

# FAQ

## GENERAL

**Q: What is the Fair Labor Standards Act?**

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

**Q: Under FLSA regulations, 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 **\$23,660** 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: I am paid a salary, so how could I be entitled to overtime?**

A: The FLSA states that if you are non-exempt, you are entitled to overtime whether you are paid on an hourly or salary basis.

**Q: How is overtime calculated?**

A:

- Hourly employees. Example: If John is paid \$20/hr and works 45 hours in a week, he is entitled to  $(\$20 \times 5 \text{ hours of overtime} \times 1.5, \text{ or time and a half}) = \$150$  in overtime, in addition to the  $(\$20 \times 40 \text{ hours of work}) = \$800$  at the regular rate. So, John would be paid a total of \$950 that week.
- Salaried employees. Example: If Sue is paid \$600 a week and works 45 hours a week, she is working the equivalent of  $(\$600/40) = \$15$  hourly rate. Thus, she would be entitled to  $(\$15 \times 5 \text{ hours of overtime} \times 1.5) = \$75$  in overtime, in addition to the \$600 weekly rate. So, Sue would be paid a total of \$675 that week.

**Q: I am a part-time employee. Is my salary prorated under the FLSA?**

A: No. For example, if an employee makes \$20,000 and is a .50 FTE, they will be considered non-exempt even though their FTE salary would be \$40,000.

**Q: I prefer compensatory time over paid overtime. Is that a possibility?**

A: Yes, depending on whether you are a collectively bargained for employee and depending on your specific unit policies.

**Q: Are graduate students considered employees under the FLSA?**

A: No, the U.S. Department of Labor (DOL) has stated it will not assert an employment relationship when the primary relationship with the institution is that of a student.

**Q: Are faculty exempt under the FLSA?**

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.

## **CHANGES TO THE LAW**

**Q: Were the FLSA regulations modified in 2016?**

A: Yes, but then a federal court enjoined the regulations. So, the final FLSA regulations passed in 2016 are currently **not effective**.

The reason for the regulation change, as explained by the Department of Labor (DOL) at the time, was that one of the exemption tests under the Act, the salary level test, was no longer effective. The DOL stated that the test lost its effectiveness 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.

A federal court enjoined the regulations ruling that the change to the salary level test was too significant and that the change was a departure from the statute. The ruling is being appealed, but with a new administration, it is likely the DOL will change its approach.

**Q: What does this mean? Which FLSA regulations does MSU follow?**

A: The previous FLSA regulations, which were passed in 2004.

**Q: What will happen next? Will the 2004 regulations be modified?**

A: It is unknown at this time how this DOL will view the 2004 regulations. There are legal challenges pending. We will continue to update the campus community as things unfold.

## **COMPENSATORY TIME**

**Q: I am a non-exempt employee and I work a schedule under which I'm permitted to work an hour late every Monday and earn an hour of comp time. Is that permissible under the compensatory time policy?**

A: Yes, if your collective bargaining agreement allows for comp time. However, going forward, you must complete the [Agreement to Accept Compensatory Time in Lieu of Overtime Pay](#) prior to the first time comp time is earned, as well as follow the other requirements contained in the Support Staff Compensatory Time Policy.

**Q: I am an exempt employee, although I am entitled to comp time per my collective bargaining agreement. Do I need to complete the Agreement to Accept Compensatory Time in Lieu of Overtime Pay?**

**A:** No.

#### **TIME TRACKING**

**Q: Do APA's level 11 and below have to track time?**

**A:** No.

**Q: Am I able to track my own time?**

**A:** Yes, you will be able to track your own hours each day and will acknowledge accuracy of your time once a week.

**Q: I've never before had to track time by hours worked each day. 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. It is important to carefully and accurately record time to ensure proper payment of employees. To the extent you have not recorded time this way in the past, it is expected going forward.

**Q: What if my unit uses a card swipe/punch system for time entry?**

**A:** If you are in a unit using a time card swipe/punch system, you will record your hours by swiping or punching your time card. Your supervisor will verify the time on a weekly basis.

**Q: Where can I go for more information?**

**A:** You can contact your supervisor, Human Resources, Academic Human Resources, or visit [www.hr.msu.edu/flsa](http://www.hr.msu.edu/flsa) for more information.