
EXEMPT VS. NON-EXEMPT

OVERTIME &
FAIR LABOR STANDARDS ACT

WHAT IS FLSA?

- Federal law passed in 1938
- Enforced by Department of Labor
- Public employers became covered in 1986
- Covers
 - Overtime
 - Minimum Wage
 - Child Labor
 - Equal Pay
 - Recordkeeping

EXEMPT – NOT COVERED BY FLSA

- Must meet salary basis test
 - Salary must be more than \$913 per week (Revised May 18, 2016)
- Meets “White Collar” exemption categories test for exemption:
 - “White Collar” exemption categories
 - Executive
 - Administrative
 - Professional
 - Computer Professional
 - Highly Compensated

For more information on these exemptions you can go to: https://www.dol.gov/whd/overtime/fs17a_overview.htm

- Applies to each position individually based on duties and responsibilities, not to a class, role, working title or category of position
- Paid on a salaried basis for the job, not the number of hours worked
- No overtime payments required

PERMITTED SALARY DEDUCTIONS FOR EXEMPT EMPLOYEES

- In the following situations, exempt employees shall receive deductions in accrued Sick, Annual, or Floating Leave benefits:
 - Full day personal absence or if they do not work a minimum of one hour in a single day
 - Full week in which no work is performed;
 - Full day sick or disability absence;
- Exempt employees shall not receive deductions in pay for partial days missed, except in the following situations:
 - Unpaid suspension for major rule/policy violation(s) of one or more full days in accordance with the disciplinary policy
 - Deductions for the first and last week of employment, when only part of the week is worked by the employee.
 - Deductions for unpaid leave taken in accordance with a legitimate absence under the Family and Medical Leave Act.

NON-EXEMPT – COVERED UNDER FLSA FOR TIME-AND-ONE-HALF OVERTIME

- Does not meet the salary test
- Job duties do not meet the Executive, Administrative, Professional or Computer Professional or Highly Compensated test criteria

NON-EXEMPT POSITIONS

- Must receive 1-1/2 times their regular rate for all hours worked in excess of 40 in a work week
- If leave was taken during week, non-exempt employee receives regular rate (straight time, 1 hour = 1 hour's pay) for hours worked in excess of scheduled hours up to 40 during a work week.
- If the employee works unauthorized overtime, UMCHS will still make payment of OT in accordance with FLSA. However, disciplinary action may be taken against the individual for creating this liability without obtaining prior supervisory approval.

CRITICAL TERMS

- Regular rate
 - Converted to an HOURLY rate
 - Is particular to each work week
 - Employee has physically worked less than 40 hr in the work week
 - Paid at 1 times the employee's hourly rate of pay
- Time-and-one-half Overtime
 - Based on WORKED time (not leave time)
 - Employee has WORKED over 40 hours in a work week
 - Paid at 1-1/2 times the employee's regular rate of pay for each hour worked beyond 40
- Hours worked
 - Principal job activity
 - "Suffer" or permit to work
 - Rest periods (except lunch)
- Work week
 - 168 consecutive hours during a 7-day period
 - UMCHS standard work week: 12:00 am Sun thru 11:59 pm Sat

OVERTIME PAY

- Overtime pay is calculated on **actual time worked**. Time paid for but not actually worked (vacation, sick leave, holidays, other paid leave) is excluded from overtime calculations.
 - Example: If a full-time employee worked 40 hours during the week of Independence Day in addition to the 8 hours paid for the Independence Day Holiday, the total hours paid would be 48 at regular time rather than 40 regular time plus time-and-a-half for the 8 hour paid Independence Day Holiday.
 - Example: If a full-time employee worked 36 hours during a week but also took 8 hours of sick leave one day that week, sick leave would be reduced to 4 hours and the total hours paid would be 40 at regular time.
- Overtime must be authorized in advance by the Executive Director. If an employee works overtime without authorization, it still must be paid. Unauthorized overtime is a disciplinary issue not a compensation one.

