

# DOL SALARY THRESHOLD CHANGES

## FAQs FOR ADMINISTRATORS

Updated 10/18/16

*Please note: This document is updated often so each question has an individual revision date.  
For items revised since the last time (10/4/16), the revision date is highlighted in red.*

### EFFECTIVE DATE – CHANGE TO NON-EXEMPT

- Q: What will be the effective date for employees that will change from exempt to non-exempt?
- A: This is dependent on their current pay frequency. Employees that change from exempt to non-exempt and are currently paid **biweekly** will be effective November 27, 2016. Employees that change from exempt to non-exempt and are currently paid **monthly** will be effective December 1, 2016. (Rev 8/23/16)
- Q: Does this mean an employee who is paid monthly and moves from exempt to non-exempt will start tracking time on a Thursday?
- A: Yes. It is in the employee's best interest to receive their entire November paycheck therefore the time-tracking will not need to begin until December 1. (Rev 8/25/16)
- Q: Employees who become nonexempt on December 1, 2016 will do so in the middle of a work week. If they work over 40 hours during that week, will they receive overtime compensation? What hours worked are counted for that week, for overtime compensation calculation?
- A: Hours worked Thursday December 1<sup>st</sup> through Saturday December 3<sup>rd</sup> will count towards hours worked for that week. The employee will receive overtime compensation for that week only if they work more than 40 hours during those three days. The employee only becomes eligible for overtime effective December 1, so hours worked before that will not be counted for that week. (Rev 10/18/16)

### RAISE TO FLSA MINIMUM INCREASES

- Q: Raising salaries for groups of employees to the FLSA minimum will create compression and inequities. How can we address those issues?
- A: There are two scenarios in which compression or inequities can arise. The process for addressing the inequities differ depending on the situation.
- Scenario #1: Employee receiving a "Raise to FLSA Minimum" adjustment needs an Internal Equity as a result of the raise to FLSA minimum:
    - Divisions will review situations and make determinations as to appropriate increases. A second column will be added to the Division's DOL Threshold Population spreadsheet to indicate the amount of the equity increase.
    - If a division submits a "Raise to Minimum" and related "Equity" increase via the spreadsheet, the increases will be entered into HRS as two separate transactions.
  - Scenario #2: Employee did not receive a "Raise to FLSA Minimum" adjustment but adjustments for coworkers or subordinates creates compression:
    - Enter Internal Equity adjustment request in Rate/Title. Include those employees that have created the compression in the justification. (Rev 8/31/16)
- Q: What is the earliest effective date for a "Raise to FLSA minimum" increase?
- A: The effective date for a raise to FLSA minimum using the new code is December 1, 2016. (Rev 8/23/16)
- Q: Will "Raise to FLSA minimum" be available after December 1, 2016?
- A: Yes. Adjustments effective after December 1, 2016 will be submitted through the Rate/Title system. (Rev 8/31/16)

- Q: Will the maximum of Range 1 be increased in order to accommodate Raise to FLSA Minimum increases?
- A: Yes. Range 1 for Academic Staff will be raised to \$48,000 (A-Basis) and \$39,273 (C-Basis). (Rev 8/31/16)
- Q: Can we use the new pay initiatives (DCF, Block Grants, Performance Lump) for “Raise to Minimum”?
- A: No. However, the new pay initiatives can be used to address equity and compression that result from the raise to minimum. (Rev 8/31/16)
- Q: Should we look at doing other appropriate pay adjustments as needed – such as “promotion/progression” or “change in duties” – before we use “Raise to Minimum”?
- A: Yes, if there are other pay adjustments that are due and appropriate, those should be processed first (for example, a change in duties or promotion). (Rev 8/31/16)

