

## Fair Labor Standard Act (FLSA) Frequently Asked Questions

**Since the original posting of FAQs (Frequently Asked Questions) regarding the FLSA regulation changes, a federal court has issued an injunction that makes it uncertain how the FLSA's overtime pay exemptions apply to employees who would be impacted by the new rules. Based on the court's order, the University System of Maryland (USM) Office has received legal advice from counsel in the Maryland Attorney General's Office that institutions should put on hold, until further notice, any changes planned in order to meet the requirements of the Fair Labor Standards Act's new overtime rules.**

The U.S. Department of Labor recently approved updates to the Fair Labor Standard Act (FLSA) regulations regarding minimum salary requirements for exempt staff and non-teaching faculty. The change raises the existing salary minimum of \$23,660 to \$47,476 regardless of employment percentage (fte). Employees who do not meet specific exemptions and whose current salaries do not meet the required minimum will be designated as eligible for cash overtime. Employers are required to implement the change by December 1, 2016.

With the change to the FLSA regulation, we face some difficult decisions for the next fiscal year. As a University System, we are faced with the following options:

- designate employees who do not meet the new minimum as overtime eligible (potentially nonexempt status); or
- increase the salaries of affected employees to the new FLSA minimum.

### **1. What does "nonexempt" and "exempt" mean?**

If your position is nonexempt, it means that you are eligible to be paid cash overtime. If your position is exempt, you are not eligible to be paid overtime. An exempt employee cannot be paid less than the FLSA minimum salary threshold (\$47,476) after December 1, 2016.

### **2. How will the new salary minimum affect my current status as an exempt employee?**

If your current salary does not meet the new required minimum, your status could change from exempt to nonexempt (overtime eligible), and you would be eligible to be paid for any hours worked in excess of the 40 hour workweek.

### **3. Are there jobs that will not be subject to the new regulation requirements?**

Yes, there are several categories of jobs that will remain as exempt and not subject to the new salary minimum. Those staff who meet the exemptions are being identified to determine if their

status will remain as exempt under the FLSA. More detailed descriptions of these exemptions may be found at [https://www.dol.gov/whd/overtime/fs17a\\_overview.pdf](https://www.dol.gov/whd/overtime/fs17a_overview.pdf).

**4. How will I know if I will be affected by this change?**

If you are currently exempt status and your salary is below the new minimum, you will receive notification regarding position/salary changes from your immediate supervisor, department head or division head.

**5. I am currently a grant-funded employee. Do the regulations still apply to me?**

Yes, the regulations affect all employees in the categories, regardless of the source of funds.

**6. My status is part-time. Will the new FLSA salary minimum be pro-rated based on my percentage of employment?**

The FLSA regulations do not allow for pro-rating of the salary minimum based upon percentage of employment.

**7. Will my job duties change as a result of the regulation change?**

No, your assigned duties and responsibilities will not change.

**8. Will my job title change?**

If it is determined that your salary will not be brought to the new minimum, your job category could become designated as nonexempt throughout the University System of Maryland (USM) or at UMBC. In either case, your position may be reclassified to a newly established nonexempt title that is designed to accommodate your current duties and responsibilities.

**9. If my position becomes nonexempt, how should actual hours worked be recorded?**

Nonexempt employees must record all time worked. This means you will record arrival and departure times for work, meal periods, and any time worked beyond the assigned work schedule. Hours worked beyond the assigned work schedule are considered overtime.

**10. If my status changes to nonexempt, how will this affect my benefits?**

**Your health and retirement benefits will remain unchanged.** However, your leave accrual status may be affected. A final decision on leave accruals will be forthcoming from the USM Chancellor's Office no later than October, 2016.

**11. If I am moved to Nonexempt, will I become a represented employee under the collective Bargaining agreement?**

Maybe. The move from exempt to nonexempt could make you eligible for to be represented by AFSCME (American Federation of State, County and Municipal Employees). If you currently supervise staff or are in a designated confidential position, you will be excluded from the bargaining

unit. Additional information regarding the [collective bargaining unit](#) and [shared governance](#) can be found on the HR website.

**12. If I am moved to nonexempt and am not represented by AFSCME union, can I participate in shared governance?**

Yes. You will be eligible to join Nonexempt Staff Senate (NESS). For more information about NESS, visit the [Nonexempt Staff Senate](#) webpage.

**13. In subsequent years, if my salary meets or exceeds the new minimum, will I then be considered an exempt employee?**

If your current job title has been classified as nonexempt based on the new FLSA regulations, your status will remain unchanged if your salary subsequently reaches or exceeds the new minimum.