

## FAQ's

### **What is the Fair Labor Standards Act?**

The Fair Labor Standards Act (FLSA) is a federal act that requires the payment of minimum wage and overtime to employees who are considered covered or "non-exempt" under the Act. The Act also contains requirements regarding exempt- or non-covered employees- with respect to how they are paid and treated in order to maintain their exemption.

### **What does the term "non-exempt" mean?**

Non-exempt means not exempt from the FLSA overtime rules. In other words, non-exempt salaried employees are those employees who must be paid an overtime rate of time-and-one-half for each hour worked in excess of 40 hours per workweek.

### **What does the term "exempt" mean?**

Exempt means exempt from earning overtime. Exempt employees are paid for the job, not for hours worked.

### **What is our workweek?**

The workweek established by King's College is from 12:01 a.m. on Sunday through midnight on Saturday.

### **What is the effect of the new FLSA rules that the Department of Labor (DOL) released on May 18, 2016 with respect to overtime eligibility?**

The Department of Labor updated the minimum salary level above which salaried workers can be considered exempt from the DOL overtime rules. Generally, the new rules require salaried employees who earn less than \$47,476 per year to be paid overtime for all hours worked in excess of 40 hours in a workweek. There are some limited jobs in higher education that are not subject to the new rules and that will therefore continue to be exempt from the overtime.

### **How is the minimum salary level changing?**

The new DOL rule raises the minimum salary level from the current amount of \$455 per week (the equivalent of \$23,660 a year) to \$913 per workweek or \$47,476 per year.

### **When does the rule take effect?**

The new rule will be effective with the pay period that begins on November 20th, 2016. Please refer to the payroll schedule for more specifics.

### **Will the salary threshold of \$47,476 be updated in future years?**

The new rule establishes a mechanism for review of the salary level every three years, with the first update expected to take place in 2020.

### **How will I know the outcome of the review of my position?**

The Human Resources Department will provide direct communication to all employees whose positions have been impacted by the new rule in the coming weeks.

### **Will my compensation change?**

All non-exempt employees will receive overtime for approved hours physically worked beyond 40 hours in the workweek.

**What happens if an employee earns more than \$47,476 per year but does not meet the “duties” test?**

If the duties test is not met, the employee must receive overtime for hours worked in excess of 40 hours in a workweek, even if the employee earns in excess of \$47,476.

**What is the “duties” test?**

The FLSA provides that the employee’s primary job must involve certain types of work to meet the test for an executive, professional, or administrative exemption from the overtime rules. Additional information about the rules can be found on the Department of Labor’s web site. The Office of Human Resources, in consultation with supervisors, determines whether an employee meets the executive, professional, computer or administrative exemption test.

**I am part-time employee. Is my salary prorated under the regulations?**

No. For example, if an employee makes \$35,000 and is a .50 FTE, they will be considered non-exempt even though their FTE salary would be \$70,000.

**I am a partial-year employee. Is my salary prorated under the regulations?**

Yes. For example, if a 10-month employee earns \$45,000, but is paid over 12 months, that employee would meet the salary requirement because the 10 month weekly salary is \$1,125.00 (\$45,000/40 weeks) even though the weekly paycheck is \$865.38 (\$45,000/52 weeks.)

**I’m paid a salary and my job title is manager. Am I exempt?**

Job titles do not determine exempt status. For an exemption to apply, an employee’s specific job duties and salary must meet all of the applicable requirements provided in the Department’s regulations.

**When is overtime earned for non-exempt employees?**

Under the FLSA, hours worked over 40 in a workweek are considered overtime. Any non-exempt employee who works beyond 40 hours in a workweek must be compensated at a rate of time-and-one-half.

**May a non-exempt employee volunteer to stay late to complete work, complete work from home, or work on weekends, and not be compensated for any hours worked beyond 40 hours in a workweek?**

No. An employee who is eligible for overtime cannot volunteer to work “off the clock” and is not permitted to waive his or her rights under the FLSA.

**Will I have to record my time?**

To ensure proper pay for hours worked, all non-exempt employees must record their time worked in WebAdvisor TimeEntry. Please refer to the online tutorial for recording you time worked.

**Does overtime have to be authorized by my supervisor prior to me working over 40 hours in a workweek?**

No, however, your supervisor will need to review and approve your timecard bi-weekly. It is the responsibility of the supervisor to exercise control to see that work is not performed beyond what is needed for the position. Overtime will also be monitored by Payroll and Human Resources Department.

