Questions to Answer

- What is the FLSA?
- What are the changes and why are they occurring?
- When are the changes effective?
- Who is affected and what do the changes mean for them?
- How will the hourly rate be determined?
- How do I manage work time?
- What’s next?
What is the Fair Labor Standards Act?

- Federal Wage and Hour Law administered by the U.S. Department of Labor
- Establishes minimum wage, overtime pay, record keeping, equal pay and youth employment standards
- Employees are either “exempt” or “nonexempt” from the FLSA regulations
- Requires employers to pay OT for all hours worked over 40 in a work week
May 18, 2016
Department of Labor
announced new overtime rules

$23,660/yr
CURRENT MINIMUM EXEMPT SALARY

$47,476/yr
NEW MINIMUM EXEMPT SALARY

Dec. 1, 2016
EFFECTIVE DATE

4.2 million
ESTIMATED WORKERS AFFECTED

Increases
AUTOMATICALLY EVERY 3 YEARS
Why is the Change Occurring

- US DOL made the change:
  "...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.

- Important to understand that this was not a MSU change
When is the new regulation effective?

- Employers MUST be in compliance by December 1, 2016
- MSU’s implementation date will be October 1, 2016
Who is affected by the change?

- Approximately 170 full-time MSU employees’ classifications will be changed from EXEMPT to NONEXEMPT
  - Grade 600 and above: Positions will remain exempt
  - Grade 575: Positions at director level with supervisory responsibility will remain exempt
  - Grades 575 - 475: All positions, unless meeting special exemptions, will be classified as nonexempt
  - Grades 550 and Above: Positions that meet the requirement for Academic Administrators

- Part-time or temporary employees must meet the new minimum salary to be classified as exempt: $47,476 annually or $913 per week

- Impacted employees will be notified by their supervisor and a detailed letter from Human Resources no later than September 1, 2016
<table>
<thead>
<tr>
<th>Grade</th>
<th>Non-Exempt</th>
<th>Exempt</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Entry Market</td>
<td>Experienced Market</td>
</tr>
<tr>
<td>750</td>
<td></td>
<td>$76,803</td>
</tr>
<tr>
<td>725</td>
<td></td>
<td>$71,451</td>
</tr>
<tr>
<td>700</td>
<td></td>
<td>$66,099</td>
</tr>
<tr>
<td>675</td>
<td></td>
<td>$60,788</td>
</tr>
<tr>
<td>650</td>
<td></td>
<td>$55,391</td>
</tr>
<tr>
<td>625</td>
<td></td>
<td>$50,040</td>
</tr>
<tr>
<td>600</td>
<td></td>
<td>$44,686</td>
</tr>
<tr>
<td>575</td>
<td>$20.17</td>
<td>$26.89</td>
</tr>
<tr>
<td>550</td>
<td>$18.13</td>
<td>$22.66</td>
</tr>
<tr>
<td>525</td>
<td>$16.92</td>
<td>$21.15</td>
</tr>
<tr>
<td>500</td>
<td>$14.97</td>
<td>$18.71</td>
</tr>
<tr>
<td>475</td>
<td>$13.67</td>
<td>$17.09</td>
</tr>
<tr>
<td>450</td>
<td>$12.38</td>
<td>$15.48</td>
</tr>
<tr>
<td>425</td>
<td>$11.13</td>
<td>$13.91</td>
</tr>
<tr>
<td>400</td>
<td>$10.37</td>
<td>$12.96</td>
</tr>
<tr>
<td>375</td>
<td>$9.21</td>
<td>$11.51</td>
</tr>
<tr>
<td>350</td>
<td>$8.64</td>
<td>$10.81</td>
</tr>
</tbody>
</table>
Exemption Requirements

1. Salary Level: $47,476 annually, $913 weekly
2. Salary Basis: Employee must be paid on a salary basis
3. Job Duties: Primary Exemptions
   - Professional: [http://www.dol.gov/whd/overtime/fs17d_professional.htm](http://www.dol.gov/whd/overtime/fs17d_professional.htm)
   - Administrative: [http://www.dol.gov/whd/overtime/fs17c_administrative.htm](http://www.dol.gov/whd/overtime/fs17c_administrative.htm)
   - Executive: [http://www.dol.gov/whd/overtime/fs17b_executive.htm](http://www.dol.gov/whd/overtime/fs17b_executive.htm)

Special Exemptions:
- Teaching
- Farming
- Academic Administrators if salary equals entrance salary of teachers ($33,918)
What does this change mean for employees who are affected?

- Employees are still “Professionals”
- 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
- Less than 12 month employees will only be paid during times worked
What does this change mean for employees who are affected?

