FAIR LABOR STANDARDS ACT (FLSA) 2016 UPDATE

Toolkit for Managers and Supervisors

LSU
Office of Human Resource Management
110 Thomas Boyd Hall  225-578-8200  HR@LSU.EDU
ABOUT THIS TOOLKIT
This toolkit is designed to help Directors, Deans, Department Heads, Managers, and Supervisors to:

- Determine which employees are impacted by the changes to FLSA overtime rule taking effect December 1st, 2016.
- Develop a strategy to comply with the regulations that aligns with departmental needs.
- Communicate effectively with impacted employees in a timely manner.

TABLE OF CONTENTS

- A Brief Overview of Fair Labor Standard Act (FLSA) 2016 Change
- Key Points for Departments
  - Tips for Managing Overtime and Use of Compensatory Time
  - Understanding New Overtime Eligibility Rules
- Supervisor Talking Points
- Frequently Asked Questions
- Communication and Training Resources
IMPORTANT CHANGES IN OVERTIME REGULATIONS

As a result of the 2016 changes to FLSA or Fair Labor Standards Act, on December 1, 2016, a new overtime rule is set to go into effect. This new rule will require employers to pay overtime to professional employees making less than or $913 per week or $47,476 annually for a full-time worker.

EXECUTIVE SUMMARY

1. The new regulation affects employees making less than or $913 per week or $47,476 annually for a full-time worker. However, the overtime rule does not apply to groups who are covered under existing Department of Labor exemptions such as teachers or instructors whose primary duty is teaching, instructing, or lecturing in the activity of imparting knowledge, and graduate assistants.

2. On January 1st, 2017, affected employees will have their annual base salaries converted to an hourly rate by dividing their annual base salary by 2080. That number will be their official hourly rate.

3. On January 1st, 2017, affected employees will be required to enter their time in Workday. All departments must keep records for the actual work hours of each employee earning less than $47,476.

4. These employees will remain Unclassified and outside the Civil Service rules and regulations. They are to be considered Professional Non-Exempt employees.

5. These employees will move from a monthly payroll to a bi-weekly payroll schedule beginning January 1st, 2017.

6. Beginning December 1st, 2016, affected employees will be paid 1.5 times their regular hourly rate for time worked in excess of 40 hours in an assigned and contiguous workweek. Compensatory Time can be substituted for overtime payments allowing that certain criteria is met. Supervisors can also choose to rearrange an employee’s work schedule to avoid a situation where an employee is working overtime hours.

7. Please note that Holidays and Time Off (Leave) are not considered hours worked and do not count towards the 40 hours work week.

8. For December only, if Professional employees accrue overtime in the month of December, they should track their overtime hours on a Supplemental Timesheet, obtain their supervisor’s signature, and have their HR Specialist or Business Manager submit the timesheet to Payroll. The employee should report only the overtime hours, which would be hours worked over 40 in an assigned workweek.

9. Overtime and compensatory time must be approved by the supervisor in advance of hours being worked.

10. Departments are responsible for financing overtime and compensatory time from their budget. They must account for their annual overtime needs within the annual budget construction process.
HISTORY

FLSA, or the Fair Labor Standards Act, establishes minimum wage, overtime pay, recordkeeping and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. On May 18, 2016, President Obama and Secretary Perez signed a Presidential Memorandum directing the Department of Labor to update the regulations defining which workers are protected by the FLSA’s minimum wage and overtime standards. On May 18th, 2016, the Department of Labor issued its Final Rule making significant changes to the salary threshold of workers eligible for overtime pay.

The Department of Labor will review the salary threshold for future adjustments every three years going forward. This transition is not a result of Workday, but rather Workday allows LSU to remain compliant with federal regulations.

KEY POINTS FOR DEPARTMENTS

Based on the new Federal FLSA regulations, LSU is required to reclassify employees making less than or $913 per week or $47,476 annually from exempt to nonexempt status which affects your department in a few key ways:

1. Affected employees will now enter their time in Workday to get paid. Timely manager approval in Workday is required in order for the employee to get paid.

2. Affected employees will be paid 1.5 times their regular hourly rate for time worked in excess of 40 hours in an assigned and contiguous workweek. Compensatory Time can be substituted for overtime payments allowing that certain criteria is met.

3. Each department is responsible for the financing of their overtime or compensatory time from their regular budget. Departments should account for their annual overtime needs within the annual budget construction process.

4. Departments should establish and inform each employee in writing who is being paid an annual base salary under $47,476 of his or her regular work hours, work schedule, and hourly rate.

