

## FREQUENTLY ASKED QUESTIONS ON FLSA CHANGES FOR 2016

### 1. What is the FLSA?

FLSA stands for the Fair Labor Standards Act of 1938 (“the FLSA”), the statute which contains the federal wage and hour laws for which employers with workers within the United States must comply. The FLSA sets the criteria to determine which employees are entitled to overtime based on duties performed, level of responsibility, decision-making authority and level of compensation. The FLSA also establishes 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 and overtime pay of 1.5 times their regular rate of pay for all hours worked over 40 in a fixed seven day period.

At Southern Illinois University Carbondale, overtime for non-represented non-exempt employees is earned after 7.5 hours in a day, or 37.5 hours in a week.

### 2. What does it mean to be exempt or non-exempt under the FLSA?

Exempt employees are employees who 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 complete work 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), exempt employees must perform certain types of duties, as defined in the FLSA, in order to be exempt and salaried.

The term “non-exempt” refers to employees who are not “exempt” from the federal overtime rules and who must receive pay for all hours worked and be paid “time and a half” (i.e., 1.5 times the employee’s regular rate of pay) for all hours worked over 40 in a fixed seven day period.

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### 3. How do I know if a position is exempt or non-exempt?

Under the FLSA, with a few limited exceptions (these exceptions are discussed in FAQ 4), exempt status is determined based on meeting **each** of the following tests:

- Salary Basis Test. Employee must be paid on an annual salary basis; **and**

- **Minimum Salary Test.** Effective December 1, 2016, the FLSA's minimum salary threshold is \$913.00 per week or \$47,476.00 annually; **and**
- **Duty and Discretion Tests.** The employee also must perform duties that meet the DOL's definition of an executive, administrative, professional, or computer professional. The requirements to meet the duties and discretion tests are quite specific and judged on a case by case basis.

#### **4. What are the limited exceptions of types of exempt employees who do not have to meet all three of the above requirements?**

Physicians, lawyers, and employees whose primary duty is teaching meet the duties and discretion tests but who do not otherwise have to meet the FLSA minimum salary threshold to be considered exempt.

#### **5. Who does this change in the law affect and what changes will it mean?**

This change will apply to all employees whose rate of pay is below **\$913 per week** or **\$47,476 per year** *except* those employees who are physicians, attorneys, or whose primary duty is teaching. These employees will continue to be exempt from the minimum salary threshold. However, this means that other exempt employees who previously met the minimum salary threshold, but do not meet the new minimum salary threshold, will be converted by law to non-exempt employee status and will need to track and account for hours worked on an hourly basis. These individuals will now also be eligible for overtime compensation/compensatory time, depending on the situation, for hours worked in excess of a day or workweek, or the negotiated threshold in the appropriate Collective Bargaining Agreement.

#### **6. Does the term "non-exempt" mean "non-professional"?**

No. The term "non-exempt" simply means that the employee is eligible for overtime payments. You continue to be a professional in your job. It is mandated by the federal government for payment purposes and does not reflect upon your status as a professional.

#### **7. What impact will the change from being exempt to non-exempt have on employee's benefits?**

Currently, the amount of vacation accrued is different for exempt and nonexempt employees. So that no current employee loses any vacation benefit as a result of this mandated change by the federal government, the University will "grandfather" the accrual rates for those employees who are changing from exempt to nonexempt status and are on the payroll on November 30, 2016 as long as they are continuously employed in a position that continues to meet the FLSA required duties test.

**8. Can employees opt out of this change (or supervisors opt an employee out of this change) if the employee wants to continue to be considered a salaried or exempt employee?**

No. This change is being required by the United States Department of Labor and the University is obligated to follow the new requirement as a matter of law.

**9. How is tracking work hours different for a non-exempt employee?**

Non-exempt employees need to appropriately and accurately record all work time and non-work time (e.g., sick, vacation, etc.). Non-exempt employees must be appropriately compensated for all hours worked including overtime hours.

**10. 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 in a fixed seven day period. The computation of "40 hours worked" does not include paid time out of the workplace (e.g., sick leave, vacation time, etc.). In the SIU system, Collective Bargaining Agreements and policies may differ depending on the job and location.

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To convert salary to an hourly basis:

Monthly Employees

Monthly Salary ÷ 163.125 = Hourly Rate

Semi-Monthly Employees

Semi Monthly rate X 2 = Monthly Salary ÷ 163.125 = Hourly Rate

**11. Can a non-exempt employee still work early and late and/or be required to check emails and voice mails from home?**

As a rule of thumb, work schedules, including flexible work schedules, need to be managed and approved by an employee's supervisor and handling emails and messages outside of normal working hours can be considered time worked for overtime purposes. Whether an employee is required to check emails or messages or perform work from home also must be managed and approved by the employee's supervisor.

An employee should not presume that it is permissible to do this work outside of the regular work day without prior approval from a supervisor. In addition, work performed outside of

work which would result in overtime must be authorized in advance by an employee's supervisor because all time worked must be accounted for and recorded as "time worked."

**12. Will I use the same time sheet I've been using?**

No, new time sheets are being developed and will be posted soon.

**13. Once approved, how do report my overtime worked?**

The [Request for Overtime Credit](#) form is the mechanism to document compensatory time earned or to request payment for the overtime worked.

**14. How do I know if I should receive compensatory time or monetary payment?**

When the overtime is offered, the supervisor should make clear how the employee will be compensated for the overtime (monetary payment or compensatory time). However, if the overtime is required, the employee has the option to insist on monetary payment.