



Fair Labor Standards Act (FLSA) Frequently Asked Questions

The following is important information for faculty and staff as it relates to compliance with the federal Fair Labor Standards Act (FLSA) in conducting business operations at Texas A&M University. For questions regarding FLSA, contact Classification and Compensation at 979-845-4170 or by email at hrcomp@tamu.edu.

Direct section links for the following are provided below:

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General Fair Labor Standards Act

1. What is the Fair Labor Standards Act?

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record keeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments. Covered non-exempt workers are entitled to a minimum wage of not less than \$7.25 an hour. Overtime pay at a rate of one and one-half times the regular rate of pay is required for non-exempt employees after 40 hours of work in a workweek (Sunday through Saturday for TAMU).

2. What is the difference between an exempt and non-exempt employee?

The status of “exempt” and “non-exempt” under FLSA determines whether an employee earns overtime or compensatory time for hours worked in excess of 40 hours per workweek. Employees who are exempt from the requirements of this law do not earn overtime and are paid a monthly salary at Texas A&M University regardless of the number of hours worked. Employees who are non-exempt from the requirements of FLSA are paid on an hourly basis, on a bi-weekly pay schedule at Texas A&M University, and are eligible for overtime pay or compensatory time for hours worked over 40 in a workweek.

3. How is the exemption determined?

Under the regulations, there are two sets of tests that must be passed to be considered exempt from FLSA. The first is a duties test to determine whether a positions duties primarily involve executive, administrative, or professional duties as defined by the regulations. The second is a salary test. Currently, the salary test is a minimum threshold of \$23,660 per year or \$455 per week.

4. Who applies the tests to determine exemption status for titles/positions at Texas A&M University?

The Human Resources Classification & Compensation Office has historically been responsible for reviewing positions classifications to determine exemption status at the title or position level, as well as monitoring compliance with the minimum salary threshold and position description content. With the implementation of the new System-wide Pay Plan and a single title listing used by all Texas A&M System Members, the process now involves collaboration with other System HR Offices, the Pay Plan Administration committee, and final decisions by the Pay Plan Administrator for consistency.

5. Are there exceptions to the salary threshold for exemption?

Yes. Certain professional positions, such as teachers, doctors, veterinarians and lawyers, do not have to meet the salary threshold to be considered exempt. This teaching exemption applies to faculty titles and others such as Graduate Assistant-Teaching. Graduate Assistants-Research are also in a special category due to being engaged in research in the course of obtaining an advanced degree under the supervision of a faculty member.

- 6. Can the \$455 per week minimum threshold be pro-rated for part-time positions?**
No. The \$455 per week minimum threshold applies whether a position is full-time or part-time.
- 7. I'm a part time employee. Why am I considered non-exempt if I am in an exempt title and my full time effort (FTE) salary is above the minimum salary threshold?**
The Department of Labor has been firm in their interpretation that FLSA exemption is affected by actual pay, rather than Full Time Effort (FTE) pay. As such, part time employees who might be exempt when working full time can become non-exempt due to part time actual pay putting them below the minimum salary threshold. For example, an employee is an exempt title paid \$40,000 FTE would still be non-exempt if working 50% effort (at \$20,000 actual pay, which is below the current \$23,660 minimum salary threshold).
- 8. Do regulations allow for a different salary threshold for Postdoctoral Research Associates or other titles related to conducting research in a higher education setting?**
No. Research positions must meet the job duties test and the salary threshold to be exempt.
- 9. What are the options available for reclassifying a non-exempt employee to an exempt title?**
Supervisors may initiate reclassifications through the Workday system if the position duties justify a title change. Reclassification actions submitted to Human Resources through the Workday system must demonstrate that the duties being performed in the position are significantly changed or are a better match to the proposed title. An analyst will be assigned to each reclassification request received to study how duties may have changed over time, review the employee's qualifications, and make determinations as to the most appropriate title.
- 10. How is the pay different for non-exempt employees?**
Non-exempt employees are paid on a bi-weekly basis (every other Friday), and must be paid for all hours worked. The Texas A&M University Systems workweek is Sunday through Saturday. Overtime pay and compensatory time are based on hours worked and in the individual week, not the entire bi-weekly pay period. Payroll deductions are split between bi-weekly checks as shown in the example below.
- 11. Why is the bi-weekly check less than half of the monthly check?**
For non-exempt employees there are 26 pay periods, rather than 24 pay periods, in a year. Although a bi-weekly check may be less than half the amount of a monthly check, there will be two times in a year that a non-exempt employee is paid three times in a single month.
- 12. Where can I find the pay dates for non-exempt employees?**
Payroll has a [bi-weekly pay schedule](#), which indicates pay dates, dates that timesheets must be submitted, and the relevant dates of the pay period.

