***Note:** The Department of Labor revised the regulations located at 29 C.F.R. part 541 with an effective date of January 1, 2020. WHD will continue to enforce the 2004 part 541 regulations through December 31, 2019, including the $455 per week standard salary level and $100,000 annual compensation level for Highly Compensated Employees. The final rule is available at: https://www.federalregister.gov/documents/2019/09/27/2019-20353/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and.

U.S. Department of Labor
Wage and Hour Division

U.S. Wage and Hour Division
(Revised September 2019)

Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act (FLSA)

This fact sheet provides information on the exemption from minimum wage and overtime pay provided by Sections 13(a)(1) of the FLSA as defined by Regulations, 29 C.F.R. Part 541 and discusses the applicability of such exemptions to employees in jobs that are common in higher education institutions.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at not less than time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempts certain computer employees. These exemptions are often called the "white-collar" exemptions.

General Requirements for Exemptions

To qualify for a white-collar exemption, an employee must generally satisfy three tests:

1. The employee must be paid on a salary basis that is not subject to reduction based on the quality or quantity of work (the "**salary basis test**"), rather than, for example, on an hourly basis;
2. The employee must receive a salary at a rate not less than $684* per week (the "**salary level test**"); and
3. The employee's primary duty must involve the kind of work associated with the exempt status sought, such as executive, administrative, or professional work (the "**duties test**").

Additional information concerning these exemptions is available in Fact Sheets 17A-G. *See* https://www.dol.gov/whd/regs/compliance/whdcomp.htm.

Exemptions for Common Higher Education Jobs

Teachers

A teacher is exempt if his or her primary duty is teaching, tutoring, instructing, or lecturing to impart knowledge, and if he or she is performing that duty as an employee of an educational establishment. *See* 29 C.F.R. § 541.303. Educational establishments include elementary school systems, secondary school systems, institutions of higher education, and other educational institutions. *See* 29 C.F.R. § 541.204(b). If a bona fide teacher meets this duty requirement, the salary level and salary basis tests do not apply. See 29 C.F.R. §§ 541.303(d), 541.600(e). Given these standards, professors, instructors, and adjunct professors typically qualify for this exemption.

A faculty member who teaches online or remotely also may qualify for this exemption. The regulations do not restrict where bona fide teaching may take place, to whom the knowledge can be imparted, or how many hours a teacher must work per week to qualify for the exemption. The exemption would therefore ordinarily apply, for example, to a part-time faculty member of an educational establishment whose primary duty is to provide instruction through online courses to remote non-credit learners. The exemption could likewise apply, for example, to an agricultural extension agent who is employed by an educational establishment to travel and provide instruction to farmers, if the agent's primary duty is teaching, instructing, or lecturing to impart knowledge. To determine a teacher's primary duty, the relevant inquiry in all cases is the teacher's actual job duties. Job titles or full/part-time status alone do not determine exempt status.

A teacher does not become nonexempt merely because he or she spends a considerable amount of time in extracurricular activities (such as coaching athletic teams or supervising student clubs), provided the teacher's primary duty is teaching.

Coaches

Athletic coaches employed by higher education institutions may qualify for the teacher exemption. After all, teaching may include instructing student-athletes in how to perform their sport. But a coach will not qualify for the exemption if his or her primary duties are recruiting students to play sports or visiting high schools and athletic camps to conduct student interviews. The amount of time the coach spends instructing student-athletes in a team sport is relevant, but not the exclusive factor, in determining the coach's exempt status.

Professional Employees

The FLSA provides for several kinds of exempt professional employees—such as learned professionals, creative professionals, teachers, and employees practicing law or medicine. In higher education, employees eligible for the professional exemption are often either teachers (as discussed above) or learned professionals (as described below). To qualify as a learned professional, the employee must satisfy three requirements:

1. The employee's primary duty must be the performance of work requiring advanced knowledge;
2. The advanced knowledge must be in a field of science or learning; and
3. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

See 29 C.F.R. § 541.301. Unless the employee is a teacher or practicing law or medicine, he or she must also satisfy the above-referenced salary basis and salary level tests to be an exempt professional.

