FAQ

GENERAL

Q: What is the Fair Labor Standards Act?
A: The Fair Labor Standards Act (FLSA) is a federal act, passed in 1938, that requires the payment of minimum wage and overtime to all non-exempt employees. The Act also contains requirements regarding exempt, or non-covered employees, with respect to how they are paid and treated in order to maintain their exemption.

Q: Why were the FLSA regulations modified?
A: The Department of Labor (DOL) had opined that one of the exemption tests under the Act, the salary level test, was no longer effective because the salary level had not been modified to keep up with inflation. Many agreed that the salary level was too low. There was, however, disagreement regarding how high it should be and how much time an employer should have in which to become compliant with such a sudden and dramatic change in level.

Q: When did the FLSA regulations become final?
A: May 18, 2016, with an effective date of December 1, 2016.

Q: How do you determine who is exempt (and thus, not entitled to overtime) under the Act?
A: There is basically a two-part test in order for an employee to be considered exempt under the Act. An employee must pass both parts in order to be considered exempt. The tests are:

1. The salary level test – the employee makes above a certain salary level, now $47,476 annually, and
2. The duties test – the employee’s duties consist of certain executive, administrative or professional functions.

However, there are exceptions – teachers, doctors and lawyers are not required to meet these tests. They are automatically considered exempt, regardless of their salary level.

Q: Who will be affected by these changes?
A: All employees making between $23,660 (the old threshold) and $47,476 (the new threshold), who are currently classified as exempt and who do not fall within the teacher, doctor or lawyer exception, or are otherwise excluded from the Act’s coverage.

Q: My affected employees are paid a salary, so how could they be entitled to overtime?
A: The FLSA states that if an employee is non-exempt, that employee is entitled to overtime whether you are paid on an hourly or salary basis. The employee’s hourly rate is calculated by dividing their weekly salary rate by 40.
Q: I have employees in my unit who are impacted. They are making close to $47,476. I want to raise their salaries. Is there any problem with that approach?

A: There are considerations you should make such as: equity in the unit as a whole if some employees receive salary increases, salary compression, whether the employees ever work overtime, etc. Human Resources and the Office of the General Counsel have hosted a number of forums and have provided numerous toolkits and other resources available online at www.hr.msu.edu/flsa.

FLSA salary adjustments for support staff may be submitted through the EBS portal. To implement this type of pay increase, the unit administrator submits a change in pay using the Pay Rate Change function in the EBS portal and select the reason code “BL” FLSA Adjustment reason. A Supporting Documentation Form must be completed for the FLSA salary adjustment reason and must include the MAU authorized signatures in order for the special pay increase to be processed.

Q: I’m going to manage the new regulations by prohibiting overtime in my unit without prior approval. If I tell my employees not to work overtime, is that good enough?

A: In a word, no. Supervisors are responsible for implementing written policies and enforcing any policies prohibiting or restricting overtime. If an employee violates the policy, the conduct should be addressed just like the violation of other work rules.

Q: I would like to raise the salaries of all of my impacted employees to $47,476. Is there central funding to allow me to do this?

A: No, there is no additional funding for such pay increases, but some units may in some cases decide to raise the pay rate of some employees that are close to the threshold up to the salary threshold amount in order to preserve the exempt status. However, units do not have to move any employees to the new threshold. It is a unit-specific analysis regarding how its particular employees work, current salaries, budgets, etc.

Q: Can an employee chose to opt out of the FLSA protections?

A: No, there is no ability to opt out of the FLSA protections. If an employee is non-exempt, they must be paid and treated accordingly. As a supervisor, you should address any concerns or questions they may have with an FLSA classification change, using the information on www.hr.msu.edu/flsa, information from the forums and help from Human Resources to do so.

Q: What about my part-time employees? Is their salary prorated under the proposed regulations?

A: No. For example, if an employee makes $35,000 and is a .50 FTE, they will be considered non-exempt even though their FTE salary would be $70,000.