Overtime and Compensatory Time

- 1. When are departments required to compensate at time and one-half overtime?**
Departments must compensate FLSA non-exempt employees at one and one-half time overtime pay for all hours worked in excess of 40 hours of work in a workweek (Sunday through Saturday at TAMU).
- 2. Why should supervisors keep a close track of the work hours of their FLSA non-exempt employees?**
FLSA regulations stipulate that you must pay non-exempt employees overtime pay even if the overtime was not pre-approved. It is important to closely watch an hourly employee's attendance.
- 3. What types of timekeeping records are required for non-exempt workers?**
For all FLSA non-exempt employees, departments are required to maintain records showing the number of hours worked each workday and workweek. There is no specific format, but it should include the employee's name, UIN, title and title code, rate of pay, hours worked, vacation or sick

leave taken and any other absences (e.g., jury duty). If the information is stored electronically, a paper copy is not required to be kept, but may be.

4. If employees volunteer to work overtime, do they have to be paid overtime?

Federal law does not allow an employee to waive their right to appropriate compensation for all hours worked. A non-exempt employee who volunteers to work overtime must be paid for that time because he or she is being "suffered or permitted" (in the language of FLSA regulations) to work for the benefit of the University. To ensure the department has not "suffered or permitted" the overtime work, the supervisor must instruct the employee not to work overtime without prior approval; continued working of unauthorized overtime hours by an employee may become a disciplinary issue.

5. Must the actual overtime pay be included in the paycheck for the pay period in which the overtime was worked?

FLSA regulations do not provide guidance for when employees are to be paid. However, a delay beyond the pay period after the period in which the work was performed would most likely not meet Department of Labor (DOL) compliance. Overtime should be paid in the current or, at the latest, in the next regular paycheck.

6. Does FLSA require notice to or consent from employees when scheduling overtime hours?

No. Departments have the discretion to establish employee work schedules in accordance with business needs, provided the workers are compensated properly and wage and overtime requirements are observed. Reminder: if an employee works past 40 hours in a workweek (Sunday through Saturday), you must pay the time worked past 40 hours at the overtime rate, even if you did not authorize it.

7. How does System policy address overtime and compensatory time for exempt employees?

Texas A&M University System Regulation 31.01.09, Overtime, states that "Employees who are exempt under FLSA are not compensated under the federal or state overtime provisions." However, in cases where an exempt employee is required to work on a scheduled holiday, the employee will be given State compensatory time for an equivalent amount of time, but it must be taken within 12 months from the date it was received or the time is lost.

8. Does compensatory time, whether it is overtime or straight, have a maximum amount? If so, what happens to the excess?

Only overtime compensatory time has a maximum, which is normally 240 hours except for employees who work in public safety, emergency response, or seasonal activities. These employees can accrue 480 hours. Any overtime worked beyond those limits must be paid until the compensatory time bank can be reduced.

9. Does a department have to pay overtime to an employee who took eight hours of sick leave on Friday but was then required to work eight hours on Saturday?

No. The employee's total work time for the workweek was 40 hours, although they have accounted for 48 hours. The FLSA requirement to pay premium rates for hours worked over 40 in a workweek applies only to time the employee actually spends working. Sick leave (or any leave) time, even though the employee is compensated for the hours, is not considered hours worked but will be included towards State compensatory time.