In higher education, examples of exempt non-teacher learned professionals generally include certified public accountants, psychologists, certified athletic trainers, and librarians. Postdoctoral fellows, who conduct research at a higher education institution after completing their doctoral studies, likewise generally meet the duties requirements of the learned professional exemption, and they may additionally qualify for the teacher exemption if teaching is their primary duty. Of course, an employee's qualification for the exemption depends on his or her actual job duties and education. Job titles alone are not sufficient for determining whether an employee satisfies the duties test.

Administrative Employees

Various employees at higher educational institutions may qualify as exempt administrative employees. The administrative exemption applies when the following requirements are met:

1. The employee's compensation must satisfy the above-referenced salary basis and salary level tests;
2. The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and

3. The employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.

See 29 C.F.R. § 541.200. Such administrative employees in higher education might include, for example, admissions counselors or student financial aid officers. An employee's qualification for the exemption depends on his or her actual job duties; job titles alone are not sufficient for determining whether an employee satisfies the duties test.

Notably, there are specific regulatory provisions for certain administrative employees—known as "academic administrative employees"—whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment. To be exempt as an academic administrative professional:

1. The employee must satisfy the above-referenced salary basis and salary level tests or receive a salary of at least the entrance salary for teachers in the same educational establishment; and
2. The employee's primary duty must be to perform administrative functions directly related to academic instruction or training in an educational establishment.

See 29 C.F.R. § 541.204. Employees who work in higher education but whose work does not relate to the educational field (such as work in general business operations) do not qualify as exempt academic administrative employees. *See* id.

In higher education institutions, exempt academic administrative personnel generally include department heads, intervention specialists who are available to respond to student academic issues, and other employees with similar responsibilities. Exempt administrative personnel would likewise generally include academic counselors who administer school testing programs, assist students with academic problems, and advise students concerning degree requirements. Again, whether an employee satisfies the duties test for these exemptions depends on the employee's actual job duties, not just the employee's job title.

Executive Employees

To qualify for the executive exemption, an employee must satisfy the following tests:

1. The employee must receive compensation that satisfies the above-referenced salary basis and salary level tests;
2. The employee's primary duty must be managing the enterprise or a customarily recognized department or subdivision thereof;
3. The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent (for example, one full-time and two half-time employees); and
4. The employee must have the authority to hire or fire other employees, or in the alternative, the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees must be given particular weight.

See 29 C.F.R. § 541.100. Various positions in higher education institutions might qualify for the executive exemption, including deans, department heads, directors, and any other manager or supervisor whose job duties and compensation satisfy the above criteria.

Student-Employees

As a general matter, most students who work for their college or university are hourly non-exempt workers and do not work more than 40 hours per week. The following, however, are examples of students who often receive a salary or other non-hourly compensation:

- **Graduate Teaching Assistants.** Graduate teaching assistants whose primary duty is teaching are exempt. Because they qualify for the teacher exemption, they are not subject to the salary basis and salary level tests.
- **Research Assistants.** Generally, an educational relationship exists when a graduate or undergraduate student performs research under a faculty member's supervision while obtaining a degree. Under these circumstances, the Department would not assert that an employment relationship exists with either the school or any grantor funding the student's research. This is true even though the student may receive a stipend for performing the research.
- **Student Residential Assistants.** Students enrolled in bona fide educational programs who are residential assistants and receive reduced room or board charges or tuition credits are not generally considered employees under the FLSA. They therefore are not entitled to minimum wages and overtime under the FLSA.

An employment relationship will generally exist when a student receives compensation and his or her duties are not part of an overall education program. For example, students who work at food service counters, sell programs or usher at events, or wash dishes in dining halls and anticipate some compensation (for example, money or meals) are generally considered employees entitled to minimum wage and overtime compensation.

Compensatory Time at Public Universities

Public universities or colleges that qualify as a "public agency" under the FLSA may compensate nonexempt employees with compensatory time off (or "comp time") in lieu of overtime pay. A college or university is a public agency under the FLSA if it is a political subdivision of a State. When determining whether a college or university is a "political subdivision," the Department considers whether (1) the State directly created the entity, or (2) individuals administering the entity are responsible to public officials or the general electorate.

If the public university or college qualifies as a public agency, nonexempt employees generally may not accrue more than 240 hours of comp time. However, employees engaged to work in a public safety activity, an emergency response activity, or a seasonal activity may accrue as much as 480 hours of comp time. *See* 29 U.S.C. 207(o)(3)(A). Private higher education institutions may not pay employees comp time in lieu of overtime pay.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When state law differs from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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