



OFFICE OF HUMAN RESOURCES



2016 Fair Labor Standards Act (FLSA) Changes Manager Toolkit

Starting November 18, 2016, more university employees will be eligible for overtime pay due to changes in the Fair Labor Standards Act. As a manager, these changes will impact your unit and the way you manage work. You are also likely to be the first person employees come to with questions.

This toolkit will help you:

- Understand what is going on and why
- Know which employees are impacted
- Communicate effectively with impacted employees

More FLSA change information is available at hr.fsu.edu/flsa.

HR is here to support you, don't hesitate to call, 850-644-6034, or email, hr@fsu.edu, with questions.

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FLSA Overview

The FLSA is a federal law designed to protect workers by setting national pay and hour standards. The law sets rules for when employees are entitled to overtime pay.

- **“Nonexempt”** positions are overtime eligible. Nonexempt employees get overtime for any hours worked over 40 in a single FSU workweek.
 - Overtime compensation is either overtime pay (usually 1.5 times the regular rate of pay) or overtime compensatory leave (1.5 hours for each overtime hour worked).
 - The FLSA sets rules for what counts toward overtime. Only “time worked” counts towards the 40 hour per week, time off and meal breaks over 30 minutes long don’t.
- **“Exempt”** employees do not get overtime, no matter how many hours they work in a week. To be exempt from overtime, employees must meet certain legal standards:
 1. **Duties Test:** the employee must perform executive, administrative, or professional job duties.
 - AND**
 2. **Salary Test:** the employee must be paid on a salary basis and earn at least \$913 per week (\$47,658.60 annually based on FSU’s 26.1 pay periods).

If either test is not met, the employee must be classified as nonexempt (overtime eligible).

- **Teaching, Law, & Medicine:** employees whose primary duties are teaching, practicing law, or practicing medicine can be classified as exempt even if they do not meet the salary test. This is a special and limited exemption under the FLSA.

The FLSA never requires that a position be classified as exempt; even if the position meets the legal standards to be exempt. In other words, a position can meet the duties and salary test and still be classified as nonexempt.

What is Changing in 2016?

In May of 2016, the US Department of Labor released new rules updating the FLSA’s overtime regulations.

The new rules:



Increase the minimum salary required for an employee to be classified as exempt, from \$455 per week, to \$913 per week (\$47,658.60 annually at FSU).



Will automatically update the minimum salary every three years (starting in 2020).

The changes go into effect nationwide on December 1, 2016, but at FSU the changes go into effect on **November 18, 2016**, due to University payroll schedules.

Click on the image below for a short video from the Department of Labor explaining the changes:



Who is Impacted?

FSU has adopted an approach that will ensure employees are treated fairly and consistently across all departments. The goal is to help departments comply with the law, while minimizing the impact on employees and departments as much as possible.

At the University, FLSA classification is determined at the job code level. All employees in the same job code share the same FLSA classification, regardless of their home department.

To prepare for the FLSA changes, Human Resources reviewed all University job codes and pinpointed codes in which changes were necessary to stay in compliance with the new FLSA rules.

- **University-Wide FLSA Handout:** This document shows you FSU job codes impacted by the FLSA changes and indicates whether the job code will remain exempt (not overtime eligible) or be reclassified to nonexempt (overtime eligible).
- **Department Specific Data:** A spreadsheet showing the FLSA status for specific employees in your department who have been impacted by the changes has been provided to your Dean, Director, or Department Head.

Some impacted job codes are becoming nonexempt and others will remain exempt.

Job Codes becoming Nonexempt

- All employees in these job codes (full-time, part-time, and even those earning over \$913 a week) will become eligible for overtime.

Job Codes Remaining Exempt

- All **full-time** employees in these job codes will remain exempt from overtime. If a full-time employee is making under \$913 a week, their salary will be adjusted to meet the new minimum.
- **Part-time employees in these job codes who earn \$913 a week or more**, while working a part-time schedule, will also remain exempt from overtime.
- **Part-time employees in these job codes who earn LESS than \$913 a week**, while working a part-time schedule, will stay in the job code, but will become **overtime eligible** (nonexempt) while they earn under the minimum.