Q: I would prefer to use compensatory time for my employees, as opposed to paid overtime. Is that a possibility?
A: Yes, depending on whether your employees are collectively bargained for and depending on your specific unit policies. See the section below entitled “Compensatory Time.”

Q: I am the budget officer in my unit and am responsible for implementing these changes. They seem complex. Will there be help?

A: Yes, there will be numerous resources and representatives from different areas on campus available to help. More communication will continue to come regarding the latest on this issue.

Q: What if an employee has more than one job?

A: To determine whether the person is exempt, you will look at the two part test. In terms of salary threshold, you will add all wages together to determine if the employee meets the new $913/week standard. In terms of duties test, the DOL’s guidance states that we must consider all of the jobs together and determine whether the employee’s primary duty is exempt work or non-exempt work.

Q: How will I be able to figure out which of my employees are exempt?

A: The BI report used to help you make this determination is: HRP058, which is located at: EBS > Business Intelligence > Public Folders > HR-Payroll Folder > University HR-Payroll Reports > OMPA - Organizational Management/Personnel Administration

FACULTY AND ACADEMIC STAFF – specific questions

Q: Are faculty exempt?

A: Most faculty are exempt either because they are over the FLSA salary threshold or because they teach and are exempt regardless of how much they make. For specific job classifications which have been deemed to meet the teacher exemption by Academic Human Resources, see www.hr.msu.edu/flsa.

Q: Are Research Associates exempt?

A: The Research Associates below $47,476 will not be considered exempt unless an exception applies, like the teacher exemption. This will be rare, and would need approval from Academic Human Resources.

Q: What if my Research Associate is working on her own (unassigned) work? What do I need to pay for? How do I know what work I need to pay for her?

A: Unless it is truly personal work, from which MSU derives no benefit, it should be counted as compensable time. Similarly, if there is no way to separate it from MSU work, it should be counted as compensable time. Please discuss specific situations with Academic Human Resources.

Q: What if my Research Associate teaches? Do they then qualify for the teacher exemption (meaning they are exempt regardless of salary level)?
A: The Research Associate’s primary duty must be teaching. Thus, if the Research Associate’s job is primarily teaching, with a small portion of the job related to teaching, the individual likely will not qualify for the teacher exemption. Please consult with Academic Human Resources on these cases.

Q: How do you determine whether someone on an AY appointment meets the salary threshold?

A: The salary threshold of $47,476 is the equivalent of $913 weekly. If an employee is making more than $913 weekly and they meet the duties test, they will be considered exempt. Thus, if someone is doing exempt work as an AY making over $913/week for nine months and then earning nothing in the summer, they would be exempt. If the same person worked during the summer, the determination would be whether they earned $913/week during the weeks worked in the summer. If not, they would be exempt during the nine months and non-exempt during the summer.

Q: I am a Budget Officer in an academic unit. What if a faculty member forwards time sheets to me and expects me to approve them?

A: This is a violation of policy. You should notify Academic Human Resources. Supervisors have an active role to play under the policy and cannot delegate that to someone else.

Q: What about Visiting Scholars? Are they considered exempt?

A: The DOL has said that an individual on a J-1 Visa is not excluded from the requirements of the FLSA. Thus, Visiting Scholars must fall within an exception in order to be excluded from the provisions of the FLSA. Academic Human Resources has said that pre-doctoral Visiting Scholars will be considered trainees (similar to graduate students) and, thus, not covered by the FLSA. Those with PhDs making less than $913/week will be considered non-exempt unless an exemption like the teacher exemption applies (which will be rare).

If you believe a visiting scholar in your unit will fit within the teaching exception or trainee exception, Academic Human Resources will make determinations on a case-by-case basis.

Q: What about trainees generally? Who can be classified in this category?

