

Overtime for Non-Academic Staff

FLSA - Overtime Eligibility & Exemption

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FLSA Requirements

The Fair Labor Standards Act (FLSA) requires that most workers receive overtime pay at 1.5 times the employee's regular pay rate for all hours worked over 40 hours in a seven day workweek, and that employees be paid at least the federal minimum wage. The UW terms positions that are covered by FLSA regulations "overtime-eligible".

The [overtime webpage](#) explains:

- How to find out whether a current classified position has been designated as overtime eligible or overtime exempt.
- Overtime payment requirements.
- University policy regarding compensatory time accumulation and payment.
- How overtime may be legally offered contingent on an employee's willingness to accept compensatory time off in lieu of overtime payment.

The [work time record keeping webpage](#) describes how overtime eligible employees' work time records must be kept and maintained.

Other Laws & Collective Bargaining Agreements

The FLSA establishes minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply with any federal, state or municipal laws, regulations or ordinances, or collective bargaining agreements or employer implemented policies that provide greater benefits than those established by the FLSA.

When state laws differ from the federal FLSA, an employer must comply with the standard most generous to employees.

FLSA Overtime Exemption Standards

To be exempt from FLSA overtime regulations a position's salary amount **and** job duties must meet criteria specified in the regulations. These criteria are referred to as the “salary basis” and “duties” tests, respectively. Some types of "blue collar" and "Police, Fire Fighters, Paramedic & Other First Responder" work do not qualify for exemption by definition. [These types of work are described below.](#)

The Compensation Office is responsible for applying the "tests" to determine the positions that are covered by the FLSA overtime regulations. This determination is normally made at the time a position is created and may be reviewed when a position is reviewed for reclassification (classified titles) or for salary or title assignment (professional staff positions). To request that a position's FLSA status be reviewed, contact the [Compensation Office](#).

All of the following requirements must be met for a position to be exempt from the FLSA overtime payment requirement:

1. The position must be paid on a salary (not hourly) basis, except for certain computer workers (see the [Computer Professional Exemption](#)). Being paid on a salary basis means that an employee is paid the same amount per workweek regardless of the hours the employee actually works, consistent with a position's percent time.
2. The position must be paid at least **\$455** per week, regardless of percent time worked: e.g. a half-time employee who is paid \$454 per week and a full-time employee who is paid \$454 per week are both overtime covered, regardless of their job duties, even though the full-time equivalent pay for the half time employee is actually \$908 per week.
3. The position's job duties must meet the **duties test** for one or more for one of the exemption categories—see below.

FLSA Exemption Categories & Checklists

The following are summaries of the FLSA-defined exemption criteria. Checklists for the most commonly applied exemption criteria may be used to help employees and managers assess whether a position is likely to be covered by or exempt from the FLSA overtime regulations. A link to the checklist follows the exemption category description. Some terms have special meanings as applied by the FLSA regulations. See the [FLSA Terms & Definitions webpage](#).

The exemption categories in the following list are described below.

- [Executive Exemption](#)
- [Administrative Exemption](#)
- [Learned or Creative Professional Exemption](#)
- [Computer Professional Exemption](#)
- [Highly Compensated Employees](#)
- [Outside Sales Exemption](#)

Executive Exemption

To qualify for the executive exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or 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.

[Executive Exemption Checklist](#)

Administrative Exemption

To qualify for the administrative exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary function must be to perform office or non-manual work that is directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

[Administrative Exemption Checklist](#)

Learned or Creative Professional Exemption

To qualify for the learned professional exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be to perform work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which requires the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning, such as law, medicine, nursing, accounting, actuarial computation, engineering, education, and various types of physical, chemical, and biological sciences; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the creative professional exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;

- The employee's primary duty must be to perform work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor, such as music, writing, acting, and the graphic arts.

[Learned or Creative Professional Exemption Checklist](#)

Computer Professional Exemption

To qualify for the computer professional exemption, the following tests must be met:

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field; and,
- The employee's primary duty must consist of:
 - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
 - A combination of the aforementioned duties, the performance of which requires the same level of skills.

[Computer Professional Exemption Checklist](#)

Highly Compensated Employees

Employees performing office or non-manual work and who are paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from FLSA overtime regulations if they customarily and regularly perform at least one of the duties of an exempt executive, administrative, or learned or creative professional employee identified in the standard tests for exemption.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Duties that do not qualify for FLSA Overtime Exemption

Blue Collar Workers

The exemptions apply only to “white collar” employees who meet the salary and duties tests (see below) set forth in the regulations. The exemptions do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, and laborers are entitled to overtime premium pay under the FLSA, and are not exempt under the regulations no matter how highly paid they might be.

Police, Fire Fighters, Paramedics & Other First Responders

FLSA overtime exemptions do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers, and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.