



# UNIVERSITY *of* ROCHESTER

## **FREQUENTLY ASKED QUESTIONS ON FLSA CHANGES FOR 2016**

### **1. What is the FLSA?**

FLSA stands for the Fair Labor Standards Act of 1938 (“the FLSA”), the statute which contains the federal wage and hour laws for which employers with workers within the United States must comply. The FLSA sets the criteria to determine which employees are entitled to overtime based on duties performed, level of responsibility, decision-making authority and level of compensation. The FLSA also establishes the rules that employers must follow relating to payment of overtime. Specifically, the FLSA requires that **non-exempt** employees receive pay for all hours worked and overtime pay of 1.5 times their regular rate of pay for all hours worked over 40 in a fixed seven day period. All jobs worked by University employees are covered by the FLSA.

### **2. What does it mean to be exempt or non-exempt under the FLSA?**

Exempt employees are employees who are ineligible for overtime pay for hours worked over 40 in a workweek (a workweek is a fixed seven consecutive calendar days). Exempt employees are expected to work as much time as is needed to complete work without an expectation of overtime or additional pay. As a result, exempt employees are paid on a salaried, not hourly, basis. In addition, in most cases (as discussed below), exempt employees must perform certain types of duties, as defined in the FLSA, in order to be exempt and salaried.

The term “non-exempt” refers to employees who are not “exempt” from the federal overtime rules and who must receive pay for all hours worked and be paid “time and a half” (i.e., 1.5 times the employee’s regular rate of pay) for all hours worked over 40 in a fixed seven day period. Due to overtime eligibility, non-exempt employees are paid on an hourly basis.

### 3. How do I know if a position is exempt or non-exempt?

Under the FLSA, with a few limited exceptions (these exceptions are discussed in FAQ 4), exempt status is determined based on meeting **each** of the following tests:

- Salary Basis Test. Employee must be paid on an annual salary basis; **and**
- Minimum Salary Test. For years, the FLSA's minimum salary threshold has been \$455 per week or \$23,660 annually; however, for some time, New York State (NYS) has had a higher salary threshold of \$675 per week or \$35,100 annually, which, as the stricter standard, the University has followed; **and**
- Duty and Discretion Tests. The employee also must perform duties that meet the DOL's definition of an executive, administrative, professional, or computer professional. The requirements to meet the duties and discretion tests are quite specific and are set forth in several fact sheets available on the Department of Labor's web site at: [http://www.dol.gov/whd/overtime/fact\\_sheets.htm](http://www.dol.gov/whd/overtime/fact_sheets.htm).
- Consistent with current practices and procedures, representatives from Human Resources are available to engage in job review audits to determine the appropriateness of classifications in order to assure compliance with the regulatory standards. As necessary, Human Resources will facilitate the use of an outside expert to conduct job audits.

### 4. What are the limited exceptions of types of exempt employees who do not have to meet all three of the above requirements?

Physicians, lawyers, and employees whose primary duty is teaching meet the duties and discretion tests but who do not otherwise have to meet the FLSA or NYS minimum salary threshold to be considered exempt.

### 5. What is changing under the FLSA and when?

The FLSA "Minimum Salary Test" is changing. The United States Department of Labor has proposed changes that, if accepted, will significantly increase the current minimum salary threshold of \$455 per week or \$23,660 annually to **\$913 per week** or **\$47,476 per year**. This new law will supersede the current NYS salary minimum of

\$675 per week or \$35,100 per year. Effective December 1, 2016 the new minimum salary for which an employee can be designated as exempt from overtime requirements will be **\$913 per week** or **\$47,476 per year**. The final rule provides for future automatic updates to the salary and compensation levels every three years beginning on January 1, 2020.

**6. Who does this change in the law affect and what changes will it mean?**

This change will apply to all employees whose rate of pay is below **\$913 per week** or **\$47,476 per year** *except* those employees who are physicians, attorneys, or whose primary duty is teaching. These employees will continue to be exempt from the minimum salary threshold. However, this means that other exempt employees who previously met the minimum salary threshold but do not meet the new minimum salary threshold will be converted by law to non-exempt employee status and will need to track and account for hours worked on an hourly basis. These individuals will now also be eligible for overtime for hours worked in excess of 40 in a workweek.