## HOURS WORKED

- Q: What if postdocs don’t mind working more than their FTE and not being compensated for it?
- A: This is considered “volunteering” and Regulations 29 C.F.R. §553.103 states employees of public employers can volunteer their services provided “such services are not the same type of services which the individual is employed to perform for such public agency.” Performing the same/similar job duties as the position you are hired to perform and not recording the time would be considered “volunteering” and is not allowed. (Rev 8/23/16)
- Q: What if a Principal Investigator (PI) tells a staff member (ex. postdoc, academic staff or university staff) to not record all of his/her hours worked, or to lie about his/her hours worked?
- A: It is not up to any non-exempt employee or a PI to make a decision or evaluation about whether to comply with federal law. Even if an employee is willing to “volunteer” to work extra hours or for less than the minimum salary, UW-Madison and the PI are legally required to pay him/her the minimum salary or pay him/her for all the hours worked.
- If any employee is asked to lie about his/her hours or sees any others employees being asked to work undocumented overtime, they should report the violation to the Divisional Human Resources Office or the Office of Human Resources/Workforce Relations. It is illegal for employers to fire, retaliate, or discriminate against an employee for filing a complaint. (Rev 8/23/16)
- Q: If the recording of hours for a Project/Program Assistant (PA) takes him/her over the University of Wisconsin-Madison Maximum Levels of Graduate Assistantship Appointments of 75%, what happens? Is there an issue if the PA works 100% and records 100% hours?
- A: *Pending clarification from VCRGE* (Rev 8/23/16)
- Q: The maximum level for Graduate Assistantship Appointments is scheduled to change from 75% to 50% in Spring 2017. Will the FLSA change affect this?
- A: Research and Teaching Assistants will remain exempt under FLSA. Project Assistants will change from exempt to non-exempt under FLSA and will be required to track and record their hours worked. (Rev 10/5/2016)
- Q: Research Associates: There is an issue/concern with recording hours for international employees – sometimes, the home country pays some of the salary directly (not through UW Payroll). However, when the employee actually tracks/records his/her hours worked, they must list all hours worked at UW-Madison. The concern is that the hours will be overstated, so won’t it make it look like they’re working a lot, and being paid too little?

- A: This may be a Joint Employment situation in which the work performed by the employee benefits UW-Madison as well as the home country and therefore the salaries from both places can be added together to see if the employee meets the salary threshold. If the combined salaries meet the threshold, the employee is exempt and no tracking of hours is needed. Please see the [Fair Labor Standards Act - Joint Employment](#) document in the FLSA Toolkit for more information. (Rev 10/18/16)
- Q: If an A-Basis nonexempt academic staff employee works on a legal holiday, do they receive additional compensation?
- A: No, A-Basis nonexempt academic staff are not eligible for holiday premium pay. If they work on the legal holiday, the legal holiday hours not used will be retained in their leave bank. (Rev. 10/18/16)
- Q: C-Basis academic staff employees do not have a leave bank. If a C-Basis nonexempt academic staff employee works on a legal holiday, do they receive additional compensation?
- A: *Pending (Rev. 10/18/16)*

## MULTIPLE JOBS - TOTAL COMPENSATION

- Q: If a Research Assistant also holds a Project Assistant position, would they be subject to the FLSA because of the Project Assistant positions or considered a non-employee because of their Research Assistant position?
- A: The positions should be considered separately. The primary duty test only extends to the duty analysis for individual positions and not the overall status of the individual as either an employee subject to the FLSA or a staff member who is not an employee subject to the FLSA. For example, if an individual is a 25% Research Assistant (RA) and a 50% Project Assistant (PA), we only “count” the hours worked in the PA as subject to the FLSA. We do not have to have the employee track their hours in the RA position. (Rev 8/23/16)

In addition, if the employee is a 25% Research Assistant and a 50% Project Assistant and makes \$15,000 in the RA and \$35,000 in the PA, they do not meet the minimum salary threshold because the only compensation applied to the salary threshold is the \$35,000 in the PA position. The \$15,000 does not “count” because the RA is a non-employee. (Rev 8/23/16)

- Q: If an employee has two separate and distinct appointments with the University (one exempt and the other nonexempt), how is the FLSA status determined?
- A: The FLSA status of the employee is based on the employee’s primary duty for the University across both positions. An employee’s “primary duty” (“principal, main, major or most important duty that the employee performs”) must be the performance of exempt work in order for the minimum wage and overtime exemptions to apply. Determination of an employee’s primary duty must be based on the character and duties of the employee’s job as a whole. For example, someone who is employed as a TA and a PA could be considered exempt if their primary duty is “teaching, tutoring, instructing or lecturing in the activity of imparting knowledge.” (Rev 8/25/16)
- Q: If an employee has two positions with the University and they are equal FTEs (ex: two 33% PA appointments), how is their FLSA status determined?
- A: The FLSA status of the employee is based on the employee’s primary duty for the University across both positions as described in the previous question. (Rev 8/25/16)
- Q: If an employee has multiple jobs across campus or across UW System, how will we monitor the other appointment to ensure the employee’s FLSA status is accurate?
- A: If an employee has multiple jobs, the division is responsible for evaluating the Multiple Jobs report monthly to determine any impacts of data changes made on job records to ensure the employee’s total salary meets the salary threshold.

