The Fair Labor Standards Act (FLSA) and the New York State Salary Threshold  

*Employee Frequently Asked Questions*

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

The Fair Labor Standards Act (FLSA) is a federal statute, passed in 1938, that introduced minimum wages and overtime pay, and created criteria for determining whether an employee is “exempt” from overtime pay requirements or is “non-exempt” and therefore entitled to overtime pay. Overtime pay is 1.5 times an employee’s regular rate of pay for all hours worked over 40 hours in a work week. Given the FLSA’s purpose of protecting workers, the law assumes employees are eligible for overtime pay (“non-exempt”) unless they meet criteria to be “exempt” from overtime.

2. **What is the NYS salary threshold?**

The New York State salary threshold requires that employees who earn below a certain amount must be paid on an hourly basis and receive overtime pay. New York State is increasing the minimum salary threshold to $832 per week or $43,264 per year; the salary threshold will continue to increase annually through at least 2020.

3. **Who does this change in the law affect?**

This change will apply to all exempt employees whose rate of pay is below $832 per week or $43,264 per year except those employees who are physicians, attorneys, or whose primary duty is teaching. The regulations exempt these employees from the minimum salary threshold.

4. **Will my pay rate change?**

No, your pay rate will not change as a result of the legislation changes; annual pay will simply be converted to an hourly rate, and you will now be eligible for overtime pay.
5. What will change for me?

The biggest change is that you will be paid on an hourly basis on the biweekly hourly pay cycle. You will need to begin tracking work hours in HRMS by clocking in and out and recording all non-work time (e.g. vacation, jury duty, bereavement, etc.). You will also be eligible for overtime pay (1.5 times your hourly rate) for all time worked beyond 40 hours in a work week.

6. How will the pay cycle transition from semi-monthly to bi-weekly?

Your final semi-monthly paycheck will be received on October 31, 2018 and reflect payment for October 16, 2018 through October 27, 2018. Note that this paycheck will be less than you are used to because your pay for work starting October 28 will be covered in your next paycheck. The first bi-weekly hourly paycheck will be received on November 16, 2018 for the pay period beginning October 28, 2018 and ending November 10, 2018. Hourly employees are paid 6 days after the pay period end date to allow for payroll processing. You will begin receiving paychecks every other week, on Fridays from then on, as biweekly hourly employees are paid more frequently based on 26 pay periods a year versus the semi-monthly 24 pay periods a year.

7. Why is this taking effect in October?

The revised New York State salary threshold takes effect December 31, 2018; employees paid under the salary threshold must be paid hourly by that date. The University decided to implement this change on October 28, 2018 to minimize the impact on employees:

- Implementing the change prior to December allows employees some time to adjust to the new pay cycle prior to the holidays.
- As indicated in the previous FAQ, the transition from a semi-monthly to bi-weekly pay cycle results in some days that have historically been paid in a salaried paycheck, now being paid on an hourly paycheck cycle, which is paid on a slight delay to allow for processing. The October 28, 2018 date was least impactful relative to the number of days that will be transitioned from a salaried check to an hourly check.
8. What impact will the change from being paid salaried to hourly (overtime eligible) have on my benefits?

Your benefits remain consistent with your current classification for as long as you remain in your current position. For any questions regarding benefits, you may contact Ask URHR ask-urhr@UR.Rochester.edu.

9. How is my hourly rate determined?

In most cases, your regular hourly rate will be determined by dividing your current annual salary by your 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 your annual salary is $40,000 and you have a standard of 40 hours per week, $40,000 divided by 2080 equals an hourly rate of $19.23. If you work in excess of 40 hours in a week, then you 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, you also received components of pay which were added to your base salary to account for working off-shifts or being on-call, those premiums will be backed out to establish a base hourly rate. However, University policies will now apply for Shift Differential, On-Call Pay, and Call-In Pay. See University Policies at http://www.rochester.edu/working/hr/policies/.

10. How is overtime calculated?

Overtime is paid at a rate of 1.5 times your regular hourly rate of pay for all time worked over 40 hours in the work week. The computation of “time 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.

11. What impact will a change to the hourly (overtime eligible) pay cycle have on paycheck deductions?

Both semi-monthly and bi-weekly pay cycles have two paychecks per month where standard deductions (medical, parking, etc.) are withheld. For these deductions, the semi-monthly deductions occur with each paycheck (mid-month and end of month) and bi-weekly deductions occur in the first two paychecks each month.
Bi-weekly standard deductions will occur with your first biweekly pay period, which begins October 28 and ends November 10, 2018. Depending on your personal circumstances, you may decide to temporarily adjust other deductions (e.g. direct deposit to a savings account, voluntary contributions to a retirement program, etc.) to minimize this impact (see below for additional information on other types of deductions and how to make updates).

