

IOWA STATE UNIVERSITY
University Human Resources



Guide for FLSA and Timekeeping Responsibilities

This guide provides an overview of the Fair Labor Standards Act (FLSA) and its requirements, including how it relates to timekeeping responsibilities for employees, managers, and timekeepers. In addition, it outlines timekeeping standards, practices, and tools used at Iowa State University to assure compliance with the legal standards set forth in the FLSA.

The University is committed to ensuring that each employee is paid in accordance with federal regulations for hours worked. Each member of the University community plays an important role in ensuring this goal is achieved.

Overview

What Is the Fair Labor Standards Act (FLSA)?

The FLSA is a federal law originally enacted in 1938 during a period of economic depression to address the lack of federal employment standards. The U.S. Department of Labor (DOL) administers the FLSA, which addresses a variety of employment areas, including:

- Establishment of the federal minimum wage
- Restrictions on child labor
- Creation of the forty-hour workweek
- Requirements for recordkeeping

FLSA Employment Categories

The FLSA categorizes all workers as either covered by the law and, therefore, subject to FLSA minimum wage and overtime provisions (“nonexempt”), or, exempted from the law and, therefore, not subject to the FLSA minimum wage and overtime provisions (“exempt”).

1. Nonexempt employees share the following characteristics:

- Are considered “not exempt” from the minimum wage and overtime provisions of the FLSA;
- For time worked over 40 hours within a workweek, nonexempt employees:
 - Are paid overtime (time and a half pay); or
 - Earn compensatory time off at a rate of time and a half (compensatory time is described in greater detail below).

2. Exempt employees share the following characteristics:

- Are considered “exempt” from the minimum wage and overtime provisions of the FLSA;
- Exempt staff are not eligible for overtime compensation for hours worked in excess of 40 per week. Consequently, exempt staff have greater flexibility for scheduling work. Scheduling of exempt staff should follow the principles outlined below:
 - Full-time exempt staff are expected to average at least 40 hours of work per week and may need to work more than 40 hours per week to fulfill their position responsibilities;
 - Time worked in excess of 40 hours per week will not result in overtime pay or accumulation of compensatory time off;
 - During unusual situations, a unit may balance a period of heavy work with a period of reduced work, without regard to the number of hours worked in any particular week;
- Are paid an annualized amount, or salary, for performing the whole job, not for every hour worked; and
- Are not required to track or record time.

The Workweek and Overtime

A workweek is defined as 168 consecutive hours used by an employer for payroll purposes. Iowa State University defines the workweek as beginning at 12:01 am on Sunday and ending the following Saturday at 12:00 midnight per the [Work Week Policy](#).

- The 40-hour workweek is the basis for calculating regular time and overtime for nonexempt employees
- Nonexempt employees cannot average or transfer hours across workweeks
 - Each workweek stands alone when reporting hours (i.e. overtime hours must be recorded in the same week they are worked)
- When addressing part-time employees, the Full-Time Equivalent (FTE) determines the employee's regular work hours in a workweek
 - Part-time employees are eligible for overtime compensation following their 40th hour worked within the workweek

What Is Compensable Time? (Work Time)

Because nonexempt employees must be compensated for every hour worked, it is important to understand what is considered compensable time. The FLSA defines compensable time as time an employee is required or permitted to work for the employer.

Overtime and Compensatory Time (Comp Time)

Compensation for Overtime Worked

Overtime is defined as working more than 40 hours within the University's defined workweek. The University has two options for compensating nonexempt employees who work overtime: overtime pay or compensatory time.

1. **Overtime pay** is compensation in the form of dollar payments in the employee's next regularly scheduled paycheck
2. **Compensatory (comp) time** is compensation in the form of paid time off hours that are accrued for future use within the fiscal year

There are two methods for calculating rate of pay:

1. Straight/Regular rate = 1.0 x hourly rate
2. Time and one-half = 1.5 x hourly rate

Comp time hours are accrued at a rate of time and one-half, and paid at the regular rate of pay. For example, if an employee works four (4) hours of overtime in one workweek, they would earn six (6) hours of comp time. When the employee chooses to take those six hours of earned comp time as comp time off, it would be paid at straight time.