10. Is additional extra compensation due for work performed on Saturdays, if the employee has not already worked over 40 hours in a workweek?

No. FLSA regulations only require that non-exempt employees be paid at one and one-half times their regular rate of pay for all hours worked in excess of 40 in a workweek.

11. As a non-exempt employee, do I need to receive prior approval from my supervisor to work beyond 40 hours in a workweek?

Yes.

- 12. As a non-exempt employee, what happens if I do not receive prior approval from my supervisor before working beyond 40 hours in a workweek?**
You will be paid for the hours worked beyond 40 hours; however, your supervisor can formally discipline you if you continue to work unauthorized overtime.
- 13. As a non-exempt employee, can my supervisor adjust my work schedule within a workweek to avoid or minimize overtime payments?**
Yes. For example, if you work an extra four hours on Monday, your supervisor may reduce your work schedule later in that same workweek by four hours so that you do not work more than 40 hours during that workweek. Each workweek stands alone in calculating regular and overtime hours worked. You cannot average hours worked over multiple weeks.
- 14. As a non-exempt employee, can my supervisor schedule overtime hours for me to work if there is a business need?**
Yes. Department managers and supervisors have the discretion to establish employee work schedules as business needs require, provided workers are compensated properly and wage and overtime requirements are observed.
- 15. As an exempt employee, do I get paid time and one-half overtime for hours worked over 40 in a workweek?**
No. As an exempt employee, you are paid a salary for performance of a specified job, not for the hours you work. (Note: The State of Texas requires exempt employees to account for a minimum of 40 hours in a workweek).
- 16. As an exempt employee, do I get compensatory time or additional straight time pay for hours worked over 40 in a workweek?**
Normally, no. TAMUS does allow for comp time for exempt employees. "When extraordinary circumstances necessitate work hours beyond those routinely required for the position, such employees may, at the discretion of the CEO, be granted compensatory time off in accordance with State law." However, there is no TAMU Rule or SAP on this issue and therefore the interpretation is that comp time for TAMU exempt employees is not authorized. The one exception to this is if an exempt employee is required to work on a University holiday, they are entitled to State comp time for an equivalent amount of time, but it must be taken within 12 months from the date or the time is lost.
- 17. As a non-exempt employee, I periodically work overtime and receive comp time (time and a half) for this work. It has been almost a year since the first of the overtime was worked; do I have to take this time, be paid for it, or can I leave it in my comp bank?**
Federal comp time never expires, though there is a limit on how much you can bank, normally 240 hours. Your employer can require you to use your federal comp time reserves before using vacation time and can require you to use the time even if you have not requested time off. TAMUS policy is that federal comp time should be taken within 12 months from the time it is earned, if practical; if not used within 12 months, it should be paid because it is paid at the employee's current rate of pay, not the rate when earned.
- 18. Do employees need permission to work overtime? What if it's an emergency situation & there's not time to get authorization to work overtime?**
Yes, overtime must be authorized in advance, except in the case of an emergency or other situation where the supervisor is unavailable. In such a situation, go ahead and perform the overtime work as requested and then notify your supervisor at the start of the next business day.
- 19. I am currently exempt but will be going to non-exempt. In addition to my full-time job, I work as a wage employee in a second job on campus. When originally submitted, it was determined that my hours worked in both jobs would not be combined for calculating overtime. However, my supervisor asked for a re-evaluation of the dual employment and it has been determined that all the hours I work in both jobs must be combined and I will therefore be, essentially, in an overtime status for all hours worked in my secondary wage position. I do not necessarily**

need the overtime pay and would prefer to have the comp time instead. Can I choose to get comp time instead in this situation?

No, comp time cannot be given for extra work in a wage position. Any overtime worked in a wage status must be paid.