5. Overtime or Compensatory time must be approved by the supervisor in advance of the hours being worked. The supervisor, in a formal manner, in advance of any change must approve work schedule deviations. Deviations from the standard 5 day, 40 hour workweek must be reviewed by HRM in advance to insure compliance and to gauge budgetary impact.
MANAGING OVERTIME

Managers and supervisors may need to set new expectations and change department schedules or behaviors in order to manage overtime according to their budgets. Overtime may be necessary but it should be pre-approved by the employee’s supervisor. However, whether or not the overtime was pre-approved, overtime must always be paid. A clearly defined approval process can assist you and your employees in managing both time and budget resources.

What are some options for responding to the changes to salary level?

- Raise salaries to maintain exemption (must still pass the DOL tests for consideration)
- Pay overtime after 40 hours
- Reorganize workloads, adjust schedules or spread work hours
- Offer comp time in lieu of cash overtime pay provided it is approved in advance and meets certain criteria

In these scenarios, the professional employee making less than or $913 per week or $47,476 annually for a full-time worker is converted to an hourly rate, biweekly pay cycle, and will enter time in Workday in order to get paid.
USING COMPENSATORY TIME
Compensatory Time can be substituted for overtime payments for professional, non-exempt employees with the following requirements.

1. Compensatory time must be credited at the same rate as overtime—1.5 times the hourly rate.

2. Non-exempt employees must be told beforehand whether they will be compensated with comp time instead of cash overtime, either in a memorandum of understanding or other agreement, or via some other agreement or understanding arrived at with the employee before the work is performed.

3. Compensatory time has a number of distinct rules aligned with it and those rules must be followed.

4. Managers cannot significantly infringe upon the use of comp time by employees. The use of comp time by employees subsequent to earning that time must occur in a reasonable time period following its accumulation.

Non-public safety workers are only allowed to accrue 240 hours of comp time. Police Officers are allowed to accrue 480 hours of comp.

COMP TIME AT TERMINATION
Employees must be paid for all accrued comp time upon the termination of their employment, regardless of reason.

- The amount paid per hour will be the average of their hourly rate for the last three years of employment or their final hourly rate, whichever is higher.

- The amount of comp time accrued will not be counted toward the maximum accumulation of leave at the time of termination.

- Departments will need to finance the payout of compensatory time from within their annual budget.
SUPERVISOR TALKING POINTS

These questions and answers are intended to assist you in answering your employee’s questions and concerns as you communicate your employee’s new hourly rate, new overtime eligibility, impact of transitioning to a bi-weekly pay cycle, and how to enter hours in order to be paid.

Can I opt out of this change?
A: An employee and employer cannot agree to waive any of the law’s requirements.

Q: Will I still be considered unclassified/professional?
A: Yes, employees will remain unclassified/professional and outside the Civil Service directions. You will be considered professional, non-exempt employees.

Q: What does non-exempt status mean?
A: Employees whose jobs are governed by the FLSA are either “exempt” or “nonexempt.” Nonexempt employee are entitled to overtime pay. Exempt employees are not.

Q: Will I still be paid monthly?
A: No, you will move to a bi-weekly payroll. Your last monthly paycheck will be on December 22nd, 2016 for the pay period of December 1st- December 31st, 2016. This is the Payroll Wage Schedule.

Q: Will I still be paid as an annual salary?
A: No, Employees earning less than $47,476 per year must have their annual base salaries converted to an hourly rate by dividing their annual base salary by 2080.

Q: Does my hourly pay rate include stipends, allowances, or additional compensation?
A: No, the official hourly rate does not include stipends for telephones, expense reimbursements, clothing allowances, benefits, additional compensation, supplemental compensation, etc.

Q: How will I keep track of my time?
A: You will be required to enter your time in Workday. View the online job aids and videos here to learn how to enter time into Workday.

Q: Is this considered a demotion?
A: No, The transition from exempt to nonexempt is necessary to comply with federal regulations, therefore in no way should this change be considered a demotion. This change will not adversely affect the actual or perceived value of an employee’s work or the importance of their contributions to LSU.

Q: Will switching from exempt to nonexempt impact my annual and sick leave accruals?
A: It will not impact your annual and sick leave accruals.

Q: Will switching from exempt to nonexempt impact my benefit elections and retirement plans?
A: Your benefit elections and retirement enrollments will not be effected. However, you may need to make adjustments to how much you have set up to contribute per paycheck to voluntary retirement and insurance elections.
Q: What happens if I work more than 40 hours per week?
A: Any hours worked in excess of 40 hours per week must be paid at the rate of 1.5 times your regular hourly rate.

Q: Can I work over time and tell my supervisor later?
A: No, employees should have overtime approved by their supervisor in advance.

Q: What happens if I take time off during the week?
A: Time off does not count towards the 40 hours. This includes annual leave, sick leave, jury duty, military leave, unpaid leave, etc.

Q: Do breaks count towards the 40 hours?
A: No, breaks, including lunch breaks, do not count toward the 40 hours.

Q: Does commute time count towards the 40 hours?
A: No, commute time does not count towards the 40 hours.