The FLSA requires that nonexempt employees (at any FTE level) who work over 40 hours in a workweek must be compensated for each hour worked over 40 with either overtime pay or comp time at a time and one-half rate. For example:

Monday	Tuesday	Wednesday	Thursday	Friday	Compensable Hours
10	8	7	9	8	40 hours straight time 2 hours overtime

Exception time is defined as hours above 40.0 for full time employees or any hours above a fractional employee's FTE. Example of the latter would be a ½ time employee working 24.0 hours in a week would have 4.0 hours exception time. Exception time could be overtime if the worked hours took the employee over 40.0 in a workweek, or straight time as in

the example above of the ½ time employee working 24.0 hours. In addition, if it was a holiday that took the employee over 40.0 hours, those exception time hours would be at straight pay since it was not hours worked that took them above the 40.0. If an employee earns comp time in lieu of overtime pay, the overtime pay (not the straight time exception pay) could be converted to comp time.

The use of paid or unpaid time including but not limited to holiday pay, sick, or vacation time off is not considered work time, and is excluded from the weekly total of time worked for purposes of calculating overtime. A supervisor may change an employee's work schedule, or in some cases time off usage, during the workweek to avoid the potential of overtime.

For example: A 1.0 FTE nonexempt employee who normally works five (5) eight-hour days, works 38 hours Monday through Thursday. That same week the employee had prescheduled vacation leave on Friday. In this case the supervisor can require the employee to take only two (2) hours of vacation time off (or comp time if applicable) on Friday to avoid pay in excess of 40 hours in the workweek.

Monday	Tuesday	Wednesday	Thursday	Friday	Compensable Hours
10	10	10	8	2 Vacation	40 hours straight time

Authorization to Work Overtime

Prior to an employee working overtime, they are required to receive authorization from their supervisor. The employee should be prepared to outline why the overtime is necessary and unavoidable. Supervisors have the discretion to establish overtime approval processes and may decline an employee's request to work overtime (or hours greater than their FTE for part-time employees).

Overtime Equalization

Overtime equalization is not required. Supervisors may distribute overtime based on their business needs and appropriate business rationale. Further guidance is offered in the [Overtime Distribution – Best Practice](#) document.

Note: Even if overtime is not approved in advance by a supervisor, the FLSA requires that the hours be compensated if they were worked.

Managing Overtime and Compensatory Time

Managers are responsible for balancing workload, staffing levels, and budget. Therefore, management has the discretion to determine if overtime will be allowed and the responsibility to determine whether additional hours will be compensated through overtime pay or comp time. The supervisor may change the work schedule during the workweek to avoid the potential of overtime. Through discussions with their managers, employees are required to understand how they will be compensated before working overtime hours.

The employee will earn overtime pay unless an employee is assigned to accrue comp time. If the employee is assigned to accrue comp time, the employee will earn comp time for the entire month. The employee cannot split compensation for overtime worked between overtime pay and comp time within the same month. An employee may accrue up to 160 hours of compensatory time.

Compensatory Time Payout

Comp time is paid time off or in some cases, pay entitled to the employee. If an employee exceeds 160 hours of comp time in their comp time bank, the additional hours of overtime will automatically be paid out on the employee's next regularly scheduled paycheck.

The University will pay out annually, any comp time that is unused as of June 30. Units should work with the employee to

ensure comp time is used throughout the year to avoid the required payout on June 30. Payment for comp time will be paid at the employee's regular rate on June 30.

Comp time will be paid out upon separation from the University. If an employee transfers or changes positions at the University, comp time will generally be paid out by the department in which it was incurred. In some situations, there may be a supported business reason for the comp time to carry over from the old position to the new one. Such situations will be evaluated as needed. Decisions to not pay out the comp time when there is a change in positions must be done in consultation with University Human Resources.

If an employee with accrued comp time is promoted or reclassified into an exempt position (i.e., they are no longer eligible to accrue comp time), comp time will be paid out at the time of the reclassification.

Comp Time Usage

Comp time must be earned before it is taken. Comp time earned must be taken prior to taking vacation leave unless the employee has reached their maximum accrual in their vacation bank. Once earned, comp time may be used at the discretion of the employee, subject to supervisory approval. A supervisor may not deny the request to use comp time unless it would unduly disrupt University operations.

In general, supervisors should set a reasonable request deadline, just like the use of vacation leave, for comp time usage. For example, an employee should request the use of comp time at least 48 hours in advance of the date they wish to take off. Before a department may deny the use of comp time for purposes of undue hardship, the supervisor must consult with University Human Resources Employee and Labor Relations. A supervisor may require an employee to use compensatory time at their discretion.

