

## FLSA Basics

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

The FLSA establishes federal minimum wage, overtime pay, and recordkeeping requirements for all employees in the private sector and in Federal, State, and local governments, including Higher Education. Employees are either “exempt” from overtime or “non-exempt” from overtime pay based on FLSA regulations. The [United States Department of Labor \(DOL\)](#) administers the [FLSA regulations](#).

### **Who is entitled to overtime pay under federal law?**

Non-exempt employees covered by the FLSA must typically be paid at least one and one-half times their regular rate of pay for any hours worked beyond 40 in a workweek. For additional information, [see the U.S. DOL Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act \(FLSA\)](#).

### **What is the definition of Non-Exempt and Exempt status?**

*Non-Exempt Employees:* Non-exempt positions are subject to the overtime rule, and employees must typically be paid at least one and one-half times their regular rate of pay for any hours worked beyond 40 in a workweek. A special provision of the FLSA for public agency employers like USF allows for the use of compensatory leave accrual at a rate of not less than one and one-half hours for each overtime hour worked. Non-exempt employees at USF must complete timesheets to accurately document their hours worked. For additional information, [see the U.S. DOL Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act \(FLSA\)](#).

*Exempt Employees:* The FLSA provides an exemption from its overtime pay requirements for certain positions and duties. Employees whose duties meet the tests for exemption are commonly referred to as “exempt” employees. This means that the overtime provisions of the FLSA do not apply to those positions, and employees within these positions are not eligible for overtime. It is important to note that exempt status must be determined based on the duties for that specific position. Titles alone are not sufficient to determine the status of a position under the FLSA.

### **What is the effective date for the new salary threshold changes?**

On April 23, 2024, the U.S. Department of Labor (DOL) published changes to update the minimum salary levels needed for positions to be exempt from overtime pay under the FLSA. The DOL changes, which became effective July 1, 2024, will increase USF's minimum salary level for exempt employees from \$684 on a weekly basis (\$35,568 annually) to **\$844 weekly (\$43,888 annually)**.

### **When did the DOL last revise the exemption regulations for Executive, Administrative, and Professional (EAP) employees?**

Prior to this final rule, the DOL last updated the EAP exemption regulations in 2019. That update set the standard salary level test at \$684 per week (equivalent to a \$35,568 annual salary).

### **Why is the DOL revising the exemption regulations for EAP workers?**

According to the DOL, the changes are intended to keep the earnings thresholds up to date for the benefit of both workers and employers and to address wage growth since the last update in 2019. The changes are

also intended to more effectively identify who is employed in a bona fide executive, administrative, or professional capacity and ensure that the FLSA’s overtime protections are fully implemented.

**Does the final rule change any of the current duties tests for exemption?**

No, the DOL’s Final Rule does not make any changes to existing job duties requirements, consistent with its approach in both the 2016 and 2019 rules. At this time, the DOL favors keeping the current standard duties test, which is well known to employers and employees.

**What is the current Exempt Level criteria under the FLSA Regulations?**

To qualify for exempt status, positions must meet all three of the following tests:

1. *Salary Level Test:* The minimum weekly pay rate for exempt employees must be at least \$844, or \$43,888 annually.
2. *Salary Basis Test:* Generally, exempt employees must be paid full salary for any week in which any work is performed. Variations in the work product or the actual hours worked typically does not impact compensation. The regulations are complex, and cases should be referred to the Classification & Compensation team for review in consultation with the Office of the General Counsel, as needed.
3. *Duties Test:* The specific position’s duties must qualify under the duties test provided by the Act for the particular exemption. The Classification & Compensation team utilizes these duties tests to make determinations when reviewing position descriptions. For more information on the duties tests, refer to the [fact sheets available on the DOL’s website](#).

**When do the changes in salary levels for exemption become applicable?**

The final rule increased the standard salary level threshold effective on July 1, 2024, and on January 1, 2025, as follows.

DATE	STANDARD SALARY LEVEL
Before July 1, 2024	\$684 per week (equivalent to \$35,568 per year)
July 1, 2024	\$844 per week (equivalent to \$43,888 per year)
January 1, 2025	\$1,128 per week (equivalent to \$58,656 per year)

**I am currently a manager. Will there be any training to assist with these potential FLSA changes?**

Yes! To support managers with the potential FLSA changes, USF’s [Employee Success Center](#) is in the process of creating training. MORE INFORMATION TO COME.

## FLSA Changes - Impact to USF

### How will these Rule changes affect USF?

- **Financial Costs:** The main financial impact at USF will be the payment of overtime to employees who become eligible. The practice of earning compensatory time instead of paying overtime will continue. There will also likely be an expense associated with increasing the salary for certain employees to maintain exempt status.
- **Organizational and Cultural Challenges:** Exempt employees who are changed to nonexempt will have to track start times, end times, and meal breaks. This may be perceived by the employee as a step back in career growth. However, this change will in no way reflect adversely on the value of an employee's work or the importance of their contributions to USF; it is not a demotion in any way. The change from exempt to nonexempt is necessary to comply with the DOL regulations and provides wage and hour protection afforded under the FLSA.
- **Modification of Processes/Structures/Systems:** Modifications of internal processes, structures, and/or systems may be needed to accommodate the number of employees moving from exempt to nonexempt status. These may include resource allocation, workload distribution, and timekeeping procedures.

