

## **Fair Labor Standards Act (FLSA) Frequently Asked Questions**

### **What is the Fair Labor Standards Act or FLSA?**

The Fair Labor Standards Act (FLSA) is a federal law administered by the Department of Labor (DOL). This law establishes minimum wage, overtime pay eligibility, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments.

### **Does MSU have to comply with this law?**

Yes, all employers must comply with this federal law.

### **What changes were made to the Fair Labor Standards Act (FLSA)?**

On April 23, 2024, the US Department of Labor announced a final rule which increases the salary threshold to be classified as an exempt employee. Effective July 01, 2024, the new salary threshold is \$43,888 annually. Effective January 01, 2025, the new salary threshold is \$58,656. The current salary threshold is \$35,568 annually.

### **What is the difference between nonexempt employees and exempt employees?**

Exempt Positions = Employees are NOT ELIGIBLE for overtime/compensatory time. Exempt employees are expected to work the number of hours necessary to accomplish the goals of their exempt position.

Non-Exempt Positions = Employees are ELIGIBLE for overtime/compensatory time. Non-exempt employees are required to report all hours and fractional hours (in 15 minute increments) worked and not worked. Hours may not be kept “off the books” or outside of the official time record.

### **What is compensatory (comp) time?**

Public universities may compensate nonexempt employees with compensatory time off (comp time) in lieu of overtime pay. This time may be used in lieu of vacation when taking leave.

### **How will I know which employees are affected by the new FLSA overtime changes?**

There are several job titles in pay grades that do not meet the new salary requirement and will no longer be considered exempt. Administrators will be informed of the job titles and employees changing from exempt to nonexempt. Human Resources will send out a memo to all employees affected.

**Do the new rules affect faculty?**

No. A teacher is exempt if his or her primary duty is teaching, tutoring, instructing, or lecturing to impart knowledge, and if he or she is performing that duty as an employee of an educational establishment.

**What will be different for me as a previously exempt employee changing to exempt?**

Non-exempt employees are required to report all hours and fractional hours (in 15 minute increments) worked through our timekeeping system – Time Clock Plus (TCP). Hours may not be kept “off the books” or outside of the official time record. A non-exempt employee is eligible for overtime/compensatory time for hours in excess of 40 in a given week. Payroll will conduct periodic training sessions on reporting time through TCP.

**What is the standard workweek for Midwestern State University?**

The standard workweek is from Sunday 12:01am until Saturday 12:00 midnight.

**What counts as work time?**

The Department of Labor determines work time. [DOL Fact Sheet #22: Hours Worked under the FLSA](#)

**Is answering email or texts after hours while “off duty” considered work?**

Time spent answering e-mail that amounts to more than de minimus (insubstantial or insignificant) amounts of time each week is considered work time and must be reported on the time record

**How is travel time paid for non-exempt employees who go out of town for work?**

Non-exempt employees are entitled to be paid when traveling to other locations to conduct University business, minus regular commute time.

- Travel within workday - Time spent by an employee in travel as part of their primary activity, such as travel from job site to job site during the workday, must be counted as hours worked.
- One day assignment in another city- Time spent traveling, working, and returning from another city is work time, with the exception that the employer may deduct/not count time the employee would normally spend commuting to the regular work site.
- Travel Time (overnight stay– conferences/events) - Travel away from home is work time when it cuts across the employee's workday. The employee is substituting travel for other duties. 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 in travel outside of regular working

hours as a passenger on an airplane, train, boat, bus, or automobile (unless required as an assistant or helper) is not considered worktime.

- Any work an employee is required to perform while traveling must be counted as hours work.

### **Are conferences I attend considered work time?**

Normally, time spent to attend lectures, meetings, and training programs is considered time worked.

Attendance is not considered working time if the following four criteria (i-iv) are all met:

- i) Attendance is outside of the employee's regular working hours;
- ii) Attendance is voluntary;
  - (a) Attendance is not voluntary if it is required by the employer. It is not voluntary if the employee is led to believe that nonattendance would adversely affect working conditions or employment.
- iii) The course, lecture, or meeting is not directly related to the employee's job;
  - (a) Training is directly related to the employee's job if it is designed to make the employee handle the job more effectively.
- iv) The employee does not perform work during attendance.

### **Should a non-exempt employee continue to work while they are having their meal break?**

No. A non-exempt employee is not considered to be completely relieved from duty if they are performing *any* duties or completing any work while taking a meal break. Therefore, if an employee is performing any work while on their meal break including, but not limited to, answering phones and emails, scheduling travel, or composing letters, then they will need to be compensated for that time. Non-exempt employees are expected to take their work and meal breaks away from their desk or assigned work area.

### **Can non-exempt employees work overtime whenever they believe it is required to get the job done?**

No. Overtime must be approved in advance by the supervisor. The supervisor may also adjust the schedule within the same work week to manage overtime.

### **What if an employee works overtime without the permission of the supervisor?**

Regardless of whether the overtime was approved, the employee must be paid accurately for hours worked, including overtime. However, the employee may be subject to disciplinary action for repeatedly working overtime that has not been approved in advance.

**What should a supervisor do if an employee is working unapproved overtime, for example, sending emails after work hours?**

The employer is required to pay for all time worked by non-exempt employees. The supervisor should have a conversation with the non-exempt employee about working outside the normal work schedule without prior approval.

**Can an employee volunteer to work on their own time without any expectation of payment?**

No, non-exempt employees must be compensated for all hours actually worked. This time must be tracked on the employee time record.

**Can an employee decide to waive overtime?**

No, the overtime requirement may not be waived under any circumstances due to federal guidelines.

**Can a supervisor adjust or allow a flexible schedule before overtime/comp time occurs?**

Yes, it is the supervisor's responsibility to organize work schedules to best fulfill the needs of the department. A supervisor may adjust the schedule within the same work week (Sunday- Saturday). If you have an employee who works more than eight hours in one day, you may require him or her to work fewer hours on another day in the same workweek to avoid overtime/comp time. Ex: an employee works two additional hours at an evening event. The supervisor may ask the employee to start the next day two hours later.

Please note that the supervisor may not avoid overtime/comp time by adjusting the schedule in a different work week.

**Can a supervisor adjust the schedule so that an employee works more than 40 hours during the busy months without earning overtime/comp time and a reduced number of hours in the less busy months so that he/she receives full salary at end of the year?**

No. Overtime/comp time is calculated by the work week, which is Sunday-Saturday. It is not possible to adjust the schedule outside the work week so that overtime is not incurred. Adjustments have to be made within the same work week.

**What are the employee's and the supervisor's responsibilities in reporting hours?**

Non-exempt employees will be advised of the expectation of keeping track of their hours worked and adherence to the assigned work schedule as part of their departmental on-boarding process for new hires. Supervisors are responsible for managing the work schedule and approving the hours worked. If the employee fails to comply and report hours worked appropriately, the matter can be addressed via the disciplinary process.

**More information:** [Department of Labor FLSA FAQs](#)