Timekeeping Standards

Timekeeping Standards

There are several reasons why all members of the University community should care about accurate timekeeping:

- Paying employees accurately and timely
- Providing necessary information for financial and accounting records
- Meeting timekeeping (effort reporting) requirements for grants/contracts
- Complying with federal and state laws
- Fundamental fairness to nonexempt employees

Overtime requirements set forth in the FLSA represent binding federal law. Employees, supervisors, and the University are required to comply with the FLSA's overtime regulations, including payment for overtime that has been worked. At no time may any individual at the University create or authorize exceptions to the time recording standards without review and approval from University Human Resources and the Office of University Counsel. For example, a supervisor cannot waive an employee's requirement to complete a timesheet. Any agreements previously in place, whether written or verbal, are superseded by the updates to University procedures. As such, any prior agreement is no longer in force.

Role	Key Responsibilities
Nonexempt Employee	<ul style="list-style-type: none"> • Record hours worked by checking in and out of Workday • Certify and submit timesheet weekly to manager in Workday • Request approval from supervisor to work OT <u>in advance</u> of working overtime

Manager	<ul style="list-style-type: none"> • Communicate work load and OT expectations to employee • Respond to requests by the employee to work OT • Monitor hours worked throughout the workweek by employees • Address worktime, workload, or OT issues promptly • Review and approve timesheets in Workday in order to meet all payroll deadlines for employees to receive timely and accurate pay
Timekeeper (Local Support Role for the Time Application within Workday)	<ul style="list-style-type: none"> • Work with managers/nonexempt employees to edit unmatched time clock events or inaccurate time punches • Audit unentered, unsubmitted, and unapproved time with nonexempt employees and managers • Provide support and/or approve time related tasks when a manager is unavailable to do so • Maintain the official records for compliance with the University's standard and record retention schedule

Employee Standards

It is a nonexempt employee's responsibility to ensure they accurately record and submit all time worked and time off on their timesheet within Workday.

Manager Standards

Management must pre-authorize overtime worked and should establish overtime approval processes and clearly communicate those to nonexempt employees. If a nonexempt employee does not seek pre-approval and works unauthorized overtime, they must still be compensated. If a nonexempt employee continues to work overtime without supervisor approval, then the supervisor may take disciplinary action with the employee; however, withholding pay for the overtime worked is not permissible.

Overtime can be required as business necessitates. Supervisors are encouraged to give as much notice as possible to employees of their requirement to work overtime, but such notice is not mandatory.

No notice is required for changing an employee's schedule whether permanently or temporarily. A supervisor may change an employee's work schedule during the workweek to avoid the potential of overtime. For example, an employee who normally works five (5) eight-hour days:

For example: An employee works 10 hours each day on Monday, Tuesday, and Wednesday to meet a project deadline that is due Thursday morning. To avoid overtime, the supervisor may require the employee to work less than eight (8) hours on Thursday and/or Friday, so that their total hours for the week does not exceed 40.

Monday	Tuesday	Wednesday	Thursday	Friday	Compensable Hours
10	10	10	8	2	40 hours straight time

A manager must verify all hours worked for each nonexempt employee for each pay period. They must do so by verifying their employee's recorded hours are accurate within Workday and approve the employee's timesheet before the payroll cutoff date.

A supervisor may not unilaterally adjust an employee's time record. If there are discrepancies found, the supervisor should discuss those with the employee and accurately record the hours worked on the employee's timesheet.

Timekeeper Standards

If a timekeeper notices an error or discrepancy in a timesheet, they should consult with the nonexempt employee or manager. If they suspect a concern with a timekeeping practice, they are encouraged to report the concern to University Human Resources.

Compensable Time

Hours Worked and Leave

Hours worked for the calculation of overtime do not include sick, vacation, comp time and holidays. Employees cannot request time off that would be in excess of their current FTE. For example, an employee with a FTE of 20 hours per week cannot work 16 hours between Monday and Thursday and then request or record 8 hours of vacation on Friday, even if that 8 hours was pre-approved.

If an employee does not work the required hours of their FTE, they are required to take compensatory time (if applicable) or time off (vacation) so that their FTE for the week will be whole. Should vacation time off not be available, unpaid time off should be utilized and tracked on the employee's timesheet. Furthermore, supervisors need not approve/deny vacation requests based on seniority and within specified timeframes. Supervisors should be fair and consistent in approving/denying requests and base decisions on business needs as appropriate.

University Holidays

When a holiday falls on a regularly scheduled work day for full time (1.0 FTE) employees, and the employee is not required to work the holiday, the holiday pay is equal to what the employee would regularly earn on that day, depending on their work schedule.

Holiday pay cannot be reduced in order to maintain a 40-hour workweek, rather, full time employees must receive at least eight (8) hours of holiday pay. The hours worked will not count toward the calculation of overtime for the week. Merit employees required to work on University holidays will be paid at the premium rate of time and one-half.

