

FLSA Changes for 2016

The Department of Labor (DOL) published final regulations on May 18, 2016.

In Brief: The FLSA generally requires covered employers, including ISU, to pay their employees overtime premium pay of one and one-half times the employee's regular rate of pay for all hours worked over 40 in a workweek. However, there are a number of exemptions from the FLSA's overtime requirements. Specifically, any employee employed in a bona fide executive, administrative or professional capacity as defined by the FLSA is considered to be exempt from the overtime protection.

Right Now: Workers are classified as either exempt or non-exempt depending on their salary and the type of work they do. The FLSA establishes a minimum salary level in order to be exempt from overtime. The current salary minimum is \$23,660 per year (\$455 per week). Employees who earn more than \$23,660 may be exempt from FLSA overtime regulations if their primary job duties meet a "duties test" (as defined in the regulations). Positions that are exempt are not required to record and track hours worked. Non-exempt positions, on the other hand, require an employee to record and track all hours worked; any time worked in excess of 40 hours in a workweek will need to be paid at time and a half.

What has changed: The featured change in the DOL's FLSA rules is an increase in the salary minimum to the 40th percentile of full-time salaried workers from the lowest wage Census Region. This would raise the salary threshold from \$23,660 per year (\$455 per week) to \$47,476 per year (\$913 per week). These changes take effect on December 1, 2016.

The Final Rule establishes a mechanism for automatically updating the salary level (and compensation level for highly compensated employees) every three years, with the first update to take place in 2020.

What That Means: Based upon the Final Rule, some currently exempt ISU employees may be changed from exempt to non-exempt status. Employees who earn less than the newly set minimum salary will need to be classified as non-exempt, must track their time and must be paid overtime as required by the FLSA.

Supervisors are obligated to ensure that all working and leave hours for non-exempt staff are accurately recorded.

What's Next: The University is working diligently to assess the impact at ISU and prepare for these changes. Human Resources will keep campus employees and supervisors updated as further information is available.

If you have questions about this information, please contact Human Resources at extension 4114.

FREQUENTLY ASKED QUESTIONS

FLSA CHANGES FOR 2016

1. What is the Fair Labor Standards Act (FLSA)?

The Fair Labor Standards Act (FLSA) is the federal wage and hour law administered by the U.S. Department of Labor (DOL). It impacts employees in both private and public sectors by establishing minimum wage, overtime pay, and other wage and hour regulations. Employees are either exempt or non-exempt from the FLSA regulations.

2. What does it mean to be exempt or non-exempt?

Exempt employees are excluded from the overtime requirements. Non-exempt employees are paid overtime for time worked in excess of 40 hours in any workweek. For an employee to be classified as exempt, he/she must meet the following three tests:

- **Salary Basis Test:** An employee must receive a predetermined, fixed salary that is not subject to reduction due to variations in quality or quantity of work performed;
- **Minimum Salary Test:** An employee must be paid a salary minimum that is currently \$23,660 per year (\$455 per week) which will be changing to \$47,476 per year (\$913 per week); and
- **Duties Test:** An employee must qualify as an executive, administrative, professional, or computer professional (as specifically defined by the FLSA)

3. What is changing?

The DOL has issued the Final Rule which requires employees be paid a minimum salary of \$47,476 per year (\$913 per week). The changes may impact up to 5-6 million employees nationwide.

4. When will these changes become effective?

The Department of Labor FLSA changes are effective December 1, 2016.

5. When will ISU implement the FLSA changes?

ISU will implement the changes effective with the normal salary increase process in November. In order to make this transition for staff who are moving from exempt to non-exempt the monthly pay in November 1 will be prorated through 10/21/16. On 10/22/16 that starts the pay period for the new pay rate for non-exempt employees so they will receive a full non-exempt pay on 11/10/16. This means they will be using Kronos to record their time beginning 10/22/16.

6. Are faculty excluded from these changes?

Yes. Under the FLSA, employees are not subject to the salary minimum if their primary duty is teaching, tutoring, instructing, or lecturing, and if they are employed and engaged in this activity as a teacher in an educational establishment (i.e., Indiana State University).

7. Are there any other areas in Higher Ed besides faculty that may be exempt from the new regulations?

Positions whose primary function is performing administrative duties directly related to academic instruction or training may be considered exempt from the new regulations. This will require such

positions are reviewed to determine if academic advising, tutoring, or counseling is the primary duty and that it is paid at least as much as the entrance salary for teachers at ISU. Athletic coaches and assistant coaches are exempt if the majority of the duties involve teaching (including instructing athletes on how to perform their sport, but excluding recruiting.) Staff who are Academic Administrative staff will be notified of their status by Human Resources.

