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# FLSA FREQUENTLY ASKED QUESTIONS

These frequently asked questions and answers are designed to help employees who are affected by the new 2016 Fair Labor Standards Act (FLSA) regulations understand how they are impacted. An employee is considered an affected employee if the employee makes less than \$913 per week or \$47,476 per year as of December 1, 2016, and are not otherwise legally exempt from the FLSA. If you have questions about whether or not you are an affected employee, please contact your supervisor or UNO Human Resources.

Please note, this document is for informational purposes only and is not intended to replace or alter any of the practices, notices, policies, regulations or laws that cover the FLSA. It does not provide any rights or privileges beyond what is provided in University policies. If this guidance conflicts with any University policy, the University policy controls.

## GENERAL QUESTIONS

**Who should I ask if I have more questions about how this change affects me?**

You can start by having a conversation with your supervisor to understand how this will impact you in your role and how your unit will communicate policies and procedures. If you have additional questions, please contact [unoflsaquestions@unomaha.edu](mailto:unoflsaquestions@unomaha.edu).

## FAIR LABOR STANDARDS ACT (FLSA)

**What is the Fair Labor Standards Act?**

The FLSA is a federal law governing several time and labor issues. It establishes minimum wage, overtime pay, record keeping and child labor standards affecting millions of full-time and part-time workers in the private sector as well as in federal, state, and local governments.

**What are the changes to the FLSA?**

The foremost change is the dollar amount for the salary test to determine if an employee receives overtime pay. Congress enacted the original legislation in 1938, and various changes were made to the regulations over the years. The salary test exemption regulations were last revised in 2004. This year, changes were made to the salary test that determines whether a position is exempt or non-exempt from the minimum wage and overtime provisions of the law. The former salary test amount was \$455 per week or \$23,660 per year and the new amount is \$913 per week or \$47,476 per year.

**What is the difference between an exempt and nonexempt employee?**

The FLSA categorizes employees as either exempt or non-exempt, meaning they are either exempt (not covered) under the regulations based on duties and salary tests contained within the Act or non-exempt (covered) under the regulations. The exempt employee is usually paid on a salary basis and does not receive extra compensation for overtime hours worked. A non-exempt employee is generally paid on an hourly basis and receives time and one-half overtime compensation for all hours worked over 40 in a work week. The FLSA allows public employers to either pay overtime or give compensatory time off to an employee, at the employee's discretion, for overtime hours worked, both at a time and one-half rate. To summarize, an exempt employee is not paid overtime and a non-exempt employee is paid overtime. A non-exempt employee must be paid for hours worked.

#### When is the effective date for compliance?

December 1, 2016.

#### Who is impacted by this change?

Employees who make less than \$913 per week or \$47,476 per year as of December 1, 2016, and are not otherwise legally exempt from the regulations, will convert from being paid on a salary exempt basis to being paid on an hourly non-exempt basis.

#### How does this impact me if I am a part-time employee?

You must earn more than \$913 per week or \$47,476 per year to meet the salary test. The salary test must be met regardless of part-time or full-time status. For example, if a salary exempt employee is at .50 FTE earning \$32,000 per year, the wage of \$32,000 cannot be doubled to annualize the wage in order to remain salary exempt. Overtime is paid for all hours actually worked over 40 in a work week regardless of part-time or full-time status.

## OVERTIME, COMPENSATORY TIME OFF, HOURS WORKED

#### What is considered "hours worked"?

A salary exempt employee is not required to document hours worked. As an hourly paid non-exempt employee, understanding what counts as "hours worked" is essential.

Below is a Quick Reference Guide to help determine what typically counts as hours worked.

Type of Activity	Is it hours worked?
Checking email	Yes
Performing Work	Yes

Lunch Break	No
Travel	Sometimes
Sleep Time	Sometimes
On-Call (On-Premises)	Yes
On-Call (Off-Premises)	Sometimes
Waiting Time (On-Duty)	Yes
Waiting Time (Off-Duty)	No
Working from Home	Yes
Required Training Time/Meetings	Yes
Changing Clothes	Yes

### What counts toward hours worked for overtime purposes?

Overtime is paid for all hours actually worked over 40 in a work week. Paid time off (vacation, sick leave, holiday pay, etc.) does not count toward hours worked.

### Can I get paid in compensatory time off instead of over-time pay?

Yes. Upon agreement between you and your supervisor, you may receive compensatory time off (in the form of time and one half) for hours worked in excess of 40 in a work week. This means that you can request time off and utilize your compensatory time off hours that you earned. Per University policy, the maximum number of hours you can currently accumulate is 60 hours.

### What is UNO's workweek?

The work week begins at 11:01 p.m. Thursday and continues through 11:00 p.m. the following Thursday.

### Will the new regulations require me to keep track of my hours and have my supervisor approve my time?

Yes. Your department will communicate policies and procedures regarding recording your time worked and paid time off along with the required approvals.

### As an hourly non-exempt employee, do I have to report all of my hours worked?

Yes. Hourly non-exempt employees must account for all time worked. All time worked must be reported and recorded.

### As a salary exempt employee, I typically worked 50 hours per week. Now that I am hourly non-exempt, does this mean if I work 50 hours per week I will earn more money?

If you work more than 40 hours per week you will be paid overtime (or compensatory time off). Your department and supervisor may implement a new work schedule to reduce the amount of

hours you work in order to manage expenses.

