FAQ on Fair Labor Standards Act (FLSA)

On May 18th, 2016, the US Department of Labor (DOL) announced a final rule change for the FLSA to increase the minimum annual salary for salaried employees to $47,476 ($913/week), effective December 1, 2016. The University System of New Hampshire has been anticipating this rule change, and to prepare, a work group of Human Resources professionals from all USNH institutions has been diligently reviewing all aspects of FLSA compliance. While Human Resources will continue to communicate with employees, managers, and especially those directly impacted by this, this document is designed as a readily available source of information.

Within this FAQ you will find information about the FLSA, what it means to be exempt or non-exempt, exceptions to the FLSA, applicable policies, and managing changes related to implementation of the new regulations. The questions have been grouped into the following areas:

General Information about the FLSA
Impact on Positions at USNH
Timekeeping for Non-exempt (Hourly) Staff

General Information about the FLSA

Q. Who is covered by the Fair Labor Standards Act (FLSA)?

A. The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

Q. What is a “non-exempt” employee?

A. A “non-exempt” employee under the FLSA means an employee paid by the hour and eligible for overtime after working more than 40 hours in a week.

Q. What is an “exempt” employee?

A. An “exempt” employee means an employee who, based upon regulations set by the FLSA, is considered exempt (i.e. not eligible) for overtime.

Specifically, as of December 1, 2016, regulations require that exempt employees must:
1. Be paid on a salary basis, 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, and
2. Be paid at least a specific salary minimum, which is now $913 per week (the equivalent of $47,476 annually for a full-year employee), and
3. Primarily perform executive, administrative, or professional duties as provided in the Department of Labor’s regulations. There is variety in the duties tests depending on each category – these may include job requirements of advanced knowledge, independent judgement and decision making in matters of
significance, supervision of multiple employees and leadership of the functional division of an organization. Because of the significant complexity of the duties test, your Human Resources office is uniquely qualified to assist with questions regarding the exempt status of positions.

Q. Are there exceptions to the FLSA?

A. Yes. Certain employees are not subject to either the salary basis or salary level tests (for example, doctors, lawyers, teachers and some academic administrators) and are therefore considered “exceptions” to the FLSA. Teachers are an exception when their primary duty is teaching, tutoring, instructing, or lecturing. Teachers include professors, adjunct instructors, and teachers of skilled and semi-skilled trades and occupations. Athletic coaches and assistant coaches may fall under the exemption if their primary responsibility is teaching, including instructing athletes in how to perform their sport.

The exception for academic administrators is applied when such a position has the primary duty of performing administrative functions directly related to academic instruction or training in an educational establishment. In higher education institutions, academic administrative personnel generally eligible for this exception include academic department heads, academic counselors and advisors, and other employees with similar responsibilities. These employees must have a minimum salary that is equal to the USNH entry-level teaching salary, however USNH will also rely heavily on market salary information to insure a fair, competitive, and equitable salary.

Q. Are student employees, such as resident assistants and researchers, exceptions from overtime pay?

A. Generally, the DOL views graduate and undergraduate students who are taking part in a clinical internship or engaged in research, under a faculty member’s supervision in the course of obtaining a degree, to be in an educational relationship and not an employment relationship with the school or with a grantor. As such, the DOL will not assert such workers are entitled to overtime. Graduate students whose primary duty is teaching or serving as a teaching assistant fall under the FLSA’s teaching exemption. Students who are participants in a bona fide educational program and who serve as resident assistants or work in other student job positions similarly are not considered to be in an employment relationship with the institution. Post Docs are covered by the FLSA except in certain cases where they have teaching responsibilities and would therefore fall under the teacher exception.

Q. Where can I review the FLSA’s announced changes to the overtime regulations for exempt employees?

A. The overview and summary of the final rule can be found online, here: https://www.dol.gov/sites/default/files/overtime-overview.pdf

Impact on Positions within USNH

Q: Why aren’t non-exempt jobs considered "professional" jobs?

