

On December 1, 2016, the U.S. Department of Labor (DOL) approved a change in the federal Fair Labor Standards Act (FLSA) regarding overtime eligibility. The revised rule increases the minimum salary threshold for exempt employees from \$455/week (23,660/year) to \$913/week (\$47,476/year). The University of California continues to honor this salary minimum for nonacademic staff employees to be considered exempt from overtime eligibility, however subsequent DOL rulings changed the amount required by the FLSA<sup>1</sup>.

All staff and academic personnel, including rehired retirees and part-time employees, who do not qualify for the professional teaching exemption and who earn less than \$913 per week, will be designated as non-exempt and paid on an hourly basis. This is because the criteria to qualify for the exemption under FLSA requires that an employee earn at least \$913 in each week in which they perform any work regardless of the number of days or hours worked.

Due to certain exemptions under FLSA, it will remain the case that some University employees will remain overtime-exempt even if they earn a salary that is below \$913 per week. For example, University employees whose primary duty is teaching, practicing law or medicine will be unaffected by this rule no matter how much they earn. This exemption from the salary basis test also applies to many University coaches, who have the primary duty of teaching or instructing student athletes. If a coach is primarily engaged in administrative duties, then the salary threshold must apply.

Employees with reductions in time, including those who participate in the Employee Reduction in Time (ERIT) program, who as a result of reduction in time no longer meet the salary minimum will be designated as non-exempt.

Part time employees holding exempt positions and have a salary above \$913 per week (\$47,476/year) do not need to be converted to non-exempt. For example, an employee working at 80% time with a base salary of \$60,000/year would continue to meet the salary minimum ( $\$60,000 \times .80 = \$48,000$ ).

Available FLSA conversion resources:

- Employee Letter templates
- Notice Regarding Overtime Compensation (compensatory time election)
- FAQ - Changing FLSA Exemption

Additional consideration:

- Coordinate with Shared Service Center to change FLSA attributes to non-exempt
- Compensation must be converted to an hourly pay rate
- Convert employee to bi-weekly hourly pay group

Contracted employees who are impacted by this change must receive an amendment to their contract outlining how the FLSA changes will affect their status and/or pay.

Rehired retiree appointments will generally be established with non-exempt status.

Employees moving from non-exempt to exempt should have any remaining compensatory time hours paid out on their last bi-weekly paycheck before conversion.

1. <https://www.dol.gov/agencies/whd/fact-sheets/17g-overtime-salary>