

# **Fair Labor Standards Act (FLSA)**

## **What does this mean for me?**



# Presentation Outline

- Overtime: It's About Time Video
- Fair Labor Standards Act General Overview
- What You Need to Know about Overtime
- FLSA Changes on Campus
- What Does Work Look Like?
- Tracking Work Time
- Q & A



# Overtime: It's About Time Video

<https://www.dol.gov/featured/overtime>



# Fair Labor Standards Act General Overview



# How is FLSA Status Determined?

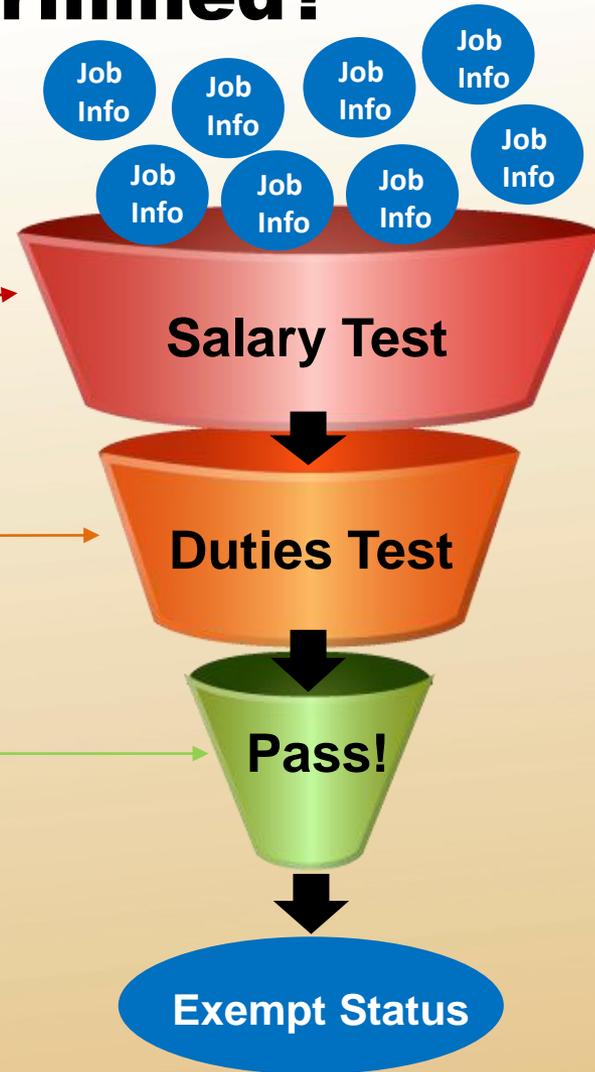
## Two tests determine FLSA status

1. Salary Test – Must be paid on a salary basis and the actual pay must be \$913 per week (\$47,476 annually) for both full and part-time positions

2. Duties Test – Exempt duties need to be 50% of the overall assigned tasks

3. A position must pass both tests in order to be determined exempt from overtime. If a position fails either the **Salary or Duties Test**, it is nonexempt

***FLSA status is tied to a position, not a person.  
When the FLSA determination is in question,  
it will be nonexempt***



# What You Need to Know about Overtime



# Overtime Defined

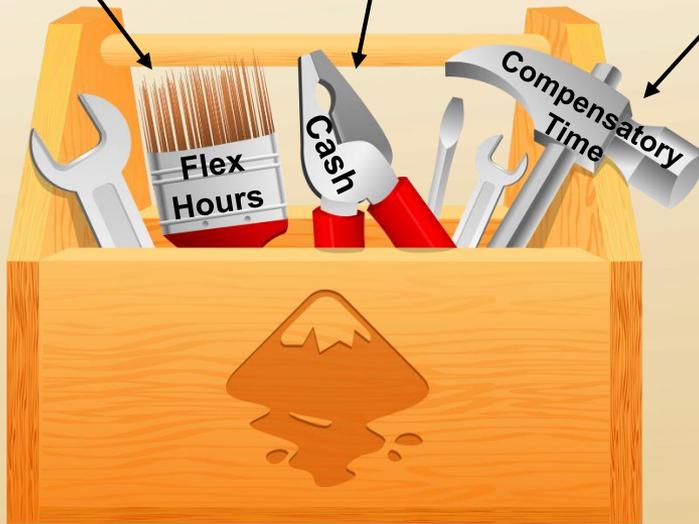
Hours Worked	Overtime	Workweek
<p>Any time a nonexempt employee is suffered or permitted to work for the benefit of the employer</p>	<p>Any hours worked by a nonexempt employee beyond 40 hours in a workweek</p> <ul style="list-style-type: none"><li>• Compensated at one and one-half times the hourly rate of pay</li><li>• Compensatory Time Off Policy</li></ul>	<p>Any regular recurring period of 168 hours – seven consecutive 24-hour periods – designated as a period of work for an employee</p> <ul style="list-style-type: none"><li>• CSU established workweek is Saturday 12:01 am through Friday</li><li>• Deviations must be approved in writing by Human Resources</li></ul>

