

## **Fair Labor Standards Act Frequently Asked Questions**

### **1. *What is the Fair Labor Standards Act (FLSA)?***

The FLSA was developed by the U.S. Department of Labor and requires employers to pay at least the minimum wage, pay overtime, comply with child labor laws and comply with record keeping requirements. FLSA does provide an exemption from both minimum wage and overtime pay for employees that are employed in certain classifications.

### **2. *What classification of employees are considered exempt from minimum wage and overtime pay?***

Employees within the Executive, Administrative, Professional and Outside Sales positions are considered exempt.

### **3. *What are the FLSA guidelines to determine if a position is exempt from minimum wage and overtime?***

The FLSA requires that 3 tests be applied to determine exempt status. The test includes a review of salary level, salary basis and job duties. All 3 tests must be met in order for a position to be determined as exempt. For additional details visit the DOL website at [www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm)

### **4. *What is the difference between exempt and non exempt employees?***

Exempt employees are paid a set amount for the job performed, regardless of hours worked, and are exempt from overtime pay. Non exempt employees are paid based on the hours worked and therefore, are eligible for overtime hours.

### **5. *Will my benefits change if my exempt status changes?***

No. Benefits are not determined based on exempt or non exempt status.

### **6. *Am I required to work overtime or be on call?***

If overtime or on call status are determined to be an essential duty within your job, you may be required to do so. *Note: employees included in a bargaining unit should refer to the master agreement for information regarding this.*

### **7. *How is overtime pay calculated?***

Pay is calculated based on the terms listed in your bargaining agreement or, for non-exempt Independent Staff, the *Independent Staff Employment and Benefits* document.

### **8. *What increment of overtime is calculated?***

Overtime is calculated based on any time worked in excess of 40 hours in one week. W.C.C. calculates overtime in ¼ hour increments.

### **9. *When is a non exempt employee eligible for overtime?***

Pay is calculated based on the terms listed in your bargaining agreement or, for non-exempt Independent Staff, the *Independent Staff Employment and Benefits* document.

**10. If I use leave time during the week am I eligible for overtime pay?**

Pay is calculated based on the terms listed in your bargaining agreement or, for non-exempt Independent Staff, the *Independent Staff Employment and Benefits* document.

**11. Can we get compensatory (comp) time off instead of overtime pay?**

Per FLSA, comp time off is restricted to public agency employees that perform fire protection or law enforcement duties. All other employees eligible for overtime must be compensated by overtime pay.

**12. Do I have the option to flex my time instead of receiving overtime pay?**

Yes. If agreed upon with your supervisor, you may flex your schedule to account for overtime; however, this must be done within the same week that overtime is worked. *Note: employees included in a bargaining unit should refer to the master agreement for information regarding work schedules.*

**13. If I am an exempt employee and my work requires me to put in 50 -60 hours during a week, can I flex my schedule to allow for time off?**

This is at your supervisor's discretion. In the event that you do flex your time, it is recommended that your schedule is flexed within the same pay period as the hours worked. If you try to keep track of flex time for future use, this may cause confusion with your afforded leave time.

**14. What is considered a work week?**

The workweek is defined as a fixed and regularly recurring period of seven consecutive 24 hour periods. The W.C.C. work week is Saturday – Friday.

**15. What is considered a work day?**

The period of time in which an employee commences his/her principal activity and the time at which he/she ceases principal activity.

**16. Is waiting time considered time worked?**

If you are engaged to wait, meaning that your supervisor has asked you to report at a certain time and you do not receive an immediate assignment or you are unable to begin work due to power outage, system failure.... this is considered work time. If you are waiting to be engaged, meaning that you are waiting for your assigned shift to start, this is not work time.

Example: If you are scheduled to work from 6:30 am – 2:30 pm and 4:00 pm – 10:00 pm and you choose not to leave your office between the scheduled times, this is not considered work time, unless your supervisor asked you to work or be available for work.

**17. Is on call time considered time worked?**

If you are required to remain on call at home or leave a message where you can be reached, this is not considered work time. However, if there are additional restraints placed on your freedom, this could be considered time worked. Please consult with your supervisor/department regarding on call procedure.

**18. Is lunch time considered time worked?**

If you are completely relieved of your duty for purposes of eating a meal, this is not considered work time. However, if you are required to perform any duties while you are eating, this is considered work time.

**19. Is travel time to work considered as time worked?**

Home to work travel is not work time. However, if you travel during your workday or if you are asked to travel to another site, this is considered work time. If traveling to an off site location, the amount of time it takes to get from home to your normal work site is to be deducted from the total travel/work time.

If you are asked to travel to a conference away from home, travel is considered work time when it cuts across your workday; this includes normal working hours on regular working days and corresponding hours on non working days. Time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus or car is not considered working hours.

**20. How many hours a day can an employee be required to work?**

Per FLSA, there is no limit on the amount of hours an employee aged 16 or older can be required to work.

**21. Can my scheduled hours of work be changed?**

Per FLSA, there are no provisions regarding the scheduling of employees with the exception of child labor. Your scheduled work hours may be adjusted, unless this is determined by bargaining unit agreement.

**22. Is it expected that a job is written to be 40 hours per week?**

Yes, for full time jobs, the expectation is that the job is 40 hours per week. There are exceptions in which a full time job may be determined to be less than 40 hours, however, this is written in the job description, benefits are reduced and overtime is still paid based on hours worked in excess of 40 in a week.

**23. Can I recover overtime pay for hours that were not reported as overtime?**

Per W.C.C. standards, overtime must be pre-approved prior to working. However, you may recover back pay for documented overtime over a 2 year period or in cases in which an employer willfully violated the FLSA for a 3 year period.

**24. How is the FLSA enforced?**

Through Department of Labor, Wage and Hour representatives that audit employer practices. Failure to comply may result in employer fines.

**25. What information is an employer required to post about FLSA?**

The federal minimum wage, general guidelines regarding overtime pay and child labor and enforcement of FLSA. This information is displayed on a poster in the Office of Human Resource Management.