Q: Can I receive comp time in place of overtime?
A: Yes, but it must be documented in writing, approved by your supervisor in advance, and you must agree to it in advance.

Q: Will I receive one hour of comp time for one hour of work time?
A: No, you will receive 1.5 hours of comp time for one hour of work time.

Q: What happens to my comp time upon termination of employment?
A: Employees must be paid for all accrued comp time, regardless of the reason for termination.

Q: Can I save my comp time?
A: Comp time should be used in a reasonable amount of time following its accumulation.

Q: Where can I get more information?
A: Complete information is available on LSU’s HRM website, on the Department of Labor’s Wage and Hour Division. Please contact hr@lsu.edu with any additional questions.
FAQ FOR SUPERVISORS, DEANS, DIRECTORS, DEPARTMENT HEADS

Q: Are there any groups of employees this new rule does not apply to?
A: Yes, the new rule does not apply to instructors and teachers. Departments should not assume any other exemptions/exceptions to the overtime rules without verifying first through the Office of Human Resource Management.

Q: Do the new FLSA rules affect faculty?
A: The new rules do not affect instructional faculty (tenure track, clinical track and lecturers). Research faculty and librarians may be affected.

Q: Are graduate assistants and student workers affected?
A: When instruction is the primary duty, the new rules do not apply and Teaching Assistants will not become eligible for overtime pay. Also, when research assistants are engaged in research in the course of obtaining a degree, they will not become eligible for overtime pay under the new rules.

Q: Who is going to let the employee know of this change?
A: Each department should establish and inform each employee in writing who is being paid an annual base salary under $47,476 of his or her regular work hours, work schedule, and hourly rate.

Q: Will these employees still be considered unclassified?
A: Yes, these employees would remain unclassified and outside the Civil Service directions. They will be considered professional, non-exempt employees.

Q: Will these employees still be paid monthly?
A: No, these employees will move to a biweekly payroll schedule.

Q: Will these employees still be paid through an annual salary?
A: No, Employees earning less than $47,476 per year must have their annual base salaries converted to an hourly rate by dividing their annual base salary by 2080. The hourly rate does not include stipends for telephones, expense reimbursements, clothing allowances, benefits, additional compensation, supplemental compensation, etc.

Q: How will employees keep track of their time?
A: Employees will be required to enter their time in Workday beginning January 1st, 2017. Their time must be approved in a timely manner (before payroll wage deadlines in Workday in order for these employees to get paid). This is the Payroll Wage Schedule.

OVERTIME PAY

Q: What happens if an employee works more than 40 hours per week?
A: Any hours worked in excess of 40 hours per week must be paid at the rate of 1.5 times the employee’s regular hourly rate.

Q: Can employees work overtime and tell me later?
A: No, employees should have overtime approved by their supervisor in advance. Each department should establish and
inform each employee in writing who is being paid an annual base salary under $47,476 of his or her regular work hours, work schedule, and hourly rate.

Q: Where will the funding for this overtime pay come from?
A: Each department is responsible for the financing of their overtime or compensatory time from their regular budget.

Q: Does this new rule apply to my employees working 12 hour shifts?
A: Yes, organizations utilizing 12 hour shifts are obligated to follow the new rules.

Q: How should I handle changes in an employee’s work schedule?
A: Any changes in work schedule should be approved by the supervisor in a formal manner in advance.

Q: What should I do if I know I will need my employees to work overtime?
A: Departments should account for their annual overtime needs within the annual budget construction process.

Q: What should I do if an employee’s workday is going to deviate from the standard five day, 40 hour a week schedule?
A: It must be reviewed by HRM in advance to insure compliance and to gauge budgetary impact.

Q: What happens if an employee has time off during the week?
A: Time off does not count towards the 40 hours. This includes annual leave, sick leave, jury duty, military leave, unpaid leave, etc.

Q: Do breaks count towards the 40 hours?
A: No, breaks, including lunch breaks, do not count toward the 40 hours.

Q: Does commute time count towards the 40 hours?
A: No, commute time does not count towards the 40 hours.

**COMPENSATORY TIME**

Q: Can employees receive comp time in place of overtime?
A: Yes, but it must be documented in writing, approved by the supervisor in advance, and the employee must agree to it in advance.

Q: Can I decide to give my employees comp time instead over overtime?
A: Yes, if the employee agrees to it in advance and you document it advance. You cannot force a non-exempt employee to forfeit comp time or to convert it to sick time, vacation time, or other PTO.

Q: Will my employees receive one hour of comp time for one hour of work time?
A: No, employees will receive 1.5 hours of comp time for one hour of work time.
RESOURCES

Additional Resources:
U.S. Department of Labor: Wage and Hour Division
Final Rule: Overtime

U.S. Department of Labor
Fact Sheet

US Department of Labor Guidance for Higher Education
Fact Sheet
Guidance for Higher Education Employers