20. I am a non-exempt employee and have 20 hours in my federal comp time bank. I just requested 5 days of vacation time, but my supervisor told me I had to use all of my federal comp time first. Can he do this?

Yes. Supervisors may require an employee to use federal comp time that is banked before using vacation time. In this case, you would use 20 hours of federal comp time and 20 hours of vacation time for a total of 5 days off. Furthermore, a supervisor may require an employee to take time off to use up federal comp time, even if the employee does not ask to use the time.

21. Who decides whether overtime will result in payment or comp time?

Your department will decide how overtime will be settled, but may allow you to provide an input.

22. Do you have to cash out federal comp time after 12 months?

No, but it is the recommendation to do so to avoid future financial liabilities. TAMUS policy is that federal comp time should be taken within 12 months from the time it is earned, if practical; if not used within 12 months, it should be paid because it is paid at the employee's current rate of pay, not the rate when earned.

23. Do you need to have a written policy on how you handle comp time?

No, departments do not need written policies. If a written policy is developed, you should first have it reviewed by Classification & Compensation to ensure it is fully in compliance.

Please note: These FAQs deal only with FLSA (federal) overtime and comp time. Non-exempt employees whose total hours worked and paid absence exceed 40 hours in a pay week are eligible for State comp time. Contact your HR Liaison or the Classification & Compensation Office for further information about Federal comp time, Federal overtime, and State comp time.

Working and Travel Time

1. As a non-exempt employee, I sometimes receive work emails on my smart phone outside normal working hours. May I take care of the email then?

No. Checking and responding to emails or other work performed remotely is likely to be compensable and will count towards overtime. If an emergency arises, you may perform the necessary work, but you must notify your supervisor at the first opportunity that you were required to work outside normal working hours.

2. Must employees who come in early to work be paid for that time?

Conditions under which the employee comes into work early would determine whether that time would be considered working time. If an employee comes in early and reads a book for leisure until the time the workday begins, this time would not be considered working time. However, if the employee comes in early and begins working or performing preliminary tasks necessary to the job, the time would be considered working time.

3. As a non-exempt employee, I occasionally have to travel to locations away from my normal place of duty. Does this travel time count as hours worked?

Travel between work sites during the day is compensable time. If the trip is to another city and the round trip travel is accomplished in the same day, all hours (minus normal commuting time) are considered hours worked. If the trip involves overnight travel, travel that occurs during the employee's normal working hours (or the corresponding hours on a weekend or holiday) is considered hours worked. Note that driver is compensated for all travel time in this situation while passengers are compensated only for travel during normal working hours.

4. Are employees entitled to be paid for lunch time if they eat at their desks?

If an employee chooses to eat at his or her desk and is completely relieved from duty, that time would not be considered working time, provided no work is performed. However, if an employee is required to eat at his or her desk, the time would be considered working time. You must have a business need to require the employee to stay on-site during their lunch. Employees who voluntarily eat at their desks – but answer phones or perform other work – are "working" even though it is voluntary on their part; and they must be paid for the time worked.

5. I am a non-exempt employee who has to travel with students on a bus while en route to a student conference. Is my travel time compensable?

If the travel is associated with a trip to a one-day conference and back in the same day, then all hours are compensable (if you travel to the conference from home in our own vehicle, you must subtract the normal daily commuting time from the total travel time). If the travel is associated with a trip involving an overnight stay, it becomes more complicated. If no work is accomplished during the travel (i.e., you can sleep, read, listen to music and are only there to take action in the event something happens), it will be compensable time only if it occurs during your normal working hours or the corresponding hours on a weekend or, if something occurs during the trip which requires your action, and then only for the period of time it takes to accomplish the action. If you are required to actively monitor the students at all times during the travel, it may be compensable time, regardless of the time it occurs. Contact HR for a determination of individual cases.

6. I am a chaperone for students during a trip. We arrive at our hotel at 6.00pm and the students must be in their rooms for the night by 10.00pm. Is this time at the hotel considered working hours?

