

2016 Fair Labor Standards Act (FLSA) Changes

Guide for Managers and
Supervisors

Andrews  University

2016 Fair Labor Standards Act (FLSA) Changes

Toolkit for Managers and Supervisors

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. This toolkit is designed to help managers and supervisors to:

- Understand the impact to newly non-exempt employees
- Develop a strategy to comply with the new regulations that aligns with department needs
- Communicate effectively with impacted faculty and staff in a timely manner

Additional resources are available at the HR website: www.andrews.edu/hr.

Table of Contents

- A Brief Guide to the Fair Labor Standards Act
- New Overtime Eligibility Rules: Supervisor Overview
- Frequently Asked Questions

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.

New Overtime Eligibility Rules: Supervisor Overview

This overview is intended to help supervisors prepare to understand and discuss the impact of upcoming FLSA changes with affected individuals.

Background: What Has Changed?

The federal government announced new rules in May that increase the salary at which an employee may be considered “exempt” from earning overtime pay. As a result, more employees are eligible for overtime pay (“non-exempt”). Eligibility for overtime pay is determined by several tests of job duties and pay under the Fair Labor Standards Act (FLSA). As of December 1, 2016, the new salary threshold to be considered exempt under the FLSA is \$47,476 annually, an increase from the previous threshold of \$23,660. The Department of Labor will review the threshold for future adjustments every three years going forward.

University Approach

A thorough evaluation was done on the implications of overtime if downline employees were moved to an hourly status and the impact that would have on the university’s finance. Additionally, ways to minimize this impact, such as restructuring positions or adjusting existing employee appointments, were reviewed.

Throughout this analysis, there were some fundamental principles constantly under consideration:

- As much as possible, maintain internal equity
- Manage excessive overtime in a practical, effective, and pragmatic way
- No employee should receive a base salary/rate decrease based on a 40-hour work week

With these principles guiding the deliberations, additional factors in making these decisions included the following criteria:

- Level of responsibility
- Critical nature of position to daily campus operations
- Frequency of demands beyond normal work hours

What Employees Who Become Eligible for Overtime Can Expect

1. They will begin reporting all time worked in addition to exception time (overtime and time off) as of November 27, 2016.
2. They will earn overtime pay at time-and-one-half for all hours worked above 40 in one workweek (Sunday through Saturday) starting November 27, 2016.
3. They will begin to accrue into and report paid time-off hours from a paid-leave and long-term sick bank. Vacation accrual rates will remain the same.

Time Reporting

New non-exempt employees will begin reporting all time worked and paid time off through the university time-clock system as of November 27, 2016. If there is an electronic punch clock in the building where the employee works a normal or regular schedule, their 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. 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.

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.

What Will Not Change

The same biweekly pay schedule applies both exempt and non-exempt employees. Health benefits will be grandfathered for previously half-time exempt employees. All other benefits are not affected by this change.

What departments and supervisors can expect?

Managing Overtime

Managers and supervisors will need to be mindful and/or set new expectations and change department schedules or behaviors in order to manage hours within the department budget. It is important to clearly communicate these expectations up front to those changing to non-exempt to avoid unexpected overtime. Managers and supervisors will want to consider the following:

- Discuss expectation to obtain approval for overtime hours. A clearly defined approval process can assist you and your employees in managing both time and budget resources. Whether overtime is pre-approved or not, it must always be paid.
- Adjusting work schedules when work must occur outside normal business hours. As much advanced notice as possible should be provided with schedule adjustments. Compensatory ("comp") time (time off in lieu of overtime pay) may not be practiced.
- Explain timesheet and departmental time reporting procedures to newly non-exempt employees. Supervisors and/or departmental time manager are responsible for reviewing and submitting all timesheets. Supervisors will want to emphasize timesheet deadlines to newly non-exempt employees.

Paid Time Off

Non-exempt employees' leave system for paid time off will now be covered by two banks that will accrue hours for each work time or paid time off reported: paid-leave bank and long-term sick bank. Both bank balance will be available on the online time-clock system. They must claim hours from the

appropriate bank in order to receive payment for the time that they are away from work. By policy other paid time off available are bereavement leave, jury duty leave, and weather closure (“snow time”). For further and more detailed information on 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 the employee’s new paid-leave bank, they must report their November (vacation) leave report by the deadline that will be indicated in the email. However, they must **not report** any vacation days that will be taken **after** November 27 in the November leave report. These days should be reported through the time-clock system instead. Supervisors should approve leave reports per usual.

Job Fill/Posting

A position may be exempt or non-exempt based the salary level. When completing the job posting form, keep in mind that positions are subject to FLSA review and classification. Exemption status are subject to change as a result.

Mobile Devices

Mobile devices expand the opportunity for work to be performed outside of normal work hours. Employees who were previously classified as exempt may be used to responding to emails or calls after hours, but these activities must be counted as paid work time (and potentially overtime) for non-exempt employees. You may need to set a new expectation with employees about answering emails or calls outside of normal hours, or you may need to assess whether to provide mobile devices at all.

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)

To Learn More

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

Frequently Asked Questions for Managers and Supervisors

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

What should I discuss with my employees who are becoming eligible for overtime?

Managers and supervisors may need to set new expectations and change department schedules or behaviors in order to manage hours worked within budgets. It is important to clearly communicate any new unit standards or business processes to newly non-exempt employees, especially if their duties will not be changing. Considerations include:

- Guidelines for using mobile devices outside of normal work hours to respond to calls or emails
- Expectation to seek approval for overtime
- How to track and report time worked and paid time off
- Adjustments to work schedules when work must occur outside of normal business hours

Communicating a clearly defined overtime approval process to your non-exempt employees can assist you in managing both time and budget resources. However, while non-exempt employees should seek pre-approval before working overtime, it is important to remember that all overtime must be paid, whether pre-approved or not.

