FREQUENTLY ASKED QUESTIONS ON FLSA CHANGES FOR 2016

1. What is the Fair Labor Standards Act?

The Fair Labor Standards Act (FLSA) of 1938 (29 USC Ch. 8 § 201 et seq.) is the United States’ federal wage and hour law, administered by the US Department of Labor. Among other things, it establishes the minimum wage and overtime pay, affecting employees in the private and government sectors.

Everyone is “covered” but some employees are exempt from FLSA regulations and some are nonexempt. The FLSA requires one-and-one-half times the regular rate of pay in Overtime or Compensatory time be paid for all hours worked over 40 in a workweek for nonexempt employees.

2. What does it mean to be exempt or nonexempt?

Exempt employees are considered “salaried” and are excluded from overtime payment. Nonexempt employees are considered “wage earning” and are subject to the payment of overtime.

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

- Salary Basis Test. Employee 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. Employee must qualify as an executive, administrator, professional, or computer professional.

3. What is changing?

The Minimum Salary Test. The US Department of Labor has proposed changes that would raise the minimum salary threshold to the 40th percentile of weekly earnings for full-time salaried workers.
While the final rules may vary somewhat, it is anticipated that for 2016 the minimum salary, above which an employee can be designated as exempt from overtime requirements, will be **$970 a week or $50,440 per year**.

The effective date is presently unknown, but it is projected to take effect in the second half 2016.

4. **Who does this affect?**

Some exempt University Staff will become nonexempt, but many noninstructional academic staff will become nonexempt. All academic staff have historically been designated as exempt but this will no longer be the case if the rate of pay is below $970 per week or $50,440 per year.

Noninstructional Academic Staff whose pay is below the threshold will have to account for their hours on an hourly basis, as nonexempt University Staff must do.

5. **Are professionals excluded from these changes?**

Some. Faculty and instructional academic staff with whose primary duties are teaching will remain exempt regardless of their salaries. Teachers, lawyers and doctors qualify for this professional exemption.

This must involve actual instructional duties, however. Those that “support” teaching activities without actual teaching interaction will most likely be nonexempt.

6. **How does this affect a part-time or a less-than-100% contract employee?**

Pay for part-time appointments will not be pro-rated under the new regulations. An employee with a .75 appointment, to a position that would pay $60,000 (over the threshold) for 1.0 FTE, is paid $45,000. $45,000 is below the minimum salary threshold and the employee will be nonexempt.

7. **What about employees that work a nine-month academic year with an extra two months’ contract in the summer; is the total pay averaged over the 11 months so that the exemption will remain in place all year?**

Probably not. For 2016, employees must make at least $970 per week to be exempt. If the employee makes more than $970 per week during the academic year but less than $970 per week in the summer, he or she will be exempt during the academic year but nonexempt over the summer.
8. Will switching from exempt to nonexempt and back again affect my leave accrual?

It will affect how the employee reports leave time, but not his or her leave accrual.

9. Can I opt out of this change if I want to continue to be considered a salaried or exempt employee?

No. These changes are not institution- or agency-driven policy making. This proposal is for permanent changes to a long-standing federal law that will apply to all employees in the private and government sectors alike.

10. How is tracking hours worked different for an hourly employee?

It is the same as the time reporting required of nonexempt University Staff. Nonexempt employees must account for their time worked rather than accounting for leave used. Nonexempt employees, for example, are not supposed to work during (unpaid) lunch breaks, and lunches of 30 minutes (or more) are unpaid time. All time worked must be reported.

11. How is overtime calculated?

Overtime or compensatory time must be paid for hours worked over 40 in a workweek. The computation of “40 hours worked” does not include paid time out of the workplace (e.g., sick leave, vacation time, etc.). See UPS Operational Policy TC 3 Compensation for more detail.

12. As an Academic Staff employee, does being paid hourly mean I will become a member of the University Staff?

No. Academic staff that become nonexempt will remain academic staff. They will become hourly academic staff, not University Staff.

13. As an Academic Staff employee, does being paid hourly mean I will be paid on the biweekly payroll?

Probably not. Your hours will have to be accounted for on a weekly basis, but the UW Service Center is examining ways to account for the time worked of Academic Staff employees and still pay them on the monthly payroll.
14. As an Academic Staff employee, does being paid hourly mean I will accrue leave time like the University Staff?

No. Academic staff that become nonexempt will remain academic staff, and will continue to be granted and to accrue leave time as an academic staff employee.

15. As a nonexempt employee, can I still work early and late? Can I check my messages from home?

Nonexempt employees can still make arrangements with their employer to work from home occasionally, to check in at night, or to completely change their daily schedules to different hours than were previously expected, but all time worked except the very most de minimis must be accounted for and recorded as “time worked”. Any alternative arrangements will have to be made with the individual School/College/Division or Institution for which you work.

16. As a new nonexempt employee, will this result in a pay increase?

There is no additional funding to cover these changes in timekeeping, although some UW institutions may in some cases decide to raise the pay rate of some employees that are close to the threshold up to the threshold amount in order to preserve the exempt status.

17. As a nonexempt employee, can I still attend professional conferences?

There is no prohibition on professional development activities that applies to exempt employees but not to nonexempt employees. Nonexempt employees must account for the hours of their travel time, and for the hours of conference attendance, but there is no blanket prohibition on traveling or professional development attendance.

18. What about the voluntary conversion of exempt, formerly-classified (now University Staff) employees to the Academic Staff, under UPS? As an exempt (or formerly exempt) University Staff, can I still convert?

At most UW institutions, employees in the University Staff service will still have the option to convert to Academic Staff. If your rate of pay is below the “minimum salary” threshold, you will be converting to hourly, rather than salaried, Academic Staff.

Some UW institutions may temporarily suspend the University Staff-to-Academic Staff conversions until more is known about the coming changes to the FLSA.

19. How much Compensatory (Comp) Time can I accumulate as an hourly employee?
The rules on accumulating Compensatory Time were recently changed to allow an accumulation of not more than 80 hours. Any excess OT or Comp Time over that limit has to be paid out.

Any Compensatory Time earned in a calendar year which is unused by April 30 of the following year will be converted to a cash payment and included in the earnings for the pay period that includes May 1. See UPS Operational Policy TC 3 Compensation for more information.

OHRWD/SEB 11/18/15