



# FAIR LABOR STANDARDS ACT (FLSA)

OVERTIME PAY REQUIREMENTS OF THE FLSA

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# HISTORY OF THE FLSA

The Fair Labor Standards Act (FLSA) is a Federal Law, which was enacted in 1938. The overtime provision was not intended primarily to give the employee more money. Rather, it was to be a penalty, intended to urge the employer to hire more people to do the job rather than working fewer people longer hours.



# **THE FLSA IS REGULATED BY**

The U.S. Department of Labor, Wage  
and Hour Division.



## FLSA Regulates

- Minimum Wage
- Record Keeping
- Posting Requirement
- Child Labor
- Overtime Compensation

# Specifics

- **Minimum Wage:** As of July 24, 2007, minimum wage is \$5.85 per hour; July 24, 2008, \$6.55 and July 24, 2009, \$7.25, respectively.
- **Record Keeping:** The FLSA requires employers to keep certain records for three years.
- **Posting Requirement:** The FLSA has a posting requirement (29 CFR 516.4) which requires us to post and keep posted in a place conspicuous to all employees a notice explaining the Act.
- **Child labor restrictions:** The age requirements for minors to work and the restrictions and/or conditions that must be in place (schedule/hours/weekends/summer)

# OVERTIME

- Overtime Compensation: The Act mandates that specific employees are entitled to overtime pay. This is true for all employees with the exception of those which are exempt under one or more of the exemptions provided for in the regulations.

*The overtime provision of the FLSA is the major focus of our interest here.*



## EXCEPTIONS TO THE OVERTIME PROVISIONS OF THE FLSA

- The FLSA regulates overtime compensation for employees in most positions but there are some exceptions. The regulations describe positions, which are exempt from the overtime provisions - this is called **Exempt** status.
- Positions, which are not exempted under the provisions of the regulations are covered by the overtime provisions and are referred to as **Non-exempt**.



## DEFINITION OF EXEMPT STATUS

**EXEMPT:** The FLSA guidelines offer several categories under which a position can be considered *Exempt* and provide guidance to managers identifying those positions which fall into the Exempt category:

The Executive Exemption

The Administrative Exemption

The Professional Exemption

Certain Computer Employees

Because the available exemptions are narrowly defined under the FLSA, a manager should work diligently with HR to define the work and responsibilities of the position.

# EXEMPTION DETERMINATION

The FLSA rules in determining exempt status must be followed:

- The classification must be based on a determination of the duties actually performed by the employee - not the job title, position description, or pay grade assigned. [with the exception of non-managerial blue collar workers and employees who make an annual salary of **\$23,660 or less annually, or \$455 or less weekly.**]
- Supervisory responsibilities
- Decision-making authority
- Executive exemption for pay over \$100k (automatic)
- The classification determination is made by HR/Compensation Analyst.
- The classification determination must be reevaluated whenever duties change on a permanent basis.

## NON-EXEMPT STATUS

**NON-EXEMPT:** The FLSA guidelines are very specific regarding the FLSA status of certain positions.

The following positions will always be Non-exempt:

- Non-managerial Blue Collar Workers
- Including Administrative Assistants, Coordinators, Research Asst., Budget Specialist (w/no supervisory role)
- Employees who make an annual salary of **\$23,660 or less annually, or \$455 or less weekly**
- Any other employee not determined to be exempt under the Executive, Administrative, Professional or Computer exemptions.

## Quick Review

- EXEMPT: The FLSA *does not regulate* compensation for overtime hours worked by employees in positions designated Exempt.
- NON-EXEMPT: The FLSA *regulates* compensation for overtime hours worked by employees in positions designated Non-Exempt.
- Become familiar with the classifications of your administrative personnel and staff.

## DEFINITION OF AN OVERTIME HOUR

*Within the scope of the FLSA, an overtime hour is any hour over 40 hours actually worked in a workweek. Leave taken and holiday hours do not count as hours actually worked.*



# COMPENSATION FOR OVERTIME HOURS

Overtime hours worked by Non-Exempt employees under the FLSA mandates:

- any hour actually worked
- by a Non-Exempt employee
- in excess of 40 hours in a workweek, must be compensated with time and one-half pay.

# WHAT HOURS ARE CLASSIFIED AS “WORK HOURS”?

Hours work include all the times the employer permits the employee to work, those hours which the employee is not directed to work but which are worked without official acknowledgement, or "off-the-record," such as:

- work performed by the employee while at lunch (answering the phone while eating a sandwich),

or

- work performed when the employee arrives at work early,

or

- work which the employee takes home and performs, etc.

## WORK PERFORMED (NON-EXEMPT)

The employer is liable for payment for these hours worked whether he/she authorized the work or simply allows the work to be performed - if he/she knows or has reason to know that the work was performed.

The employer may have actual or constructive knowledge that the work is being performed.

- *Actual knowledge is when the employer sees the employee performing the work.*
- *Constructive knowledge is when the employer should realize that the work was performed because of the product. As an example, if the typing of the report was not finished at closing time but was finished the next day at the beginning of business, some employee worked outside of the regular work hours.*



## MANAGEMENT OBLIGATION

### “GOOD FAITH”

- The courts will probably not accept an employer's defense that the employee was told not to work overtime. If the employer benefited from the work and was at least constructively aware of it, the employer must pay for it.
- The fact that there is a rule or policy prohibiting an employee from working before or after work or during lunch does not, in and of itself, relieve management from this responsibility.
- Management has the power to enforce the rule or policy and must make every effort to do so.

## EXAMPLES OF OVERTIME HOURS UNDER FLSA

**Under the FLSA, for an employee with the status of *Non-Exempt*, an overtime hour is any hour (or portion thereof) actually worked, which exceeds 40 hours worked in a workweek. Only hours actually worked are counted (not counted are hours of leave or holidays):**

### **EXAMPLE #1:**

Monday	Tuesday	Wednesday	Thursday	Friday
8 Hours	10 Hours	8 Hours	9 Hours	8 Hours

The two extra hours worked on Tuesday and the one extra hour worked on Thursday are considered overtime by the FLSA because cumulatively, the employee worked 43 hours in the workweek.

### **EXAMPLE #2:**

Monday	Tuesday	Wednesday	Thursday	Friday
8 Hours	10 Hours	<b>8 Sick Leave</b>	9 Hours	8 Hours

The two extra hours worked on Tuesday and the one extra hour worked on Thursday are not considered overtime by the FLSA because cumulatively, the employee actually worked only 35 hours in the workweek.



# Timekeeping

- Actual Time Worked
- Lunch
- Working at desk is “actual hours worked”
- Weekend work (events, meetings, retreats) are clocked hours
- Travel\*\*



# Questions

# RESOURCES

- <http://www.dol.gov/elaws/overtime.htm>
- <http://www.dol.gov/esa/whd/flsa/>
- Human Resource Services: Kim Wilson, Director, HR Consulting and Recruiting, x8796 or email, [kwilson@richmond.edu](mailto:kwilson@richmond.edu); Pam Ash, HR Consultant, x6515, [pash@richmond.edu](mailto:pash@richmond.edu).
- Leave Administration Questions: Laura Dietrick, Director, HR Total Compensation and HR Administration, [ldietric@richmond.edu](mailto:ldietric@richmond.edu)