Are there exceptions to the new salary threshold under the FLSA?

Yes. Salaried employees not subject to the salary threshold test include instructional faculty (including lecturers) physicians and lawyers. In addition, academic administrative personnel are subject to a different salary threshold requirement.

Can I limit overtime? Conversely, can I require overtime for non-exempt employees?

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

Can a non-exempt employee waive overtime?

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

If an employee does not report overtime hours worked on his/her timesheet and the supervisor discovers this after the close of the pay period, what should the supervisor do?

AU is required to pay for all time worked by non-exempt employees. In order to comply with the FLSA, it is important that employees report overtime hours within the relevant pay period. Contact payroll to review how the time correction can be submitted to account for the time worked. The supervisor should have a conversation with the non-exempt employee about working outside the normal work schedule without prior approval. If this repeatedly continues after having the discussion, consult with HR to review steps for disciplinary action.

Does an employee need to be paid for overtime if I did not approve it?

Yes. If overtime hours are worked by non-exempt employees, even if unapproved, they must be paid. Therefore, it's important to establish overtime rules and communicate them to everyone in your unit. The guidance for affected staff reiterates that they should seek approval before working any overtime, but you can help by establishing rules in your unit for seeking approval in advance for projects or events that may be deadline driven and require additional hours. Since more employees in your unit may now be paid for overtime than may have previously been the case, you will need to consider this impact when planning your salary budget.

Can I request or require that a non-exempt employee work over 40 hours in a week and offer “comp time” (unpaid time off taken in a later workweek) instead of pay for overtime?

No. AU does not recognize “comp time,” and, according to FLSA regulations, non-exempt staff are to be paid for overtime hours worked. Other forms of payment, such as compensatory time off, are not to be used. Rearranged work schedules may be an option in lieu of overtime, as long as the hours worked do not exceed 40 in a single workweek. These types of schedules provide flexibility for both the unit and the employee. If an employee's hours worked exceed 40 in a single workweek, they must be paid overtime.

Can non-exempt employees have flexibility in their work hours if it is acceptable for the department?

Yes. Special or alternate hours scheduling is allowed from day to day within the same week, but the regulations do not provide you with the discretion to move hours from one week to the next without incurring overtime for the week in which the hours worked exceed 40 (even if the hours worked in the preceding week were less than 40). For example, if an employee normally works 8 hours a day, and has a personal appointment on Monday that only allows him to work 6 hours, the supervisor and employee can agree that the employee will make up the 2 hours later in the same workweek. Another example would be if a typical schedule is 8 hours a day during the day, and the department needs an employee to work a special event for 4 hours during the evening. The schedule may be changed to give the employee 4 hours of time off at another time during the same workweek. Another type of flexibility is working less hours the prior or subsequent week where overtime hours are incurred. Although it will not be a straight offset, but it will provide some counterweight to the additional pay. Advance notice of schedule changes should be given to the employee if possible.

Can my non-exempt employee voluntarily work extra hours beyond their normal schedule and not get paid?

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

Does time spent answering emails or using a mobile phone for work outside of normal hours count towards overtime?

It is important to distinguish between tasks an employee is required to do because you request 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. For non-exempt employees who respond to emails or calls outside of normal work hours or while on lunch breaks on a "regular" basis, that time is counted as work time for overtime purposes. If a non-exempt person responds to emails or calls "very occasionally," then court cases have considered that to be "de-minimis" and therefore not counted for overtime purposes. 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.

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 non-exempt employees telecommute?

Any telecommuting arrangement should be evaluated on a case-by-case basis. 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 happens if employees move from full-time to part-time?

After November 27, 2016, if an exempt employee moves from full-time to part-time, he or she must be reclassified as non-exempt if the change causes the compensation rate to fall below \$47,476. Managers should be sure to discuss this implication with any employee considering a reduced schedule. 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.

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. Unless it is an organizational sanctioned business lunch,

employees must not report lunch time away from their station as work time. To date, lunch break policy has been treated as an individual and departmental decision. Your department may allow, albeit discreetly, employees to take lunch while remaining at their work station, while 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.

What happens if an employee's time was not reported and/or submitted to by the deadline?

All non-exempt employees' time sheets must be submitted online by 1pm Monday of pay week. You will receive an automated reminder of any unsubmitted time on that Monday morning. If time was not submitted before the deadline, please email any missing time to payroll@andrews.edu. You may contact them for questions on 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.

What if an employee has or wants a second position at the university? Can they have more than one FLSA status designation?

Employees may have multiple positions, however, the situation should be reviewed for any potential overtime, whether for a short- or a long-term period. Their classification is determined by the primary duty. Regardless of how many jobs an employee holds, their status must be either exempt or non-exempt. If they have an additional temporary appointment, only the salary in the regular position should be used to determine compliance with the FLSA salary threshold; do not combine the two salaries for evaluating FLSA status in the employee's regular position.

Can non-exempt employees 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.

Will a change in FLSA status from exempt to non-exempt result in any changes in accounting or budgeting?

Yes. A change in status from exempt to non-exempt will result in a change in the expense between labor line items 9110 "Salary" and 9210 "Staff Wages". Please contact the Budget Office if you have questions or need additional clarification.