If you are able to use the time for your own benefit (e.g., go to the gym, the swimming pool, the hotel restaurant or even go to your room and sleep), the time will not be compensable. On the other hand, if you are required to regularly tour the facility, ensuring students are conducting themselves properly and are in their rooms on time, time will likely be considered to be compensable time. Time worked is rounded to the nearest 15 minutes.

7. I am changing to non-exempt status. I regularly check my emails and other work-related material in the evenings just to keep caught up with work. Can I continue doing this when I become non-exempt?

If you are simply scanning emails (i.e., seeing who sent it, the subject, and other cursory items) and it takes only a minute or two, it is unlikely to be recordable working time as it would be de minimis (negligible time) and there would be no problem with this. However, if you are reading emails and attachments, responding to them or taking any other actions relating to work, it is probably compensable time for which you must have prior permission from your supervisor. If you are contacted by your supervisor to respond to an email, you are essentially being told to work overtime and you should proceed. If you see an email which requires immediate action, but you are unable to obtain permission from your supervisor, go ahead and respond to the email, making note of the start and finish time (rounded to the nearest 15 minutes) and notify your supervisor of this on your first return to work. If it is considered to be recordable working time, your supervisor may adjust your working schedule (must be in the same working week), have you bank federal comp time or pay you for overtime, if the evening work puts you over 40 hours in the work week.

8. I have several employees who are changing from exempt to non-exempt. There are certain times during the year that they simply must respond to incoming emails in the evenings; this typically occurs over a two or three-day period but sometimes may last up to two weeks. Can I direct them to respond to emails they receive after hours, but only those for a specific subject?

Yes, as their supervisor, you may direct your employees to work at any time to meet business requirements. In this situation, you can have them record their start and finish times and then adjust their normal work days to cover the working time (rounded to the nearest 15 minutes) or, at the end of the work week if working time exceeds 40 hours, give them federal comp time or overtime pay to cover the overtime worked.

- 9. I am attending a two-day conference in another city and will be arriving the afternoon before the conference starts. There is a reception that evening, the night before the official conference starts. The following evening, the sponsors are hosting a dinner for participants after the normal conference hours. Both events are marked as optional on the agenda, but if I attend, will that be working time?**

Attending the reception will most likely be considered working time, because receptions are usually intended to facilitate networking among participants and can be considered of benefit to the University. Attending the dinner is not straight forward. If there is a speaker and the subject is related to the conference, it is probably compensable time. If there is no speaker and the dinner involves arriving, having the meal and then leaving, it is more than likely non-compensable time.

- 10. I am traveling to a conference overseas. Will my travel be considered compensable time?**

The answer can get complicated, but basically follows the guideline of “did the travel occur during my normal working hours or the corresponding hours on a weekend?” The first thing to remember is to base all time traveled on either the origin or destination time zone. If you travel to London from Houston, your trip may look like this: 1) drive to Houston airport, taking 2 hours, arriving at 2.00pm 2) check in for your 4.00pm flight 2 hours prior to departure as required by the airline 3) fly to London, taking 9.5 hours, arriving in London at 7.30am 4) clear customs and immigration and travel to your hotel, taking 2.5 hours, arriving at your hotel at 10.00am. There is normally a 6-hour difference in time zones, so your arrival at your hotel in London will equate to 4.00am Houston time. For this trip, basing all travel on Houston time, you would have 5 hours of compensable travel time (2 hours for the drive to the airport, 2 hours from check in to flight time and the first hour of the flight, all occurring between your normal working hours of 8.00am – 5.00pm. The remainder of this travel leg is non-compensable because it occurred outside your normal working hours. However, if you base the travel leg on London time, you would only receive 2 hours of travel time; the period from the time you left home at noon until 30 minutes after your arrival in London all occurred between 5.00pm and 8.00am London time and is therefore not compensable. While at your destination, working hours would be based on the local time. We recommend departments calculate travel time based on both time zones and pay the employee for the most advantageous compensable time. In this example, you would pay the employee based off Houston time and award them 5 hours of compensable time.