For example: A 1.0 FTE nonexempt employee who normally works five (5) eight-hour days, works 38 hours during a week where a holiday falls and the employee did not work the holiday. The employee would earn 38 hours of straight pay and eight (8) hours of straight holiday pay. Since the holiday hours are not considered hours worked, the employee would not receive overtime compensation that week, however they would receive six (6) hours of additional pay at straight time, exceeding 40 hours in that workweek.

Monday	Tuesday	Wednesday	Thursday	Friday	Compensable Hours
8 Holiday	9	9	11	9	46 hours straight time

Part time employees (those working less than 40 hours per week) will receive holiday pay according to their fraction of employment (e.g., 3/5, etc.), regardless of their work schedule or day in which the holiday falls.

For example: A .5 FTE nonexempt employee who normally works eight (8) hours on Monday and Tuesday and four (4) hours on Wednesday, will receive four (4) hours of holiday pay regardless of which day the holiday falls during the workweek. If the holiday falls on a Monday or Tuesday, the employee will be required to either work four (4) additional hours or take four (4) hours of vacation in order to maintain 20 hours of pay for the workweek. If, in this example, the holiday falls on a Friday, the employee would be permitted to reduce their work hours by four (4) on a day they are scheduled to work, in order to maintain their .5 FTE status.

Monday	Tuesday	Wednesday	Thursday	Friday	Compensable Hours
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4 Holiday 4 Vacation	8	4	n/a	n/a	20 hours straight time
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Or

Monday	Tuesday	Wednesday	Thursday	Friday	Compensable Hours
4	8	4	n/a	4 Holiday	20 hours straight time

Meal and Rest Periods

The University encourages employees to take daily meal breaks and rest periods as necessary. Employees should work with their supervisor to determine the appropriate scheduling of meal and rest periods to meet the needs of the employee and their department.

Employees should be fully relieved from work during meal periods and are expected to check out when they stop working and check back in when they resume working after their meal break has finished. Under the FLSA, bona fide (i.e., uninterrupted) meal periods of 30 minutes or more are unpaid and should not be included in time reporting or in the calculation of overtime hours worked. An employee who performs work of any type while on their meal period must be compensated as the employee has not been completely relieved from duty. Most employees typically have a 30 or 60-minute unpaid meal period built into their schedule for each eight (8) hour workday. Previous practice of 40 or 70-minute lunch hours are no longer required.

Rest periods are considered paid time, and therefore are included in determining if overtime has been worked, and should be included when reporting time. A supervisor has the authority, but is not required, to establish and permit paid rest periods for nonexempt employees of up to 15 minutes for each four (4) hour work period.

Call Back Time

Merit employees who are called back to work after completing their regular work schedule will be paid for a minimum period of three hours, regardless of the time worked. Merit employees who are called and work in excess of three hours will be paid the actual time worked. Should a supervisor need to call back employees, they should be prepared to assign no less than three hours of work to maximize the productivity and costs associated with call back time. An employee is not considered in Call Back Status if the request to work additional hours is contiguous to their shift or less than 30 minutes from when their scheduled shift ended and they clocked out.

On-Call Time

On-call is when an employee is required to remain available for work, whether on or off University premises, such that they cannot use the time effectively for their own purposes. In such situations, a supervisor is required to notify staff in advance of their on-call status. Whether an employee is considered working, and therefore compensated while on-call, is situational:

- An employee who is required to remain on-call on University property is considered working and must be compensated for the entire duration they are on-call
- An employee who is required to remain on-call off University property and who must leave a message where they can be reached for future work within a reasonable time period but can otherwise engage in personal activities, is not working and need not be compensated, unless they are contacted and required to perform work. Then, they are only compensated for the time actually spent working (not the wait time)
- An employee who is required to remain on-call off University property and must be prepared to provide services immediately upon notification is considered working and must be compensated for the entire duration they are on-call

Wash Up Time

Departments/units may need to establish eligible merit positions where cleaning or showering is required for sanitary reasons or decontamination. When units designate a merit position as being eligible for wash up time, the wash up time is compensated as hours worked.

Shift Differential

All merit employees will be paid a shift differential for any shift of which four or more hours occur between 6pm and midnight and shift differential for any shift of which four or more hours occur between midnight and 6am. This rate is set by the Regents Merit System Director as outlined in the Regents Merit System Rules.

