



Change in Overtime Regulations – Frequently Asked Questions

1. What is the Fair Labor Standards Act (FLSA)?

The FLSA is a federal law that establishes minimum wage, overtime pay, recordkeeping, and youth employment standards for employees in the private sector and in Federal, State, and local governments.

2. What do the terms “exempt” and “non-exempt” mean?

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 work week. 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 biweekly 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 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 the whether a position’s duties primarily involve executive, administrative, or professional duties as defined by the regulations. The second is a salary test. Currently that salary test is a minimum threshold of \$23,660 per year.

4. What is changing on December 1, 2016 with the revised FLSA regulations?

The updated FLSA regulations change the minimum salary threshold for most positions to be considered exempt. Currently the threshold is \$455 per week (\$1,971.66 per month or \$23,660 per year). Under the new regulations effective December 1, 2016, that threshold is being raised to \$913 per week (\$3,956.33 per month or \$47,476 per year).

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. Do the 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 tests and salary threshold to be exempt.

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

Human Resources Classification and Compensation has historically been responsible for reviewing position 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 December 1 implementation of 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. Some titles that have traditionally met the exemption tests at Texas A&M University are being changed to non-exempt as a result of this collaboration and analysis, with a focus on mitigating legal risk and applying the regulations consistently across all System Members. Human Resources will continue to review submitted position descriptions for compliance with the title's exemption status as well as monitor the minimum salary threshold for exempt positions.

8. How do I know if my position is impacted?

Human Resources has directly notified Texas A&M University employees who have been identified as being impacted by the change, either due to their title changing to non-exempt, or due to their current pay rate being lower than the minimum salary threshold. Communications were distributed via email, and mailed communications to employee mailing addresses followed. Departments were provided lists of employees who are changing to non-exempt. Since the analysis and initial communications were based on a set of employee data as of September 5, 2016, additional communications will be generated on periodic schedule through the December 1 effective date.

9. When are these changes effective for employees?

The changes are effective during the pay period beginning December 1, 2016. Thursday, December 1 is the first day of a monthly pay period and also the first day of a biweekly pay period. Therefore, monthly-paid employees will receive their regular monthly pay check on December 1, and then will transition to a biweekly pay schedule during the month of December.

10. How is the pay different for non-exempt employees?

Non-exempt employees are paid on a biweekly basis (every other Friday), and must be paid for all hours worked. The Texas A&M University System's work week is Thursday through Wednesday. Overtime pay and compensatory time are based on the hours worked in the individual week, not the entire biweekly pay period. Payroll deductions are split between bi-weekly checks as shown in the example below.

11. Why is the biweekly 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 biweekly 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 [biweekly pay schedule](#) which indicates pay date, dates that timesheets must be submitted, and the relevant dates of the pay period.

13. What will the December and January paychecks look like during the transition from exempt to non-exempt?

Please consider the following example:

Example: Employee Moving from Exempt to Non-Exempt on 12/1/16				
	12/1 Monthly check	BiWeekly check 12/22*	BiWeekly check 1/6	BiWeekly check 1/20
Pay Period	(11/1 - 11/30)	(12/1 - 12/14)	(12/15 - 12/28)	(12/29 - 01/11)
Base Pay	\$3,188.42	\$1,471.20	\$1,471.20	\$1,471.20
Longevity Pay	\$40.00	\$40.00	\$0.00	\$40.00
Deductions	\$1,133.90	\$745.18	\$532.92	\$544.43
Net Pay	\$2,094.52	\$766.02	\$938.28	\$966.77
Deductions				
Federal Income Tax	\$192.26	\$58.61	\$83.32	\$88.89
Social Security	\$170.01	\$63.48	\$76.14	\$78.62
Medicare	\$39.76	\$14.85	\$17.81	\$18.39
Teacher Retirement/ORP	\$232.44	\$108.81	\$105.93	\$108.81
Medical	\$389.70	\$389.70	\$194.85	\$194.85
Dental	\$58.82	\$58.82	\$29.41	\$29.41
Vision	\$14.25	\$14.25	\$7.13	\$7.13
Optional Life	\$6.12	\$6.12	\$3.06	\$3.06
Dependent Life	\$0.60	\$0.60	\$0.30	\$0.30
Long term disability	\$6.44	\$6.44	\$3.22	\$3.22
Parking	\$23.50	\$23.50	\$11.75	\$11.75
Total Deductions	\$1,133.90	\$745.18	\$532.92	\$544.43
*Note: December 22, 2016 paycheck will differ from future biweekly paychecks because a full month's insurance premiums & parking will be deducted (if applicable). In future pay periods the deductions for insurance premiums will be split.				

