FLSA & Overtime FAQs

Additional information can be found on the HR website at: [http://www.pdx.edu/hr/overtime-eligibility](http://www.pdx.edu/hr/overtime-eligibility)

Q. What is the FLSA?

A. The Federal Fair Labor Standards Act (FLSA). The FLSA is the most general federal labor law. It contains the minimum wage provisions, Equal Pay Act, child labor restrictions, and a variety of other federal labor and employment law sections. A key provision of the FLSA is that most employees must be paid time and one-half for all overtime “hours worked.”

Q. Does the FLSA and the Department of Labor’s (DOL) proposed overtime rule for white collar workers apply to state or local government workers?

A. Yes, state and local government employers are subject to the FLSA and the DOL’s proposed regulations concerning white collar employees.

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. Some government or medical jobs may have alternative thresholds.

Q. What is an FLSA threshold?

A. The FLSA generally requires overtime for hours worked in excess of 40 hours per week. In a regular, 40 hour week situation, the FLSA “threshold” is thus 40 hours per week. Some government employees, and some medical employees, may have different thresholds. For FLSA purposes, only “actual” work time counts toward the overtime threshold. Leave time does not count as work time under the FLSA, even if the time is paid for and considered working time for other purposes.

Q. What is PSU’s workweek?

A. Sunday 12:00 a.m. through Saturday 11:59 p.m.

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. Certain computer professionals and outside sales employees are also excluded from these requirements.
Q. Under the current rules what determines if an employee falls within one of the white collar exemptions?

A. Certain employees are not subject to either the salary basis or salary level tests (for example, doctors, teachers, and lawyers). Currently, to qualify for exemption, a white collar employee generally must:
   a. be salaried, meaning that they are paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the “salary basis test”);
   b. be paid at least a specific salary threshold, which is $455 per week (the equivalent of $23,660 annually for a full-year employee) in existing regulations (the “salary level test”); and
   c. primarily perform executive, administrative, or professional duties, as provided in the DOL’s regulations (the “duties test”).

Q. What are the significant changes to the overtime regulations for white collar workers?

A. The DOL set the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers, which is $913 a week, or $47,476 a year.

Q. How do the current regulations, proposed rule and final rule compare?

A. | Current regulations (2004 until December 1, 2016) | Proposed rule | Final Rule |
---|--------------------------------------------------|---------------|------------|
Salary Level | $455 weekly | $970 weekly | $913 weekly |
HCE Total Annual Compensation Level | $100,000 annually | $122,148 | $134,004 |
Automatic Adjusting | None | Annually, with requests for comment on a CPI or percentile basis | Every 3 years, maintaining the standard salary level at the 40th percentile of full-time salaried workers in the lowest-wage Census region. |
Bonuses | No provision to count nondiscretionary bonuses and commissions toward the standard salary level | Request for comment on counting nondiscretionary bonuses | Up to 10% of standard salary level can come from nondiscretionary bonuses, incentive payments, and commissions, paid at least quarterly. |
Standard Duties Test | See WHD Fact Sheet #17A for a description of EAP duties. | No specific changes proposed. | No changes to the standard duties test. |
Q. Are teaching faculty exempt from overtime?
A. Yes.

Q. Does overtime under the FLSA differ from overtime under the SEIU contract?
A. Yes. FLSA overtime is specifically time worked in excess of 40 hours in the work week. The SEIU contract defines time worked and overtime for its members, resulting in compensation (payment or accrual) at time and one-half in some situations where actual work time does not exceed 40 hours. Please refer to the SEIU contract for more information.

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. Is the DOL making adjustments to the standard duties tests?
A. No.