**May an employee's hours be adjusted within the same workweek to avoid the employee earning overtime for hours worked beyond 40 in the workweek?**

Yes. An employee, with supervisory approval, may adjust his/her schedule during the workweek to offset extended workdays. Alternatively, the employer may require that the employee adjust his or her schedule. For example, if an employee needs to work into the evening (e.g., three hours later than normal hours), it might be possible to have the employee come into work three hours later on another day as long as the change does not disrupt the business operations of the office and the adjustment occurs in the same workweek.

**How can I determine if staff development/training and committees are considered compensable activities, if they occur outside of the employee's normal work hours?**

In order for training or a meeting to not be considered compensable work time, all of the following four (4) criteria must be met:

1. Attendance must occur outside the employee's work hours;
2. Attendance must be voluntary;
3. The employee must do no productive work while attending (productive to the employer); and
4. The training, or meeting, should not be directly related to the employee's job.

If any of the above conditions are not met, the time is treated as hours worked.

**If non-exempt employees work during lunch will it count towards the 40 hour workweek?**

Yes. Non-exempt employees may not work during their lunch break. If they do the time counts as hours worked. Performance of any work duties, such as answering phones or emails, during meal periods is considered hours worked.

**Will the proposed rule impact employees who use electronic devices, such as smartphones or laptops, for work-related purposes outside of regular work hours?**

Yes, performance of any work duties, such as answering phones, or emails during off hours, is considered hours worked.

**Does the new rule change my benefits?**

No, the new rule does not affect your benefits. Rates of vacation accrual are determined by College policy and are not determined by FLSA regulations. Affected staff who have less than the required years of service to get the maximum accrual rate, will have their current accrual rate "grandfathered" as a special policy exception tied to this implementation change.

**Can a non-exempt employee accept a second position at the College, even if the second position is considered exempt?**

In most instances, it will not be permitted as an employee can only have one exemption status based on their "primary duties". If a non-exempt

employee is interested in a second position, please consult with the Human Resources Department.

**What about campus sponsored events like mixers, lunches, and activities? Are these on or off the clock?**

Attendance at these events are voluntary, and are not considered work. Attendance at these events that occur during the workday counts for part of your 40 hours. Events such as these are encouraged as team-building opportunities.

**Is my normal commute “working time”?**

No, ordinary home-to-work travel is non-working time.

**Is a commute to and from my home to an offsite location or event in fulfillment of my job duties considered working time?**

That depends. Any time spent traveling to the special worksite that is in excess of the length of your normal commute is working time. If this commute to the offsite location is shorter than your normal commute, then it is non-working time.

**Is travel from my normal office to an off-campus location or special worksite (such as an “away” game or an event) or to meetings, lectures, training programs, or similar activities during my usual workday considered working time?**

Travel from your office to any other location during the workday in fulfillment of your job duties is working time.

**Is attendance at non-mandatory meetings, lectures, training programs or similar activities considered working time?**

Attendance at these activities is non-working time ONLY IF the following four criteria are met:

- It is outside your normal working hours;
- It is voluntary;
- It is not job-related;
- No other work is concurrently performed.

In other words, if you attend a voluntary meeting, lecture or training program during your normal working hours, it is counted as hours worked.

**If I am required to stay at a hotel, how much time is working time?**

While you are considered “on duty” for the entire time you are away from home, only certain types of activity count as working time.

- On call” Hours: If you are “on call” for duty, the hours worked are not considered working time unless you are required to remain awake and in a particular location. If you are able to do other activities while on-call and use your time for your own purposes, this time is not considered hours worked.
- Sleeping time: Time spent asleep is non-working time.

**If I am away from home for a weekend meeting or event, how do I determine how much time I worked?**

For each full weekend day you are away from home, you count as hours worked any time spent actually working. If you are relieved from duty for a portion of the day such that the time is long enough to permit you to use

the time effectively for your own purposes, then this time when you are relieved from duty is not considered work time. For example, if you are out of town for an event, and if you are not required to leave the hotel until 11:00am on Saturday morning, and if you are at the event and then return to the hotel at 5:00pm, you count six hours as hours worked. If you do not return to the hotel until 8:00pm, you count nine hours as hours worked.

**Who can I contact with additional questions about FLSA compliance?**

Please contact the Office of Human Resources at 570-208-5925.