**7. What impact will the change from being paid salaried to hourly (overtime eligible) have on employee's benefits?**

Merely changing from being paid salaried to being paid hourly will not immediately impact an employee's benefits eligibility/status. Due to the anticipated financial impact of the increased minimum salary threshold, the University has asked Human Resources to undertake a formal review of paid leave benefits, including benchmarking with peers to ensure competitiveness, and will make recommendations for possible modifications needed to attempt to better harmonize paid leave benefits provided to staff. For any questions regarding benefits, please contact the Benefits Office at (585) 275-2084.

**8. Should it be necessary for an employee to change pay cycles, what impact will the change to the hourly (overtime eligible) pay cycle have on paycheck deductions?**

Employees will want to review their direct deposit selections to make sure that their elections work with the conversion to the 26 biweekly payment schedule. Due to the shift in pay cycle, employees may need to make adjustments for direct deposit, tax withholding, and voluntary contributions to the retirement program, as detailed below:

**Direct Deposit** – If an employee currently makes a direct deposit based on a flat dollar amount, the employee may want to adjust the amount for the per pay period deduction under the new hourly, biweekly pay cycle. These changes can be made through HR Self-Service at [www.rochester.edu/people](http://www.rochester.edu/people). The Payroll Office (275-2040) also is available to answer employee questions.

**Tax Data** – Though an employee’s tax status will not change, if an employee has requested additional withholding in a flat dollar amount, the employee may want to adjust the amount for the per pay period deduction under the new hourly, biweekly pay cycle (the additional withholdings specified will be taken out every two weeks). Changes can be made through HR Self-Service at [www.rochester.edu/people](http://www.rochester.edu/people).

**Voluntary Contributions to the University’s Retirement Program** – If an employee currently makes voluntary contributions to the retirement program in a flat dollar amount, the employee may want to adjust for the per pay period deduction under the new hourly, biweekly pay cycle (as the contribution will be taken every two weeks). Changes can be made through Retirement Program Self-Service at [www.rochester.edu/people](http://www.rochester.edu/people) or over the telephone 1-800-410-6497 (weekdays from 8 a.m. to 6 p.m.).

A number of other deductions will be adjusted automatically, including: United Way contributions, URGIFT donations, Athletic Club deductions, Parking deductions, Health Care deductions, Dental Plan deductions, Flexible Spending Account and Health Savings Account deductions, and Long Term Care, Optional Life Insurance and MetLife Auto & Home deductions. Employees will **not** need to make any changes for these types of deductions.

## **9. How does this change affect an employee’s part-time status?**

As is the case under current regulations, pay for part-time appointments (including those for part-time faculty) will not be pro-rated under the new regulations. If the part-time employee’s salary falls below the new threshold, then the employee would be non-exempt *unless* working as a physician, an attorney or an employee whose primary duty is teaching. This is the case even if the full-time salary for that position is above the threshold.

For example, an employee might be hired on a 0.75 appointment to a position that would pay \$60,000 for 1.0 FTE. This person would receive a salary of \$45,000. Since \$45,000 is below the proposed new minimum salary threshold, the employee is non-exempt *unless* working as a physician, an attorney or an employee whose primary duty is teaching.

**10. For faculty whose primary duty is not teaching or who are not physicians, does being paid hourly mean that faculty member will be considered staff instead of faculty?**

No. A faculty appointment remains a faculty appointment even if the faculty member needs to track hours worked. The only change is that the FLSA's new higher minimum salary threshold means that more non-teaching or non-physician faculty will need to record work on an hourly basis.

**11. Can employees opt out of this change (or supervisors opt an employee out of this change) if the employee wants to continue to be considered a salaried or exempt employee?**

No. This change is being required by the United States Department of Labor and the University is obligated to follow the new requirement as a matter of law.

