



MIDWESTERN
STATE UNIVERSITY



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What is the Fair Labor Standards Act? (FLSA)

The [Fair Labor Standards Act \(FLSA\)](#) was first passed in 1938 and is a federal law enforced by the Department of Labor (DOL).

- Establishes minimum wage & overtime standards
- Distinguishes between covered (non-exempt) and excluded (exempt) employees
- Establishes overtime threshold (40 hours per week)
- Specifies employer record-keeping requirements

Exempt Vs. Non-Exempt Employees

The Fair Labor Standards Act (FLSA) requires that employers classify positions as either exempt or nonexempt.

- ❖ **Exempt Positions** = Employees NOT ELIGIBLE for overtime
 - ❖ Exempt employees are expected to work the number of hours necessary to accomplish the goals of their exempt position.
- ❖ **Non-Exempt Positions** = Employees ELIGIBLE for overtime
 - ❖ Non-exempt employees are required to report all hours and fractional hours (in 15 minute increments) worked and not worked on their timesheet. Hours may not be kept “off the books” or outside of the official timesheet.

Current FLSA Guidelines

- **Currently**, to be exempt from overtime/compensatory time, an employee must pass three tests:
 - **Job Duties Test:** employee performs work that primarily involves certain executive, administrative, or professional duties.
 - **Salary Basis Test:** employee receives a fixed salary each week that is not subject to reduction because of variations in the quality or quantity of work.
 - **Minimum Salary Test:** employee receives a minimum salary —*currently* \$23,660 (2004 revision)

Federal Overtime

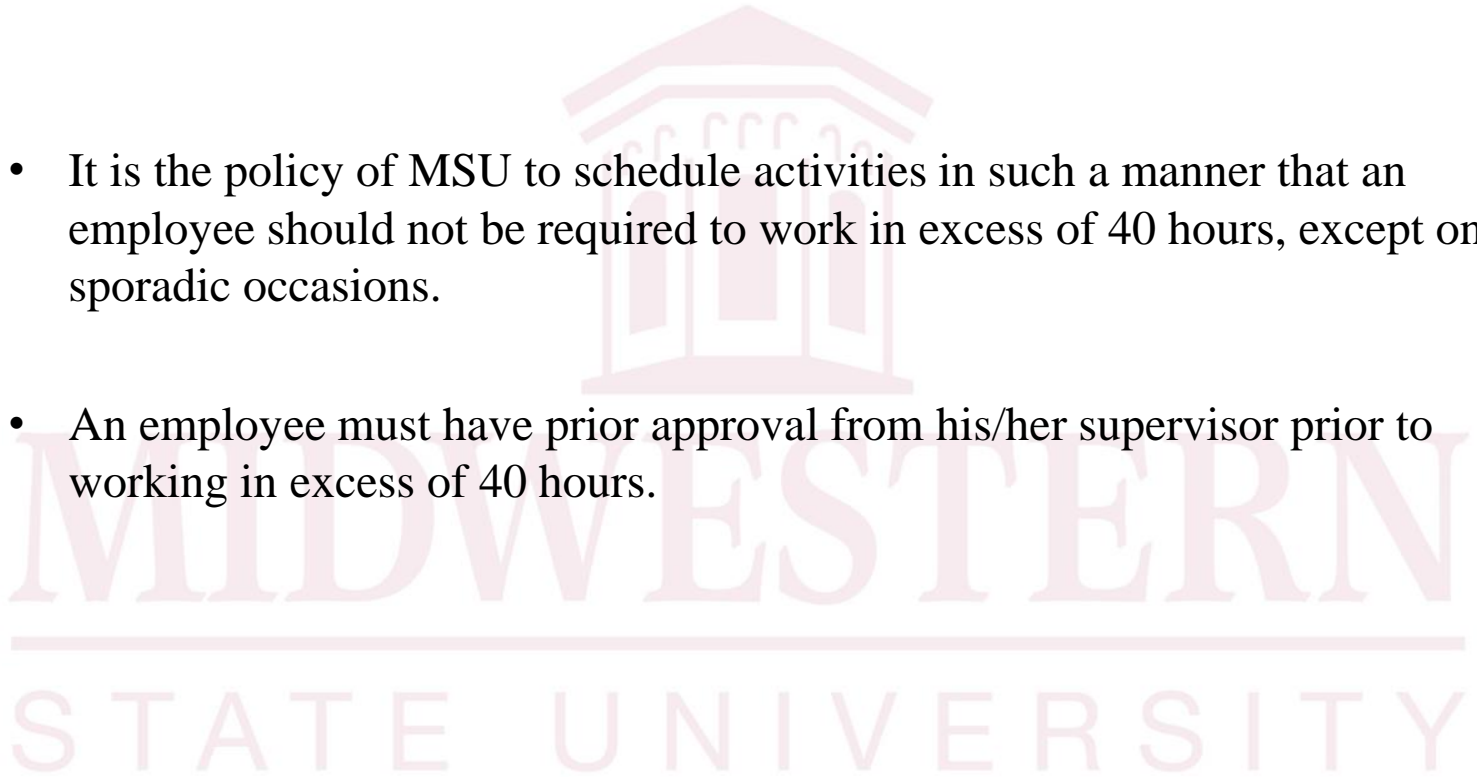
- If the actual hours worked in the work week (Sunday-Saturday) exceed forty (40) hours, this is considered federal overtime/federal compensatory time. These hours are to be credited at the rate of one and one-half times the hours worked.
- In most instances, federal overtime is accrued as compensatory time to be taken at a later date. These hours may be accrued or "banked" up to a maximum of 480 hours (=320hrs at time and one-half) for law enforcement personnel and a maximum of 240 hours (=160hrs at time and one-half) for all other non-exempt personnel.
- At the discretion of the university and with budget available, employees will be paid in cases where: the granting of time off is impractical, the employee terminates from the university, a twelve-month period has occurred, or the employee has reached the maximum balance permitted.
- [Government Code 659.015](#)

State Overtime

- When an employee has not physically worked more than forty (40) hours in the work week, but the *combined* total number of hours worked, paid leave taken, and/or holidays exceeds forty (40) hours, the employee may accrue state compensatory time which is straight time, hour for hour.
- State compensatory hours must be used during the twelve-month period following the week in which the hours were earned. Equivalent or "state" compensatory time may not be carried forward past the end of the twelve-month period in which it was earned and an employee may not be paid for unused time. Exemptions may be granted to allow payment only when taking of time off is disruptive to critical functions.
- [Government Code 659.015](#)

Overtime Approval

- It is the policy of MSU to schedule activities in such a manner that an employee should not be required to work in excess of 40 hours, except on sporadic occasions.
- An employee must have prior approval from his/her supervisor prior to working in excess of 40 hours.



Remote Access

A non-exempt employee must account for all hours worked, including business correspondence after hours.

- Email
- Text
- Telephone Conversations
- Activities



Recordkeeping

Employers are required to have an accurate record of all hours a non-exempt employee works. Falsifying time sheets by the employee or supervisor is a violation of federal and state law.

Violations:

- Failing to account for all hours an employee is permitted to work.
- Limiting the number of hours employees may record on the timesheet.

Employers who willfully violate the FLSA shall be subject to a civil penalty up to \$1,925 per violation (29 CFR 579.1) plus back wages.



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