Lectures, Meetings, and Training Programs

In general, meetings, lectures, and training are included as work hours and should be paid. They may be excluded only when all of the following criteria are met:

- The event is outside normal hours;
- The event is voluntary;
- The event is not job related; and
- No other work is concurrently performed.

An employee should consult with their supervisor *prior* to attending elective events to assure attendance will not be unduly disruptive to the department and also to avoid any confusion over whether attending the specific event is considered compensable time. Employees may still be able to attend but may be required to take leave for the time they are out of the office.

Remote Access

Employees should talk to their supervisor about their department's processes and expectations of after-hours work, including checking and responding to emails and/or phone calls. Time spent on work email or phone calls outside of normal work hours or while on lunch breaks on a regular basis is considered time worked and should be recorded. If a nonexempt employee checks and/or responds to emails or calls very occasionally or infrequently, and that period of time is less than six (6) minutes, this time is considered "de-minimis" (i.e., insignificant) and does not need to be recorded.

Travel Time

The principles which apply in determining whether time spent in travel is compensable time depends upon the kind of travel involved. Generally speaking, excluding normal commuting time, employees should be compensated for all travel unless it is:

- Overnight;
- Outside of regular work hours; or
- On a common carrier or the employee is a passenger.

Volunteer Time

There are legitimate opportunities for employees to volunteer for civic, charitable, or humanitarian events at the University. For example, when a department hosts a charity fundraising pancake breakfast and employees donate their time to support the event. True volunteer work is unpaid time and therefore should not be recorded.

True volunteer work:

- Must be performed for civic, charitable, or humanitarian reasons;
- There can be no promise, expectations, or receipt of compensation; and

- The person must offer services freely and without any (direct or indirect) coercion.

An employee may not volunteer their time to perform the same or similar duties that they perform as an employee. For example, it would not be appropriate to ask the department webmaster to mock up a website for a fundraising event without compensating the employee for this work.

University Service

University service is defined as individual effort provided to the University that may fall outside of the normal job responsibilities. Examples of University service are service on search committees outside of your home department or service on institutional committees, such as P&S Council. University service is considered paid time and therefore should be recorded. An employee must discuss such activities with their supervisor before agreeing to a commitment outside of his/her normal scope of work, and such activities should not interfere with an employee's job performance or create an undue disruption to the department.

Professional & Scientific Council

Regardless of an employee's exemption, they may be elected to Professional and Scientific Council (P&S Council). An employee and supervisor should discuss this commitment prior to an employee running for Council. The chart below shows generally how many hours to expect a councilor to be engaged in council duties.

Councilor Commitment Type	Anticipated Hours of Commitment Per Month	% of Time
Councilor Commitment (Non-executive committee member)	4-8 hours (3-4 hours week of council meeting)	4.60%
Councilor Commitment (Executive Committee)	10-14 hours (4-5 hours week of council meeting)	8.07%
President-elect	15 hours per month	8.65%
President	25 hours per month	14.42%

Table reflects September 2016 information

Nonexempt employees should work with their supervisor to plan for council duties within their 40-hour workweek whenever possible. The time an employee is performing work for Council is considered paid time.

Lactation Breaks

The Affordable Care Act amended the FLSA adding a legal requirement for employers to provide reasonable break time for an employee to express breast milk:

- Breaks permitted when the employee has a need to express the milk
- For one year after the child's birth

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. At ISU, we have generally considered breaks for new mothers to express milk to be paid breaks.

Other Information

Consequences of Failure to Comply with FLSA Regulations – DOL Audits

The DOL may choose to audit an employer's payroll records for the following reasons:

- It has received complaints by current or former employees;

- It suspects or has determined that certain industries (grocery stores, manufacturers, school districts, etc.) may have wide-spread irregularities; or
- The employer has been selected randomly.

FLSA violations can seriously impact the financial health of the employer, as well as its reputation among its employees and the general public. Penalties typically take the form of:

- Back pay and interest – Payments to the employee for any time that was not accurately reported as time worked, plus any applicable back overtime compensation and interest. These inquiries can go back a full 2 years.
- Legal fees – Employer and plaintiff attorney fees, witness fees, etc.
- Civil penalties – Fines up to \$1,000 per violation (i.e., each workweek's occurrence for each employee).
- Criminal penalties – Fines up to \$10,000 and/or six months imprisonment for willful, repeated violations.
- Personal liability for managers/supervisors - Federal lawsuits against an individual manager/supervisor for willful/repeated violations.

All University employees are expected to work together to assure compliance with the FLSA. Any employee with questions or concerns about how time is being calculated, tracked, recorded, or paid should promptly contact University Human Resources Employee and Labor Relations Office.