

2016 Fair Labor Standards Act (FLSA) Changes

Guide for Non-Exempt Employees

Andrews  University

2016 Fair Labor Standards Act (FLSA) Changes

Toolkit for Faculty and Staff

About This Toolkit

More staff will be eligible for overtime pay under changes to the Fair Labor Standards Act (FLSA) that take effect on December 1, 2016. For Andrews University changes will be effective November 27, 2016 as that is the beginning of the week. If you are impacted by these changes, this toolkit is designed to help you:

- Understand what you can expect as a result of a change in FLSA status
- Plan for key transition dates between now and November 27
- Prepare for changes in time reporting

If you have additional questions after reading these materials, please visit the HR website www.andrews.edu/hr or contact your supervisor or HR.

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A Brief Guide to the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) determines whether a position is eligible for overtime pay. An “exempt” position is not eligible for overtime pay. A “non-exempt” position is eligible and must receive overtime pay at time-and-one-half for any hours worked above 40 hours in one workweek.

Three Tests: Salary Basis, Duties and Salary Level

A position may be considered exempt under the FLSA if it meets three tests.

1. Employee must be paid on a salary basis, not an hourly basis
2. Duties must meet criteria for executive, professional, administrative, computer or outside sales activities
3. Compensation rate (pro-rated full-time rate if part-time) must be at least \$47,476 annually (effective December 1, 2016)

If any one of the three tests is not met, the employee must be classified as non-exempt and eligible for overtime pay. Please note that exempt classification is an option, not a requirement under the law. A position that meets all three tests may still be classified as non-exempt.

Faculty and instructional academic staff whose primary duties are teaching are excluded from the salary level test. In addition, there is a special provision for higher education for positions that fulfill the “academic administrative” exemption, which requires that a position’s primary duty entail performing administrative duties directly related to academic operations and functions of the educational establishment. The minimum salary threshold is the entry level salary for teachers.

FLSA Status at Andrews University

At AU, FLSA status affects the following areas of employment:

1. Eligibility for overtime pay for hours worked above 40 in one workweek
2. How time is reported
3. Leave reporting system

Pay schedules and most benefits are the same for non-exempt and exempt employees. See the following page for a detailed comparison of exempt and non-exempt employees.

What Counts Towards Overtime?

Only time worked is counted toward the 40 hours per week required for overtime pay for non-exempt (hourly) employees. Paid time off such as vacation, holiday, sick, jury duty, funeral leave does not count toward the 40 hours per week of time worked that is required for overtime pay.

Comparing Exempt and Non-Exempt FLSA Status

| | NON-EXEMPT | EXEMPT |
|--|--|--|
| Reporting work time | Report all hours worked | Do not report hours worked |
| Reporting paid time off | Report on biweekly time sheet: personal, vacation, holiday, short- & long-term sick time, jury duty & funeral leave | Report on monthly leave report: vacation No reporting for other paid time off |
| Vacation accrual (based on service yrs) | <ul style="list-style-type: none"> • First 4 years: 2 weeks • After 4 years – 9 years: 3 weeks • After 9 years: 4 weeks | |
| Holiday accrual | <ul style="list-style-type: none"> • 9 holidays • Accrued as part of paid-leave bank | <ul style="list-style-type: none"> • 9 holidays observed • No accrual, no reporting |
| Short-term sick days accrual | <ul style="list-style-type: none"> • 6 days • Accrued as part of paid-leave bank | <ul style="list-style-type: none"> • No accrual • Covered by policy |
| Long-term sick days accrual | <ul style="list-style-type: none"> • 4 days • Accrued as part of long-term sick bank | <ul style="list-style-type: none"> • No accrual • Covered by policy |
| Jury duty & Funeral leave | <ul style="list-style-type: none"> • Jury duty: as necessary • Funeral leave: 3 days • No accrual/no leave bank | <ul style="list-style-type: none"> • Jury duty: as necessary • Funeral leave: 3 days • No accrual/no leave bank |
| If employee reduces hours to part-time | No change in FLSA status | May require reclassification to non-exempt if comp-rate falls below \$47,476 annually |

To Learn More

For more information, visit [HR website](#) or the U.S. Department of Labor’s Wage and Hour Division at dol.gov/whd/flsa.

Employee Guide to Overtime Eligibility

In order to comply with revised Fair Labor Standards Act (FLSA) regulations announced by the federal government in May 2016, your position will be considered eligible for overtime pay (or “non-exempt” under the FLSA) as of November 27, 2016. This overview provides a summary of how this change will impact you, a timeline of key dates and a guide to common considerations.

How This Change Will Affect You

Overtime

You will become eligible for overtime pay effective November 27, 2016. As of November 27, you must record all hours worked, including overtime hours, and you will receive additional pay for overtime at one-and-one-half times your regular rate of pay for all hours worked above 40 in one workweek (Sunday through Saturday). If your supervisor has not specifically requested that you work overtime, you will need to obtain approval before doing so. Learn more about overtime pay at [HR website](#).