EXAMPLES OF COMPENSABLE TIME

- Performing principal duties
- Performing principal duties or closely related duties outside of work hours
- Travel time between job sites
- Employer required training
- Breaks (10 minutes)
- Preparatory work related to principal duties (checking job locations, fueling cars, picking up mail at P.O., putting away tools at the end of the day)

EXAMPLES OF COMPENSABLE TIME

- “Waiting” or “standing by” for work
- “Unauthorized” work performed (with or without Supervisor’s knowledge)
 - Work not requested but “suffered or permitted” is counted as time worked
 - Standard is whether the employer knows or has reason to believe the work is being performed
- Employee arrives early to work **AND begins working**
- Meal time if an employee is not “free” from work duties

REST AND MEAL PERIODS

- Per state law if lunch is taken, the period shall be no less than 30 minutes. Below is the chart which specifies how many are needed depending on work period.

REST BREAKS AND MEAL PERIODS
Number of rest breaks and meal periods required
for work periods of up to 24 hours:

Length of work period	Number of rest breaks required	Number of meal periods required
2 hrs or less	0	0
2 hrs 1 min – 5 hrs 59 min	1	0
6 hrs	1	1
6 hrs 1 min – 10 hrs	2	1
10 hrs 1 min – 13 hrs 59 min	3	1
14 hrs	3	2
14 hrs 1 min – 18 hrs	4	2
18 hrs 1 min – 21 hrs 59 min	5	2
22 hrs	5	3
22 hrs 1 min – 24 hrs	6	3

ORS 653.261

Meal Periods:

Under 5 hours and 59 minutes=not required

6-7 hour employees=meal period to be taken between the second and fifth hour of work. This also means that meal periods MUST end by the fifth hour worked. NO EXCEPTIONS.

7 +hours=meal period to be taken between the third and sixth hour worked. This also means that meal periods MUST end by the sixth hour worked. NO EXCEPTIONS.

Rest periods :

Need to be 10 minutes in the morning and 10 minutes in the afternoon, or as the schedule dictates (number of breaks for hours worked) above.

REST AND MEAL PERIODS

- The lunch period should be taken away from the work area. It is unpaid.
- If a non-exempt employee eats lunch at his/her desk and answers the phone or speaks with clients or staff regarding work, that individual is doing work and must be paid for the time.
- Remember the intent of the lunch period -- to rest and return as a productive and happy employee... **DON'T WORK OR ALLOW YOUR EMPLOYEES TO WORK DURING LUNCH!**

MEETINGS AND TRAINING

Time employees spend in meetings, lectures, or training is considered hours worked and must be paid, **unless**:

- Attendance is outside regular working hours
- Attendance is voluntary
- The course, lecture, or meeting is not job related
- The employee does not perform any productive work during attendance

TRAVEL TIME

- **Commuting Time**

- Home-to-work travel is not work time and not compensable. Normal "home-to-work/work-to-home" commuting also includes travel between the employee's temporary place of lodging and a work site.

- **Travel during work day**

- Travel that is part of the employee's daily job tasks, such as travel from one job site to another during the workday for meetings or to pick up tools or materials, is compensable work time.

- **One-day travel to another city**

- All time spent traveling on one-day, out-of-town work assignments must be counted as "hours worked." Federal regulations state that such travel is for the employer's benefit and at the employer's request, and should be compensated. Deductions may be made, however, for meal times and for time spent traveling between the employee's home and a train/bus station or airport.

TRAVEL TIME-OVERNIGHT TRAVEL AWAY-COMPENSABLE

- Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time **when it cuts across the employee's workday**. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days.
- Time spent waiting at the airport counts as hours worked **IF** it occurs within normal work hours.

TRAVEL TIME-OVERNIGHT TRAVEL AWAY- NOT COMPENSABLE

- Time spent in travel away from home **outside of regular working hours** is not consider as work time, unless the employee is the driver of a vehicle.
- Travel between home and airport is considered normal commuting time and does not count as hours worked **if it is outside normal work hours.**
- Time spent at a motel with freedom to use time for the employee's own purposes is not compensable.
- Employees are not compensated for time not working even if it occurs within the employee's regular work schedule (e.g., employee goes sightseeing instead of attending a session of the conference or the conference sessions are only from 9 - 2).
- However, any work that an employee is required to perform while traveling must, of course, be counted as hours worked. (e.g., answering e-mails, taking business related phone calls.)