# Department Overtime Options

Flex Hours: Time worked beyond the 8-hour work day may be flexed and used within the same workweek

Cash: Paid at one and one-half times the hourly rate for all hours worked over 40 in a workweek

Compensatory Time: Accrued at one and one-half times for every hour worked over 40 in a workweek



Nonexempt employees - required to sign Compensatory Time Agreement

Maximum amount of compensatory time a nonexempt employee may accrue is 240 hours

Departments may opt for lower maximum accruals and/or pay out options

# Variations to the Work Schedule

## May redefine a workday

- May delay start time and work into evening hours
  - Work 12 pm to 8 pm
- May group schedules to accommodate the needs of the department
  - Work 9 am to noon, non-work break, return 3 pm to 8 pm
  - Varying weekly schedule
    - Saturday, Tuesday and Wednesday - 10 am to 7 pm with lunch
    - Thursday and Friday - 7 am to 4 pm with lunch

# FLSA Changes on Campus



# Myth Busters

Myth – All Administrative Professional (AP) positions are exempt from overtime requirements.

- **Fact** – *Many AP positions will revert to nonexempt and be eligible for overtime based on the annual salary and/or position duties.*

Myth – All salaried positions (SC and AP) are exempt from overtime and do not track hours worked.

- **Fact** – *All nonexempt positions (hourly and salaried) must track all hours worked and are eligible for overtime.*

Myth – All positions below the new salary threshold will receive an increase to at least \$47,476.

- **Fact** – *Not all positions will receive a salary increase. Departments will assess each position and develop strategies to manage overtime costs*

# What does this mean for me?

## Changes

- The position is now eligible to earn overtime/compensatory time
- Increased communication with supervisor on work schedule

## Stays the Same

- Annual salary
- Level of authority/status in department and across campus
- Autonomy and level of decision making
- Supervisor responsibilities
- Career development and path choices
- Benefits
- Available programs and services

# Transitioning to Nonexempt

Effective December 1, 2016, all positions below the salary threshold will revert to nonexempt and be overtime eligible

- Notification of change in exemption status will be sent to currently exempt employees transitioning to nonexempt status by October 31, 2016
  - Nonexempt employees will be required to track all hours worked
  - Some positions at or above the salary threshold may also be nonexempt and overtime eligible
  - Compensatory Time Off Policy/Acknowledgement
  - Positions will be reviewed every three years, initial review 2020

# What Does Work Look Like?



# Work Time Activities

## Possible Compensable Activities

- Crafting/responding to business emails/correspondence
- Making/receiving work phone calls
- Creating/revising presentations
- Reviewing applications
- Donning/removing safety equipment
- CSU sporting events/fundraising events
- Traveling for work related business
- Working through lunch or attending lunch meetings
- Providing after hours student counseling
- Engaging in work related activities for other departments



# Meal Periods

## Scheduled meal periods are discretionary

- Don't count as hours worked as long as the nonexempt employee is relieved of all duties for the purpose of eating a meal
- Must be at least 20 minutes
- Nonexempt employees who work through a meal period must be compensated
- Nonexempt employees who routinely work through a meal period without supervisor approval may be subject to corrective or disciplinary action

# Rest Periods

## Rest periods are discretionary

- If granted, rest periods of short durations (5 to 20 minutes) are included as part of the 8 hour workday and considered hours worked
  - Examples – coffee/snack, health breaks, etc.
- Rest periods cannot be used for
  - Overtime/compensatory time (already paid time)
  - Extending the meal period, leaving work early or arriving late

