adopted in 1938, this federal law articulates the government's standards for such issues as minimum wage, overtime pay, and youth employment.

The FLSA itself—and the regulations the federal government regularly updates—set the criteria that determines which employees are exempt from overtime based on salary (amount and frequency), duties performed, level of responsibility, and decision-making authority.

The FLSA and its attendant regulations also articulate the rules that employers must follow relating to payment of overtime.

Specifically, the FLSA requires that non-exempt employees receive pay for all hours worked. In addition, it stipulates that non-exempt employees receive overtime pay of 1.5 times their regular rate of pay for all hours worked beyond 40 in a fixed seven-day period.

For those employees who work a 37.5 hour workweek, hours worked beyond 37.5 but less than 40 hours a week are paid at the same rate as the normal hourly pay. In other words, those 2.5 hours do not constitute overtime.

WHY IS MY CLASSIFICATION BEING CHANGED NOW?

Last year, the U.S. Department of Labor (DOL) issued new regulations raising the Fair Labor Standards Act's (FLSA's) salary threshold for exemption from overtime pay from \$23,660 to \$47,476. The new rule had an effective date of December 1, 2016, but a federal judge temporarily blocked the DOL's new rule on November 22, 2016, thereby delaying the required implementation. The DOL appealed the injunction, which is unresolved. Nonetheless, the university has decided to proceed with changes at this time.

Over the last several months, CWRU has taken the time to re-assess the details and campus-wide equity. The university has determined that because of more stringent FLSA requirements and internal equity, several employees will be changed from exempt to nonexempt.

WHAT DOES IT MEAN TO BE EXEMPT OR NON-EXEMPT UNDER THE FLSA?

Employees are classified as either exempt or non-exempt depending on their salary and the type of work or duties they perform.

The FLSA requires that non-exempt employees must receive at least the federally mandated minimum wage pay per hour worked within a work week.

When non-exempt employees work more than 40 hours within a fixed, seven-day period, those employees must be paid 1.5 times their regular rate of pay for every hour beyond 40.

Exempt employees are ineligible for overtime pay for hours worked over 40 in a workweek (a workweek is a fixed seven consecutive calendar days).

Exempt employees are expected to work as much time as is needed to fulfill their responsibilities without an expectation of overtime or additional pay. As a result, exempt employees are paid on a salaried, not hourly, basis.

In addition, in most cases (as discussed below), employees must earn above a specific annual salary threshold and perform certain types of duties, (as defined in the FLSA regulations) to be classified as exempt.

WHO OR WHAT DETERMINES IF MY POSITION IS EXEMPT OR NON-EXEMPT?

The U.S. Department of Labor established the following criteria for determining the status of a specific position:

1. Must meet all requirements associated with one of the exemption tests (for example, those involving the nature of work) and
2. Be paid not less than \$455 per week (\$23,660 annually) and
3. Be paid on a salaried basis

The federal government requires that similar positions within the university be classified in the same manner as others.

WHEN WILL THIS CHANGE TAKE EFFECT?

All affected employees' classification will be changed on or before July 1, 2017.

WHAT WILL CHANGE FOR ME IN BECOMING A NON-EXEMPT EMPLOYEE?

- You will have an hourly pay rate that is based on your current annual salary;
- You will be eligible for overtime (i.e., compensation 1.5 times hourly rate) for hours worked over 40 per week;
- You will be required to record your work and time off hours, and account for all hours worked on an hourly basis;
- You will be paid twice a month instead of monthly; and
- As of July 1, 2017, you will accrue vacation at the rate that applies to your salary grade.

HOW DOES THE CHANGE AFFECT MY ANNUAL SALARY OR TAKE HOME PAY?

Because your salary is not changing, your take-home pay (after all deductions) over the course of a year should be the same, assuming you work 40 hours per week.

Your annual salary can change in two ways: (1) if you work more than 40 hours in a week, your pay will increase; (2) if you work less than 40 hours in a week, your pay will decrease.

If you work overtime, your take-home pay over the course of a year will increase. If you and your supervisor choose to change your schedule to non-exempt 37.5 hours/week, your pay will decrease by 6%.

Your pay frequency will be affected. You will be paid semi-monthly (twice a month) instead of once a month. This change means that you will receive 24 paychecks rather than 12 paychecks during the course of the year.

HOW IS OVERTIME CALCULATED?

Overtime is paid at a rate of 1.5 times an employee's regular hourly rate of pay for the work week for all time worked over 40 hour within that work week.

