Fair Labor Standards Act Frequently Asked Questions

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

The Fair Labor Standards Act is a federal law that was established by the US Congress in 1938 and has been amended several times since then, most recently August 23, 2004. It is enforced by the US department of Labor. The FLSA defines the federal minimum wage, employee time recordkeeping requirements, and jobs required to receive overtime compensation after 40 hours have been worked in a workweek.

The University administers compensation in compliance with the FLSA.

- **What does the term “nonexempt” mean?**

“Nonexempt” employees are covered by the overtime provisions of the FLSA and must record each hour worked on the time record. If the employee works more than 40 hours in one workweek, the employee is paid a premium of time and one-half, whether in pay or in accrual of compensatory time. Nonexempt employees are paid on a bi-weekly basis.

- **What does the term “exempt” mean?**

“Exempt” employees are not covered by the overtime provisions of the FLSA and are paid an agreed upon amount for the whole job, regardless of the amount of time or effort required to complete the work. Exempt employees receive a set monthly salary regardless of the number of hours worked. Exempt employees do not record hours of work on the time record.

- **What are the criteria that enable employees to be exempt from the FLSA overtime provisions?**

To be exempt, an employee must meet ALL of the standards in the following “tests”:

1) be paid over a minimum salary – the “salary level test” - AND

2) be paid on a salary basis as opposed to an hourly basis - the “salary basis test” – AND

3) perform certain duties as outlined in one of the “duties tests”.

- **What is the salary level test?**

The FLSA salary level test revised effective August 23, 2004 requires that an employee’s salary must be at least $455 a week in order to be considered exempt from the overtime provisions. An employee with a salary less than $455 a week must be nonexempt. Part time employees may be nonexempt even though their annualized salary is well over $455 a
week. For example, an employee with an annualized salary of $40,000 and an FTE of .5 would be paid $385 a week and be nonexempt.

Here is the formula to use when determining whether an employee’s employment arrangement meets the salary level test:

When using an annual rate: (Employee’s annual rate x FTE) ÷ 52 weeks

Example: ($40,000 x .50) ÷ 52 = $384.61/week – this employee must be nonexempt

- **What duties tests are applicable to UA employees?**

To be exempt, an employee must qualify under one or more of the following tests:

1. Executive exemption test
2. Administrative exemption test
3. Professional exemption test
4. Computer exemption test
5. Highly compensated employee exemption test

Each duties test has specific requirements that must be met for an employee to be exempt. For example, the Executive Exemption requires that an employee a) supervise two or more full time employees (or their FTE equivalent), b) have authority to hire and fire, or meaningfully recommend hiring and firing, and c) manage a recognized department or subdivision. More information on the exemption tests is available on the Department of Labor website at [http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17a_overview.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17a_overview.htm).

- **How is the duties test applied?**

Human Resources is responsible for determining which of the FLSA exemptions would be appropriate for all staff jobs employed by the University. This determination is based on an assessment of the job as described/performed compared with the criteria for each exemption test.

- **What is work time?**

Work time is time that a nonexempt employee has been permitted to work, and time for which the employee must be compensated, either in pay or in accrual of compensatory time off (comp time).
Examples of work time include a) time worked before the scheduled start time; b) rest breaks less than 20 minutes; c) eating lunch at the desk, while answering the phone, serving clients, or performing any work; and c) time worked after the scheduled ending time.

Examples of non-work time include a) eating lunch at desk, but not answering phone nor working, and b) rest breaks or meal periods of 20 minutes or longer.

- **Who is responsible for knowing when work is performed?**

The employee's supervisor is always responsible for knowing when work is performed. This is one reason the supervisor must pre-approve overtime and must also approve and sign the time record.

- **Is lunch time or dinner time "work time" or "rest time"?**

Bona fide meal time is not work time. The meal period generally should be at least 30 minutes. The employee must be completely relieved of all duties, and the employee must be free to leave the duty post.

- **Is a nonexempt employee paid for time to travel between one work location and another work location?**

Travel from one work site to another during the workday is work time. Special rules exist for out of town overnight travel. For specific details, please contact Human Resources.

- **What is the definition of overtime?**

Overtime is time worked by a nonexempt employee that exceeds 40 hours in a workweek.

- **Must overtime be approved in advance?**

In support of the supervisor's continued awareness of unit work volume, individual productivity, and available funds to pay overtime compensation, the supervisor must provide prior approval for a nonexempt employee to work overtime.

- **If I am a nonexempt employee, how do I know if my overtime/compensatory time off is earned at straight time or at time-and-one-half?**

Overtime/compensatory time is earned at straight time when the hours actually worked in that same workweek are LESS than 40.

Overtime/compensatory time is earned at time-and-one-half when the hours actually worked in that same workweek are MORE than 40.
• **One of my nonexempt employees has earned compensatory time off, now that the employee is becoming exempt, can s/he retain the compensatory time balance?**

In accordance with the Fair Labor Standards Act, exempt employees are ineligible to earn or retain a compensatory time off balance, and the balance must be paid off in full, effective with the change to exempt status.

• **May a nonexempt employee volunteer to work unpaid hours in his/her regular job in addition to his/her regular schedule?**

No. All nonexempt employees are compensated for all hours actually worked in his/her regular job, in his/her regular department.

• **May an employee volunteer hours outside his/her department at The University of Alabama?**

Under certain circumstances, exempt and nonexempt employees may volunteer time. Specifically, nonexempt employees may volunteer for work outside their regular duties and regular hours, and exempt employees may volunteer for work outside their regular duties. Volunteer services must be both (a) offered freely and without pressure or coercion, direct or implied, from the employer, and (b) performed for civic, charitable or humanitarian reasons. If you have any questions about the appropriateness of volunteering time, contact Human Resources.

• **May a nonexempt employee waive his/her rights to overtime compensation?**

No. All nonexempt employees are compensated for all hours actually worked at the appropriate rate of pay.

• **Can the supervisor make a nonexempt employee leave early on Friday so the employee’s total hours will not exceed 40 in the workweek?**

Yes. This is one method to effectively manage work time and the department budget.

• **Can exempt employees maintain separate overtime records and receive overtime?**

No. Exempt employees are ineligible to receive overtime payment or compensatory time off. There are instances, however, when a supervisor might permit flexible work hours to accommodate, for example, an exempt employee who worked an excessive number of hours in a prior work week or who routinely works more than 40 hours in a work week.

• **Who must complete a time record?**

Nonexempt employees must record all time worked and all paid and unpaid leave used.
Exempt employees time is reported on an “exception time reporting” basis.

However, some FLSA exempt employees may be required to complete detailed records of hours actually worked, based on the business needs of the work unit.

- **Who is responsible for knowing when work is performed?**

  The employee's supervisor is always responsible for knowing when work is performed. This is one reason the supervisor must pre-approve overtime and must also approve and sign the time record.

- **What is the maximum number of comp time hours that can be earned before the time must be paid in cash?**

  After a nonexempt employee has accrued 240 hours of compensatory time, all subsequent overtime hours worked are compensated in cash.