What Can Employees Who Become Overtime Eligible (Nonexempt) Expect

1. They will earn overtime compensation (pay or compensatory leave) for all hours worked over 40 in a single workweek, beginning November 18, 2016.
2. Their regular rate of pay, leave accrual, insurance benefits, retirement options, and pay plan (USPS, A&P, Faculty, OPS) will stay the same.
3. They will begin reporting all hours worked starting on November 18, 2016.
 - *Nonexempt USPS and OPS employees*: will keep punch time (recording ins/outs on timesheet).
 - *A&P nonexempt employees and OPS Non-Teaching Faculty or Postdoctoral Scholars who are nonexempt due to part-time status*: will keep their default schedule in OMNI HR, but will be required to adjust their total hours for the day if they vary from their normal schedule, in addition to reporting time off/leave usage.

Manager Responsibilities

You are the first line of support and information for employees who have been impacted by FLSA changes. You are also responsible for setting your team's schedules to meet business needs, making sure employees enter time properly, and limiting overtime whenever possible to help your department's budget stay balanced.

Reviewing Time

Overtime hours reported on a nonexempt employee's timesheet do not require manager approval to pay out. **This is why it is extremely important for you to review all nonexempt employee time each pay period. If you do nothing, overtime could be paid out without you knowing!**

Reviewing time is also an important opportunity to make sure:

- Nonexempt employees remember to report all hours worked.

- Nonexempt employees remember to enter Overtime Compensatory Leave on their timesheets if you are compensating with leave (the system defaults to overtime pay for any hours over 40 on a timesheet).

Managing Hours Worked

When it comes to managing time for overtime eligible employees you have options:

Clarify Expectations

- How do you want employees to obtain your pre-approval of overtime hours?
- Guidelines about after hour response on mobile devices, phones, text.
- When is event attendance for work?
- How to track and report all time worked.



Rebalance

- Spread work across team members.
- Prioritize projects.



Flex Time

- Must flex time within a single FSU workweek (Friday-Thursday).
- Managers have authority to adjust an employee's schedule to meet work needs, but give as much notice as possible.



Overtime Compensatory Leave

- Award overtime compensatory leave instead of overtime pay to defray costs.
- Let the employee know in advance that you will give leave.

Paying overtime may occasionally be necessary and should be pre-approved by managers. However, whether or not an employee gets pre-approval, any overtime worked must always be compensated (through pay or compensatory leave). Clearly defining and discussing an approval process with your team can help you manage time and financial resources.

Mobile Devices

Mobile devices make it easier than ever to do work outside of regular work schedules. Employees who used to be exempt, but are now overtime eligible (nonexempt), may be used to responding to emails and texts after hours. This counts as time worked (and could create overtime) for nonexempt employees. This is another reason it is important to set clear expectations about answering calls,

emails, or texts after hours. For example, to minimize the potential for overtime, you may want to tell nonexempt employees not to respond to emails or texts outside of work hours, or set other guidelines for responding. If your department provides mobile devices to nonexempt employees, you may need to assess whether you continue to do so.

Learn More

- **Managers – FLSA Time Management Training:** this in-depth training covers everything you need to know about FLSA time management, including travel for nonexempt employees and how overtime and compensatory leave must be reported on timesheets. **We strongly encourage you to take this class.** The schedule is [available here](#).
- Refer to the Appendix, *FLSA Time Management for Nonexempt Employees*, for additional guidance on what does and does not count as time worked.

Employees with Multiple Jobs at FSU

When an employee has multiple jobs at FSU, hours worked in other positions may cause overtime for your department. If you have questions, contact Human Resources.

Primary Job	Secondary Job	Overtime?
Exempt	Exempt	No
Exempt	Nonexempt	Only if work time is > 40 in <u>Secondary Job</u>
Nonexempt	Exempt	Only if work time is > 40 in <u>Primary Job</u>
Nonexempt	Nonexempt	YES! Employee becomes OT eligible if the combination of hours is > 40

Talking to Employees

What Should Managers Discuss with Employees who are Becoming Eligible for Overtime?