- Will switch to non-exempt payroll and be paid in arrears
  - Skipped payroll check on October 15
  - $1,000 optional transition payment to bridge the gap with payback over 12 payrolls beginning January 15, 2017 and ending June 30, 2017 ($83.33 per pay period)
- Missed benefits deductions:
  - Health and Dental Insurance prorated over 5 pay checks beginning October 30 through December 30
  - Other payroll deductions will be made up on the October 30 pay release
    - Supplemental Retirement, Supplemental Life Insurance, Parking, Foundation, etc.
How will the hourly rate be calculated?

- **Work Weeks**
  - 37.5 Hours = 1,950 hours annually
  - 40 Hours = 2,080 hours annually

- **Converting Salary to Hourly Rate**
  - 37.5 and 40 hour work week: Salary / 1,950 Hours = Hourly Rate
  - Less than 12 month employees annual hours:
    - 11 month: Salary / 1,787.5 Hours = Hourly Rate
    - 10 month: Salary / 1,627.5 Hours = Hourly Rate
    - 9 month: Salary / 1,462.5 Hours = Hourly Rate

**Example**

\[
\frac{\text{Current Salary}}{1,950 \text{ Hours}} = \text{Hourly Rate}
\]

\[
\frac{\$45,000}{1,950} = \$23.08
\]
How do I calculate the overtime rate?

Regular Hourly Rate = $23.08

\[
\text{Regular Rate} \times 1.5 = \text{Overtime Rate}
\]

\[
\begin{align*}
$23.08 & \times 1.5 = $34.62 \\
\end{align*}
\]

The FLSA does not require time paid but not worked to count toward hours worked for purposes of overtime.

Personnel Policy PSNE-5:
For purposes of determining overtime, vacation leave, sick leave, funeral leave, holidays and any other time when the employee is not physically engaged in work are not considered.
Time paid, but not worked

37.5 Hour Workweek Employee

<table>
<thead>
<tr>
<th>Day</th>
<th>SUN</th>
<th>MON Vacation</th>
<th>TUE</th>
<th>WED</th>
<th>THU</th>
<th>FRI</th>
<th>SAT</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worked</td>
<td></td>
<td>7.5 paid but not worked</td>
<td>7.5</td>
<td>7.5</td>
<td>7.5</td>
<td>7.5</td>
<td>5</td>
<td>35 hours actually worked</td>
</tr>
</tbody>
</table>

Even though the employee received pay for 7.5 hours on the Monday holiday, that time does not count toward actual hours worked in that week. So, the employee is not eligible for overtime pay.
How do I manage time worked?

MSU’s work week begins at 12:01 a.m. on Sunday and ends at 12:00 midnight on the following Saturday.

- **Overtime**
  - One and one-half times regular rate of pay
  - Must be paid when hours worked exceed 40 in a WORK WEEK
  - Must be approved by the supervisor

- **Equivalent Time (EQ Time)** For regular work week of 37.5 hours
  - 2.5 hours (up to 40) can be paid at the regular rate
  - 2.5 hours (up to 40) can be given as Equivalent time off (EQ time)
  - Can be banked until June 30, then must be paid
  - Must be approved by the supervisor

**Important:** Overtime work must be approved by the supervisor

PSNE-5: 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 employees outside the normal work schedule unless authorized by the supervisor. Nonexempt employees who engage in unauthorized overtime work may be subject to disciplinary action. Supervisors should implement management controls to assure that unauthorized overtime work is not being performed.
How do I manage time worked?

Flex Time

- Within the work week
- Must be communicated to employee in advance
- Agreement between employee and supervisor

Note: Compensatory (Comp) time is permitted by Federal law but not by Kentucky law (KRS 337.285)

Example of Flex Time for 37.5 hour employee

<table>
<thead>
<tr>
<th>Days Worked</th>
<th>SUN</th>
<th>MON</th>
<th>TUE</th>
<th>WED</th>
<th>THU</th>
<th>FRI</th>
<th>SAT</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7.5</td>
<td>7.5</td>
<td>10</td>
<td>7.5</td>
<td>5</td>
<td></td>
<td></td>
<td>37.5</td>
</tr>
</tbody>
</table>
# Flex Time, Equivalent Time and Overtime

## 37.5 Hour Workweek Employee

### Flextime Within the Workweek

<table>
<thead>
<tr>
<th>Day</th>
<th>SUN</th>
<th>MON</th>
<th>TUE</th>
<th>WED</th>
<th>THU</th>
<th>FRI</th>
<th>SAT</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worked</td>
<td>7.5</td>
<td>7.5</td>
<td>10</td>
<td>7.5</td>
<td>5</td>
<td></td>
<td></td>
<td>37.5</td>
</tr>
</tbody>
</table>