**12. How is tracking work hours different for a non-exempt hourly-paid employee?**

Non-exempt hourly-paid employees need to appropriately and accurately record all work time and non-work time (e.g., sick, vacation, etc.) in the Human Resources Management System (HRMS). Non-exempt employees must be compensated for all hours worked including overtime hours at 1.5 times the employees regular hourly rate of pay and applicable University compensation related policies such as: Call-In, On-Call, and Shift Differential, etc., apply. <http://www.rochester.edu/working/hr/policies/>

Additionally, New York State requires that all employees take a minimum 30-minute uninterrupted meal period for shifts over 6 hours. During the meal period, by law, employees may not perform any work whatsoever. Employees do not need to swipe in and out for meal periods as HRMS automatically deducts the designated amount for a meal period for an employee once the employee has worked more than six (6) consecutive hours. In the rare situation a meal period is not taken, you must be paid and an override in HRMS is required. If the employee's original meal period was missed or interrupted, you must document it on the University exception log and take at least a 30-minute uninterrupted meal period before the end of the scheduled shift. See University Policy #172 – Work Schedules – Meal and Rest Periods.

<http://www.rochester.edu/working/hr/policies/pdfpolicies/172.pdf>

### **13. How is overtime calculated?**

Overtime is paid at a rate of 1.5 times an employee's regular hourly rate of pay for the work week for all time worked over 40 in a fixed seven day period. The computation of "40 hours worked" does not include paid time out of the workplace (e.g., sick leave, vacation time, etc.). For more details, see University Policy #223 <http://www.rochester.edu/working/hr/policies/pdfpolicies/223.pdf>.

### **14. Can a non-exempt hourly-paid employee still work early and late and/or be required to check emails and voice mails from home?**

It is important to distinguish between tasks an employee is required to do because a supervisor requests it and tasks an employee may "desire" to do simply because it is the way the employee likes to work. As a rule of thumb, work schedules, including flexible work schedules, or arrangements to work from home on occasion, need to be managed and approved by an employee's supervisor -- just the same as when the employee was exempt. Whether an employee is required to check emails or messages or perform work from home also must be managed and approved by the employee's supervisor. An employee should not presume that it is permissible to do this work outside of the regular work day without prior approval from a supervisor. In addition, work performed outside of work which would result in overtime must be authorized in advance by an employee's supervisor because all time worked must be accounted for and recorded as "time worked."

### **15. Will conversion to nonexempt hourly-paid status result in a pay increase for that employee?**

Salary increases will not occur due to the change in the FLSA's minimum salary threshold unless deemed necessary by senior leadership. This change will not impact pay increases that are anticipated as a result of the annual Wage & Salary Program, which is separate from the federally-mandated FLSA change.

### **16. How will the employee's hourly rate be determined?**

In most cases, an employee's regular hourly rate will be determined by dividing current annual salary by the current annual standard hours. If the standard hours are 40 per week, that is the equivalent of 2080 hours in a year (40 hours/week x 52 weeks). So, if an employee's annual salary is \$40,000 and the employee has a standard of 40 hours per week, \$40,000 divided by 2080 equals an hourly rate of \$19.23. If the employee works in excess of 40 hours in a week, then they will receive overtime pay of 1.5 times the regular hourly rate. The overtime rate in this example would be \$28.85 per hour.

However, if when exempt, the employee also received components of pay which were added to base salary to account for working off-shifts or being on-call, those premiums will be backed out to establish a base hourly rate and University Policy will now apply for Shift Differential, On-Call Pay, Call-In Pay. See University Policies at <http://www.rochester.edu/working/hr/policies/>.

**17. As a nonexempt hourly-paid employee, can I still attend professional conferences?**

Yes. Professional development activities apply to exempt and nonexempt employees, and there is no blanket prohibition on traveling or participation in professional development activities. However, nonexempt hourly-paid employees must account for the hours of their travel time, and for the hours of conference attendance. It is expected that this will be managed at the departmental level to avoid incurring unnecessary travel time. Additional information on this topic is available to supervisors.

**18. What can I as an employee, who may be impacted by these changes, expect to happen next?**

President Seligman has appointed a group of senior leaders to oversee processes related to communication, training, and implementation of these important regulatory changes. Working groups will be formed to make recommendations on how to harmonize potential paid leave changes, how to address necessary payroll cycle changes, and how to prepare affected employees as well as their managers and supervisors to adapt to the changes. Our senior leaders and working groups will approach these necessary changes from the perspective of what we can do that minimizes the impact to our employees and our operations.

Leadership and Human Resources continue to work on communications and scheduling of orientation sessions that will provide additional information. If you have questions, please contact your HR Business Partner (see list at [https://www.rochester.edu/working/hr/contact/contact\\_list.html](https://www.rochester.edu/working/hr/contact/contact_list.html))