- 11. I am a Graduate Assistant (Research) and as part of my assistantship, I have to travel on occasion, sometimes significant distances. Will I receive pay or comp time for travel hours that occur during my normal working hours?**

No. Graduate Assistant (Research) positions are coded as Exempt employees in our payroll system to accommodate the fact that they can be paid a fixed stipend; in fact, under the FLSA, GAR positions are not actually considered covered by the FLSA because they are conducting research under the supervision of a faculty member while in pursuit of an advanced degree. Therefore, GAR positions are not eligible for travel time at any time under the FLSA.

- 12. I am an exempt employee who works directly for a faculty member. We often end up working very long hours over the weekends, resulting in up to 55 hours per week being worked. Should we be getting some sort of extra pay or comp time?**

No. Under the FLSA, exempt employees are not eligible for overtime pay or compensatory time. The only instance where an exempt employee can accrue comp time is when they are required to work on a University holiday. In that situation, an exempt employee will accrue one hour of State comp time (sometimes referred to as Holiday Comp Time) for each hour worked on the holiday. That time is treated the same as regular State comp time: it must be used within 12 months from the end of the work week in which it was earned and can only be paid by exception where taking the time off would cause serious disruption to teaching, research, or other critical function.

- 13. I am an exempt employee and have been told I will have to work over the Thanksgiving break. Will I earn any comp time for this?**

If you are required to work on the Thursday or Friday of the Thanksgiving break, you will receive hour-for-hour State comp time (sometimes referred to as Holiday Comp Time). However, if you are only required to work on the Saturday or Sunday, you will not accrue any comp time, as the Saturday

and Sunday are not normal work days and therefore are not considered as part of the University holiday allocation.

- 14. I am currently exempt but will become non-exempt on December 1st because my current pay does not meet the new minimum threshold. My supervisor has told me I will need to continue working the same hours, but that he will not pay me the overtime which will be due because his funding does not allow payment of overtime. Do I have to do the work without the necessary overtime pay?**

Yes and No. A non-exempt employee must be paid for all hours worked and, if they work more than 40 hours in one work week, they must receive either overtime pay at one and one-half times their regular rate of pay, or, because the University is a public employer, they may be given federal comp time in lieu of overtime pay. This will accrue at a rate of 1 ½ hours of federal comp time for each hour of overtime worked. Therefore, you do not need to be paid for overtime hours worked; but if not, you must be given federal comp time at the one and one-half times their regular rate of pay.

- 15. I recently finished an evening class I have been taking in town. Does the time I spent on the course have to be considered working time? I know there are four conditions that must be met or the time is considered compensable and one of the conditions is that it does not relate to my job. In this case it does relate to my job because it has given me the capability of doing my job here at the University more effectively and more efficiently.**

No, this would not be considered working time. You were taking the course as an individual, outside of working hours, and therefore it is not compensable University working time. On the other hand, if your supervisor had directed you to take this specific course, then it would be considered working time.

- 16. If you have a wellness release time schedule & you don't take it, what happens?**

You lose the time. Wellness Release Time (WRT) cannot be combined or banked. It can also not be used in lieu of vacation or sick leave.

- 17. Regarding travel time for a one-day meeting in another city, if you have a 5 minute commute, do you have to take out 10 minutes from the total travel time?**

Yes. For trips to another city and back in the same day, you must subtract your normal commute time from the total travel time.

- 18. Are receptions at conferences that are outside of normal working hours compensable?**

Conference receptions are commonly used primarily for networking with other attendees and can be considered to be beneficial to the University. If in doubt, contact the Classification & Compensation Office.

- 19. If we write up departmental guidelines on travel time, can you review them?**

Yes, if a written policy is developed, you should first have it reviewed by Classification & Compensation to ensure it is fully in compliance.

Please note: These FAQs deal only with working and travel time. Non-exempt employees are eligible for travel time. Contact your HR Liaison or the Classification & Compensation Office for further information about working and travel time.