A number of 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, Optional Life Insurance and MetLife Auto & Home deductions. Employees will not need to make any changes for these types of deductions.

If paycheck deductions are made on a flat dollar amount basis, employees will want to review their selections. Unless you change these selections, the same flat dollar amount will be deducted bi-weekly rather than semi-monthly or monthly. Examples of situations where employees often choose to make flat dollar amount deductions are direct deposit to a savings account, additional tax withholdings, and voluntary contributions to your retirement program. You may review your current selections and make adjustments through HR Self-Service at www.rochester.edu/people. For direct deposit, you may call the Payroll Office (275-2040) with questions. For voluntary contributions to the University’s retirement program, you may call TIAA at 1-800-410-6497 for assistance; note voluntary contribution changes must be submitted by 11/10/18 to be effective with the first bi-weekly paycheck dated 11/16/18.

12. I’m currently a part-time employee. Does this change affect me or my 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. If your part-time salary falls below the new threshold, then you will be transitioned to 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 $53,500 for 1.0 FTE. This person would receive a salary of $40,125. Since $40,125 is below the new minimum salary threshold of $43,264, the employee is non-exempt unless working as a physician, an attorney or an employee whose primary duty is teaching.
13. Can I check emails and voice mails from home?

Responding to e-mails and voicemails is considered work time, and hourly employees must report and be compensated for all time worked. All overtime, including for responding to emails or voicemails from home, must be approved by your supervisor in advance. It is recommended that all supervisor/manager and hourly employees discuss general manager expectations about checking e-mail and voicemails in advance.

14. Can I maintain my flexible work schedule?

Yes, provided the arrangement has been approved by your supervisor and you are reporting all hours worked, including any pre and post shift 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 salaried.

15. 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 new higher minimum salary threshold means that more non-teaching or non-physician faculty will need to record work on an hourly basis.

16. Can I opt out of this change (or can supervisors opt an employee out of this change) if I want to continue to be considered a salaried or exempt employee?

No, there is not an exception/appeal process.

17. How do I record my time?

Hourly-paid employees need to accurately record all work time and non-work time (e.g., vacation time, jury duty, bereavement, etc.) in the Human Resources Management System (HRMS). Hourly employees must be compensated for all hours worked,
including overtime hours for time worked over 40 hours in a work week. Overtime hours are paid at 1.5 times the employee’s regular hourly rate of pay. The Additional Compensation policies, such as those regarding Call-In Pay, On-Call Pay, and Shift Differential, also apply.

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, the meal period must be paid and a meal 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.

18. Can I still attend professional conferences?

Yes. Professional development activities apply to all employees, and there is no blanket prohibition on traveling or participation in professional development activities. However, 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. Talk with your manager if you have specific questions or concerns.

19. How can I prepare?

• Print a copy of the biweekly pay cycle calendar for your reference at www.rochester.edu/adminfinance/finance/payroll/calendars/.
• Review Policy 413 on Time Management.
• Review the resources provided on the HR Compliance webpage at http://www.rochester.edu/working/hr/compliance/.
• Make changes to any automatic payments you have set up for personal bills so that you have adequate funds available in your bank account when you are switched to a biweekly pay cycle.
• Check your retirement, direct deposit, and tax withholding deductions and determine if you want to adjust them based on the new biweekly pay cycle. Since you will be paid more frequently, but less each pay period, you may opt to adjust your pay allocations.
• Talk to your supervisor or HR Business Partner if you are concerned or have questions.

20. Our department does not have a badge reader. How will time be recorded?

Hourly-paid employees need to accurately record all work time and non-work time (e.g., vacation time, jury duty, bereavement, etc.) in the Human Resources Management System (HRMS). You should consult your supervisor on the method your team uses to record time in HRMS.

21. There are others doing the same job as me who are not impacted by this; why is that?

Under the FLSA and New York law, exempt status is determined based on meeting criteria which includes a Minimum Salary Test. This means that employees must earn more than an established threshold in order to be exempt from overtime requirements. This is not a reflection of your work or your value to the University of Rochester. This change is necessitated by a change in the law and is not related to your performance.