Employees impacted by FLSA changes will have questions and concerns. One of your most important tasks will be discussing the changes with your impacted team members. Be sure to set clear expectations and rules about when they can work overtime, how they are expected to seek approval for overtime, and how to record their hours worked. As the manager, you have a key role in communicating these changes to your employees in a supportive, informative, and positive manner.

Support

- Acknowledge and discuss the changes. Failing to address the changes and the impact to employees may cause more confusion and concern.

- Expect that there will be an adjustment period for everyone and it will take some time for new processes to become second nature. Be committed to resolving issues collaboratively.
- Some employees may fear that they will lose all work flexibility or the ability to get their work done. Be sympathetic to their concerns and discuss how you might handle these issues. Remember that you can allow flexibility and alternate work schedules for nonexempt employees as long as they record all their work time accurately.
- Keep an “open door” for employees to bring forward issues and concerns. Seek help if you do not have the answers.

Inform

- Be able to explain the basic reasons why the change is happening. Explain that this is a federally mandated legal change and no one is being singled out. It is best to explain the changes in a way that employees can easily understand. For example, use more conversational words like “eligible for overtime pay” and “not eligible for overtime pay,” instead of statutory terms like “exempt” and “nonexempt,” which employees may not fully understand.
- Confirm that your employees have a clear understanding of what will be expected from them, such as new time keeping procedures, not working from home, how you plan to manage the workload, the process for receiving approval to work overtime, etc.
- Make sure nonexempt employees know that you *really* want them to report **all** time they have worked. Give them friendly reminders until they believe you. For example, if you need a nonexempt employee to work through lunch tell them right then, “make sure to put this extra hour on your timesheet.”
- Encourage your impacted employees to attend the [Employee – FLSA Time Management Training](#) provided by Human Resources.

Emphasize the Positive

- Be sensitive to employees who may feel the changes impact their “status” as an employee. Emphasize that the changes do not diminish the value of their work or their organizational status as professionals.
- Most newly nonexempt employees (A&P nonexempt, and non-teaching faculty & postdocs who are nonexempt due to part-time) will **not** have to “punch the clock,” letting them know this may allay some concerns. The exception is nonexempt USPS & some OPS employees who will move to “punch time.”
- Communicate the positive aspects of work-life balance and the ability to receive additional earnings if they work over 40 hours in a workweek. Explain that their work hours will be more clearly structured and finite. Now, if they work more than their normally scheduled hours they get compensated or they get to go home and spend that time with friends and family (if overtime work is not approved).

Reiterate the new rules, reassure your staff, and repeat these steps as you settle into a new routine.

If you are not sure how to handle an issue or concern, contact Human Resources. Employees can also be referred to the University's Human Resources website for more comprehensive information about FLSA changes.

Manager FAQs

* Even more FAQs are available at hr.fsu.edu/flsa/faqs.

My employees are used to having flexibility in their work hours. Can I continue this if some of my employees become overtime eligible (nonexempt)?

Yes. You can allow a nonexempt employee to set an alternate work schedule that is different from the normal business hours of your office (for example, starting work at 8:30 am and leaving at 5:30 pm). You can also allow a nonexempt employee to depart from their set schedule (come in a little early, work a little late, take a long lunch) as long as they are reporting this time accurately and not going over 40 hours for the workweek without overtime approval.

- For example, if an employee normally works an 8-hour day, but stays 2 hours late to complete an assignment, the manager can allow the employee to take 2 hours off at another time during the same workweek. The employee should report 10 hours for the day she stayed late, and 6 hours for the day she takes off the 2 hours.

Always remember that the University's workweek **begins on Friday** and **ends on Thursday night**.

Does an employee have to be paid for working overtime that I did not approve?

Yes. Whenever a nonexempt employee works overtime hours, FSU must compensate them for that time, even if it was unapproved. This is why it is important to set clear guidelines about overtime pre-approval and communicate them to your team, especially employees who are newly nonexempt.

