

# Fair Labor Standards Act

Getting paid for what you do!

September 2019



# Agenda

## 1. Overview

- What is the Fair Labor Standards Act?
- Nursing Mothers

## 2. Exempt & Nonexempt

- Definitions
- Salary Requirements
- Exemption Categories

## 3. Time Worked Records

## 4. Minimum Wage Requirements

## 5. Overtime Pay Requirements

## 6. Compensable Time

- Travel
- Rest and Meal Periods
- On Call
- Preparing for Work

## 7. Summary

## 8. Resources

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

Federal law passed in 1938 that sets standards for:

- Child labor
- Minimum wage
- Overtime pay
- Equal pay (added under the 1963 Equal Pay Act) for men and women performing the same jobs
- Nursing Mothers [added under Patient Protection and Affordable Care Act (PPACA) in 2010]

Purpose

- Passed to help with economic recovery from the Great Depression
- Ensured a maximum number of jobs that paid a minimum livable wage

Established penalties for employers who do not comply

# Basic Provisions: Nursing Mothers

- FLSA was amended by the PPACA in 2010
- Employers are required to provide reasonable (unpaid) break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk
- Employers are also required to provide a place\*, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk

\*Family Resource Map provided at end of presentation which details the location of lactation rooms and how to designate a room if needed

# Definitions of Exempt & Nonexempt Employees

- Exempt employees:
  - Meet **one of the FLSA exemption tests** (the Duties Test) AND are paid the minimum salary of \$23,660 annually (\$455/week)\*
  - Not entitled to overtime
- Nonexempt employees:
  - Do not meet any of the FLSA exemption tests OR are paid less than the minimum salary requirement
  - Covered by wage and hour laws regarding minimum wage, overtime pay, and hours worked

\*Department of Labor has proposed to increase this threshold to \$35,308 annually (\$679/week) in January 2020

# Exempt Employees



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# Salary Requirements for Exempt Employees

For any work\* that is performed in any given week an exempt employee must receive their full salary with the following exceptions:

- Hourly paid computer professional employees who make at least \$27.63 per hour
- Teachers, doctors, lawyers or individuals who meet the outside sales exemption

\*the quality/quantity of the work does not affect their pay, poor quality/quantity should be addressed as a performance concern

# Categories of Exemptions from FLSA Minimum Wage and Overtime Pay Requirements

- Must meet one of these tests
  - **Executive** – manages the company or a recognized department of the company
  - **Administrative** – (specifically in the Higher Education industry) those responsible for the development of curricula, instruction, or student services
  - **Professional** – work requiring advanced knowledge (in a *recognized* field of science or learning) or particular creativity, imagination, or talent
  - **Computer-related** – work consisting of computer system analysis, design, modification, determining hardware, software, or system specifications, and similar work
  - **Outside sales** – regularly engaged in sales outside the employer's place of business
  - **Highly compensated employee** – paid more than \$100,000 annually (will increase to \$107,435 annually on January 1<sup>st</sup>, 2020)
  - **Technologists and Technicians** – work requiring advanced knowledge that is intellectual in nature, requiring judgment and discretion
- **AND be paid at least \$23,660 annually (\$455/week)\***

\*Will increase to \$35,568 annually (\$684/week) on January 1<sup>st</sup>, 2020 by the Department of Labor

## Executive Exemption

- Primarily manages the company or a customarily recognized department of the company
- Customarily and regularly directs the work of two or more full-time employees or equivalents
- Has the authority to hire or fire other employees or make recommendations that carry weight on significant employment decisions

## **Administrative Exemption**

- Primarily performs office or nonmanual work directly related to the management or general business operations of the company
- Engages in work requiring the exercise of discretion and independent judgment with respect to matters of significance

# Professional (Learned and Creative) Exemption

## Learned professional:

- Primarily performs work that requires advanced knowledge and that is primarily intellectual in character and includes the exercise of discretion and independent judgment
- Must have advanced knowledge in a field of science or learning
  - The field of science or learning must have a recognized professional status and are distinguishable from the mechanical arts or skilled trades where the knowledge could be of a fairly advanced type, but is not in a field of science or learning
- Must have acquired the advanced knowledge in a prolonged course of specialized intellectual instruction (appropriate academic degree or combination of degree and experience)

# Professional (Learned and Creative) Exemption

## Creative professional:

- Primarily performs work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual or physical work
- Recognized fields of creative professionals include acting, music, writing and graphic arts

# