

**FREQUENTLY ASKED QUESTIONS FLSA CHANGES FOR 2024**

# What is the Fair Labor Standards Act?

The Fair Labor Standards Act (FLSA) of 1938 (29 USC § 201 et seq.) is the United States’ federal wage and hour law, administered by the US Department of Labor. Among other things, it establishes the minimum wage and overtime pay, affecting employees in the private and government sectors. Everyone is “covered” but some employees are **exempt** from FLSA regulations and some are **nonexempt**. The FLSA requires one-and-one-half times the regular rate of pay in overtime or compensatory time be paid for all hours worked over 40 in a workweek for **nonexempt** employees.

# What does it mean to be exempt or nonexempt?

Exempt employees are excluded from overtime payment. Nonexempt employees are subject to the payment of overtime. Exemption is based on qualifying for all three of the following tests:

* Salary Basis Test. Employee must be paid on an annual salary basis; and
* Minimum Salary Threshold Test. Employees must be paid above a salary threshold amount that is currently $844 per week or $43,888 annually; and
* Duty and Discretion Tests. Employee must qualify as an executive, administrator, professional, or computer professional.

# What is changing?

* The FLSA Minimum Salary Threshold Test is changing. Effective July 1, 2024, the US Department of Labor is changing the new minimum salary for which an employee can be designated as exempt from overtime requirements from $684 per week or $35,568 per year to **$844 per week or $43,888 per year**.
* It is also raising the total annual compensation level for “highly compensated employees (HCEs)” from the currently enforced level of $107,432 to $132,964 per year.
* [Department of Labor FAQ site](https://www.dol.gov/agencies/whd/overtime/rulemaking/faqs)

# Who will the rule change affect?

If an employee’s rate of pay is below the new minimum salary threshold at the time of the effective date, the employee (unless he or she qualifies for an exception listed below) must be designated as nonexempt. Employees whose pay is below the threshold and who are designated as nonexempt will have to account for their time by the hour.

# Who is excluded from these changes?

Teachers, lawyers, and doctors qualify for an exemption as professionals. Faculty and instructional academic staff whose primary duties are teaching will remain exempt regardless of their salaries. Attorneys and physicians will remain exempt. To be properly designated as a teacher, however, an employee must have actual instructional duties. Those who support teaching activities without actual teaching interaction will most likely be designated as nonexempt.

# How does the proposed rule change affect employees who work less than full time?

Pay for part-time appointments will not be pro-rated. An employee with a .75 appointment with a fulltime rate of $45,000 (above the minimum salary threshold) is paid $33,750. $33,750 is below the new minimum salary threshold, and therefore, the employee will be nonexempt.

# How are employees who are less than 12 months impacted by the new regulation?

# If a 9-month employee earns $42,500 for 9 months but is paid over 12 months, they would meet the salary requirement because the 9-month weekly salary is $1,089.74 ($42,500/39 weeks), even though the weekly paycheck is $817.31 ($42,500/52 weeks). A similar calculation can be used for 10-month employees.

# It is critical that the employee performs no work outside of the 9 month or 10-month period.

# Can employees opt out of this change if they want to continue to be considered a salaried or exempt employee?

No. FLSA is a federal law. The determination of an employee’s FLSA status is governed by the requirements of the federal law – it is not an employee choice.

# How is tracking hours worked different for an hourly nonexempt employee?

Nonexempt employees must account for time worked rather than accounting for leave used. All time worked must be reported in Kronos.

# When is an employee entitled to overtime pay?

Overtime (or compensatory time) must be paid for hours worked over 40 in a workweek. The computation of “40 hours worked” does not include paid time out of the workplace (e.g., sick leave, vacation time, etc.).

1. **How will the employee’s hourly rate be determined?**

As an example, an employee’s regular hourly rate will be determined by dividing current annual salary by the current annual standard hours. If the standard hours are 40 per week, that is the equivalent of 2080 hours in a year (40 hours/week x 52 weeks). So, if an employee’s annual salary is $45,000 and the employee has a standard of 40 hours per week, $45,000 divided by 2080 equals an hourly rate of $21.64. If the employee works in excess of 40 hours in a week, then they will receive overtime pay of 1.5 times the regular hourly rate. The overtime rate in this example would be $32.46 per hour.

# Can a nonexempt employee still work early and late? Can a nonexempt employee check messages from home after work hours?

