



The FLSA (Fair Labor Standards Act) and WVU Employees General Information

The following Q&A from the Classification and Compensation unit of the Division of Talent and Culture provides information on the Fair Labor Standards Act (FLSA) and how it works to protect non-exempt employees' work time and pay.

What is the Fair Labor Standards Act (FLSA)?

The FLSA is federal employment legislation that was enacted in 1938 at the height of the Great Depression as an attempt to create more jobs and to protect the rights of workers. It establishes minimum wage, overtime pay, recordkeeping, and child labor standards/provisions affecting full-time and part-time workers in both the private and public sectors. It is administered by the federal Department of Labor (DOL).

Must WVU abide by the FLSA?

Absolutely. While the applicability of some provisions of the FLSA varies depending upon types of employers and employment, WVU, as a public employer, abides by all required mandates and aspects of the FLSA.

Who is covered by the provisions of the FLSA?

Most employees in the United States, with the exception of elected officials, political appointees and legal advisors, bona fide volunteers, independent contractors and prisoners. Other employees may be covered by the recordkeeping but not the overtime and minimum wage provisions; these are the employees we refer to as "exempt."

What's the basic difference between "exempt" and "non-exempt" employees?

Non-exempt employees are covered by the appropriate minimum wage and overtime provisions of the FLSA; exempt employees are not, hence they are "exempt" from the overtime and minimum wage provisions of the FLSA.

What's the major distinction between an exempt employee and a non-exempt one, in terms of how they work and fulfill their job responsibilities?

A non-exempt employee must be paid for every hour worked and is considered "hourly" under the FLSA. An exempt employee is "salaried" (meaning that she/he receives a fixed amount of pay that does not vary based on the actual hours worked.) An exempt employee is expected to "work to get the job done" no matter how many hours in a work week that may take. Exempt employees are not covered by the overtime provisions of the FLSA, nor may they earn compensatory time off or receive any extra pay to do their regular assigned duties.

What determines if an employee is exempt or non-exempt?

In order to be considered exempt, the position must meet the salary and duties test as required by the FLSA. The salary test is the simplest: At the present time, if an employee is not making at least \$455 per week or \$23,660 (gross) per year for 12-month, full-time employment, then the employee may not be considered exempt by the employer, even if the position meets the “duties test.”

What’s the “duties test?”

The duties test permits employees to be considered exempt if their jobs are bona fide executive, administrative or professional positions. An executive employee must have as his or her primary duty the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision. An administrative employee must have as his or her primary duty the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers. A professional employee must have a primary duty that is the performance of work requiring knowledge of an advanced type -- including the consistent exercise of discretion and judgment -- in a field of science or learning, customarily acquired by a prolonged course of specialized intellectual instruction. Assuming the “salary test” is met, the work the employee does must meet one or more of these standard tests and any secondary criteria laid out by the FLSA before the employee may be designated an exempt employee.

If I were to be given a job title that has the word “manager” or “administrator” or “executive” in it, would I automatically be considered an exempt employee?

No, the Department of Labor’s regulations are very clear on this, and they state expressly that, for purposes of determining exemption from the provisions of the FLSA: “A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations in this part.” The duties assigned a position determine its exemption status.

Who’s an exempt employee at WVU?

Exempt employees are those whose positions meet the “salary test” and whose duties meet one of the FLSA’s exemption tests as an executive, administrator or learned professional.

What are examples of Executive, Administrative and Professional jobs as defined by the Fair Labor Standards Act (FLSA) at WVU?

Examples of Executive jobs would include the president and vice presidents, executive directors and directors. Examples of Administrative jobs would be assistant directors, program managers and program coordinators, budget and financial managers and analysts. Jobs that qualify for the Professional FLSA category are physicians, attorneys and faculty in general.

Are faculty exempt employees?

Yes. For purposes of the overtime and minimum wage provisions of the FLSA, faculty are teachers, who are considered exempt. They meet one or more of the criteria for professional exemption: The employee performs work requiring knowledge of an advanced type; the advanced knowledge must be in a field of science or learning; and the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Are all jobs in a given title or job classification in the same exemption status?

Usually, but not necessarily, because it is the salary and duties assigned a position that determine its exemption status. Two jobs in the same title and paygrade could be different (one exempt and one non-exempt).

How should a non-exempt employee be paid if she works through her lunch period?

If the employee is required or directed by her supervisor to work through lunch, then the employee should be paid for the time worked. The supervisor should ensure that the employee has the opportunity to eat, even if it's while she works. Other employees may be required to carry cell phones or radios during their lunch breaks; but so long as they are not called back to work, or to perform work duties, they are not considered to be working and the time is not compensable.

I'm a non-exempt employee, but my unit is so busy that I often take work home to do in the evening. Is this okay?

It's okay as long as your supervisor has given you permission to do so, and you are being paid appropriately; however, you must be paid for any work you do. Employees should not do any work beyond their scheduled hours that is not assigned to them or approved by their supervisors. Supervisors are obligated to make sure that non-exempt employees are paid appropriately for all work that they do.

I'm a non-exempt employee in a busy unit, and we have a limited budget and really can't afford overtime. I don't mind working extra hours and taking work home. Is it okay if I don't turn in hours I work beyond my schedule?

No. This is not a decision an employee or supervisor can make. WVU, as an employer, has an obligation to make sure that non-exempt employee time is tracked and paid accurately and appropriately. WVU appreciates all of the hard work and dedication of its employees, but we must still pay according to federal employment law.

Who at WVU determines the exemption status of jobs or positions?

The Classification and Compensation unit of the Division of Talent and Culture determines exemption status for WVU jobs.

How can I get more information?

Please contact the C&C unit at 293-5700, ext. 6, or e-mail classcomp-hr@mail.wvu.edu. We'll be glad to answer your questions to help you ensure you are properly paying your employees in accordance with this law.