A: The FLSA exemption status does not diminish the professional nature and significance of any job within the University System of New Hampshire. It is simply a legal designation for pay and overtime purposes. USNH does consider all employees "professionals" and therefore, emphasizes appropriate job classifications, merit pay, performance incentives, and professional development.
Q: I will receive an increase in pay to the new minimum. Why will my coworker move to non-exempt and be eligible for overtime?

A: The decision to move some positions to non-exempt while leaving others as exempt will be the result of the analysis of the alignment of positions under the FLSA. If your position is made non-exempt, it is due to no longer being in alignment with the FLSA exempt requirements. If you receive an increase to the new minimum salary, it is because your position meets the FLSA requirements for exempt status, but your salary falls below the new required annual minimum of $47,476 ($913 per week).

Q: My position won’t be changed to non-exempt or have a pay change, but will have a classification change. What is the reason for this?

A: While reviewing the current classifications, the HR work group discovered a number of areas that could be improved in our classification structure. For instance, there are a number of positions that share similar descriptions, and they could be combined under one classification. In other areas, a single classification is being used to cover a number of unrelated positions, and these will be split and classified under descriptions that appropriately match the role.

Q: How are part time and/or percent time employees reviewed under the FLSA?

A: Other than those positions described above as exceptions to the FLSA, the new minimum salary for exempt employees applies to part time and/or percent time employees. Therefore, regardless of current schedule, the FLSA requirement is to pay a minimum annual salary of $913/week to qualify as exempt. Each situation of part time and partial year employment is unique. Therefore, along with the standard considerations of converting to non-exempt or increasing base salaries for these individuals, managers may also need to review appointment dates and scheduled hours/work days.

Q: Will my benefits be impacted if I transition to non-exempt status?

A: While your health and wellness benefits will not be impacted, changing to non-exempt status will require some changes to time off and leave policies, specifically the manner in which time off balances accrue. Your time off benefits will be converted as follows (also found in policy USY V.A.4.11.8):

- Vacation/Personal: 1 full time day to 8 hours of Earned Time
- Sick Time: Prorated by length of service
- If the vacation/personal leave conversion exceeds 480 Earned Time hours, the additional hours will be automatically converted to Sick Pool hours. The maximum Sick Pool time is the equivalent of 150 days (1,125 hours for staff on a 37.5 hour work week and 1,200 hours for those on a 40-hour work week).

More information about Earned Time accruals and how the sick pool functions are located under USY V.A.4.10 and USY V.A.4.10.5

Q: If I frequently work overtime including nights and weekends from home and my role changes to non-exempt, does this mean I am no longer able to perform my job in this way?

A: All time worked, including time that goes beyond your normally scheduled 40 or 37.5 hour work week will need to be tracked. You should discuss your schedule with your supervisor, based on the demands of the job, to see if this change will have any impact. Also note that overtime hours must be approved by your supervisor before they are worked.
Q: I currently have a work from home agreement, can I continue with that agreement if I am non-exempt?

A: This agreement should be discussed with your supervisor to determine if adjustments are needed. A change to non-exempt/hourly status wouldn’t necessarily impact your ability to work remotely, but you would be required to track all hours worked. Also note that overtime hours must be approved by your supervisor before they are worked.

Timekeeping for Non-exempt (Hourly) Employees

Q: How do I report time worked if I change to non-exempt status?

A: You will be required to enter all of your hours worked through Web Time Entry. The time sheet will then be reviewed and approved by your supervisor. Overtime hours must be pre-approved by your supervisor and will be paid for any time you work more than 40 hours in a week.

Instructions for Web Time Entry can be found here: [http://usnh.edu/banner/training/active/WTE_Introduction.pdf](http://usnh.edu/banner/training/active/WTE_Introduction.pdf)

Q: If a non-exempt employee is working outside of normal office hours, such as checking emails or accessing documents remotely, does that time need to be tracked?

A: As with other types of authorized work, all time spent by nonexempt employees using electronic communications or other technology for work purposes will be considered hours worked; the time is compensable and will count toward overtime eligibility as required by law. Therefore, to avoid incurring unnecessary expenses, electronic communications should not be used outside regularly scheduled work hours, unless approved in advance. This includes all types of work-related communication.