

# **FLSA FAQ**

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## **1) What is the Fair Labor Standards Act (FLSA)?**

The Fair Labor Standards Act is a federal law that was established by the US Congress in 1938 and has been amended several times since then, most recently **August 23, 2004**. It is enforced by the US department of Labor. The FLSA defines the federal minimum wage, employee time recordkeeping requirements, and jobs required to receive overtime compensation after 40 hours have been worked in a workweek.

The University administers compensation in compliance with the FLSA, and Massachusetts state law.

## **2.) What does the term "nonexempt" mean?**

"Nonexempt" employees are covered by the overtime provisions of the FLSA. If the employee works more than 40 hours in one workweek, or more than 8 hours in a day, the employee is paid a premium of time and one-half, whether in pay or in accrual of compensatory time. Time accrued between 37.5 hours and 40 hours in a week, or between 7.5 and 8 hours in a day is considered compensable time, but will be paid at straight time and not at time and one-half.

## **3.) What does the term "exempt" mean?**

"Exempt" employees are not covered by the overtime provisions of the FLSA and are paid an agreed amount for the whole job, regardless of the amount of time or effort required to complete the work.

## **4.) What are the criteria that enable employees to be exempt from the FLSA overtime provisions?**

To be exempt, an employee must meet ALL of the standards in the following "tests":

- 1) be paid over a minimum salary – the "salary level test" - AND
- 2) be paid on a salary basis as opposed to an hourly basis - the "salary basis test" – AND
- 3) perform certain duties as outlined in one of the "duties tests". (See Question 10)

## **5.) How did this all happen?**

Our unit was created as the "Exempt Unit."

FLSA changes in 2004 made some of these previously exempt positions nonexempt, which meant that some members of our unit are eligible for OT.

Federal Law states that if someone is eligible, then he MUST be paid.

In bargaining, HR explained that they needed to pay people differently. We said "If they are eligible for overtime, then by all means, PAY THEM OVERTIME." It wasn't that simple.

Both parties agreed to do no harm, and eventually came up with Article 39.

Federal Law states that the employer has the exclusive right to determine which positions are exempt, and which are nonexempt, so HR began the process of reviewing approximately 650 position descriptions on file, under the advisement of a legal team, and eventually declared approximately 270 members to be eligible for overtime.

## **6.) How many PSU members are affected?**

In Amherst, approximately 270 members had their status changed from exempt to non-exempt, and became eligible for Overtime Pay.

## **7.) What is the salary level test?**

The FLSA salary level test revised effective August 23, 2004 requires that an employee's salary must be at least \$455 a week in order to be considered exempt from the overtime provisions. An employee with a salary less than \$455 a week must be nonexempt. Part time employees may be nonexempt even though their annualized salary is well over \$455 a week. For example, an employee with an annualized salary of \$40,000 and an FTE of .5 would be paid \$385 a week and be nonexempt.

Here is the formula to use when determining whether an employee's employment arrangement meets the salary level test.

When using an annual rate: (Employee's annual rate x FTE) ÷ 52 weeks

Example:  $(\$40,000 \times .50) \div 52 = \$384.61/\text{week}$  – this employee must be nonexempt

### **8.) Does the salary level test apply to all UMASS employees?**

The salary level test applies to all employees except teachers and those practicing law or medicine. The FLSA does not apply to graduate assistants/associates so they are excluded as well.

### **9.) What does being paid a salary mean in terms of the FLSA?**

Under normal circumstances, employees paid a salary are paid a predetermined amount each week regardless of quantity or quality of work or hours worked. PSU exempt employees are paid a salary as the term is used by the FLSA.