# Waiting Time

## Waiting time is counted as hours worked when

- A nonexempt employee is unable to use the time effectively for personal purposes
- The time is controlled by a Supervisor
  - Example - An Academic Advisor is waiting 30 minutes for a student to arrive for an appointment. Waiting time = hours worked

## Waiting time is not counted as hours worked when

- A nonexempt employee is completely relieved from duty and required to return to work at a set time
- The duration is long enough to allow the employee to use it effectively for personal purposes

# On-Call Time

## On-call time is hours worked when

- A nonexempt employees has to stay at a designated worksite
- A nonexempt employee has to stay close to the worksite and cannot use that time effectively for personal purposes
- A nonexempt employee responds to a 15 minute phone call and does not have to report to campus

## On-call time is not hours worked when

- A nonexempt employee is given the freedom to pursue personal interests/activities while on-call
- A nonexempt employee is provided with a radio, beeper or cell phone and no work activities occur
  - Example – Nonexempt employee must be available to receive calls and report to campus if needed, and no calls are received

# Call Back Time

Call Back time occurs when a nonexempt employee is called back to work before their scheduled shift or after leaving the place of work upon completion of the shift

- Call back time shall be for a minimum of two hours or actual time worked, whichever is greater
- Compensation shall be at the hourly equivalent of standard rate of pay, subject to CSU's overtime policies
- The minimum of two hours of compensation shall be counted as two hours worked when computing the total number of hours in the workweek

Example – A nonexempt employee is called back to campus resulting in one hour of actual work. Credit will be given for two hours of work. If overtime for the week results, the time will be compensated as overtime or compensatory time.

# Remote Access and Cell Phones

A nonexempt employee cannot agree that (s)he will not be paid for the hours spent on work related tasks outside of a normal workday

## Remote Access/Emails

- Time spent working through remote access or answering emails is time worked

## Cell Phone Usage

- No change to CSU's Mobile Communications Policy
- Time spent communicating on work related matters is time worked

## Waiting Time

- Time spent waiting for a call at the direction of the supervisor or in between work related email responses may also be included in the total work hours



# Training/Professional Development

Time nonexempt employees spend in lectures, seminars, classes or training is considered hours worked and must be tracked and paid, unless all of the following criteria are met

- Attendance is outside of normal working hours
- Attendance is voluntary
- The course, lecture or meeting is not job related
- The nonexempt employee does not perform any productive work during attendance
  - Responding to emails would be work time

Employees need to work with supervisors to establish expectations as to what is considered work hours

# Travel Time

Time spent traveling as part of the principal activity must be counted as work time (i.e., Traveling from high school to high school during the work day)

FLSA does not apply when traveling to an exempt country if all work is done during the employee's regular established workweek

Time spent commuting between home and work is not work time



All time spent traveling for a Special One Day Assignment to another city is work time

Overnight travel away from home is considered time worked when it occurs during a nonexempt employee's normal daily work schedule

Time spent traveling during normal daily work schedule is counted for Saturday or Sunday Travel

Overnight travel outside the normal daily work schedule is not considered work time, unless assigned specific work tasks

# Special One Day Assignment

A nonexempt employee is given a one day special training assignment in Denver. The employee leaves at 6:30 a.m. and returns at 5:30 p.m. The employee's daily commute to CSU is 30 mins one way and the employee has a one hour meal break.

**What are the hours worked for this special assignment?**

This would result in a 7:00 a.m. to 5:00 p.m. workday with one hour lunch for total time worked equal to 9 hours.

# Travel Time Review 1

Normal working hours 7:30 a.m. to 4:30 p.m.,  
Monday-Friday.

The employee leaves Fort Collins on at 12:00 p.m. and  
catches a flight from Denver at 3:00 p.m. on Sunday.

**Q: What is the total compensated travel time?**

***A: 4.5 hours – Hours traveling during the  
employee's normal work hours (12:00 to 4:30)***

# Volunteering

A nonexempt employee volunteering to work CSU events must be compensated for hours worked when tasks are similar to the normal duties of the employee

Exception – A nonexempt employee is considered to be a volunteer when all of the following conditions are met

- Services are not similar/related to the type of service the employee is employed to perform
- Services rendered are done so freely and without coercion
- Services are performed for civic, charitable or humanitarian reasons for which no compensation is received beyond expenses or a nominal fee
  - Example – A nonexempt employee from Human Resources volunteers to take tickets at a basketball game for CSU

# Review – Scenario 1

A nonexempt employee is on his 30-minute lunch break, which he takes at his desk. The phone rings and no one answers the call, so he answers the phone. The situation took a total of 15 minutes.

