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## Policy Information

**Effective Date:**

August 1, 2004

**Last Revised Date:**

November, 2016

**Reference:**

Classified Staff Human Resources Policy Manual 311.0

University Handbook for Appointed Personnel 2.22

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## Policy

The University administers compensation in compliance with Arizona Board of Regents (ABOR) policy and the Fair Labor Standards Act of 1938 (FLSA), as amended. Included in this federal law are regulations covering the federal minimum wage, employee time recordkeeping requirements, and jobs where an employee must receive overtime compensation after working 40 hours in a workweek. In accordance with Arizona Revised Statute 23-351 C (a), the University delivers pay to employees no later than five days after the end of the most recent pay period.

These standards apply equally to all classified staff jobs and all non-faculty appointed personnel jobs. Graduate assistants/associates are not subject to the FLSA.

## Definitions

**Compensable Time** is also called work time. An employer must document a nonexempt employee's work time. In addition to regularly scheduled hours, work time can include overtime, certain types of travel time, training time, and shift preparation/transition time. **Exempt** employees are paid an agreed amount for the whole job, regardless of the amount of time or effort required to complete the work, and do not record hours of work on the time record.

**Nonexempt** employees are paid for each hour worked, and record each hour worked on the time record. If the employee works more than 40 hours in one workweek, the employee is paid a premium of time and one-half, which is also referred to as **overtime compensation**.

**Overtime** is time worked by nonexempt employees that exceeds the employee's normally scheduled workweek. For full-time employees, overtime is time worked over 40 hours in a workweek. For part-time employees, overtime is time worked over the established full time equivalency (FTE). (For a more complete explanation, see **Options for Overtime Payment** below.)

The University **workweek** is seven consecutive days commencing at 12:01 a.m. on Monday and ending 168 hours later at 12:00 midnight on Sunday.

## **Exemption Status Overview**

### **The Exemption Tests**

The overtime provisions of the FLSA apply to employees in certain types of jobs. Employees who are not subject to the overtime provisions are considered "exempt." Employees considered "nonexempt" are subject to the overtime provisions of the FLSA. These standards apply equally to all Classified Staff jobs and all Non-Faculty Appointed Personnel jobs; the FLSA does not differentiate based on an employer's various employment types. To be exempt from the overtime provisions, an employee must meet ALL of the following FLSA tests:

1. perform certain duties as outlined in one of the "duties tests," AND
2. be paid more than a minimum salary of \$455 a week\*—the "salary level test"—AND
3. be paid on a salary basis as opposed to an hourly basis—the "salary basis test."

Employees who practice law or medicine, or who teach are not subject to the salary level test and are always exempt. Student Group A, B, and C employees are always nonexempt. Graduate assistants/associates are not subject to the FLSA.

There are six duties tests, and each test has specific requirements before an employee is exempt from the overtime provisions of the Act. The six duties tests follow:

1. the executive exemption test,
2. the administrative exemption test,
3. the professional exemption test,
4. the computer exemption test,
5. the outside sales exemption test, and
6. the highly compensated employee exemption test.

Additional information on the duties tests is available on the [Department of Labor website](#) [2].

### **Job Exemption Status**

Classified Staff and Appointed Personnel job descriptions are maintained by Human Resources, the division responsible for assigning the FLSA exemption status for these job titles. Some Classified Staff job titles are exempt and some are nonexempt.

All jobs must meet at least one of the FLSA duties tests to be exempt; jobs that do not meet at least one of these tests, and are therefore nonexempt, are more appropriately assigned to a Classified Staff job title.

## Employee Exemption Status

Though a job may be categorized as exempt from the overtime provisions, a particular employee in that job must be categorized as nonexempt if the employee does not meet the \$455 weekly salary level test. To determine whether the employee meets the salary level test, use one of the following calculations.

When using an **hourly** rate: Employee's hourly rate  $\times$  FTE  $\times$  40 hours

*Example: \$11.00/hour  $\times$  1.0  $\times$  40 = \$440.00/week - this employee must be nonexempt*

When using an **annual rate**: Employee's annual rate  $\div$  number of hours in current fiscal year  $\times$  40 hours  $\times$  FTE *Example: \$40,000  $\div$  2088  $\times$  40  $\times$  .5 FTE = \$383.14/week—this employee must be nonexempt*

## Compensable Time (Work Time)

The FLSA defines compensable time as time that an employee is required or permitted to work for the employer.

### Meal Periods

Under the FLSA, bona fide meal periods at least 30 minutes long generally are not compensable time if the employee is relieved completely from duty for the purpose of eating.

For most employees, the University of Arizona provides for a one-hour unpaid meal period each 8-hour workday. There may be circumstances where a department head designates certain positions as having paid meal periods.

### Breastfeeding Rest Periods

Employees who are nursing are provided with reasonable unpaid break time to express breast milk after the birth of the child as long as providing such a break does not unduly disrupt operations. The department head will make reasonable efforts to provide the employee a private location, not a restroom, for nursing and/or expressing breast milk. The regulation requires availability of the break time for one year after the child's birth, and department heads are encouraged to be flexible when developing a plan of support for an individual employee.

### Rest Periods

Department heads have the authority, but are not required, to establish and permit rest periods for nonexempt employees of up to 15 minutes each four-hour work period. Rest periods are paid work time, and are included as work time on the employee time record.

Rest periods are not to be used (1) to offset late arrival or early departure from the worksite, (2) to extend the meal period, or (3) to accumulate paid time off from one day to the next.

