



## Overtime Final Rule and Higher Education

**Higher Education Sector:** Higher education is a complex and important sector in our economy and civil society. It includes a large variety of institutions: public and private schools; community colleges, four-year colleges, and large research institutions; and small campuses of only a few hundred students and faculty and large campuses of thousands of people.

**Overtime Final Rule:** The Department of Labor's final overtime rule updates the salary level required for the executive, administrative, and professional ("white collar") exemption to ensure that the Fair Labor Standards Act's (FLSA) intended overtime protections are fully implemented, and it provides greater clarity for workers and employers, including for higher education institutions. The final rule will also lead to better work-life balance for many workers, and it can benefit employers by increasing productivity and reducing turnover.

The final rule updates the salary threshold under which most white collar workers are entitled to overtime compensation to equal the 40th percentile of weekly earnings of full-time salaried workers in the lowest wage Census region, currently the South. The final rule will raise the salary threshold from \$455 a week (\$23,660 for a full-year worker) to \$913 a week (\$47,476 for a full-year worker) effective December 1, 2016.

**FLSA Includes Several Provisions that Limit Its Impact for Higher Ed:** Although employees at higher education institutions are generally covered by the FLSA's minimum wage and overtime provisions, several provisions apply to many personnel at these institutions that make them ineligible for overtime and unaffected by this rule, regardless of whether they earn above the new salary threshold or not:

- *Bona fide teachers:* Teachers are not subject to the salary level requirement for the white collar exemption. Teachers are exempt if their primary duty is teaching, tutoring, instructing, or lecturing. Teachers include professors, adjunct instructors, and teachers

- of skilled and semi-skilled trades and occupations.
- *Coaches:* Athletic coaches and assistant coaches may fall under the exemption if their primary duty is teaching, which may include instructing athletes in how to perform their sport. If, however, their duties primarily include recruiting athletes or doing manual labor, they are not considered teachers. A coach could primarily be responsible for instructing athletes but also spend some time recruiting or doing manual labor and still be considered ineligible for overtime.
- *Graduate and undergraduate students:* Generally, the Department views graduate and undergraduate students who are engaged in research under a faculty member's supervision in the course of obtaining a degree to be in an educational relationship and not an employment relationship with the school or with a grantor. As such, the Department will not assert such workers are entitled to overtime. Graduate students whose primary duty is teaching or serving as a teaching assistant fall under the FLSA's teaching exemption. Students who are participants in a bona fide educational program and who serve as resident advisors in exchange for reduced room and board charges or tuition credit similarly are not considered to be in an employment relationship with the institution.
- *Academic administrative personnel:* The administrative personnel that help run higher education institutions and interact with students outside the classroom, such as department heads, academic counselors and advisors, intervention specialists and others with similar responsibilities are subject to a special salary threshold that does not apply to white-collar employees outside of higher education. These employees are not entitled to overtime compensation if they are paid at least as much as the entrance salary for teachers at their institution.

**Public Higher Education Institutions May Utilize Provisions for State and Local Employees:** Employees of public higher education institutions may also be public sector employees for whom specific provisions

in the FLSA will further limit the impact of the final rule. Specifically, public institutions may be able to use compensatory (“comp”) time as an option to satisfy their obligation to provide overtime compensation.

**Comp time:** Pursuant to an agreement with employees or their representatives, state or local government agencies, including higher education institutions whose employees are treated as state employees under state law, may provide their employees with comp time instead of cash payment for overtime hours. Any comp time arrangement must be established pursuant to the applicable provisions of a collective bargaining agreement, memorandum of understanding, any other agreement between the public agency and representatives of overtime-protected employees, or an agreement or understanding arrived at between the employer and employee before the performance of the work. This agreement may be evidenced by a notice to the employee that comp time will be given in lieu of overtime pay (for example, providing the employee a copy of the personnel regulations). The comp time must be provided at a rate of one-and-one-half hours for each overtime hour worked, instead of cash overtime pay. For example, for most state government employees, if they work 44 hours in one workweek (4 hours of overtime), they would be entitled to 6 hours (1.5 times 4) of comp time. When used, the comp time is paid at the regular rate of pay.

Most state and local government employees may accrue up to 240 hours of comp time. Employees engaged in seasonal activities (such as admissions counselors) may accrue up to 480 hours of comp time. An employee must be permitted to use comp time on the date requested unless doing so would “unduly disrupt” the operations of the agency.