**As an hourly non-exempt employee, can I work more than 40 hours in a work week and decide not to report the additional hours?**

No. Hourly non-exempt employees must account for all time worked. All time worked must be reported and recorded.

**As an hourly non-exempt employee, can I decide to work more than 40 hours in a work week without prior approval from my supervisor?**

No. Any hours worked in excess of 40 per week and any change in your normal schedule must have supervisory approval prior to performing the work.

**Can my work hours change within a work week?**

Yes, with your supervisor's prior approval. Hourly non-exempt employees must account for all time worked during the work week in which it is worked so that overtime (or compensatory time off) is compensated accurately. For example, rather than working 8 hours on Monday and Tuesday, you might be approved to work 10 hours on Monday and 6 hours on Tuesday. Any change in schedule must be approved in advance.

**Can I work 50 hours one week and 30 hours the next yet record 40 hours of work each week since it adds up to 80 hours?**

No. There are 2 reasons:

1. As an hourly paid non-exempt employee you must account for all time worked during the work week in which it is worked. In this example, you would be paid 40 hours plus 10 hours of overtime (or compensatory time off) for the week you worked 50 hours.
2. As a full-time employee, you must account for at least 40 hours per week, including hours worked and/or paid time off. In this example, in the week you worked 30 hours, you must be paid for 10 hours of paid time off in order to total 40 hours.

**Can my supervisor require me to work extra hours and not pay me for it if I am non-exempt?**

No. UNO is required to pay you for all hours worked, including time worked in excess of 40 hours in a work week, unless both you and your supervisor agree to provide compensatory time off instead, but both parties must agree. You may contact UNO Human Resources if you have further questions.

**Can I volunteer to work more than 40 hours without pay or compensatory time off?**

No

## PAYROLL AND BENEFITS

### What happens to my pay due to these regulations?

Your wage does not change as a result of the changes to the regulations. Your monthly pay rate will be converted to an hourly pay rate. You will be paid overtime (or compensatory time off) at the rate of one and one half times your hourly wage for hours worked over 40 in a work week.

### How do I determine my hourly rate?

Your hourly pay rate is your annual wage divided by the full-time equivalent (FTE) of your appointment.

- Example of 1.00 FTE: An FTE of 1.00 is equal to 2,080 hours per year. For example, if your annual wage is \$40,000, divide \$40,000 by 2080, which results in an hourly rate of \$19.231 per hour.
- Example of .75 FTE: If your appointment is less than 1.0 FTE, your hourly wage calculation is prorated by your appointment's FTE percentage. For example, if your annual wage is \$30,000 and your appointment is a .75 FTE, you will multiply 2080 x .75 (equals 1,560 hours). \$30,000 divided by 1,560 hours equals an hourly rate of \$19.231 per hour.

### Does this mean I am getting a raise?

No. Your wage remains the same. If you work more than 40 hours per week you will be paid overtime (or compensatory time off).

### Will my pay date change?

Yes. Monthly paid employees are paid once per month. Bi-weekly paid employees are paid every two weeks.

Monthly paid employees are paid for time worked in the current month and bi-weekly paid employees are paid for two weeks of time worked and are paid two weeks in arrears. Pay practices at UNO require affected employees to convert from being paid monthly on a salary basis to being paid bi-weekly on an hourly basis, which results in a change in pay periods and pay dates. UNO is delaying the conversion to a bi-weekly pay cycle in order to give employees time to adjust to the delay in pay.

- Monthly Paychecks: All employees affected will record their hours worked starting in December 2016 and continue to be paid on a monthly basis through February 2017. If applicable, overtime will be paid on the monthly paychecks or compensatory time off will accumulate. In summary, from December 2016 – February 2017, employees will be paid exactly the same and be paid overtime (or earn compensatory time off) if applicable.
- Adjustment Paycheck: Employees will receive a partial March monthly paycheck on March 31, 2017, for hours worked from March 1, 2017 to March 16, 2017. The March paycheck

will include a reduced number of paid work days and a full month of benefit and other deductions, which results in approximately half of the normal gross pay before full deductions are subtracted for the month.

**What will happen to my leave benefits?**

Your vacation and sick leave benefits will remain the same.

**Will any of my insured benefits change?**

No. Your insurance coverage will remain the same. Payroll deductions for insurance deductions will coincide with your new pay cycle.

## **JOB STATUS AND CATEGORY**

**Will my job title change?**

No

**Will my job category change?**

No. Affected Managerial/Professional employees will remain Managerial/Professional employees. Staff members will change from Salary staff members to Hourly staff members effective December 1, 2016, but will maintain all rights and privileges of Managerial/Professional status including paid leave benefits. All other employees will maintain their job category, rights and privileges.

**Is there any way I can remain as a salary exempt employee, exempt from overtime, even if I make less than the new salary threshold?**

No. Your exemption status is determined by your wage and the duties you perform. As an affected employee (not exempted by law), even though your duties previously indicated you were allowed to be exempt from overtime and paid on a salary basis, under the new changes to the regulations, if your wage is below \$913 per week or \$47,476 per year you must convert to an hourly paid non-exempt status unless you meet certain limited exemptions.

**Are there some positions that do not require a salary test?**

Yes. The FLSA exempts certain positions from the salary test such as physicians, attorneys and teachers. As an affected employee, your position has been reviewed and is considered non-exempt.