### **10.) What duties tests are applicable to UMASS employees?**

To be exempt, an employee must qualify under one or more of the following tests:

1. Executive exemption test
2. Administrative exemption test
3. Professional exemption test
4. Computer exemption test
5. Highly compensated employee exemption test

Each duties test has specific requirements that must be met for an employee to be exempt. For example, the Executive Exemption requires that an employee a) supervise two or more full time employees (or their FTE equivalent), b) have authority to hire and fire, or meaningfully recommend hiring and firing, and c) manage a recognized department or subdivision. More information on the exemption tests is available on the Department of Labor website at [http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17a\\_overview.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17a_overview.htm)

### **11.) How is the duties test applied?**

The Total Compensation area of Human Resources is responsible for determining which of the FLSA exemptions would be appropriate for all jobs employed by the University. This determination is based on an assessment of the job as described/performed compared with the criteria for each exemption test.

## **12.) What is work time?**

Work time is time that a nonexempt employee has been permitted to work, and time for which the employee must be compensated, either in pay or in accrual of compensatory time off (comp time).

Examples of work time include a) time worked before the scheduled start time; b) rest breaks less than 20 minutes; c) eating lunch at the desk, while answering the phone, serving clients, or performing any work; and c) time worked after the scheduled ending time.

Examples of non-work time include a) eating lunch at desk, but not answering phone nor working, and b) rest breaks or meal periods of 20 minutes or longer.

## **13.) Who is responsible for knowing when work is performed?**

The employee's supervisor is always responsible for knowing when work is performed. This is one reason the supervisor must pre-approve overtime.

## **14.) Is lunch time or dinner time "work time" or "rest time"?**

Bona fide meal time is not work time. The meal period generally must be at least 30 minutes. The employee must be completely relieved of all duties, and the employee must be free to leave the duty post.

## **15.) Is a nonexempt employee paid for time to travel between home and the work site?**

Normally, no. There may be exceptions for travel to sites that are beyond the normal commuting area of the employee. For specific details, please see our Contract Section [39.12 Travel](#), or contact Human Resources.

## **16.) Is a nonexempt employee paid for time to travel between one work location and another work location?**

Travel from one work site to another during the workday is work time. Special rules exist for out of town overnight travel. For specific details,

please contact Human Resources, and refer to our contract Section 39.12 Travel.

**17.) Will I lose my flexible schedule?**

Human Resources and the Labor Management team have agreed to sign a Memorandum of Understanding, (MOU) to allow members, in concert with their supervisors, to maintain a flexible schedule. The member will also be required to sign an individual MOU with the exact terms of his or her flexible schedule.

**18.) Will I still be compensated for being On-Call?**

On-Call/Call-Back will be replaced by Standby. This is because FLSA requires that members be paid within a very short time period of when the work is performed, so the option of equalizing the pay over the entire year is unavailable. Currently, our Standby language has no mention of a minimum payment for response while on call, so it is departmental policy. We have addressed this in current contract bargaining.

**19.) Will I be compensated for any Comp-Time Earned?**

You will be paid at time and one half for earned and accrued comp-time currently on the books, accrued since March 2005. You will be paid at one-half time for any comp-time used since March 2005, since comp-time earned was all after 40 hours, and therefore would originally be compensated at time and one half, but was used at straight time.

**20.) What is the cutoff date for comp-time back compensation?**

Because the University has performed a "Voluntary Compliance" – that is, they were not forced to begin to pay overtime to these employees due to an audit by the federal government – their liability is only 2 years from implementation. They are claiming March 2007 as the implementation date, so your compensation will be for any justifiable time accrued or used since March of 2005.

**21.) What is the definition of overtime?**

Overtime is time worked by a nonexempt employee that exceeds 40 hours in a workweek, or 8 hours in a day.

**22.) Must overtime be approved in advance?**

In support of the supervisor's continued awareness of unit work volume, individual productivity, and available funds to pay overtime compensation, the supervisor must provide prior approval, preferably written, for a nonexempt employee to work overtime. However, if an employee does work overtime, s/he will be compensated whether or not the supervisor has approved this in advance. If this happens too frequently, the employee may be subject to discipline.

**23.) If I am a nonexempt employee, how do I know if my overtime/compensatory time off is earned at straight time or at time-and-one-half?**

Overtime/compensatory time is earned at straight time when the hours actually worked are LESS than 40 hours in a work week, or less than 8 hours in a day.