**Higher Ed Impact Is Limited by Other Rules and Exemptions:** Many employees of higher-education institutions will not be affected by the rule, even if they do not qualify for the special rules for teachers:

- *Hourly workers:* The new threshold has no impact on the pay of workers paid hourly. Generally, hourly workers are entitled to overtime regardless of how much they make if they work more than 40 hours – nothing in the new rule changes that.

- *Workers with regular workweeks of 40 or fewer hours:* To the extent that many salaried white-collar employees at higher-education institutions have office jobs where they work no more than 40 hours, the changes to the overtime rules will have no effect on their pay.
- *Workers who fail the duties test:* Salaried workers who do not primarily perform executive, administrative, or professional duties are not eligible for the white collar overtime exemption and therefore are not affected by the final rule. Those employees already should be getting paid overtime for any hours they work over 40 in one week.
- *Highly compensated workers:* White collar workers who fail the standard duties test but are “highly compensated”—earn more than \$134,004 in a year—are almost all ineligible for overtime under the highly compensated employee exemption, which has a minimal duties test. This exemption would cover some high-level managers at institutions of higher education. (You can see more information on HCE duties in [WHD Fact Sheet #17H](#).)

**A Limited Number of Higher Education Workers Will Be Affected:** The overtime rule will impact limited groups of workers at higher-education institutions, including:

- *Postdoctoral researchers:*
  - o **Sciences:** Postdoctoral researchers in the sciences who engage only in research activities and do not teach are not covered by the teaching exemption. These employees are generally considered professional employees and are subject to the salary threshold for exemption from overtime. DOL has been working closely with NIH regarding their mutual interest in this area.
  - o **Humanities:** Many postdoctoral researchers in the humanities also teach. To the extent that they have a primary duty of teaching, they will be subject to the teaching exemption and not entitled to overtime compensation. If they do not teach, however, and earn less than the new threshold, they will be eligible for overtime.
- *Non-academic administrative employees:* For administrative employees who do not meet the special provision for academic administrative employees, such as admission counselors and re-

cruiters, they will be eligible for overtime if they earn below the salary level set in the final rule and they work more than 40 hours in a week.

- *Other salaried workers:* To the extent that higher-education institutions employ workers whose duties are not unique to the education setting—like managers in food service or supervisors of security guards—they will be covered by the final rule, just like their counterparts at other kinds of institutions and businesses, unless another exemption applies.

## Higher Education Employers Have Discretion to Choose Between Several Options

The Department does not dictate what option employers should use to comply with the revised regulations. In fact, many options are available to all employers for complying with the new salary threshold. These options include:

- *Raise salaries:* For workers whose salaries are close to the new threshold and who meet the duties test, employers may choose to raise these workers' salaries to meet the new threshold and maintain their exempt status.
- *Evaluate and realign employee workload:* Employers can limit the need for employees to work overtime by ensuring that workloads are distributed to minimize overtime and that staffing levels are appropriate for the workload.
- *Pay overtime above a salary:* Employers also can continue to pay newly overtime-eligible employees a salary basis and pay overtime for hours in excess of 40 per week. The law does not require that newly overtime-eligible workers be paid on an hourly basis.

This approach works for employees who usually work 40 hours or fewer, but have seasonal “spikes” or periods of activity when overtime hours are required, for which employers can plan and budget the extra pay during those periods.

- o For employees who work a fixed schedule that rarely varies, the employer may simply keep a record of the schedule and indicate the number of hours the worker actually worked only when the worker varies from the schedule.
- o For an employee with a flexible schedule, an employer does not need to require an employee to sign in each time she starts and stops work. The employer must keep an accurate record of the number of daily hours worked by the employee. So an employer could allow an employee to just provide the total number of hours she worked each day, including the number of overtime hours, by the end of each pay period.
- *For public schools, utilize comp time:* Public sector employers—unlike private sector employers—can provide comp time at time and one-half rather than cash overtime payments, in appropriate circumstances.
- *Adjust employees' base pay and pay overtime:* Employers can adjust the amount of an employee's earnings to reallocate it between regular wages and overtime pay. This method works for employees who work a relatively small amount of predictable overtime. The revised pay may be on a salaried or hourly basis (there is no requirement to convert workers to hourly pay status), but it must include payment of overtime when the employee works more than 40 hours in a week.

For more detail on the FLSA and higher education, please see [here](#).