TRAVEL TIME EXAMPLES

- Example 1: Chet's regular work schedule is 8:00 a.m. to 4:30 p.m., Monday through Friday. His employer requires him to attend a two-day business conference in Boise, Idaho. Chet travels by bus on Wednesday, from 10:00 a.m. to 4:00 p.m. The employer must pay for these six hours of travel time, since they cut across Chet's normal work hours. Chet returns home by bus on Saturday, traveling from 2:00 p.m. to 8:00 p.m. The employer must pay for the 2.5 hours between 2:00 and 4:30 p.m., the travel time which cuts across Chet's normal work hours. This is required even though Chet does not normally work on Saturdays.
- Example 2: Jane's regular work schedule is 8:00 a.m. to 4:30 p.m., Monday through Friday. Her employer sends her to a work-related weekend convention in Chicago on a Friday night "red-eye" flight from midnight to 5:00 a.m. Since Jane is traveling as a passenger outside of normal work hours, the employer needn't pay for any of the travel time.
- Example 3: Peter, whose regular work schedule is 8:00 a.m. to 4:30 p.m., Monday through Friday, travels by plane to an out-of-state business meeting. The air travel takes place from 12:00 noon to 5:00 p.m. At the airport, Peter is required to pick up a rental car and drive an additional five hours to reach the remote city where the meeting will take place. In this case, the employer must pay for 10 hours of travel time -- the 4.5 hours of air travel which cut across Peter's normal work hours, plus the 5.5 hours of car travel which fall outside of Peter's normal work hours, since he is required to drive during that time.

COMMON FLSA MISUNDERSTANDINGS

“Our policy says overtime must be pre-approved. If an employee doesn’t get approval beforehand, I don’t have to pay overtime.”

You cannot deny payment for time worked simply because the time was not approved. To enforce policy, you must use disciplinary action.

COMMON FLSA MISUNDERSTANDINGS

My employee works 80 hours a pay period (36 hours the first week and 44 hours the second week of the pay period so I don't have to pay overtime)

You would have to pay the employee at 36 hours straight time for week 1 and 40 hours straight time plus 4 hours overtime for the 2nd week.

You can't flex within a 2 week period. Flex is within the week and final hours must equal 40 for a full-timer.

COMMON FLSA MISUNDERSTANDINGS

“If a non-exempt employee chooses to eat lunch at their desk and ends up answering the telephone a few times, they don’t need to be paid for that time.”

To be considered unpaid time, an employee must be relieved of duties during that period.

If you allow an employee to answer phones while eating, they are performing employment-related tasks and must be compensated, regardless of whether they chose to eat at their desk.

COMMON FLSA MISUNDERSTANDINGS

“My employee volunteered to stay to complete work in the evening or on weekends and not be compensated? I don’t have to pay them if they volunteered.”

An employee cannot volunteer to work “off the clock” and is not permitted to waive their rights under the FLSA.

COMMON FLSA MISUNDERSTANDINGS

“I have certain employees that arrive early and/or stay late due to transportation problems. They insist on working as they do not like to remain idle and claim they will volunteer the time. Am I not liable for payment because they are volunteering the time.”

False. The law states that an employer must compensate an employee for all hours worked whether those hours are authorized or unauthorized.

In order to avoid liability for payment it is management's duty to have and to enforce rules prohibiting unauthorized work. If a worker insists on not following your work rules, discipline would be in order. However, an employer must pay for all hours worked, even if unauthorized.

COMMON FLSA MISUNDERSTANDINGS

“I can have an employee volunteer in any capacity.”

False. In order for an employee to qualify as a volunteer, these four criteria must be met:.

- The work must be at the employee’s initiative.
- The work must be outside normal or regular work hours.
- The employee must be performing a religious, charitable or other community service without contemplation of payment.
- The employee must be performing a task outside of the regular job functions performed for the same employer.

RESOURCES

- Visit the Wage and Hour Division (WHD) homepage at: <https://www.dol.gov/whd/>
- DOL Final Rule Questions and Answers:
<https://www.dol.gov/whd/overtime/final2016/faq.htm>
- Oregon Wage & Hour Division FAQs:
https://www.oregon.gov/boli/TA/Pages/T_FAQ_Tafaq.aspx