

As part of the University's ongoing compliance effort, Human Resources reviews new positions, reclassification requests, and evaluates current jobs to ensure continued compliance with the Fair Labor Standards Act (FLSA).

### **General FLSA Information**

The primary objective of the Fair Labor Standards Act (FLSA) is to protect workers' rights. The FLSA is enforced by the U.S. Department of Labor (DOL) Wage and Hour Division. The FLSA establishes the following:

- minimum wage;
- overtime pay;
- recordkeeping; and
- child labor standards.

Other provisions of the FLSA define the following:

- exemption categories (i.e. exempt and non-exempt);
- hours of work; and
- violations and penalties.

The FLSA does not regulate:

- vacation, holiday, severance, or sick pay
- meal or rest periods
- pay raises or fringe benefits
- discharge, termination, or final payment procedures

### **Wages**

Covered, nonexempt employees must be paid the minimum wage of \$8.00 per hour. Overtime pay is paid at a rate of one and one-half times the employee's regular rate of pay and it is required after 40 hours of work in a workweek.

### **Exemption Status**

Exempt and nonexempt classifications determine what work is overtime eligible. The Fair Labor Standards Act (FLSA) requires that overtime (payment for hours worked in excess of 40 hours in workweek) be paid to employee performing nonexempt work. FLSA does not require that time and overtime be paid to employees performing exempt work.

Under the FLSA, there are three tests exemption tests that must be met in order for a position to be classified as exempt. This include salary level, salary basis, and job duties.

- Salary level—minimum of \$455 per week or \$23,660 annually. Salary level is not prorated for part time employment.
- Salary basis—regularly receives a predetermined amount of compensation each pay period.
- Job duties
  - Executive: primary duty is management. *Examples: Vice President, Dean*

- Administrative: performance of work directly related to general business operations and exercises discretion. *Examples: Accounting, Finance*
- Professional:
  - Learned: requires advanced knowledge *Examples: Doctors, Lawyers*
  - Outside sales: making sales away from employer's place
  - Highly skilled computer employees
  - Creative: performance of work in an artistic or creative field *Examples: Artists, Musician*

Many times the positions have a combination of exempt and nonexempt duties. The "primary duty" of the position must be the performance of exempt work. Primary duty means the principal, main, major or most important duty that the employee performs. An employee's primary duty is determined by looking at all the facts, with the major emphasis on the character of the employee's job as a whole.

### **Recordkeeping**

Every employer covered by the Fair Labor Standards Act (FLSA) must keep certain records for each covered, nonexempt worker. There is no required form for the records, but the records must include accurate information about the employee and data about the hours worked and the wages earned. The following is a listing of the basic records that an employer must maintain:

- Employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;
- Address, including zip code;
- Birth date, if younger than 19;
- Gender and occupation;
- Time and day of week when employee's workweek begins. Hours worked each day and total hours worked each workweek;
- Basis on which employee's wages are paid;
- Regular hourly pay rate;
- Total daily or weekly straight-time earnings;
- Total overtime earnings for the workweek;
- All additions to or deductions from the employee's wages;
- Total wages paid each pay period;
- Date of payment and the pay period covered by the payment.

### **Enforcement**

The Department of Labor representatives investigate wages, hours, and other employment practices. The Obama administration has increased compliance with FLSA rules. In 2010, employers paid \$6.5 million in back wages related to FLSA settlements and penalties. In the previous year, they paid only \$2.6 million.

Some of the common FLSA violations include the following:

- misclassification of employees as exempt;
- improper payment for break time;

- improper payment/no payment for on-call time, training time, and travel time;
- inappropriately providing compensatory time off;
- failure to pay for unauthorized hours worked or all recorded hours; and
- inaccurate records.

Penalties for failing to pay minimum wages or overtime include the following:

- back pay;
- equal amount of liquidated damages;
- fine of \$1,000 per violation; and
- attorney's fees and court costs.

Penalties for wrongly classifying a position as exempt include the following:

- fines up to \$1,000 per violation;
- criminal penalties including up to \$10,000 in fines; and
- back pay, liquidated damages, attorney's fees.