Reiterate that they are expected to seek approval before working any overtime and explain how you want them to seek approval. If you have an employee who is repeatedly ignoring this requirement, work with HR to address the situation. You can also help by checking in with your team regularly when they are working on deadline-driven projects so you can assess whether workloads need to be rebalanced or whether overtime may be necessary.

Can I require a nonexempt employee to work overtime?

Yes. Managers have the authority to set schedules and to require overtime when necessary, with overtime compensation. However, you should plan overtime in advance when possible. In non-routine situations, it is best to solicit volunteers first. Work schedule changes must be implemented within University policy and any applicable collective bargaining agreement, which may require specific a notice period.

If a nonexempt employee answers an email, text, or call from me outside of their normal work hours, does that count towards their 40 hours for overtime purposes?

Yes. Responding to work-related emails, texts, and calls is considered time worked, whether it occurs during the work day, while on a lunch break, or after hours from home. The only exception is when a nonexempt employee only responds to emails or texts after hours “very occasionally” and the response is brief enough that it wouldn’t be reported on the timesheet (under 7 minutes).

Otherwise, you should expect and require employees to report time worked responding to emails and texts outside their normally scheduled shift on their timesheet. Managers have the authority to establish an overtime approval process for their team that includes the manager’s expectations for after-hours response.

If I need a nonexempt employee to work extra hours during a week, can I require them to reduce their hours on other days that week so they don’t work a total of over 40 hours?

Yes. You can adjust an employees work hours to meet business needs, but give as much advance notice as possible so they can make appropriate arrangements.

- For example, if you need an 8 am-5 pm employee to work an evening event, you can have them replace some of their normal daytime hours with evening hours during the same workweek so their total hours for the week don’t go over 40.

My department doesn’t have the budget to handle overtime pay, what should I do to get the work done?

Managers have several options for handling this situation.

- You can flex time within the workweek by rearranging an employee’s schedule so the total hours for the week don’t go over 40. That way no overtime is accrued.
- You can award overtime compensatory leave. This allows the employee to take time off outside the workweek, instead of getting overtime pay. Be aware that if it is not used, overtime compensatory leave will pay out once a year. Also, OPS employees cannot earn compensatory leave.
- You can rebalance work to other employees to help share the workload without anyone needing to work overtime.
- Sometimes overtime may be truly necessary. Discuss such situations with your leadership and work to account for them in your budgeting.

Can my nonexempt employees waive overtime?

No, overtime compensation for nonexempt employees is a right created by federal law, individual employees do not have the option to waive this legal requirement if they work over 40 hours in a workweek. If you learn that an employee has failed to report overtime they have worked, their timesheet must be corrected to reflect the hours they actually worked. Failure to make such corrections subjects the University to liability.

I am still confused, where can I get more help?

Sign up for the **Managers – FLSA Time Management** training. The schedule is [available here](#). If you still have questions, don't hesitate to contact Human Resources or your Department Representative. We are here to help!

Appendix

- FLSA Time Management for Nonexempt Employees
- Sample Employee Communications



OFFICE OF HUMAN RESOURCES

FLSA TIME MANAGEMENT FOR NONEXEMPT EMPLOYEES

What is the FLSA?

- ❖ The Fair Labor Standards Act (FLSA) is a federal law that sets federal minimum wage, overtime pay, and record keeping standards for U.S. employers.
- ❖ By law, FLSA nonexempt FSU employees must receive overtime compensation (usually 1.5 times their regular rate of pay) for time worked over 40 hours in a workweek.

Golden Rule

Nonexempt employees must be paid for all time they are “suffered or permitted” to work. This doesn’t just mean time in the office, but all time, whether pre-approved by the employer or not.

The Basics

- All hours worked by a **nonexempt employee** must be recorded and compensated, even those performed outside of the employee’s standard shift.
- All time worked must be tracked and overtime work must be **approved by the supervisor** in advance.
- Overtime is determined by the **workweek**, not the pay period.
 - FSU’s **workweek** is midnight Friday through the following Thursday.
 - Night and weekend work is not automatically considered overtime, but counts as time worked.
- If nonexempt employees physically work over 40 hours from Friday through Thursday in a single FSU workweek, they must be given overtime compensation.