Time Reporting

You will begin reporting all time worked through the university time-clock system as of November 27, 2016. Other paid time off will also need to be reported through the time-clock system, however, due to the transition and processing of payroll week, your available leave balances will not be displayed online until Sunday, December 4.

The time-clock system consists of an electronic punch clock that most buildings have mounted on a wall, which you will use to swipe in and out of work, using your AU ID card. If there is an electronic punch clock in your building where you work a normal or regular schedule, your ID card should be used to punch in and out of work time. The hours worked and other time reported are available for secured online access at: www.andrews.edu/admsvs/timeclocks.

Employees should be regularly monitoring their online time sheet to ensure that appropriate hours are reflected. All hours reported must be approved and submitted by the employee’s supervisor or departmental time manager by 1pm on Monday of pay week for payment on pay Friday.

Paid Time Off

Your leave system for paid time off will now be covered by two banks that will accrue hours for each worked or paid-time hour reported. Both bank balance will be available on the online time-clock system. You must claim hours from the appropriate bank in order to receive payment for the time that you are away from work.

1. **Paid-Leave Bank:** accrual rate accounts for your appropriate vacation level (2-, 3-, 4-week level), nine holidays, and six short-term sick days. Your vacation balance from your November leave report will be transferred into the paid-leave bank.

2. Long-term Sick Leave Bank: you may accrue a maximum of four long-term sick days per year. Due to a difference in tracking method, your accrued long-term sick eligibility has been converted to hours partly based on years of service at the university, and added to your available balance. Any prior long-term sick hours balance that was accrued from previous hourly positions will also be available.
3. Other Paid Time Off: by policy, bereavement leave and jury duty leave is available for hourly employees. These hours must also be reported in the time-clock system. During weather closures, “snow time” will be automatically entered into the online system to account for the closure period.

For further and more detailed information on the above paid time off, please refer to the Employee Handbook, section [IV. Your Benefits: Time off work](#).

Salaried Vacation Reporting

In order to ensure that the appropriate vacation balance is transferred to your new paid-leave bank, you must report your November (vacation) leave report by the deadline that will be indicated in the email. However, you must **not report** any vacation days that will be taken **after** November 27 in your November leave report. These days should be reported through the time-clock system instead.

Pay Schedule

You will continue on the same biweekly pay schedule, with your first pay date as a non-exempt employee on December 16, 2016. This covers the work period of November 27 to December 10.

Pay Stub

As the biweekly salary is based on a 40-hour work week, the converted hourly pay rate will be based on dividing the annual salary by 2080 hours (40 hours/week x 52 weeks). In the earnings portion of your paystub, you will also now see a differentiation of the various types of hours that have been processed and paid. They will be listed as:

1. Regular Pay-Hourly
2. Paid Leave
3. Long-term Sick Leave
4. Jury Duty Leave
5. Funeral (Bereavement) Leave

Benefits

There are two benefits that are affected by this change, health and some educational assistance. Currently those affected by the difference in health benefits will have their eligibility grandfathered, as long as they remain in the converted position. There are none affected by the change in educational benefits.

What Will Not Change

You will continue on the same biweekly pay schedule, with your first pay date as a non-exempt employee on December 16, 2016. This covers the work period of November 27 to December 10. Except for what was previously mentioned under the Benefits section, all other benefits are not affected by this change.

Key Transition Dates

| | |
|---------------|--|
| Nov. 27, 2016 | Start of first pay period as hourly; begin recording time worked and paid-time off |
| Dec. 4, 2016 | Paid-leave & long-term sick balances available |
| Dec. 10, 2016 | End of first pay period as hourly |
| Dec. 12, 2016 | Work and paid-time off must be submitted to payroll by 1pm |
| Dec. 16, 2016 | First pay date as hourly (reflects Nov. 29 – Dec. 10) |

What You Need to Do

You will need to work with your supervisor, timekeeper or human resources representative to make sure that you know how to report time correctly starting November 27, 2016. You should also discuss with your supervisor how this change may impact scheduling of regular and overtime hours.

To Learn More

Contact your supervisor or HR with any questions, or visit [HR website](#) for additional information.

Frequently Asked Questions About FLSA Changes for Employees

Note: FAQs will be monitored and updated periodically. Please refer to [HR website](#) for the most up-to-date information.

What benefits will change with the transition to hourly classification?

Please refer to the policy regarding educational benefits for spouse and dependents:

https://www.andrews.edu/services/hr/current_employees/benefits/overview/educational.html. All other benefits are not affected by this change.

What will happen with my vacation/leave bank?

Your vacation balance from your leave report will be transferred to your paid-leave bank (8 hours for each day) effective November 27, 2016. Due to timing of payroll processing you will be able to view your balance on your online time sheet starting December 4, 2016.

What happens to my leave banks if I change jobs?

If you move between hourly positions on campus, your paid-leave and long-term sick bank will continue accruing at the same rate.

Can a supervisor limit overtime? Conversely, can they require overtime?

Yes, supervisors may limit your overtime and require you to obtain approval before you work any extra hours beyond your usual work schedule. They may also require overtime work. Supervisors are encouraged to give as much notice as possible to staff members.