A: Under the FLSA, trainees are not considered employees, generally, if the benefit to the trainee outweighs the benefit to the employer in the course of the relationship. Some of the factors considered are as follows:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school.
2. The training is for the benefit of the trainees or students.
3. The trainees or students do not displace regular employees, but work under their close observation.
4. The employer that provides the training derives no immediate advantages from the activities of the trainees or students, and on occasion operations may actually be impeded.
5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period.
Q: What about employees working overseas? Does the FLSA apply to them?
A: Employees working the entire workweek overseas are not covered by the FLSA. Employees working any portion of the workweek in the U.S. are covered by the FLSA for the entire week.

SUPPORT STAFF – specific questions

Q: The employees in my unit that are impacted are covered by a union contract. How will the regulations impact the contract?
A: The regulations may provide greater benefits to employees than current union contracts do. In those cases, the FLSA will apply even if the terms differ from those in the union contracts. Additionally, the union contracts may provide greater benefits, in which case, the union contract terms apply. It is, therefore, important to check union contracts in addition to the Support Staff Overtime and Time Tracking Policy and Compensatory Time Policy and work closely with Employee Relations.

Q: What about non-union employees?
A: Non-union employees are covered by the support staff overtime and compensatory time policies in the same way union employees are – they are covered if they are non-exempt under the FLSA or if they are entitled to the benefits by MSU policy.

TIME TRACKING

Q: What constitutes supervisory approval on a time sheet? If I email the timesheet to a Budget Officer indicating I approve, is that sufficient approval per the policy?
A: Yes, instructions on the MSU approved time sheet state that in the event the timesheet is used in an electronic manner, the use of the MSU NetID email address will be required as the signature authority for the transaction.

Q: My non-exempt staff have never had to track time by hours worked each day before. Why now?
A: The FLSA requires records to be kept for each non-exempt worker, including hours worked each day. The way in which time must be kept according to the new FLSA policies is a best practice. To the extent you have not recorded time this way in the past, it is expected going forward.

Q: What if my employee, who is an APA/APS 11 or under, is over $47,476, do I have to track their time?
A: Yes, even though this individual is considered exempt, they are nevertheless contractually entitled to overtime and, thus, a careful recording of hours is a best practice.

Q: What if my employee who is an APA/APS 12 or above is over $47,476? Do I have to track their time?
A: No.

Q: What about employees who are non-union/confidential? Do I have to track their time if they are entitled to overtime by policy (since they track the benefits of levels 8 – 11 in union contracts)?

A: Yes, they are entitled to overtime per policy and, thus, time should be tracked.

Q: I track my employees' time for them. I write down the hours they have worked each day. Is that sufficient?

A: No, employees need to be able to track their own time.

Q: I have my own time tracking system we have already been using for support staff. Is that sufficient?

A: Units can use their own time tracking procedure on the staff side as long as it, at a minimum: (1) gives the employee the ability to record the number of hours worked each day; (2) provides for some sort of employee AND supervisory sign-off weekly; (3) is retained for 3 years at the unit level.

Q: My non-exempt employee checks email every night. I can tell because I get email from her regularly at 7:00 or 8:00 p.m. Is this a problem?

A: Maybe. The DOL has indicated that a de minimis (small) amount of checking email is not compensable. However, as soon as it becomes more than de minimis, it is compensable. This should be made clear to non-exempt employees.

COMPENSATORY TIME

Q: My non-exempt employee works a schedule that allows her to work an hour late every Monday and earn an hour of comp time. Is that permissible under the overtime policies?

A: Yes. However, going forward, you must complete the Agreement to Accept Compensatory Time in Lieu of Overtime Pay prior to each time comp time is earned, as well as follow the other requirements contained in the Support Staff or Faculty and Academic Staff Compensatory Time Policy.

Q: Can we require a payout of accrued comp time at the end of a grant?

A: Yes.

Q: Do I have to retain the Agreement to Accept Compensatory Time in Lieu of Overtime Pay form at the department? Should I send it to HR?

A: It is to be retained at the department level for three years. You do not need to send it to HR.