



| a new state of mind

FLSA NEW OVERTIME RULE QUICK REFERENCE AND FAQs

**SOUTH CAROLINA STATE UNIVERSITY
OFFICE OF HUMAN RESOURCES**

FLSA-WAGE & HOUR LAW

The Fair Labor Standards Act (FLSA) requires that most employees be paid:

- **At least the federal minimum wage for all hours worked and**
- **Overtime pay (at time and one-half the regular rate of pay) for all hours worked over 40 hours in a workweek.**

The FLSA is an employee protection act and employees are general presumed entitled to overtime. Strict record-keeping requirements for compensatory time and overtime hours.

- **WHAT ARE THE NEW REGULATIONS TO THE FAIR LABOR STANDARD ACT (FLSA) OVERTIME RULE?**

The new regulations will increase the minimum salary requirement for employees to be considered exempt from \$23,660 a year (\$455 per week) to \$47,476 a year (\$913 per week). This means anyone making below **\$47,476** a year will be considered non-exempt and guaranteed overtime compensation.

The salary threshold for Highly Compensated Employees will increase from \$100,000 per year to \$134,004 per year, but these employees still must satisfy a minimal duties test.

- **When does the new ruling take effect?**

The new rules are to be made effective by December 1, 2016.



- **HOW DOES THIS AFFECT NEW EMPLOYEES MAKING BELOW THE SALARY THRESHOLD?**

All employees making below the new salary threshold of \$47,467 are considered “Non-exempt” employees and will be required to do timesheets.

Non-exempt employees must receive prior approval to work overtime.

Non-exempt employees must accurately record all overtime in the university’s timekeeping system by completing the [P-42](#) Time and Attendance Record form.


Employees cannot work overtime out of the “goodness of their hearts.” Also working off the clock is not an option.



VIOLATIONS TO FLSA

- U.S Department of Labor enforces FLSA
- Burden of proof is on the employers
- Employees can sue their employers for the recovery of back wages & liquidated damages for up to 3 years if violation is found to be willful
- Employers cannot retaliate against employees for “whistle blowing”

PENALTIES FROM DEPARTMENT OF LABOR

- Unpaid wages (2-3 years of back wages)
 - Fines (\$10,000)
 - Imprisonment (6 months)
 - Liquidated Damages (2x)
 - Attorneys fees and costs
 - Individual Liability
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- **WHAT IS OVERTIME/COMPENSATORY TIME?**

Overtime is all hours worked in excess of 40 in a seven (7) consecutive day work period. A non-exempt employee shall be paid no less than one and one-half (1 ½) times his/her regular rate of pay for all hours worked over 40 in a workweek or granted compensatory time at a rate of one and one-half (1 ½) hours for each hour of overtime worked. Non-Exempt employees, who have a scheduled workweek of 37.5 hours, shall not receive additional compensation nor compensatory time for hours worked between 37.5 and 40.0 hours per workweek.

The requirements that overtime pay must be paid or compensatory time granted to nonexempt employees after 40 hours of work in a workweek shall not be waived by agreement between the supervisor and the employee.

- **WHAT IS COMPENSATORY TIME?**

Compensatory time is an arrangement by which eligible employees are entitled to time off in lieu of overtime pay. Employees may accrue up to 240 hours of “comp-time” per year before cash payments must be made. (*Exceptions for recruiters and admission counselors*).


Compensatory time off will be given for any occurring overtime at a rate of one and one-half hours for each hour worked in excess of 40 in the workweek (overtime). For example, four hours of overtime will yield six hours of compensatory time.

Records of any accrued or used comp time must be kept for three years.



- **ARE THERE ANY PROVISIONS TO THE OVERTIME RULE?**

Although employees at higher education institutions are generally covered by the FLSA's minimum wage and overtime provisions, several provisions apply to many personnel at institutions of higher education that make them ineligible for overtime and unaffected by this rule, regardless of whether they earn above the new salary threshold or not:

- Bona Fide Teachers
 - Coaches
 - Graduate and Undergraduate Student Workers
 - Academic Administrative Personnel
 - Highly Compensated Workers
 - Attorneys
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- **WHAT IS SC STATE'S POLICY ON OVERTIME?**

It is the policy of South Carolina State University that overtime will be authorized only when it is necessary to meet the required services of a department. When overtime is required and authorized, all non-exempt employees shall be compensated for overtime hours worked in accordance with the provisions of the Fair Labor Standards Act.