8. Will employees who have the same job title/description and paygrade be treated differently?

No, employees with the same job title/description will either be classified as exempt or non-exempt professional.

9. Can I continue to be an exempt employee by opting out of this change?

No. The exemption criteria are federal law. An employee and employer cannot agree to waive any of the law's requirements.

10. Will switching from exempt to non-exempt impact an employee's leave accrual or retirement benefits?

No. This regulatory change will not change an employee's leave accrual or retirement plan participation.

11. Will switching from exempt to non-exempt make those previously considered exempt eligible to receive a convenience day?

No. Since we are allowing them to retain the same leave accrual and retirement benefits that they received as exempt staff they will not be eligible to receive a convenience day.

12. As a non-exempt employee, can I still work early or late? Can I check emails from home?

Non-exempt employees can make arrangements and obtain approval from their supervisor to work different hours. However, all time worked must be accounted for and recorded as time worked. All overtime and any alternative work arrangement must be approved in advance by the employee's direct supervisor. Checking emails from home would be considered work time and should be done only with supervisor's approval.

13. I'm currently tracking my work hours and recording my work time. How will this proposed change in regulations affect me?

You will not be personally impacted by the proposed changes in FLSA regulations. The changes as proposed will only impact employees who are currently exempt, not required to track work hours and not eligible for overtime pay.

14. How does the proposed rule change affect staff members who work less than full time?

Pay for part-time appointments will not be pro-rated. An employee with a .75 appointment with a fulltime rate of \$60,000 (above the minimum salary threshold) is paid \$45,000. \$45,000 is below the minimum salary threshold, and therefore, the employee will be non-exempt.

15. When is overtime paid?

The DOL requires overtime be paid for hours worked in excess of 40 in a workweek.

16. Will ISU change how we pay overtime?

No, ISU will continue to pay overtime based on hours paid in excess of 37.5 hours except in those areas which are currently 40 hours in a work week.

17. Will I receive overtime if I work through my lunch break?

Employees generally are allowed two breaks throughout a work day which are already paid breaks. Lunch however is not a paid break unless the employee works through their lunch break. All employees are encouraged to take their lunch breaks. Working through the lunch break making it as time paid needs to be approved by the immediate supervisor.

18. How do we deal with overtime for those who are now no longer exempt from overtime?

Training sessions are being held for employees and supervisors impacted by FLSA. However, training sessions will discuss ways to minimize overtime and adjust work week hours. Overtime should be authorized in advance by management. Also, management has the authority to adjust work schedules in order to avoid paying overtime.

19. Can comp time be used to avoid paying overtime?

ISU **does not** authorize comp time. In order for comp time to exist it must be an established ISU policy that applies to the university. Comp time cannot be determined and or implemented on a departmental basis.

20. Can I work additional hours and just not claim them when I report my time of Kronos?

All time worked must be recorded and paid. There is no exceptions. However, to continue to work hours that are not authorized by management could be subject to discipline if it continues without authorization.

21. Can I work hours in excess of 37.5 in one week and then adjust my hours the following week if it is in the same pay period?

No, adjusting hours in order to not receive overtime must take place in the same work week. Overtime is paid based on hours worked **each week** and not hours over the pay period.

22. What happens if I report less than 37.5 hours for my work week when I am a full time employee?

If time recorded is less than 37.5 then payroll will request the remainder time be paid through benefit time whether it is appropriate as vacation or as sick pay. If no benefit time is available then it will be considered as dock pay.

23. What type of training will be given?

Employees and their supervisors will receive training on how to use Kronos, how to manage overtime and also explaining how travel is handled for non-exempt employees.

24. Can non-exempt employees still attend professional conferences?

Yes, non-exempt employees must account for the travel time and for the hours of conference attendance, but there is no prohibition on traveling or professional development.

25. How will the changes be communicated?

Division Vice Presidents will be provided information regarding those employees within their respective areas that are impacted. Human Resources will send letters to employees in September explaining how FLSA changes and what this means them. Also, communication will include dates and times of training to be provided by HR, Payroll, and others. Supervisors will also be invited to training specific to their duties as supervisors.

26. How will new hires be handled in those positions that are now identified as non-exempt professional staff?

Most of those positions when refilled especially if it is not a single incumbent position will continue to be classified as non-exempt professional and be eligible for the same benefits as exempt staff except they will be required to monitor their time and be eligible for overtime.