Time Worked

- ✓ Time spent working (regardless of location)
- ✓ After hours work from home (emails/calls/texts)
- ✓ Time spent traveling for work

Not Time Worked

- X Normal commuting to/from work
- X Downtime while traveling for work
- X Meal periods over 30 minutes (unless employee works)



Managing Overtime

- Explain that overtime hours must be approved in advance by the supervisor.
- Set clear expectations about responses to work-related communications after hours and event attendance.
- **Flex time** within the workweek to avoid accruing overtime hours for nonexempt employees.
 - You can flex before or after the day(s) the employee is expected to work extra hours, but you must flex *within the same workweek*.
- Offer **Overtime Compensatory Leave**.
- **Rebalance workloads** between employees.
- Carefully review and approve all employee time records for accuracy.

Special Issues

Dual Appointments

- If an employee has multiple nonexempt jobs at FSU, overtime is calculated by taking the total number of hours worked between both nonexempt FSU jobs.

OVERTIME COMPENSATION

Departments generally have the option to provide **overtime pay** or **overtime compensatory leave** to nonexempt employees who work over 40 hours in a workweek.

- The supervisor and employee should agree on whether overtime hours will be compensated through receipt of **overtime compensatory leave** or **overtime pay**.
- Supervisors can preferentially assign the overtime hours to an employee who is willing to accept **overtime compensatory leave** instead of **overtime pay**.



Overtime Pay

- Usually 1.5 times regular rate of pay
- Only option for OPS nonexempt employees



Overtime Compensatory Leave

- Department can offer compensatory leave instead of overtime pay
- 1.5 hours of leave for each overtime hour worked
- Not available for OPS employees
- 160 hour cap
- Pays out annually
- Require employees to use overtime compensatory leave before annual leave

Overtime Worked Without Pre-approval

- Nonexempt employees who work overtime without supervisory pre-approval should be counseled to clarify expectations and to provide a warning, but must still be compensated for the overtime hours worked.
- If the employee continues to work overtime without prior approval, the supervisor may proceed to disciplinary measures, with guidance from the Office of Human Resources.

Questions & Resources

Christine Conley
caconley@fsu.edu
(850) 644-1978

Jonathan Banks
jebanks@fsu.edu
(850) 644-1449

FLSA Overtime Changes
<http://hr.fsu.edu/flsa>



Over 40 is Overtime



Sample Letter Employees Becoming Overtime Eligible (Nonexempt)

TO: [First Name] [Last]

Employee ID #: [Emplid]

Position Number: [position]

Job Title: [Job Code Descr]

Job Code: [Job Code]

Department: [Dept ID] [Dept ID Descr]

FTE: [FTE]

FROM: Renisha Gibbs, Assistant Vice President for Human Resources

DATE: [Date]

SUBJECT: 2016 FLSA Changes Impacting Your Position

Dear [First name]:

The Fair Labor Standards Act (FLSA) is a federal wage and hour law that sets rules for which employees are eligible for overtime compensation for working over 40 hours in a workweek ("nonexempt" employees) and which employees are not eligible for overtime ("exempt" employees) regardless of how many hours over 40 they work in a workweek. You are currently classified as FLSA exempt (ineligible for overtime) due to both your job duties and your annual salary.

In May of 2016, the federal government updated the FLSA overtime regulations, more than doubling the minimum salary required for "white collar" exempt employees. [This brief video](#) from the U.S. Department of Labor explains the changes. The FLSA changes go into effect nationwide on December 1, 2016, but at FSU changes will be made on November 18, 2016, due to the University's payroll schedules.

After conducting an impact analysis of the new regulations on all University positions, the Office of Human Resources has determined that your position is one of many at FSU that has been impacted by the changes.

About You: Effective November 18, 2016, your **FLSA classification for this position is changing to nonexempt (overtime eligible)**. Your job title, duties, regular rate of pay, retirement and insurance options, and leave accrual rates will not change.

