

Fair Labor Standards Act (FLSA) Toolkit for Unit Administrative Staff

Update January 1, 2019

Presentation content comes from DoL, CUPA, University of Missouri, MUS sources, and in consultation with MSU's Staff Senate, Professional Council, and FLSA Task Force. Topics covered are intended for general use. Please refer specific questions to Human Resources directly

Agenda

- FLSA Basics
- Summary Guide to Overtime
- Timekeeping
- Summary
- Assistance and Further Information

FLSA Basics and Compliance Timeline

NOTE: The DOL identifies certain job categories, including Teacher, as exempt from FLSA. Most faculty members therefore remain unaffected by the current changes in FLSA regulation.

The information provided here is pertinent to non-faculty positions/employees only.

What is FLSA?

The Fair Labor Standards Act (FLSA) is a federal law determining, among other things, 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
- FLSA sets forth:
 - the requirements for minimum wage, overtime pay, recordkeeping, and standards for employing minors
 - categories of employees eligible and ineligible for overtime. Jobs are generally reviewed for exemption eligibility through a series of tests. The requirements of all three tests must be met to be exempt from the overtime provisions of the law:
 - **Salary basis** test (employees must be paid on a salary basis)
 - **Salary threshold** test (employees must be paid a minimum salary)
 - **Duties** test (primary duties must be consistent with standards set by DoL)

*some collective bargaining agreements carry a different stipulation as to when overtime occurs

FLSA and Employment Types

Montana University System employs non-faculty personnel in two general categories depending on several factors, including duties performed and the funding sources.

- **MUS Staff Compensation Plan (MUS SCP)**
 - Within MSU, commonly known as “Classified” or “Staff”
 - *Both* non-exempt and exempt positions exist within the MUS SCP
- **On contract appointment**
 - Within MSU, commonly known as “Professional”
 - Two main contract types – MUS contract and Letter of Appointment (LOA)
 - Only exempt positions are hired on contract

Every employee’s professionalism and distinct contribution to the university mission is highly valued, and individual skill and ability is respected no matter the manner and method of pay

Exempt or non-exempt at MSU

	Currently as Exempt Employee	Non-Exempt Employee
Pay Method	<ul style="list-style-type: none"> • Salaried • Receive the same amount of money each month regardless of hours worked 	<ul style="list-style-type: none"> • Receive payment each month for work performed above <ul style="list-style-type: none"> • the standard 40-hour* work week (full-time) • or stated FTE (part-time employees) • Hourly rate used to calculate overtime
Overtime	<ul style="list-style-type: none"> • Ineligible for overtime 	<ul style="list-style-type: none"> • Is eligible for overtime pay for hours worked in excess of 40* hours per week
Timesheets	<ul style="list-style-type: none"> • Submits a timesheet every month reporting exception time only (e.g. annual leave, sick leave taken) • Part-time salaried positions must carry appropriate FTE (reporting “extra” hours above stated FTE is not permitted) 	<p>Salaried:</p> <ul style="list-style-type: none"> • Submits a timesheet every month reporting exception time (e.g. annual leave, sick leave taken) AND overtime hours worked • Part-time salaried positions must carry appropriate FTE (reporting “extra” hours above stated FTE is not permitted) <p>Hourly:</p> <ul style="list-style-type: none"> • Submits a timesheet every month reporting all hours worked AND hours not worked
Contract	<ul style="list-style-type: none"> • May be appointed on MUS contract, Letter of Appointment, or within the MUS Staff Compensation Plan (MUS SCP) 	<ul style="list-style-type: none"> • Appointed within the MUS Staff Compensation Plan (MUS SCP)

*some collective bargaining agreements carry a different stipulation as to when overtime occurs

Summary Guide to Overtime

Can employees waive their
right to be
non-exempt?

No, the classification is a legal designation
that cannot be waived

Overtime

Paying Overtime

- A non-exempt employee must be paid for all hours the s/he is “suffered or permitted to work”
- Work performed in excess of the standard 40 hour* work week is compensable at 1.5 times the regular hourly rate

Approving Overtime

- Employees may not work overtime unless approved in advance, however all hours worked must be compensated whether or not approved
- If an employee believes they must work overtime, they will need the supervisor’s advance written approval
- Supervisors can require overtime when necessary, and departments can also deny or otherwise limit overtime

Recording Overtime

- All overtime hours worked must be recorded and paid appropriately whether or not pre-approved
- Employees cannot work, nor be asked to work, overtime without recording it on the timesheet

*some collective bargaining agreements carry a different stipulation as to when overtime occurs

The 40-hour* workweek

- Employees working **multiple jobs** are considered to consolidate time worked across all jobs to meet the 40 hour* threshold
- Communication between **impacted departments** is encouraged so as to manage overtime costs and appropriate charges
- Under MSU policy, annual leave, sick leave, holiday and military **leave taken** are counted towards the 40 hour* threshold. Please consult HR when holidays worked are essential to your unit
- Adjusting/staggering **schedules** is permissible in managing overtime

*some collective bargaining agreements carry a different stipulation as to when overtime occurs

“Time Worked” can be complicated

Device Use

- There is no expectation that a non-exempt employee will check for messages outside work hours
- Supervisors should set a clear expectations and any action by the employee is compensable

Travel time

- Regular home to work commute is not considered time worked
- Generally, time spent traveling on business is considered time worked when it occurs during the work day
- Out of hours travel is reviewed on a case-by-case basis to determine what is compensable

Incidental contact

- Supervisors should set clear expectations about how employees are to handle out of hours contact, e.g. a customer arriving at the office just as it is closing