Overtime/compensatory time is earned at time-and-one-half when the hours actually worked in are MORE than 40 hours in a week or 8 hours in a day.

**24.) May a nonexempt employee volunteer to work unpaid hours in his/her regular job in addition to his/her regular schedule?**

No. All nonexempt employees are compensated for all hours actually worked in his/her regular job, in his/her regular department.

**25.) May a nonexempt employee waive his/her rights to overtime compensation?**

Never. All nonexempt employees are compensated for all hours actually worked at the appropriate rate of pay.

**26.) Can the supervisor make a nonexempt employee leave early on Friday so the employee's total hours will not exceed 40 in the workweek?**

Although changes of schedules of less than one hour may be imposed by the University without invoking the Transfer and Reassignment language, our contract specifically prohibits supervisors from changing employees' schedules to avoid paying overtime of 5 hours or less per week.

**27.) Can a supervisor make a nonexempt employee take 2 hours off during the day in order to avoid paying overtime for an evening meeting?**

In short, no. See Question 26.

**28.) Can exempt employees maintain separate overtime records and receive overtime?**

No. Exempt employees are ineligible to receive overtime payment. Departments are able to allow you to accrue compensatory time off at a rate of one to one, as per Article 18 of the Collective Bargaining Agreement.

At this time, Human Resources has not implemented a method to record compensatory time earned in our regular time keeping system, so each Department may have either a formal or informal system of keeping track. The University has promised to have something in place to formally record all comp-time earned and used through PeopleSoft sometime in the near future.

**29.) What are the employee time recordkeeping requirements?**

The FLSA requires that all employees complete, and employers approve and maintain, employee work time records.

**30.) Who must complete a time record?**

The FLSA requires that all employees complete, and employers approve and maintain, employee work time records.

Nonexempt employees must record all time worked and all paid and unpaid leave used.

**31.) What about Ad-Comp?**

Due to FLSA regulations requiring that a nonexempt employee must be compensated when earned, and must be paid overtime for any work over 40 hours in a week, Ad Comp becomes very complicated. There may be situations that terms could be arranged, but it will be only through a separate Labor Management agreement, on an individual basis.

**32.) Who is responsible for knowing when work is performed?**

The employee's supervisor is always responsible for knowing when work is performed. This is one reason the supervisor must pre-approve overtime and must also approve and sign the time record.

### **33.) Will I always be paid for Overtime worked?**

Unless the employee specifically requests comp-time instead of cash, yes. The supervisor or employer can never impose the comp-time arrangement. Additionally, FLSA requires that nonexempt employees are paid for all of the work that they do.

### **34.) Must an employee use sick leave or vacation leave for time away from work to go to a doctor's appointment?**

The state sponsored paid leave benefits are intended to allow employees the flexibility to continue their income for a specified period when there is a need to be away from work. If an employee earns paid time off, the employee uses the paid time off when an applicable occasion occurs. This applies to Exempt and Nonexempt employees, and Classified Staff, Service Professional and Administrative Staff. However, the employee and supervisor have the flexibility to agree to modify the employee's schedule to accommodate the absence.

Since some of these benefits have cash values upon the employee's retirement or separation from employment, supervisors and department heads are encouraged to develop and implement fiscally sound policies and practices regarding the use of paid sick and annual leave.

### **35.) What is the minimum time increment that may be recorded as work time, or charged to sick leave, vacation leave or unpaid leave?**

The minimum increment for accrued leave usage currently varies by the type of leave.

We have asked, in bargaining, that the smallest increment of work or leave time recorded is one-quarter hour, and that time be rounded to the nearest one-quarter hour used.

Time earned is accrued in 15 minute (or one quarter hour) increments.

### **38. When will I get the money for my Comp Time Earned?**

The University expects to pay this out before the Calendar Year End. They have allotted a separate account to pay this so that no budget will be affected by the payout of accumulated comp-time.

**39. What is the process to claim Comp Time Earned?**

You and your supervisor or Department Head must determine the time accrued and used, and s/he will submit that to Human Resources. After reviewing the submission, Human Resources will issue compensation.