What is the Fair Labor Standards Act (FLSA)?

The Fair Labor Standards Act is a federal law that establishes the federal minimum wage, overtime pay, recordkeeping, and child labor standards. This law applies to employees that work in the private sector, or in federal, state, or local governments. The Wage and Hour Division of the U.S. Department of Labor administers and enforces the FLSA. Specific to exemption status, the FLSA provides parameters by which employees would be considered overtime eligible or exempt from overtime eligibility.

What are the new changes to the FLSA?

As outlined in the FLSA, exemption from overtime is determined by utilizing a two-pronged test. The first test is based on duties and the second test is based on salary. The U.S. Department of Labor did not change the duties test as part of its recent updates to the FLSA. However, the salary test requirements have been updated in the law.

Historically, if an employee’s salary was greater than $455 per week or $23,660 annually and the duties test was met, the employee was considered exempt. Effective Jan. 1, 2020, the salary requirement will increase to $684 per week or $35,568 annually.

When will the changes to the FLSA become effective?

The law requires eligible employers to implement the new FLSA salary requirements on Jan. 1, 2020.

What do the terms exempt vs. non-exempt mean?

These terms relate to the overtime provisions of the FLSA. If a job is FLSA exempt, that means it is exempt from the overtime provisions of the FLSA no matter how many hours are worked. If a job is non-exempt, it is eligible for overtime pay for any hours worked over 40 hours in the workweek.

Can employees waive their right to be non-exempt (hourly)?

No, the classification is a legal designation that cannot be waived. A non-exempt employee also cannot waive their right to receive overtime pay for any hours worked over 40 in a workweek. Any overtime worked needs to be compensated either in the form of cash payment or compensatory time.
What is overtime?

Overtime is required by the FLSA for non-exempt workers for all hours worked in excess of 40 hours in a workweek. Overtime is paid at one and one-half times the non-exempt employee’s regular rate of pay. Part-time employees who work more than their scheduled weekly hours, but less than 40 hours in the workweek, will receive their regular rate of pay. Non-exempt employees must be paid for all hours worked.

Can part-time employees be classified as exempt?

Yes, as long as the employee is classified in a job that is exempt, and is paid at least $684/week, per the university’s practice the employee can be considered exempt under FLSA, regardless of FTE status or number of hours worked.

Can part-time employees’ salaries be prorated in order to meet the salary minimum?

No. The salary level test states that employees must make at least $684/week. The minimum threshold establishes a baseline that must be met, regardless of FTE status or the number of hours worked per week. For example, if an employee makes $22,000 and is a 50% FTE, they will be considered non-exempt even though their full time salary would be $44,000.

If a position changes from an exempt position to a non-exempt position, is it considered a demotion?

No. Any change from an exempt to non-exempt position will be made to comply with the law and has nothing to do with the value of an employee’s position at the University. The change from an exempt position to a non-exempt position is merely a change in how the pay is administered.

Will P&S employees moving to non-exempt status be classified in the Merit System?

No. P&S employees moving to non-exempt status will remain classified as P&S employees. They will simply now be considered eligible for overtime per the provisions of the FLSA. Furthermore, they will continue to be paid on a monthly basis.