Will I be paid overtime if my supervisor did not approve it?

Yes. If non-exempt employees perform work, they must be paid for it. However, supervisors have discretion to establish overtime approval processes. If an employee continues to work overtime without supervisor approval, then the supervisor could begin taking possible disciplinary action with the employee.

Can I waive overtime as a non-exempt employee?

No, employees don't have the option of waiving the legal requirements.

What is compensatory time (comp time) and can I use it?

Comp time is an arrangement by which eligible employees are entitled to time off in lieu of overtime pay. Under current law only the public sector may give their employees comp time instead of overtime wages, and only under certain conditions. Additionally, hours cannot be averaged over the two-week pay period. Departments may somewhat accomplish the work time flexibility by rearranging the work schedule within the same week.

Can non-exempt employees have flexibility in their work hours?

Employees can discuss their work schedule with their supervisor and determine what will be an acceptable arrangement. Special or alternate scheduling is allowed within the same workweek. For

example, if you normally work 8 hours a day, and have a personal appointment on Monday that only allows you to work 6 hours, you and your supervisor can agree that you will make up the time later in the same workweek. Another example would be if your typical schedule is 8 hours a day during the day, and your department needs you to work a special event for 4 hours during the evening. Your schedule may be changed to give you 4 hours of time off at another time during the same workweek. Note: Special or alternate schedules must be within a single workweek.

As a non-exempt employee, am I permitted to voluntarily work extra hours beyond my normal schedule and not get paid?

No. **You must** document all time you spend working, and you must be compensated for that time.

Can I still work early/late and/or be required to check emails and voicemails 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.”

How is travel time handled for non-exempt employees?

Any time spent actually working (while traveling) is be counted as work time. The FLSA has numerous, specific rules about when a non-exempt employee’s travel time is compensable (considered work time). For example, regular commuting from home to work is not compensable. However, travel that is all in a day’s work (principal activity) is compensable. Further, traveling from home to work on a special one-day assignment in another city is compensable (but the usual commute and meal time may be deducted). Travel out of town, however, is handled differently. It is compensable if travel was during his or her work hours, regardless of what day of the week, as long as the employee was a passenger on an airplane, train, boat, bus, or automobile. Any driving done *at the direction of the employer* must be paid time. However, when an employee is traveling to an overnight stay and has the option to use public transportation but chooses to drive his or her own personal vehicle instead, only the travel time that occurs during normal work hours will be considered work time, regardless of what day of the week the travel occurs. If an employee *voluntarily* chooses to drive others in his or her own vehicle to the overnight stay, their time is not counted as work time for those travel hours outside the normal work hours.

Can I telecommute as a non-exempt employee?

Any telecommuting arrangement should be evaluated on a case-by-case basis by each department/supervisor. Several factors for evaluation include: the type of work performed, including collaboration and level of interaction with others; the employee’s ability to work independently with little

direct or daily supervision; and the supervisor's ability to monitor and evaluate the employee. Additionally, there need to be clear expectations about work schedules and accurate tracking of hours worked for non-exempt employees.

What is the policy on lunch breaks?

There are no federal or state laws which require employees to take lunch and/or breaks. Currently, AU does not have a formal policy governing this. It is not appropriate to leave your work station for lunch and treat it as work time, unless it is an organizational sanctioned business lunch. To date, lunch break policy has been treated as an individual and departmental decision. While some departments may allow, albeit discreetly, taking your lunch while remaining at your work station, other departments with high public access may not permit this to be done. It is recommended that lunch and breaks be taken for health, productivity and work life balance.

Will I still get paid if my time sheet report is not submitted on time?

Your hours worked and paid time off for each biweekly pay period must be submitted by your supervisor or department time manager by 1pm Monday of pay. They may have an earlier deadline for you to submit any missing punches/time or leave request. If your time was not submitted before the deadline, your supervisor or departmental assistant will need to contact the Payroll Office for payment arrangement. To avoid any delays in payroll and to ensure your leave balances are up-to-date, please be sure that your biweekly time sheets are submitted prior to the cutoff time.

Can a part-time salaried employee remain exempt if the salary is prorated?

Pay for part-time appointments cannot be prorated. An employee at 75% appointment during the full year cannot be paid at \$45,000 (prorated from full-time percent of \$60,000) as that is below the new threshold. However, if the employee works full-time nine of the 12 months of the year and is paid \$45,000, that is acceptable for maintaining exempt status—as long as they do not perform other work for the university for the remaining three months.

As a non-exempt employee, can I still attend professional conferences?

Yes. Professional development activities apply to exempt and non-exempt employees, and there is no blanket prohibition on traveling or participation in professional development activities. However, non-exempt 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.

Can a non-exempt employee have multiple positions?

Yes, however the situation should be reviewed for any potential overtime, whether for a short- or a long-term period.

If an employee holds more than one job, can they have more than one FLSA status designation?

No, status is determined by the primary duty. Regardless of how many jobs an employee holds, their status must be either exempt or non-exempt.