Compensatory time off is an acceptable alternative to overtime compensation for non-exempt employees. It is University policy that unless specifically approved by the VP of Fiscal Affairs, compensatory time will be granted rather than overtime pay except when granting compensatory time will have a detrimental effect on the department's services.

FLSA- WAGE & HOUR LAW

Non-Exempt Employees = eligible for overtime

Exempt Employees = ineligible for overtime

SO which Employees are “Exempt” and what are the requirements?

- For **EAP** & **HCE** employees whether they are exempt or non-exempt depends on:
 1. How they are paid?  Salary Basis
 2. How much they are paid?  Salary Level
 3. What kind of work that they do?  Job Duties Test

FLSA PROVIDES AN EXEMPTION FROM BOTH MINIMUM WAGE AND OVERTIME PAY FOR CERTAIN “WHITE COLLAR” WORKERS

Categories of “White Collar” employees that may be exempt from both minimum wage & overtime requirements of the FLSA:


- Executive
- Administrative
- Professional- (EAP)*
- Highly Skilled Computer Employees
- Highly Compensated Employees-(HCE)*

FLSA- REQUIREMENTS FOR EXEMPTION

Remember Exemption Depends on three things:

1. How employees are paid → **Salary Basis**
 - employees must be paid a pre-determined & fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed
 - no partial day deductions
2. How much they are paid → **Salary Level**
 - December 1, 2016 \$913/week \$47,476 per year
3. What kind of work do they do → **Job Duties Test**
 - each category of exemption-Executive, Administrative & Professional – has different required job duties as set forth in regulations. (ex. regularly supervises 2 or more employees)

FLSA REQUIREMENTS FOR NON-EXEMPT

- **Most make a minimum wage**
 - **Receive Overtime for hours worked over 40- Paid or Compensatory Time**
 - **Most keep Record of time**
 - **Paid for the hours worked**
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- **WHAT HAPPENS IF AN EMPLOYEE WORKS OVERTIME WITHOUT PRIOR APPROVAL FROM THEIR SUPERVISOR OR MANAGER?**

Non-Exempt employees are entitled to overtime pay or compensatory time whether the overtime was approved or not. The employees department is liable for any overtime. If an employee continues to work overtime without receiving approval, then the employee can be disciplined according to [University Policy Employee Relations section VII: Subject I](#) under the [Progressive Discipline Policy](#).

- **WHAT ARE THE COSTS AND BENEFITS OF THE FINAL RULE?**

This Final Rule will transfer income from employers to employees in the form of higher earnings, whether in the form of overtime premium payments for newly overtime eligible workers or raises for some workers to maintain their exempt status. National average transfers are estimated to be approximately 1.2 billion per year over the first ten years. The Salary Threshold will automatically update every three years beginning January 1, 2020.

The Final Rule is also expected to create new jobs due to financial incentive for employers to spread overtime hours of employees newly entitled to overtime pay; however the Department did not attempt to quantify the number of new jobs created due to data limitations. Other benefits of the Final Rule including strengthening overtime protections for workers currently misclassified as overtime-exempt and improve work life balance and workers health and productivity.

FOR MORE FAQ'S AND GENERAL INFORMATION ON THE OVERTIME FINAL RULE CHECK OUT THE LINKS BELOW:

<https://www.dol.gov/whd/overtime/final2016/faq.htm#E1>

<http://www.admin.sc.gov/files/2016-05-18%20-%20Attachment-Overtime%20Rule%20and%20Higher%20Education.pdf>

<https://www.dol.gov/whd/overtime/final2016/highered-guidance.pdf>

<http://www.acenet.edu/news-room/Pages/Administration-Releases-New-Overtime-Rules.aspx>