- **Overtime:** You will now be eligible for overtime at time-and-a-half for any hours you work over 40 in a University workweek.
 - You must get **pre-approval** from your supervisor **before** working over 40 hours (outside of emergency response situations)!
 - The University's workweek is 12:00 am (midnight) Friday through 11:59 pm Thursday.

- Overtime compensation can take the form of overtime pay or overtime compensatory leave. Some departments may have policies in place indicating their general method of compensating for overtime worked.
- **Timekeeping:** As a nonexempt employee, you must track and record all hours worked and leave taken to the nearest quarter hour on your timesheet.
 - We strongly recommend that you attend Human Resources' [Employee – FLSA Time Management Training](#) to ensure that you understand your new timekeeping requirements.

The change of your FLSA classification to nonexempt is necessary to comply with federal regulations. It also provides you with wage and hour protections that you did not have as an exempt employee. This change in no way adversely reflects the level or value of your work to the University. FSU is still counting on you to continue to perform at the high standards already in place for the important work you do.

Information, FAQs, and training schedules are available [online here](#) to assist you. If you have questions about your FLSA classification, salary, or timekeeping requirements, please contact:

- For Staff (A&P, USPS, and OPS employees): Shelley McLaughlin, *Associate Director of Compensation Services*, at sscopoli@fsu.edu or (850) 644-7935.
- For Faculty & Postdoctoral Scholars: Rebecca Peterson, *Assistant Director for Faculty Relations*, at rpeterson@fsu.edu or (850) 645-2202.

I, *[First Name] [Last]*, acknowledge that I have received and read this notice regarding changes to my FLSA classification. If I have questions about my FLSA classification or timekeeping requirements, I will contact my supervisor or the Office of Human Resources.

☐ Acknowledge receipt of this communication.



Sample Letter Employees Remaining Overtime Ineligible (Exempt) with Salary Adjustment

TO: [First Name] [Last]
Employee ID #: [Emplid]
Position Number: [Position]
Job Title: [Job Code Descr]
Job Code: [Job Code]
Department: [Dept ID] [Dept ID Descr]
FTE: [FTE]

FROM: Renisha Gibbs, Assistant Vice President for Human Resources

DATE: [Date]

SUBJECT: 2016 FLSA Changes Impacting Your Position

Dear [First Name]:

The Fair Labor Standards Act (FLSA) is a federal wage and hour law that sets rules for which employees are eligible for overtime compensation for working over 40 hours in a workweek ("nonexempt" employees) and which employees are not eligible for overtime ("exempt" employees) regardless of how many hours over 40 they work in a workweek. You are currently classified as FLSA exempt (ineligible for overtime) due to both your job duties and your annual salary.

In May of 2016, the federal government updated the FLSA overtime regulations, more than doubling the minimum salary required for "white collar" exempt employees. [This brief video](#) from the U.S. Department of Labor explains the changes. The FLSA changes go into effect nationwide on December 1, 2016, but at FSU changes will be made on November 18, 2016, due to the University's payroll schedules.

After conducting an impact analysis of the new regulations on all University positions, the Office of Human Resources has determined that your position is one of many at FSU that has been impacted by the changes.

About You: Effective November 18, 2016, you will continue to be classified as an exempt employee, and your annual salary will be increased to \$47,658.60 to meet the requirements of the revised regulations. Your job title, duties, retirement and insurance options, and leave accrual rates will not change.

Information, FAQs, and training schedules are available [online here](#) to assist you. If you have questions about your FLSA classification, salary, or timekeeping requirements, please contact:

- For Staff (A&P, USPS, and OPS employees): Shelley McLaughlin, *Associate Director of Compensation Services*, at sscopoli@fsu.edu or (850) 644-7935.
- For Faculty & Postdoctoral Scholars: Rebecca Peterson, *Assistant Director for Faculty Relations*, at rpeterson@fsu.edu or (850) 645-2202.

I, *[First Name] [Last]*, acknowledge that I have received and read this notice regarding an increase in my salary due to FLSA changes. If I have questions about my FLSA classification or salary, I will contact my supervisor or the Office of Human Resources.

☐ Acknowledge receipt of this communication.