### Training Time

Generally, when an employer requires or permits a nonexempt employee to attend training during the employee's regular work hours, the time is compensable time. Therefore, nonexempt employee training time is typically paid unless all four of the following criteria are met: (a) attendance is outside of the employee's regular working hours; (b) attendance is in fact voluntary; (c) the course, lecture, or meeting is not directly related to the employee's job; and (d) the employee does not

perform any productive work during such attendance. Note: If the training is required by law and is outside of regular working hours, then the time is not considered compensable time.

## **Travel Time**

In ordinary situations where a nonexempt employee commutes to and from the worksite, the employee is not entitled to compensation for travel time.

1. Excluding normal commuting time, the general rule is that nonexempt employees should be compensated for all travel time unless it is overnight, outside of regular working hours, on a common carrier, where no work is performed.
2. Single-day out-of-town travel is considered compensable time, excluding normal commute home-to-work travel time.
3. Overnight out-of-town travel is compensable time when it cuts across the employee's workday. This is true for hours worked on regular working days during normal working hours and during the corresponding hours on nonworking days. For example, an employee regularly works from 8 a.m. to 5 p.m. from Monday through Friday. The employee travels on business to a location that requires two hours of travel time. The employee leaves Friday at 8 a.m., works the remainder of Friday and Saturday morning, and returns on Saturday at 2 p.m. The two hours of travel time on Friday and the two hours of travel time on Saturday are compensable time. Of course, the work hours on Friday and Saturday are also compensable time.
4. Regular meal period time is not considered compensable time.
5. Time the employee spends in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile and is free to relax, is not considered compensable time.

## **Overtime**

### **Approval of Overtime**

Supervisors are responsible for authorizing and scheduling overtime in advance; therefore, a nonexempt employee shall not work overtime unless authorized in advance by his/her supervisor. Employees are expected to work overtime when requested to do so. Overtime will be used only after other alternatives have been explored, such as rescheduling priorities, reassigning work, re-balancing workloads, offsetting excess hours in one day with reduced hours in another day in the same workweek, and revising the work schedule so that weekend work can be performed as a regular part of the affected workweek.

### **Options for Overtime Payment**

Generally, compensatory time off is the preferred means of compensating nonexempt employees for overtime hours worked.

When a nonexempt employee works more than his/her FTE, but less than 40 hours in a workweek, the employee must be compensated by one of the following methods:

1. pay at the employee's regular rate of pay, or
2. accrual of compensatory time at straight time for each hour worked over the normal FTE.

When a nonexempt employee works more than 40 hours in a workweek, the employee must be compensated by one of the following methods:

1. pay at time and one-half of the employee's regular rate of pay for each hour worked over 40, or

2. accrual of compensatory time at time and one-half for each hour worked over 40.

### **Maximum Compensatory Time Accrual**

After a nonexempt employee has accrued 120 hours of compensatory time off (prorated by FTE), all subsequent overtime hours worked shall be paid in cash. Exceptions to this rule may be approved in writing by the Dean/Vice President in advance; however, in no case shall the accrual of compensatory time off exceed 240 hours (prorated by FTE). As compensatory time is an unfunded fiscal liability, department administrators may establish fiscally practical departmental policies further limiting the accrual of compensatory time. Department administrators are responsible to ensure that compensatory time balances do not become excessive.

### **Disposition of Accrued Compensatory Time**

Any compensatory time balance shall be paid to a nonexempt employee, at the employee's most recent rate of pay, upon termination, retirement or change of status from nonexempt to exempt.

### **Allocating Value of Extra Effort for Use During the Annual University Closure**

Exempt employees may contribute extra effort throughout the year with the express intent of receiving paid release time during the annual University closure. When an exempt employee moves to nonexempt status, the extra effort that was expended shall be reviewed by the employee and the supervisor. This extra effort is not considered on an hour-for-hour basis, but on the overall extra contribution during the period of exempt employment. The employee and supervisor should discuss the value of the extra effort and equate it to a number of hours of compensatory time off, which is processed according to current payroll procedures.

### **Recordkeeping**

Nonexempt employees must accurately record the number of hours worked each day on the employee time record. Exempt employees record either "presence at work" or "exceptions to regular work schedules" on the employee time record. Accurate recordkeeping of hours worked, compensatory time earned, and leave/compensatory time used is the joint responsibility of each employee and his/her supervisor.

### **Responsibilities**

#### **Supervisors, Business Managers**

- ensure all employees are properly categorized as exempt or nonexempt
- ensure all employees have been trained on all applicable employee time recordkeeping requirements, in accordance with university and departmental standards
- ensure all nonexempt employees have been trained on university and departmental overtime policies

#### **Employees**

- comply with all applicable employee time recordkeeping requirements, in accordance with university and departmental standards
- all nonexempt employees comply with university and departmental overtime policies

## Human Resources

- consults with units regarding management strategies for combining FLSA compliance with best management practices
- in partnership with FSO-Operations, provides training to the campus community on the FLSA
- maintains Classified Staff job descriptions

\* Weekly salary subject to change based on external legal proceedings.

## Related Information\*

Fair Labor Standards Act of 1938 as amended [3]

Arizona Revised Statute §23-351 C(a) Designation of paydays for employees; payment; exceptions; violation; classification [4]

## Revision History\*

Salary threshold reverted with footnote January 19, 2017

Salary threshold updated November 15, 2016

Updates and corrections June 25, 2015

August 2010

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### Source URL:

<http://tobaccofree.arizona.edu/employment-human-resources/fair-labor-standards-act-and-overtime-policy>

### Links

[1] <mailto:hradmin@email.arizona.edu>

[2] [http://www.dol.gov/whd/overtime/fs17a\\_overview.pdf](http://www.dol.gov/whd/overtime/fs17a_overview.pdf)

[3] <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

[4] <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/23/00351.htm>