

Fair Labor Standards Act

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Sponsoring Department: Human Resources

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I. Purpose

This policy provides guidelines and procedures to determine those positions that qualify for exemption under the Fair Labor Standards Act (FLSA).

II. Policy

Unless specifically exempted, all employees of the university are covered by the provisions of the Fair Labor Standards Act of 1938, as amended.

Normally, a representative of the Office of Human Resources, Compensation department will determine whether a position status is exempt or non-exempt in accordance with the FLSA. The Assistant Vice President of Human Resources and/or the UT System Office of General Counsel will make this determination in unusual circumstances and shall make interpretation of other FLSA issues.

III. Scope

- A. The FLSA establishes standards concerning minimum wages, maximum hours, overtime pay, equal pay, child labor and record keeping for covered employment.
- B. The FLSA applies to all activities performed in connection with the operation of institutions of higher education (whether public or private, or whether operated for profit or not for profit) regardless of the annual dollar volume of the institution, provided there are employees engaged in interstate commerce or in production of goods for interstate commerce, including employees who handle, sell, or otherwise work with goods which have been moved in or produced for such commerce.

- C. The FLSA provides that a state or political subdivision thereof is responsible as an employer for compliance with FLSA in regard to all of its employees in connection with the operation of such an institution carrying out its mission of providing education. This is true even though the employee may be part of a central administrative or servicing staff or otherwise employed at a location away from the premises where the classes are conducted, so long as the employees are employed in the statutory enterprise.

IV. Exemptions

The FLSA provides a minimum wage and overtime pay exemption for any employee paid on a salaried basis and employed in a bona fide executive, administrative, professional, creative professional, or qualified computer employee capacity (including academic administrative personnel and teachers). Whether an employee is exempt depends on his or her duties, responsibilities, and salary. Title alone does not make an employee exempt. The following criteria, all of which must be met for a given category, have been established by the Wage and Hour Division of the Department of Labor in determining those positions that qualify for an exemption under the FLSA:

- A. Executive - An executive employee must meet all the following requirements in order to be considered exempt from overtime:
 - 1. Compensation: The employee must be paid not less than \$455 per week exclusive of board, lodging, or other facilities. (On an annual basis, \$455 per week equals approximately \$23,660 per year) This must be the minimum salary of the exempt employee even if they are employed on a part-time basis.
 - 2. Duties: Duties must consist primarily of management of the agency, department or a subdivision of the agency or department.
 - 3. Supervision: Customarily and regularly directs two or more full-time employees, or their equivalent. (Supervision must include hiring, firing, counseling and reviews of employees.)
- B. Administrative - An administrative employee must meet all of the following requirements in order to be considered exempt from overtime:
 - 1. Compensation: The employee must be paid not less than \$455 per week exclusive of board, lodging, or other facilities. (On an annual basis, \$455 per week equals approximately \$23,660 per year) This must be the minimum salary of the exempt employee even if they are employed on a part-time basis.
 - 2. Duties: Duties must consist primarily of the performance of office or non-manual work directly related to management policies or general business operations, or the performance of functions in the administration of an educational establishment, or a department or subdivision thereof, in work directly related to the academic instruction or training.

3. Responsibilities: Primary duties include work requiring the exercise of discretion and independent judgment with respect to matters of significance.
- C. Professional - A professional employee must meet all of the following requirements in order to be considered exempt from overtime:
1. Compensation: The employee must be paid not less than \$455 per week exclusive of board, lodging, or other facilities. (On an annual basis, \$455 per week equals approximately \$23,660 per year) This must be the minimum salary of the exempt employee even if they are employed on a part-time basis.
 2. The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment.
 3. The advanced knowledge must be in a field of science or learning.
 4. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.
- D. Creative Professional - To qualify for the creative professional exemption, all of the following tests must be met:
1. The employee must be paid not less than \$455 per week exclusive of board, lodging, or other facilities. (On an annual basis, \$455 per week equals approximately \$23,660 per year) This must be the minimum salary of the exempt employee even if they are employed on a part-time basis.
 2. The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
- E. Computer Employee Exemption - To qualify for the computer employee exemption, the following tests must be met:
1. The employee must be compensated either on a salary or fee basis (as defined in the regulations) at a rate not less than \$55 per week or, of compensated on an hourly basis, at a rate not less than \$27.63 an hour.
 2. The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below:
 - a. The application of systems analysis technique and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - b. 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;

- c. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - d. A combination of the aforementioned duties, the performance of which requires the same level of skills.
- F. Highly Compensated Employees - Highly compensated employees performing office or non-manual work and 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 the FLSA if the customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee.