

FREQUENTLY ASKED QUESTIONS ON FLSA CHANGES FOR 2024

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 July 1, 2024, the FLSA’s minimum salary threshold is \$844.00 per week or \$43,888.00 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. Why are some classifications considered variable rather than exempt or non-exempt?

Positions are either exempt or non-exempt for overtime compensation under FLSA. Historically, SIUC has designated all Administrative/Professional positions and some civil service classifications as exempt. Another group of civil service classifications are designated as non-exempt. There is also a group of civil service classifications that SIUC has considered to be variable. This means that the exempt/non-exempt designation was determined on a case by case basis, depending on the duties and responsibilities of the position.

5. What factors are used in making the decisions regarding variable positions and if they are exempt vs. non-exempt status?

The duties and responsibilities of the position as well as the salary level assigned to the position are the main factors considered in determining overtime eligibility status. The Department of Labor is responsible for publishing rules for these determinations and several fact sheets are available on their website.

6. 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.

7. 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 **\$844 per week** or **\$43,888 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.

8. Are you considering increasing the minimum salary on some classifications that have been historically exempt?

Increasing minimum salaries for some classifications is an option however, it may not be the best course of action. The new overtime rules include a planned automatic review of the salary threshold every three years.

9. 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.

10. Does it matter if the employee is AP or CS? It appears that the next salary threshold will capture additional AP staff.

All positions are subject to FLSA overtime regulations unless exempted. The Department of Labor does not see any distinction between civil service or administrative/professional staff positions. They will refer to the duties assigned to the positions and whether or not they meet the salary threshold, if applicable.

11. What impact will the change from 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 June 30, 2024 as long as they are continuously employed in a position that continues to meet the FLSA required duties test.

12. 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.

13. Is there any possibility of a classification change to those that were switched to non-exempt?

There will be no automatic changes to classifications or titles as a result of changing from exempt to non-exempt under FLSA.

14. Can a desk audit be requested effective as of 7/1?

The university is engaged in a large-scale compensation review project titled Compensation 2030. Part of that process includes asking civil service and administrative/professional staff to complete job analysis questionnaires regarding their positions. This process will result in an

audit or review of each staff position. During this process, we will be pausing audit requests/position reviews for a period of 6 months.

15. Are you going to notify the employees that have been changed to non-exempt?

Employees who were changed from exempt to non-exempt were notified via email. Fiscal officers of these employees were also notified.

16. For those who will be changing on January 1, 2025, will you be notifying them closer to that time?

Yes, once the final salary threshold is set for the next change, we will again be notifying affected staff and fiscal officers.

17. Does the payroll on which the employee is paid matter in determining overtime eligibility?

No, the duties of the position and the salary are the determining factors in FLSA overtime status.

18. Are union represented employees covered by FLSA and overtime rules?

Yes, all positions are covered by FLSA overtime rules. However, some positions are exempt from the rules and some are not.

19. What if the Job description was inaccurate and did not accurately reflect job duties?

Position descriptions can be updated and reviewed for potential change in status under FLSA overtime rules.

20. 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.

21. 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

22. 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."

23. Will employees who are refused overtime approval be documented if they cannot complete their job in 7.5 hours daily? What type of protection is provided to staff?

Staff should discuss workload concerns and expectations with their supervisors regardless of overtime eligibility. It's important for the both the employee and supervisor to understand the demands of the work assignments and the prioritization of the assigned duties.

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

New time sheets have been developed for exempt and non-exempt staff paid monthly and semi-monthly. Links to both revised forms are provided here.

[Exempt AP and Semi-Monthly Civil Service Employee Time Recording Sheet](#)

[Non-Exempt AP and Semi-Monthly Civil Service Employee Time Recording Sheet](#)

25. Is there a reason that exempt employee are required to track time?

The State Officials and Employees Ethics Act requires all university employees to submit time sheets documenting the time spent each day on University business. Actual hours worked and/or any absences must be reported.

26. 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.

27. 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.

28. Can you confirm that the list of employees impacted was shares with cabinet?

Yes, Chancellor Lane's cabinet was presented with their respective lists of impacted employees.