Additionally, divisions are responsible for reviewing the Exception Compliance report delivered to Cypress immediately following a confirmed payroll to ensure the employees total earnings across their multiple jobs are meeting the FLSA salary threshold. (Rev 10/18/16)

Q: How often should the division evaluate employees' total compensation including multiple jobs, fluctuations in FTE, changes in status, etc.?

A: An Exception Compliance Report is being developed by the Service Center and will be available in Cypress. This report is intended to track employees potentially eligible for a change in FLSA Status from exempt to non-exempt, accounting for exceptions due to job duties (such as teaching) that are legal exceptions to the rule. This report runs immediately after a confirmed payroll and should be monitored every payroll and appropriate changes made as necessary. (Rev 10/18/16)

## COMP TIME

Q: If Post-Degree Training positions are eligible for comp time and we are not able to track comp time in HRS for these employees, how should this be captured so the 80-hour limit is able to be enforced and employees know how much time they have to use?

A: *Pending. Need to convene a group to come up with potential solutions.* (Rev 8/23/16)

Q: If Post-Degree Training positions use the comp time they have earned, how do we indicate this in HRS since it will not be hours worked?

A: *Pending. Need to convene a group to come up with potential solutions.* (Rev 8/23/16)

Q: How is Comp Time tracked and paid out for academic staff and for University staff and is there a difference? Is comp time for academic staff tracked and paid out on a fiscal year basis and comp time for university staff tracked and paid out on a calendar year basis?

A: *Pending; the proposed revisions to the Overtime Policy were silent on this issue* (Rev 8/23/16)

Q: Are Divisions required to offer compensatory time as an alternative to paid overtime?

A: No. Comp time is not required – it is optional. A division, school or college may decide it will not offer comp time. (Rev 8/31/16). **For the School of Education, similar to what is available for University Staff, comp time will be an option for non-exempt Academic Staff/Limited appointees; approval must be requested and granted prior to the comp time generated, like overtime.**

Q: If comp time is earned and the employee changes from non-exempt to exempt (or takes a new position at UW-Madison), does the comp time have to be paid out?

A: When an employee changes from non-exempt to exempt, any earned comp time must be paid out by the department. When an employee takes a new position at UW-Madison, the old department must pay out any earned comp time unless the new department has agreed to allow the employee to carry it over into the new position. (Rev 8/31/16)

## APPOINTMENT LETTERS FOR NEW HIRES

Q: When should we start notifying new hires that they may be affected by this change? If we are making a hire now, for a start date later this fall, should we notify the employee of this possibility?

A: Updated template letters will be posted to the SoE Business Office Human Resources website by 11/5/2016.

## TUITION REMISSION – PA’S (PROGRAM/PROJECT ASSISTANTS)

- Q: PA’s must meet a certain level of earnings over the course of the semester in order to get tuition remission. Before the salary threshold changes, these employees were paid a set salary and there was no danger of them not meeting the earnings requirement. Now that these employees will be paid hourly, we run the risk of these employees not meeting the earnings requirement and therefore putting their remission in danger. How will this be monitored?
- A: A report is being generated by the Bursar’s office that will be available monthly for HR Reps and Payroll offices. The report will include all earnings so far in tuition remission eligible positions across UW System. HR Reps and/or Payroll Staff can use these reports to follow up with employees to ensure they are on track to meet their earnings requirement. (Rev 9/27/16)

## CHILDCARE PROVIDERS

- Q: Infant care is usually seen as non-exempt work. What distinguishes whether a caregiver or provider can be considered covered under the teaching exemption (which implies “imparting knowledge”) – the age of the child, the level of development of the child, or what knowledge the care giver is imparting to the child? Specifically, please clarify for infants, toddlers and 4K.
- A: *Pending - “Childcare Workers and FLSA” is being created/reviewed to address this* (Rev 9/8/16)

