FAQ

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: **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: **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?**

- **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 \text{ in overtime, in}


addition to the ($20 x 40 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 x 5 hours of overtime x 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 currently an exempt employee, but I will be classified as a non-exempt employee if the regulations are finalized in proposed form. What changes might I see?

A: If you work over 40 hours in a week, you will be entitled to overtime at a time and a half rate. Regardless of how many hours you work per week, your supervisor will be responsible for tracking your time. He or she will be required to document how many hours you work each week. Your unit may have a policy requiring you to seek pre-approval before working overtime.

Q: I make $39,000 and am currently exempt. Can I keep my exempt status, even after December 1, 2016? I like the freedom, flexibility and status it provides me.

A: There is no ability to opt out of the FLSA protections. If you are non-exempt, you must be paid and treated accordingly. However, your supervisor can work with you to address any concerns or questions you have about practical changes that may come with an FLSA classification change.

Q: I am a part-time employee. Is my 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 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 employees?

A: No, the 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?

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](http://www.hr.msu.edu/flsa).

Q: When will I be notified about any impact this change in the law will have on me?

A: Employees will begin being notified about the change in October.

Q: I am an APA 11 and I make more than the new salary threshold. Do I have to track time?
A: Yes, although you are not entitled to overtime per the FLSA, you are per union contract and, thus, will have to track your time.

Q: I am a non-union employee, but I track benefits of an APA 11. Will I have to track time?
A: Yes, although you are not entitled to overtime per the FLSA, you are per policy and, thus, will have to track your time.

Q: I don’t like the idea of tracking my time. I am a professional and have never had to do this before.
A: The change in the law, and corresponding requirements, do not do anything to diminish MSU’s value of you as an employee or your work. If the change in the DOL regulations caused you to move from exempt to non-exempt employee, the law provides you with wage and hour protections you did not have as an exempt employee.

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: 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 for more information.