Draft

PROPOSED CHANGES TO THE FAIR LABOR STANDARDS ACT

New Overtime Eligibility
FLSA

The Fair Labor Standards Act of 1938 is the US Department of Labor (DOL) federal wage and hour law. Everyone is “covered” but some employees are **Exempt** and some are **Nonexempt**.

The FLSA requires time-and-one-half OT or Comp Time pay for all hours worked over 40 in a workweek for nonexempt employees.
TESTS

Exemption is based on qualifying for all three of the tests:

• **Salary Basis Test.** Employees must be paid on an annual salary basis; and

• **Minimum Salary Test.** Employees must be paid above a salary threshold amount of $455 per week or $23,660 annually, and

• **Duty and Discretion Tests.** Employees must qualify as an executive, administrative, professional or computer professional.
CHANGES TO MINIMUM SALARY TEST

• The US DOL has proposed to raise the minimum salary threshold to qualify for exemption to the 40th percentile of weekly earnings for full-time salaried workers.

• $970 weekly or $50,440 annually.

• Effective date of the changes is unknown, but projections indicate the second half of 2016.

• The DOL proposal would annually increase the salary threshold based on either the Consumer Price Index or by pegging the threshold to the 40th percentile for weekly earnings of all full-time salaried employees.
CHANGES TO MINIMUM SALARY TEST

• Pay for Part-Time appointments will not be pro-rated.

• An employee with a 75% appointment, to a position that would pay $60,000 (over the threshold) for 1.0 FTE, is still being paid $45,000

• $45,000 is below the threshold and the employee will be nonexempt
WHO IS AFFECTED?

- Some exempt **University Staff** will become nonexempt.

- Many noninstructional Academic Staff will become **nonexempt**. Academic Staff have historically been designated as exempt.

- **Nonexempt Academic Staff will remain Academic Staff.** They will become hourly Academic Staff, not University Staff.

- Faculty and instructional Academic Staff whose primary duties are teaching will remain exempt regardless of salary. Teachers, lawyers and doctors qualify for this professional exemption.
WHAT NEEDS TO BE DONE?

• Identify all FLSA exempt employees (except “teachers”) with an annual salary less than $50,440 and evaluate the options.
• Make certain that the primary duties of the position are genuinely exempt.
• For each employee, compare the cost of increasing his/her salary to $50,440 to the cost of anticipated OT.
• Use the Overtime Breakeven Point (OBP) Calculator for assistance.
• UW Service Center will examine establishing new timekeeping procedures for hourly Academic Staff to maintain a monthly payroll.
**OVERTIME BREAK EVEN POINT**

- The Overtime Break-even Point is the number of hours an employee would have to work before the difference between the current salary and the $50,440 threshold is eliminated.

### OBP Calculator

<table>
<thead>
<tr>
<th>Annual Salary -- Base</th>
<th>Current Salary v. New Reg Salary</th>
<th>Current Hourly Wage</th>
<th>Current Overtime Rate</th>
<th>Number of OT Hours to Break Even</th>
<th>Weekly OT to Break Even</th>
</tr>
</thead>
<tbody>
<tr>
<td>$39,000</td>
<td>$11,440</td>
<td>$18.75</td>
<td>$28.13</td>
<td>406.76</td>
<td>7.82</td>
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</tbody>
</table>
PAY OPTIONS AND QUESTIONS

• Raise the salaries of those close to the threshold that are likely to incur OT, or
• Pay Overtime for hours worked over 40 in a workweek
• Can 12-month appointments be reduced to 9- or 10-month appointments, paid at least $970 per week?
• Can part-time employees be given 100% appointments to get them above the threshold?
• Can OT and/or Comp time accrual be limited?
COMMUNICATION AND CHANGE MANAGEMENT

• Communicate the changes in the FLSA regulations and in timekeeping to the affected staff and governance groups

• Communicate the changes in the FLSA regulations and in time approval to faculty/administrative managers who will now approve hours

• Prepare employees likely to become nonexempt for more controlled and rigid schedules
TRAINING IN WAGE AND HOUR PRACTICE

• Train the employees that will become nonexempt how to carefully track hours worked
• Train faculty/administrative managers that are unfamiliar with hourly timekeeping in how to approve and how to manage employees’ hours and leave
• Train supervisors/managers to control or limit the amount of OT worked
SPECIAL AND SPECIFIC SITUATIONS

- Residence Assistants—students, not employees
- Resident Hall Managers – nonexempt employees
- Teaching Assistants – employees, but should remain exempt if they really teach
- Other Student Assistants – FLSA status depends on whether they are students or employees. They should be designated as employees only if the university’s benefit from the student’s labor outweighs the educational benefit to the student.
- Coaches—exempt (coaching is teaching) unless they perform other duties such as scouting or recruiting
- Recruiters—probably nonexempt – still being considered
- Student Advisors/Academic Counselors—probably exempt
QUESTIONS?