Employee works normal 37.5 hour work week

### Equivalent time Within the Workweek

<table>
<thead>
<tr>
<th>Day</th>
<th>SUN</th>
<th>MON</th>
<th>TUE</th>
<th>WED</th>
<th>THU</th>
<th>FRI</th>
<th>SAT</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worked</td>
<td>7.5</td>
<td>7.5</td>
<td>7.5</td>
<td>10</td>
<td>7.5</td>
<td>7.5</td>
<td></td>
<td>40</td>
</tr>
</tbody>
</table>

Employee is eligible for 2.5 hours of equivalent time off

### Overtime Within the Workweek

<table>
<thead>
<tr>
<th>Day</th>
<th>SUN</th>
<th>MON</th>
<th>TUE</th>
<th>WED</th>
<th>THU</th>
<th>FRI</th>
<th>SAT</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worked</td>
<td>7.5</td>
<td>7.5</td>
<td>10</td>
<td>10</td>
<td>7.5</td>
<td></td>
<td></td>
<td>42.5</td>
</tr>
</tbody>
</table>

Employee is eligible for 2.5 hours of equivalent time off and 2.5 hours of overtime pay
How do I manage time worked?

On Call Time: Waiting to be engaged

- Employee is REQUIRED to remain on employer’s premises:
  Considered work time and compensable

- Employee is NOT REQUIRED to remain on premises:
  - Non-restricted Conditions: Able to use time effectively for their own purpose
    Not considered work time and not compensable
  - Restricted Conditions: Restricted from using time for personal use
    Considered work time and compensable

PSNE-5: Employee called to work outside normal work schedule shall be credited with a minimum of two working hours.
How do I manage time worked?

On Call Time:  Waiting to be engaged

1. Strict geographic limitations:  How close to the worksite?
2. Restrictions on movement:  Is the employee required to stay in the same place whether worksite or home?
3. Quick response requirements:  How much time does employee have to reach worksite?
4. Uniform requirements:  Is wearing a uniform required while on-call?
5. Frequency of calls:  How many calls is employee taking during the on-call period?
How do I manage time worked?

Travel Time

<table>
<thead>
<tr>
<th>Compensable</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Travel between job sites during the work day</td>
</tr>
<tr>
<td>• Travel to another city for special one-day assignments (minus normal commute time)</td>
</tr>
<tr>
<td>• Overnight travel during the employee’s normal work hours (on a work or non-work day)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Not Compensable</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Normal home to work commuting</td>
</tr>
<tr>
<td>• Overnight travel, if outside the employee’s normal work hours (on a work or non-work day)</td>
</tr>
<tr>
<td>• Any meal break of 20 minutes or longer during the travel time</td>
</tr>
</tbody>
</table>
How do I manage time worked?

Meal and Rest Breaks

• Meal and rest breaks are not required under the FLSA; however, KY statute requires both
  - Meal: KRS 337.355 (Reasonable period for lunch)
  - Rest: KRS 337.365 (10 minutes during each 4 hours worked)

• A meal period may be unpaid if 30 minutes or longer and the employee is relieved of duties

• An employer may require an employee to remain at the worksite during a meal or rest break

• A rest period of 20 minutes or less is compensable work-time

• MSU Policy PG-38 Rest Periods
  “...reasonable amount of time for this purpose should not exceed 15 minutes during each half-day work period.”
What are my responsibilities as a supervisor?

- Manage employees’ work efficiently and effectively
- Manage budget if overtime is needed
- Be knowledgeable of the FLSA changes in order to explain them to employees
- Be knowledgeable of the law in order to be compliant (Civil and Criminal Penalties)
Employee Concerns

- Is this a demotion?
- Habits are hard to change
- Will I still be able to advance my career?
- What will the impact be to my benefits (e.g. retirement plan)?
Morale

- Have conversations with affected employees. Assure them...
  1. They are still professional employees
  2. This is not a demotion
  3. This is not a reflection on their performance
- Remind the employee this is a decision from the DOL to proved better overtime work protection
- Remind them that all time worked must be recorded
- Ask what concerns/questions they have
What’s next?

- Meet with your employees

- Personnel Action Requests (PARs): HR will prepare PARs for reclassification that will require only VP approval

- Official notification letters will be sent to employees on or before September 1

- Employee Forums: September 7 and 8

- Effective Date: October 1
Resources

- Frequently Asked Questions: HR/Payroll Web Site
- DOL Web Site: [https://www.dol.gov/whd/flsa/](https://www.dol.gov/whd/flsa/)
- Specific Guidance for Higher Education:
  - [https://www.dol.gov/sites/default/files/overtime-highereducation.pdf](https://www.dol.gov/sites/default/files/overtime-highereducation.pdf)
- PSNE-5
- PG-38
Any Questions?