Calculating 40 hours worked within a week does not include paid time off (i.e. vacation, sick time, holidays, meals that do not involve performing university work, and/or unpaid time off).

WILL MY WORK HOURS CHANGE?

Employees and supervisors will work together to create a written plan for expectations of work hours. This plan will include university office hours, scheduled hours per week and an unpaid lunch break. In consultation with their supervisors, current employees who are impacted by the FLSA changes will choose between a 40-hour work week or a 37.5-hour work week. The latter requires a 6% reduction in salary.

An employee's job responsibilities or direct work with students might necessitate shifting work hours to accommodate student needs or other work responsibilities, which requires a pre-approved plan with the supervisor. Any fluctuation in work hours or additional hours worked requires the supervisor's prior approval.

CAN MY SUPERVISOR OFFER ALTERNATIVE START OR END TIMES TO THE DAY?

Yes, as long as it is within the same work week (Sunday-Saturday).

CAN I DEFINE THE WORK WEEK?

No. Pursuant to university Policy no. II-14, the work week is defined as 12:01 am on Sunday and ending midnight the following Saturday.

CAN MY SUPERVISOR FLEX MY TIME?

Yes, your supervisor can flex your time so long as it is within **the same work week**. For instance, if someone works an evening event on a Tuesday, resulting in 4 extra hours of work, then the person could come in 4 hours later the next day or leave 4 hours early on Friday, etc. It must be within the same work week.

CAN MY SUPERVISOR GIVE ME COMP TIME RATHER THAN OVERTIME PAY

No, your supervisor cannot offer "comp time" in lieu of overtime pay. Comp time is not permitted under the FLSA. However, if what is meant by "comp time" is flexing someone's schedule, that can be done so long as it is within **the same work week**.

ARE SPLIT DAYS OR SPLIT SHIFTS PERMITTED UNDER THE FLSA?

Yes, so long as the off-duty time in between shifts is sufficiently long enough to allow the employee to use that time effectively for his/her personal pursuits.

HOW DOES THE CHANGE AFFECT MY VACATION ACCRUAL?

Employees moving from exempt to non-exempt will continue to accrue vacation at their current rate through the end of the fiscal year:

	1-5 years of employment	5-15 years of employment	15+ years of employment
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Category I Senior Staff	21 days/year (14 hours per month) Maximum Fiscal Carry Over = 21 Days (168 hours)	21 days/year (14 hours per month) Maximum Fiscal Carry Over = 21 Days (168 hours)	21 days/year (14 hours per month) Maximum Fiscal Carry Over = 21 Days (168 hours)
Category II Exempt Staff	16 days/year (10.67 hours per month) Maximum Fiscal Carry Over = 16 days (128 hours)	21 days/year (14 hours per month) Maximum Fiscal Carry Over = 21 Days (168 hours)	21 days/year (14 hours per month) Maximum Fiscal Carry Over = 21 Days (168 hours)
Category III Nonexempt Staff (working 37.5 hours/week)	11 days/year (6.875 hours per month for 37.5 hour employees) Maximum Fiscal Carry Over = 11 Days (82.5 hours)	16 days/year (10 hours per month) Maximum Fiscal Carry Over = 16 Days (120 hours)	21 days/year (13.125 hours per month) Maximum Fiscal Carry Over = 21 Days (157.5 hours)
Category III Nonexempt Staff (working 40 hours/week)	11 days/year (7.334 hours per month) Maximum Fiscal Carry Over = 11 Days (88 hours)	16 days/year (10.67 hours per month) Maximum Fiscal Carry Over = 16 Days (128 hours)	21 days/year (14 hours per month) Maximum Fiscal Carry Over = 21 Days (168 hours)

Beginning July 1, 2017, employees will accrue vacation at the following rate, based on their tenure with the university and salary grade:

