



## Fair Labor Standards Act (FLSA) Frequently Asked Questions

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

A. The Fair Labor Standards Act (FLSA) is the federal wage and hour law administered by the U.S. Department of Labor (DOL). The purpose of the FLSA is to establish minimum wage, overtime pay, recordkeeping, and youth employment standards affecting most full-time and part-time workers. Employees are either “exempt” or “non-exempt” from the FLSA regulations. This designation indicates eligibility for overtime pay when overtime is worked. The FLSA requires employers to pay their employees overtime (one and one-half times the employee’s regular rate of pay) for all hours worked over 40 in a workweek unless they meet a minimum salary requirement and their job duties meet specific criteria to be “exempt” from overtime as defined in the regulations.

### **Q. What does it mean to be exempt or non-exempt?**

A. Exempt employees are excluded from the overtime requirements. Non-exempt employees are paid overtime for time worked in excess of 40 hours in any workweek and are paid an hourly rate. For an employee to be classified as exempt, he/she must meet the following three tests:

**Salary Basis Test:** An employee must receive a predetermined, fixed salary that is not subject to reduction due to variations in quality or quantity of work performed.

**Minimum Salary Test:** An employee must be paid a salary minimum that is \$47,476 per year (\$913 per week) effective December 1, 2016.

**Duties Test:** An employee must qualify as an executive, administrative, professional, or computer professional (as specifically defined by the FLSA).

### **Q. What is changing?**

A. The minimum salary threshold is the major change. The US Department of Labor released the final rule on May 18, 2016 that raises the minimum salary threshold to the 40th percentile of weekly earnings for full-time salaried workers. The new minimum salary threshold will be \$47,476 per year (\$913 per week), up from \$23,660 annually (\$455 per week). Employers have until December 1, 2016 to comply. Additionally, the new regulation establishes a mechanism for automatically updating the salary minimum every three years beginning January 1, 2020.

### **Q. Why is this change occurring?**

A. It is important to understand that it was not Morehead State University’s decision to make this change. The US Department of Labor made the change to the regulations in an effort to extend overtime protection to workers and “to help build real, lasting economic security for more hardworking Americans.” A change to the regulations has not been made since 2004.

**Q. When is the regulation effective?**

A. The federal government has set the effective date of the final rule for December 1, 2016. MSU's actual implementation date will be decided based on a variety of administrative factors. This is a complex administrative change requiring numerous systems changes, communications to those impacted, training for supervisors and employees, and a myriad of other things required to ensure compliance with the new regulations and make this a smooth transition for all involved.

**Q. Who is affected by this change?**

A. If you are currently classified as an exempt employee, you may be subject to the new minimum salary threshold. If you are currently classified as a nonexempt employee, you will not be affected. It is anticipated that approximately 200 MSU staff employees FLSA classifications will change from exempt to non-exempt.

**Q. Are part-time employees affected?**

A. Part-time employees will be affected if they are currently classified as exempt, but make less than the new salary threshold, \$47,476 annually (\$913 per week) while working part time.

**Q. How and when will impacted employees be notified?**

A. If your job is changing from exempt to non-exempt status, you will be notified at least 30 days prior to implementation. The implementation date for MSU is still under consideration.

**Q. What does this change mean for employees who are affected?**

A. Employees moving from exempt to non-exempt:

Must report all hours worked.

Must be paid for all hours worked and receive overtime compensation for hours worked in excess of 40 in a workweek.

Will switch to non-exempt payroll and be paid in arrears. This will result in a missed payroll; however, the University will provide a loan option to bridge the gap with payback over a series of payrolls.

It is important to note that this change in FLSA status is in no way a downgrade of any position, of professional status, or of the importance of your work.

MSU is simply required to abide by federal law and ensure that employees are paid according to the new FLSA regulations. As a non-exempt employee, you are paid for all of the hours you work and are eligible for overtime. MSU understands that this transition may be challenging in many aspects and will work to ensure the transition is as seamless as possible.

**Q. When is an employee entitled to overtime pay?**

A. Non-exempt employees earn overtime (time and a half) when they work more than forty (40) hours in a workweek. MSU's workweek begins at 12:01 a.m. on Sunday and ends at 12:00 midnight on the following Saturday.

If an employee works more than eight (8) hours in a day, they do not earn overtime. It is only when the employee works more than forty (40) hours in a workweek that they earn overtime. For example, if a staff employee works ten (10) hours on Monday, Tuesday, Wednesday and Thursday, but does not work on Friday, they will not earn overtime. If this same employee reports to work on Friday and works for four (4) hours, they will earn four (4) hours of overtime.

**Q. Can I work overtime hours any time I want?**

A. No. Supervisors are required to approve any work for nonexempt employees that is in excess of their regular work schedule. Work on personal devices, e.g., smart phones, tablets, home computers, is prohibited for nonexempt employee outside the normal work schedule unless authorized by the supervisor. Nonexempt employees who engage in unauthorized overtime work may be subject to disciplinary actions.

**Q. What activities are considered “work?”**

A. The courts have held that work time under the FLSA includes all time spent performing job related activities which (a) genuinely benefit the employer, (b) which the employer “knows or has reason to believe” are being performed by an employee, and (c) which the employer does not prohibit the employee from performing. These can include activities performed during “off-the-clock” time, at the job site or elsewhere, whether “voluntary” or not.

**Q. What is “overtime?”**

A. The word overtime has a technical definition under the FLSA, and means all time actually worked over a “threshold.” The usual threshold is 40 hours per week.

**Q. What are the white collar exemptions to the FLSA?**

A. The FLSA’s white collar exemptions exclude certain executive, administrative, and professional employees from federal minimum wage and overtime requirements.

**Q. Are teaching faculty, instructors and adjuncts affected?**

A. Teachers are FLSA exempt, regardless of their annual/weekly salary, if their “primary duty is teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge.” MSU’s faculty, instructors and adjuncts who meet the “primary duty” requirement qualify as FLSA exempt under this “teaching exemption” and will not be affected by the changes. Non-teaching faculty, such as curators, university librarians, and research faculty may be impacted by these changes.

**Q. If I am currently a full-time, exempt employee with a 10 month appointment and am reclassified to nonexempt, will I continue to receive my salary over 12 months?**

A. No. You will be paid during the 10 month time period you worked.

**Q. Can I or my department opt out of FLSA changes if we want to handle things differently?**

A. No. These changes are federal law that will apply to employees across the United States. The University has and will continue to consult with administrators and supervisors on factors impacting MSU’s response to these regulatory changes. A plan and policy will be established to ensure the University’s response is consistent, non-discriminatory, sustainable, and legally compliant.

**Q. I am paid a salary and my job title is manager. Am I exempt from overtime pay?**

A. Job titles do not determine exempt status, and the fact that a white collar employee is paid on a salary basis does not alone provide sufficient ground to exempt that employee from the FLSA's minimum wage and overtime requirements. For an exemption to apply, an employee's specific job duties and salary must meet all of the applicable requirements provided in the DOL's regulations.

**Q. Can hours be flexed over a specific time period to avoid overtime?**

A. Hours can only be flexed during a workweek, not spread over multiple workweeks. The supervisor must communicate the flexible schedule to the employee in advance.

**Q. Will switching from exempt to non-exempt require me to change retirement plans?**

A. No. Retirement eligibility is based on the minimum requirements of your position, which will not change as a result of the FLSA revisions.

**Q. Is training available for supervisors regarding FLSA and time approving?**

A. Yes. Training will be provided to employees and supervisors once a final implementation plan is approved.