It is important to distinguish between tasks an employee is required to do because a supervisor requests it and tasks an employee may “desire” to do simply because it is the way the employee likes to work. As a rule of thumb, work schedules, including flexible work schedules, need to be managed and approved by an employee’s supervisor - just the same as when the employee was exempt. An employee should not presume that it is permissible to do this work outside of the regular workday without prior approval from a supervisor. In addition, work performed outside of work which would result in overtime must be authorized in advance by an employee’s supervisor because all time worked must be accounted for and recorded as “time worked”. Any alternative arrangements will have to be made with the School/College/Division or Department for which an employee works.

# Can nonexempt employees still attend professional conferences?

Yes. Nonexempt employees must account for the travel time and for the hours of conference attendance, however, from the Department of Labor perspective there is no prohibition on traveling or professional development for non-exempt employees.

# Are instructional academic staff and other employees whose primary duty is teaching or instructing subject to the minimum salary threshold?

No. Instructional academic staff and others who qualify as “teachers” are not subject to the minimum salary threshold. To be exempt from FLSA overtime requirements as a teacher under 29 CFR § 541.303, the following two tests must be met:

* The employee’s primary duty must be imparting knowledge by teaching, tutoring, instructing, or lecturing, and
* The employee must be employed by an educational establishment.

Teachers who earn less than the minimum salary (including part-time teachers) are exempt as long as their primary duty is teaching.

# Are athletic coaches exempt under the FLSA?

Athletic coaches employed by higher education institutions may qualify for the teacher exemption. Teaching may include instructing student-athletes in how to perform their sport. On the other hand, if coaches’ primary duties are recruiting students to play sports or visiting high schools and athletic camps to conduct student interviews, they are not considered teachers. The amount of time an employee spends instructing student-athletes in a team sport is a relevant—but not exclusive—factor in determining the employee’s exempt status.

# Will students and postdoctoral fellows be impacted by the changes in FLSA regulations?

# As a general matter, most students who work for their college or university are hourly workers who do not work more than 40 hours per week. The changes in the final rule do not affect these students. Graduate teaching assistants who have teaching as their primary duty are not subject to the salary tests. Graduate and undergraduate students who are engaged in research under a faculty member’s supervision in the course of obtaining a degree are considered to be in an educational relationship with the school instead of an employment relationship.

# The Department of Labor has defined postdoctoral fellows as employees who conduct research at a higher education institution after the completion of their doctoral studies. Postdoctoral fellows are not considered students because they are not working towards a degree. Postdoctoral fellows often meet the duties test for the “learned professional” exemption but must also satisfy the salary basis and salary level tests to qualify for this exemption. To the extent that a postdoctoral fellow’s primary duty is teaching, higher education institutions can classify such an employee as exempt from overtime under the teacher exemption. If a postdoctoral fellow does not primarily teach and earns less than the new salary level, the fellow will be entitled to overtime when the fellow works more than 40 hours in a workweek.

# What does the DOL mean by “primary duty?”

The term "primary duty" means the principal, main, major, or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to:

* the relative importance of the major or most important duty as compared with other types of duties;
* the amount of time spent performing the major or most important duty;
* the employee's relative freedom from direct supervision; and/or
* the relationship between the employee's salary and the wages paid to other employees for performance of similar work.

The amount of time spent performing the specific duty can be a useful guide in determining whether such work is the primary duty of an employee. Employees who spend more than 50 percent of their time performing a specific duty will generally satisfy the primary duty requirement. Time alone, however, is not the sole test, and nothing requires exempt employees to spend more than 50 percent of their time performing a specific duty. Employees who do not spend more than 50 percent of their time performing their major or most important duty may nonetheless meet the primary duty requirement if the other factors (listed above) support such a determination.

# If an employee holds more than one job, can the employee have more than one FLSA status designation?

No. Regardless of how many jobs an employee holds, the employee’s status must be either exempt or nonexempt. For example: Employee X, whose total salary is below the minimum salary threshold, holds a part-time instructional academic staff position as a lecturer. The employee also holds a part-time position as a recreational specialist. If Employee X’s primary duty is teaching as a lecturer, then the employee’s designation is exempt because teaching is the employee’s primary duty and qualifies for the “teacher” exemption regardless of salary. But if the primary duty is determined to be work as a recreational specialist, the FLSA designation will be nonexempt because total salary is under the minimum salary threshold.

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