14. What happens when an employee who is non-exempt due to salary level receives a salary increase that raises the annual salary above \$47,476?

Depending on the position, the employee may become exempt. Please contact HR Classification and Compensation for questions about specific positions.

15. Can two employees in the same title have a different exemption status—one non-exempt (paid below \$47,476) and one exempt (paid at least \$47,476)?

Yes, employees in the same title performing the same type of work, could be exempt or non-exempt, depending on the exemption status of the job title as well as the salary threshold.

16. I am currently making above the new minimum salary threshold, but I was notified that I am going to be non-exempt. Why?

There are two reasons an employee might become non-exempt on December 1. The first is due to the changing salary threshold. The second is due to a collaborative determination of the exemption status of new titles under the System-Wide Pay Plan. There are some titles that have been determined to be non-exempt under the duties test of the FLSA. For those positions being mapped to new, non-exempt titles under the System-Wide Pay Plan, salary will have no bearing on exemption.

17. What are the options available for reclassifying an employee to an exempt title?

Supervisors may initiate reclassifications through the PATH system if the position duties justify a title change. Reclassification actions submitted to Human Resources through the PATH online 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.

18. Why are some titles that have always been exempt changing to non-exempt?

During the course of implementation of the new System-Wide Pay Plan, the process for determining exemption status has necessarily become a collaborative effort among the other System HR offices, the Pay Plan Administration committee and final decisions made by the Pay Plan Administrator. As a result, some titles that have traditionally met the exemption tests at Texas A&M University are being changed to non-exempt due to this new collaboration and analysis, with a focus on mitigating legal risk and applying the regulations consistently across all System Members.

19. 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 pay. This aspect of the FLSA is not changing, and 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 in an exempt title paid \$50,000 FTE would still be non-exempt if working at 50% effort (at \$25,000 actual pay).

20. Can my department just raise my pay and fix this?

For exempt staff (non-research) titles, departments cannot just choose to raise an employee's pay to the new threshold for the exemption reason alone. A memo requesting an adjustment must be submitted like any out of cycle increase, through HR to the relevant VP, so that Classification and Compensation can perform a review to be sure the raise doesn't create an internal equity problem with other employees in the same title.

For research staff, please submit memos and requests for increases through department/college approval routing to the office of the Vice President for Research for approval.

21. How can I find out what my take home pay will be once this change takes place?

Hourly pay rates will be calculated using a standard base of 2,080 hours per year (for full-time, 12 month employees). Your official hourly rate will be communicated to you before December 1. We recommend utilizing the “Net Pay Estimator” tool in HR Connect (located in the SSO Menu) to try and estimate take home pay and to plan accordingly for this change. Please also see FAQ #13 for notes about the transition to biweekly and how the first pay check deductions may be different than paychecks after the transition month.

22. I read about special provisions available for academic administrative personnel. Does this apply to me?

The Department of Labor has defined an optional salary minimum threshold for academic administrative personnel, such as academic counselors and advisors, which allows a higher education institution to set a new minimum threshold that matches the entry salary for a teacher at that institution. Texas A&M considered this, but after legal and general consultation, both internally and externally, the decision has been made to **not** use this option. So all positions ruled exempt by duties will be subject to the same federally established threshold of \$47,476 per year unless specifically excluded (such as teachers, doctors, etc.)

For more information, please contact Classification and Compensation by email at payplan@tamu.edu or by phone at (979) 845-4170.