### When is USF required to implement the changes to the salary levels for exemption?

The changes detailed in the Final Rule will be implemented as of the effective dates listed in the above table.

## FLSA Changes – Impact to Employees

### Are faculty members or coaches impacted?

Teaching faculty will not be impacted. Teaching faculty are exempt under the FLSA, regardless of their annual/weekly salary if their "primary duty is teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge." Typically, athletic coaches also qualify as FLSA exempt under this "teaching exemption" and will not be affected by the changes.

### If my salary is below the new salary threshold determined by the DOL, does this mean I am going to automatically receive a pay increase?

No. If your salary falls below the new threshold for exempt employees under the DOL's Final Rule, it doesn't necessarily mean an automatic pay increase. Instead, Central Human Resources will communicate with the supervisors of potentially impacted employees. They'll collaborate with various departments to assess and determine what appropriate actions should be taken.

### How do I know if I am impacted by the proposed change?

If a salaried employee is earning below the new threshold amount, they may be affected by the changes. Human Resources will notify the supervisor of potentially impacted employees.

### If I am impacted by this change, will my pay schedule change?

No. Both exempt and non-exempt employees are already paid on a bi-weekly pay schedule, so there will be no impact on when an employee continues to be paid.

**What else will be impacted by this change for positions that are reclassified from Exempt to Non-exempt?**

- **Time Reporting:** Non-exempt employees must accurately record all time worked.
- **Overtime for Non-exempt employees:** Non-exempt employees must accurately report all time worked, including overtime hours, and will receive additional pay for overtime. All overtime must be pre-approved by the employee's supervisor.

**How and when will affected employees be notified of any changes?**

An analysis is currently being conducted to determine the positions which may be potentially impacted by the updated salary thresholds. Human Resources will work with university departments with exempt employees earning less than the new FLSA salary threshold to determine next steps. Thereafter, the results will be communicated to the impacted employees.

**If I am an employee with a salary under the new threshold, can I remain exempt?**

No, unless the salary is adjusted to meet the new threshold for exemption, at the discretion of management following consultation with CHR and review of all relevant factors. An employee's status as exempt or non-exempt is governed by federal law (FLSA) – it is not an employee choice. To be exempt from FLSA provisions (not eligible for overtime), employees must meet ALL requirements for exemption under the FLSA. If you do not meet these requirements (including salary level), you must be classified as non-exempt.

## **Part-Time Employees**

**How are part-time employees paid overtime?**

Part-time employees are paid overtime for hours worked over 40 hours per work week.

**I work part-time. Will my pay be calculated at 40 hours to determine if I am over the new threshold?**

The 40-hour equivalent compensation is not used to make this determination. The actual weekly pay is used to determine whether an employee is over the salary threshold.

## **Payroll and Benefits Deductions**

**Will [Employee Benefits](#) change for positions that are reclassified from Exempt to Non-exempt?**

Employees whose positions are reclassified to non-exempt will change to the appropriate leave accrual schedule. However, the annual accrual rates will not change.

**Is this change considered a Qualifying Change in Status event, allowing me to make a change to my benefit elections?**

No, the change from exempt to nonexempt status is not considered a Qualifying Change in Status event

under IRS regulations and does not allow you to change your current Benefits elections. Only if there is a change in FTE (appointment percentage) or a change in salary, would there potentially be an impact on benefits eligibility and the cost-sharing percentage for benefits, respectively.

**Will becoming nonexempt affect my retirement contributions?**

No. The same contribution rules apply, and these contributions are calculated off a percentage of your base pay.

**Will my Flexible Spending Accounts (FSA) deductions change?**

No.

**Will becoming nonexempt affect my eligibility for the Optional Retirement Program (ORP)?**

No. Employees who are in the Administration salary plan are eligible for the Optional Retirement Program (ORP), and this eligibility will continue even if they are converted to non-exempt Administration. Retirement plan eligibility is determined by an employee's designated pay plan (e.g., Administration, Staff, Faculty), not their status as exempt or non-exempt.

## **Leave, Holidays, and Comp Time**

**Do holidays count as time worked?**

Holidays are not counted the same as hours worked for overtime purposes. Rather, Administration employees who work on a holiday get a delayed holiday. See the Human Resources Policy on Compensatory leave time and holidays.

**Do annual and sick leave count as time worked?**

No. The use of leave should be adjusted in a work week so that annual leave and sick leave do not cause an employee's total hours to exceed 40.

**Will my sick and annual leave accruals be affected?**

No. Administration employees who are converted to non-exempt will continue to earn 6.769 hours of annual leave and 4 hours of sick leave biweekly. Leave accruals are prorated for appointments less than 1 FTE.

**Is there support available for employees to understand their rights under the FLSA?**

Yes, we have implemented training programs and provided resources to help employees understand their rights and responsibilities under the FLSA. Additional resources, including online materials and training workshops, will be provided to employees and supervisors to enhance their understanding of FLSA regulations and compliance. If employees need clarification or additional information related to the FLSA changes, they are encouraged to reach out to their supervisors or HR via email.