## OVERTIME POLICY

- Q: Will the “University Staff Overtime Policy” be revised to reflect the fact that additional employee groups other than University staff are now non-exempt and eligible for overtime?
- A: Yes, the policy has been renamed “Overtime Policy” and has been posted online with revisions to FLSA compliance. (Rev 10/14/16)
- Q: Will Overtime need to be approved?
- A: Yes, School of Education currently has a policy and expectation that any overtime is requested and approved prior to OT being generated. Please see the online request form:  
[https://uwmadison.co1.qualtrics.com/jfe/form/SV\\_6XqS4BiaRD05OqF](https://uwmadison.co1.qualtrics.com/jfe/form/SV_6XqS4BiaRD05OqF)

## DISCIPLINE/ENDING APPOINTMENTS

- Q: How will discipline be affected (if at all) if the employee is changing from academic staff exempt, to academic staff non-exempt?
- A: Discipline of academic staff employees will not change based on the exempt or non-exempt nature of the employee’s position. Academic Staff members are governed by Academic Staff Policies and Procedures (ASPP), regardless of whether they are exempt or non-exempt. (Revised 9/6/16)
- Q: If a post-graduate appointment needs to be reduced in FTE (or ended), what is best practice?
- A: Post-graduate trainee appointments are typically “at-will” in nature and typically terminal in nature. There should be a legitimate non-discriminatory business reason for ending or reducing a trainee’s appointment. Post-graduate trainees should receive appointment letters, and the end date should be identified in the appointment letter. If no appointment letter is provided, if no end date is identified, or if an appointment is ended prior to the end date identified in the appointment letter, a term letter should be provided to the trainee indicating that the appointment has been ended. (Rev 9/6/16)

## ON-CALL AND DIFFERENTIAL PAY

Q: Are non-exempt academic staff eligible for differential pay?

A: No, non-exempt academic staff will not be eligible for differential pay. (Rev 9/27/16)

Q: Are non-exempt academic staff eligible for compensation for being on-call?

A: Yes, non-exempt academic staff are eligible and must be compensated for having to be on-call as defined by the Department of Labor (DOL). The DOL defines On-Call as:

*“An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message where they can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.”* (Per [DOL Fact Sheet #22](#)) (Rev 9/27/16)

## POSTDOCTORAL EMPLOYEES

Q: What is the difference between a “postdoctoral” employee and a “post-degree training” employee?

A: Post-degree training employees (formerly called Employees-in-Training or EIT's), are a larger more general group of employees working here after bachelor's or master's degree. Postdoctoral employees (postdoc) are a smaller subset within that group – referring only to those working here after a PhD/doctorate degree (includes Postdoctoral Fellow X10NN, and Postdoctoral Trainee X30NN, and Research Associates X01NN). (Rev 10/14/16)

## APPOINTMENT CHANGES/FLUCTUATIONS

Q: What happens when an employee has a change in their appointment (FTE increase or decrease, change in salary, leave of absence, etc.) that changes their FLSA status from Exempt to Nonexempt or from Nonexempt to Exempt?

A: Changing payroll frequency requires additional work and coordination on the part of many people including HRS Coordinators and Payroll Staff, HR staff, and employees. To minimize the number of changes in payroll cycles, these guidelines have been established:

- When an employee changes to Nonexempt, the employee will **change from the monthly payroll to the biweekly payroll** as soon as possible so all hours can be correctly recorded in each work week.
- When an employee changes to Exempt, the employee will not immediately change payroll – instead, the employee will **remain on the biweekly payroll** until the end of the fiscal year. At the beginning of each new fiscal year, all employees who have changed to exempt during that fiscal year will need to change to the monthly payroll. **This is not an option – the move to a monthly payroll is required.** (Rev 10/14/16)

Q: If an employee has a temporary reduction in their FTE that will reduce their earnings so they are below the threshold, what should be done?

A: When the division processes an employee change (examples: change in FTE or change in status such as LOA or termination of an appointment) – *regardless of whether permanent or temporary* -- the division is responsible for evaluating the employee's overall employment, and taking action to ensure compliance. If the earnings will be below the threshold because of the change, and the employee is not otherwise exempted under FLSA, the employee must be moved to nonexempt status. (Rev 10/18/16)