Meetings

- Time spent in meetings or trainings is compensable unless four criteria are met
 - Attendance is outside regular work hours, and voluntary; the meeting is not directly job-related, and the employee doesn't perform any productive work during his/her attendance
- “Working lunches” are typically considered work hours, and the provision of food eaten at the meeting does not preclude this

Overtime Alternatives

Comp time instead of overtime pay

- Departments may consider compensatory time off (i.e. “comp time”) at a rate of 1.5 hours in lieu of overtime pay.
- Comp time must be mutually agreeable to the employee and the university, and be pre-approved in writing (Employees/Departments may decline an offer/request of comp time, preferring overtime payment instead)
- Comp time earned under the agreement will be reported on the employee’s time sheet. Comp time used is claimed through the time sheet
- Comp time policy sets maximum balances and rules for pay out:
 - Non-exempt employees’ maximum: 90 hours (60 hours worked) and pays out upon separation, or job change
 - Classified, exempt employees’ maximum: 40 hours (40 hours worked) and is forfeit at separation, or job change (exceptions must be approved by the Chief Human Resources Officer)
- Overtime worked in excess of a balance of 90 hours is reported as overtime on the timesheet and appropriate payment is made

Flex time

- Departments may consider a flex time arrangement at an hour for hour rate in lieu of overtime pay
- Approval of the use of Flex time is at the sole discretion of the supervisor based on the individual needs of the department or work unit
- Must be pre-approved and used within the same working week
- Should not be utilized purely as an alternative to annual or sick leave

Timekeeping

Supervisor Role Approving Time

Regardless of timekeeping method, accurate timesheet approval is

- The responsibility of the **immediate supervisor**
 - Pay close attention to each timesheet and address any inaccuracies with the employee
- A **legal obligation** under FLSA, with serious consequences for intentional violation
 - **It is illegal** for overtime hours worked to go unreported or uncompensated, and intentional violations carry serious consequences.
- Due for completion by noon on the first business day of the month

Human Resources offers

- Standard documentation through which to record
 - Supervisor pre-approval to work overtime/additional hours
 - Employee acknowledgement of compensatory time in lieu of payment for overtime/additional hours worked
- Identification of employee FLSA status (exempt and non-exempt)
- Assistance in all aspects of FLSA compliance

Timesheets – Three Types

1

Hourly

Non-Exempt

Reports **every hour worked**, including

- Regular hours
- Overtime worked
- Comp time earned/used
- Holidays worked

... and **hours not worked**, including

- Holidays
- Sick leave
- Leave without pay
- Military leave

2

Salaried (Exceptions Only)

Non-Exempt

Reports **only the exceptions** to his/her normal FTE:

- Overtime/comp time
- Holidays worked

...and **hours not worked**, including

- Annual leave
- Sick leave
- Leave without pay
- Military leave

Exempt

Reports only the **hours not worked** (i.e. exceptions to his/her stated FTE) and work schedule, including

- Annual leave
- Sick leave
- Leave without pay
- Military leave

Except **classified exempt personnel** who report hours not worked (above) **and** comp time earned/used

3

Faculty

Exempt

Reports only the **hours not worked** during his/her work schedule, including

- Sick leave
- Leave without pay
- Military leave

Supervisors remain responsible for approving leave (annual, sick, military, without pay). Please call Human Resources with any questions in this regard.

Summary

What Does FLSA Mean For Campus?

Supervisor need to-

- ✓ Know their **obligations** under FLSA
- ✓ Know who is **eligible** for overtime
- ✓ Know what **qualifies** as overtime
- ✓ Know when overtime work is **really required**. Set clear **expectations** and perhaps change department schedules or behaviors, in order to manage overtime
- ✓ Know and enforce overtime **pre-approval** process
- ✓ Know **resource allocation** options to reduce overtime costs

while effectively managing FLSA-

- ✓ Work closely with departmental leadership on overtime strategy for your team
- ✓ Know who is exempt and non-exempt
- ✓ Communicate actively with employees around overtime rules and process
- ✓ Reach out to HR for support as needed

What Does FLSA Mean For Unit Admin Staff?

- Departmental Administration & Budgeting considerations include:
 - Which personnel are overtime eligible
 - What constitutes overtime and when are costs incurred
 - Overtime management options
 - Timekeeping and timesheet approval
- Human Resources
 - Relevant business practices will be utilized to ensure FLSA compliance, including:
 - New hires
 - Duties testing & Position Number management
 - Direct hires through ATS
 - Templates
 - Overtime, and Compensatory Time pre-approval forms are available on the HR website for optional departmental use
 - Associating supervisor contact information with supervisee positions
 - **HR is here to help you.** Please see next slide for assistance and further information

Assistance and further information:

- Human Resources
 - Sara King, Compensation Manager 994.4358 sking@montana.edu
 - Val Aughney, Personnel Officer 994.4121 Valerie.aughney@montana.edu
 - FLSA web page http://www.montana.edu/hr/flsa_info/index.html
 - Supervisors' page http://www.montana.edu/hr/flsa_info/supervisors.html
 - Including training presentation
 - Employees' page http://www.montana.edu/hr/flsa_info/employees.html
 - Including Unit Admin training materials, and
 - Employee information session presentation
- Compensatory Time Policy (updated 1/1/19)
https://www.montana.edu/policy/hr_policies/overtime_and_compensatory_time/index.html and
- https://www.montana.edu/policy/hr_policies/compensatory_time_exempt_classified_employees.html
- Human Resources general information
 - Web <http://www.montana.edu/hr>
 - Tel 994.3651
 - Email humanresources@montana.edu