*Did the employee engage in work? What happens to his lunch break?*

**Yes!** Since the employee answered the phone, he performed a work function and needs to be compensated for his time worked. Also, he needs to be paid for his entire lunch break because he wasn't able to use his lunch break for his own purposes.

# Review – Scenario 2

An Academic Advisor has an appointment with a student on Saturday, and the student calls the Academic Advisor at home before the meeting to notify them of a two-hour delay.

*Did the Academic Advisor engage in time worked?*

**Yes!** The phone call from the student was time worked and should be tracked. The two-hour delay would not be time worked as the Academic Advisor was not on campus and was still permitted to tend to personal activities during that time.

# Review – Scenario 3

A nonexempt Postdoctoral Fellow is working after hours in the lab performing research and administrative duties, such as – catching up on emails, ordering laboratory supplies and preparing the lab for the next day’s activities. Upon returning home, she reads scientific periodicals not related to the research she is performing.

*Did the Postdoc engage in work time?*

**Yes and No.** Since the employee was reading periodicals not related to research or the work being performed, that is not considered hours worked, so the employee is not paid for that time. However, when the employee is performing administrative duties that are directly related to the work being performed, that is considered hours worked and that time must be tracked and compensated.

# Supplemental Pay

Supplemental pay cannot be added to the nonexempt base salary to meet the new salary threshold.

Supplemental pay for the additional duties should be calculated at one and one-half times the regular rate of pay for any hours worked over 40 per week

- Even if the supplemental pay duties are exempt in nature (teaching)

All hours worked associated with supplemental pay must be tracked and verified to ensure the correct overtime rate of pay

Employees must coordinate between each department to ensure proper tracking and compensation

*Refer to the University's Supplemental Pay policies for information on acceptable duties and approval*

# Tracking Work Time



# Tracking Time

## FLSA requires employers to keep records of hours worked

- Nonexempt employees must report total hours worked each day and submit a weekly timesheet for Supervisor approval
  - Punching in and punching out is not a FLSA requirement
    - Some departments may have a time clock system
  - Colleges/Units may have different processes in place for tracking time
  - Excess regular hours are used for part-time positions under 40 hours

## Overtime must be pre-approved by the Supervisor

- If not pre-approved, overtime worked must still be compensated
  - Supervisors may authorize a maximum number of overtime hours that can be worked without pre-approval

Exempt employees do not track time worked

# Hours Worked Examples

## Example 1

Days	Sat	Sun	Mon	Tues	Wed	Thurs	Fri	Total	Grand Total
Worked	2.5		8.5	7.4	8.9	8		40	40
Flex Hours							4.7	4.7	

## Example 2

Days	Sat	Sun	Mon	Tues	Wed	Thurs	Fri	Total	Grand Total
Worked					10	10	10	30	40
Holiday			8					8	
Annual Leave			2					2	

# Overtime Examples

## How many hours of overtime worked?

### Example 1

Days	Sat	Sun	Mon	Tues	Wed	Thurs	Fri	Total	Grand Total
Worked				9.4		8.25	9.75	27.40	43.40
Sick					8			8	
Hldy/leave			8					8	

- 3.4 – Sick leave, annual leave and holidays are included in the computation of overtime

### Example 2

Days	Sat	Sun	Mon	Tues	Wed	Thurs	Fri	Total	Grand Total
Worked	9			10.15	9.3			28.45	40.00
Comp Time						8	3.55	11.55	

- 0 - Compensatory time is not counted as hours worked in the computation of overtime as it is a form of compensation and not hours worked.

# Resources

HR website – 2016 Changes to the Fair Labor Standards Act (FLSA)

<http://www.hrs.colostate.edu/compensation/flsa.html>

U.S. Department of Labor Wage and Hour Division Final Rule: Overtime

<https://www.dol.gov/WHD/overtime/final2016/>

CSU – Compensatory Time Off Policy & Agreement

<http://policylibrary.colostate.edu/policy.aspx?id=716>

HR Employee Manual

<http://www.hrs.colostate.edu/policies/hrs-manual.html>

# Questions