	1-5 years of employment	5-10 years of employment	10+ years of employment
Senior Staff	21 days/year (14 hours per month) Maximum Fiscal Carry Over = 21 Days (168 hours)	21 days/year (14 hours per month) Maximum Fiscal Carry Over = 21 Days (168 hours)	21 days/year (14 hours per month) Maximum Fiscal Carry Over = 21 Days (168 hours)
Staff Salary Grades 10 and above (working 40 hours/week)	16 days/year (10.67 hours per month) Maximum Fiscal Carry Over = 16 days (128 hours)	21 days/year (14 hours per month) Maximum Fiscal Carry Over = 21 Days (168 hours)	21 days/year (14 hours per month) Maximum Fiscal Carry Over = 21 Days (168 hours)
Staff Salary Grades 10 and above (working 37.5 hours/week)	16 days/year (10 hours per month) Maximum Fiscal Carry Over = 16 Days (120 hours)	21 days/year (13.125 hours per month) Maximum Fiscal Carry Over = 21 Days (157.5 hours)	21 days/year (13.125 hours per month) Maximum Fiscal Carry Over = 21 Days (157.5 hours)
Staff Salary Grades 9 and below	11 days/year (6.875 hours per month for 37.5 hour employees)	16 days/year (10 hours per month)	21 days/year (13.125 hours per month)

(working 37.5 hours/week)	Maximum Fiscal Carry Over = 11 Days (82.5 hours)	Maximum Fiscal Carry Over = 16 Days (120 hours)	Maximum Fiscal Carry Over = 21 Days (157.5 hours)
Staff Salary Grades 9 and below (working 40 hours/week)	11 days/year (7.334 hours per month) Maximum Fiscal Carry Over = 11 Days (88 hours)	16 days/year (10.67 hours per month) Maximum Fiscal Carry Over = 16 Days (128 hours)	21 days/year (14 hours per month) Maximum Fiscal Carry Over = 21 Days (168 hours)

Whether exempt or non-exempt, staff may only take vacation time in half day increments (i.e. staff who work 40 hours/week must take 4-hour increments; staff who work 37.5 hours/week must take 3.75-hour increments). See Policy no. IV-6 for further information on the university's vacation policy.

HOW DOES THE CHANGE AFFECT MY SICK TIME ACCRUAL?

For the majority of employees moving from an exempt position to a non-exempt position, the FLSA changes do not change an employee's sick time accrual, as both exempt and non-exempt employees accrue sick time at an identical rate based upon anniversary date.

Years of Service	Paid Time Off
3 months to < 1 year	5 days per year
1 to <5 years	10 days per year
5+ years	15 days per year

While exempt employees must take sick time in half day increments, non-exempt staff may take sick time in one hour increments. See Policy no. IV-10 for further information on the university's sick time policy.

WHAT IS THE DIFFERENCE IN HOW I WILL BE PAID?

You will switch from receiving your pay from once at the end of each month (12 paychecks per year) to twice a month (24 paychecks per year).

MY SALARY IS ABOVE THE THRESHOLD, BUT I WAS CHANGED TO NON-EXEMPT ANYWAY. WHY?

Generally speaking, the US Department of Labor recommends that all positions in the same job classification would be treated the same. So if a job classification changed to non-exempt, everyone in that job classification will be changed to non-exempt, even if their salaries are above the threshold.

HOW DOES THIS CHANGE MY PART-TIME STATUS?

As is the case under the current regulations, pay for part-time positions will not be pro-rated. If the part-time employee's salary falls below the FLSA defined threshold, then the employee will be non-exempt. This is the case even if the full-time salary for that position is above the threshold.

HOW WILL I BE PAID FOR TRAVEL TIME AS A NON-EXEMPT EMPLOYEE?

When non-exempt employees travel, they must be compensated for any time that:

1. they are required to travel during regular working hours (i.e., during the regularly scheduled administrative work week);
2. they are required to work during travel (e.g., by being required to drive a university vehicle as part of a work assignment and/or performing work for the university at the travel destination (e.g., travelling to meet with a university vendor));
3. they are required to travel on a 1-day assignment away from the university that does not involve an overnight stay;
4. they are required to travel on an overnight assignment away from campus during hours on non-workdays that correspond to the employee's regular working hours.

Compensable travel time when traveling overnight includes any time spent in any authorized travel that cuts across normal work hours (e.g., 8:30 – 5:00 or 8:30 – 5:30).

This includes time spent:

- traveling on weekends that cuts across normal work hours (so travel on Saturdays or Sundays that occurs between the normal work hours);
- waiting at the airport for flights, if that cuts across normal work hours;
- as the individual driving a vehicle to or from a remote work location, even if it falls outside normal work hours; and
- doing work. For example, if the employee responds to e-mails or logs on to a computer and performs work after an event while at a hotel, that is compensable work time.

Normal commuting time is not compensable work time. For example, the time the employee takes to travel from home to the airport, from the event to the hotel, or from the airport back home is normal commuting time [assuming the home/airport travel time and distance is similar to the employee's normal commuting time].

