



Fair Labor Standards Act– Joint Employment

Joint employment under the Fair Labor Standards Act (FLSA) exists when an employee is employed by two (or more) employers such that the employers are responsible, both individually and jointly, to the employee for compliance including paying overtime compensation for all hours worked over 40 during the workweek. The FLSA states:

“(b) Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees; or

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer. [<https://www.law.cornell.edu/cfr/text/29/791.2>]

The DOL Salary Threshold applies in Joint Employment situations which means the total salary between the two employers (both of whom are eligible for compliance with the FLSA) must be considered. To establish the total salary, we must know how much the other employer is paying our employee. Some employers may be reluctant to provide salary information. Without the additional salary information to establish whether the employee's joint employment salary meets the threshold, the employee must be treated as nonexempt.

Possible examples of Joint Employment at UW-Madison:

1. **Foreign Government:** Employee receives a paycheck from UW-Madison and some form of salary payment from a foreign government (not paid through UW-Madison payroll).

If the salary payment or funding is being received as a direct result of the work being performed for us at UW-Madison and the foreign government is receiving a direct benefit from the work being performed, a joint employment relationship may exist and the salary payments received from both institutions can be considered for compliance with the DOL FLSA Salary Threshold.

2. **Outside Organization:** Employees receives a paycheck from UW-Madison and another paycheck from an outside organization (ex. Morgridge Institute for Research, UW Medical Foundation).

If the work being performed by the employee simultaneously benefits both employers at the same time, a joint employment relationship may exist and the salary payments received from both institutions can be considered for compliance with the DOL FLSA Salary Threshold.



3. **Higher Education Institution or Government Agency:** Employee is employed by UW-Madison and another institution of higher education (outside UW System) or a government agency.

If the employee is working on a research program that is of mutual interest and benefit to UW-Madison and another University or government agency, a joint employment relationship may exist and the salary payments received from both institutions can be considered for compliance with the DOL FLSA Salary Threshold.

4. **Working Abroad:** Employee is working abroad (not in a territory or possession of the United States) and receiving salary from UW-Madison

The FLSA applies to employment within any state of the United States, the District of Columbia or any territory or possession of the United States. An employee working in a foreign country is not covered by the FLSA even though the employer has its main office in the United States, so the individual is not subject to the threshold. However, if an employee works in the United States, the District of Columbia or any territory or possession of the United States for any portion of the workweek, all hours worked over 40 must be compensated regardless of whether that work occurred in the United States or in a foreign country.

References:

[U.S. Department of Labor Fact Sheet #35](#)

[U.S. Department of Labor FLSA Advisor](#)

[U.S. Department of Labor Administrator's Interpretation No. 2016-1](#)