Also, time spent for meal breaks or social activities that are not required or not part of working the event is not considered work time. For example, if the employee has breakfast the next morning at or near the hotel before going to the airport (and it's not a working meeting or part of the event), that is not compensable time.

If, after the event, the employee chooses to go to a bar or restaurant to have a late dinner/drink, that is not compensable time. (See the *non-exempt employees FLSA Travel Pay Chart* below for more information of what is and is not compensable travel time.)

Travel Category	Compensation Time	Non-compensable Time
Commuting	<ul style="list-style-type: none"> • Performing authorized work-related errands while commuting from home to work or from work to home. • Transporting or delivering materials or equipment to a job site prior to the start of the work day and/or returning materials or equipment after the end of the work day. • Transporting other employees to work sites, to the office, or to their homes either before or after the workday at management request. 	<ul style="list-style-type: none"> • Ordinary travel from home to work (commuting time).
Travel During	<ul style="list-style-type: none"> • Time spent in travel as part of the member's principal job activity (i.e., travel between job 	

the Work Day	sites).	
One-Day Assignment in Another Town or City	<ul style="list-style-type: none"> • Time spent traveling to and returning from a one-day required assignment in another city or town regardless of whether employee is the driver or the passenger, regardless of whether the travel cuts across the normal work schedule. • Time spent at required conference, meeting, etc. 	<ul style="list-style-type: none"> • Normal commuting time will be subtracted. • Time not worked even if it cuts across the employee's regular work schedule (e.g., employee goes sightseeing instead of attending a conference session, the conference sessions are only from 9a.m. to 3 p.m., etc.). • Meal periods and social activities where attendance is not required and work is not performed.
Travel Away From Home Community (Overnight Travel)	<ul style="list-style-type: none"> • Any portion of authorized travel, including time spent waiting at an airport, bus station, etc., that cuts across a member's normal work schedule, including non-work days. • If an employee travels between two or more time zones, the time zone associated with the point of departure determines whether the travel falls within normal work hours. • Riding as a passenger when the member is required to perform work (for example, to serve as an assistant or helper, respond to email, take business-related phone calls, etc.). • Driving a vehicle, regardless of whether the travel takes place within or outside normal work hours. • Time spent attending authorized conferences, meetings, etc. • Required attendance at meals or meal breaks where work is performed. • Required attendance at social functions. 	<ul style="list-style-type: none"> • Any portion of authorized travel, including time spent waiting at an airport, bus station, etc., that falls outside of normal work hours. • Riding as a passenger outside of normal work hours where work is not required. • Travel between hotel and meeting site. • If an employee drives a car as a matter of personal preference when an authorized flight or other travel mode is available and paying for travel by car would exceed the cost of the authorized mode, only the estimated travel time associated with the authorized mode will be counted as hours worked. • If the University authorizes hotel accommodations for overnight travel but the employee prefers to drive home each evening. • Regular meal periods where work is not performed and attendance is not required. • Voluntary attendance at social functions. • Time spent outside of the conference or meeting (e.g., employee goes sightseeing instead of attending a conference session, the conference sessions are only from 9a.m. to 3p.m., etc.) • Time spent sleeping unless the member has the primary responsibility for the safety and welfare of students.

Reimbursement for hotel and meal costs is governed by the university's Travel Policy, which can be found at <https://www.case.edu/travel/resources/policy/>. Reimbursement for such expenses while traveling is calculated separately from an employee's regular hourly rate. The rules/policies on meal and hotel reimbursements have not changed.

MY QUESTION IS NOT LISTED HERE. NOW WHAT?

If your FLSA question is not listed here, please contact your school's HR Administrator. Those individuals are:

College	HRA
Campus Services	Christine Torrence
Case School of Engineering	Cena Hilliard
College of Arts and Sciences	Denise Donahey
Development	Larry Gibson
Facilities	John Lawyer
Frances Payne Bolton School of Nursing	Susan Frey
Mandel School of Applied Social Sciences	Karen Powers
Research Administration	Dennis Rupert
School of Dental Medicine	John Smolik
School of Graduate Studies	Dennis Rupert
School of Law	Timerra Jung
School of Medicine	Danielle Price Haslett
Undergraduate Studies	Dennis Rupert
Student Affairs	Dennis Rupert
UTech	Lolita Hines
Weatherhead School of Management	Debi Bruss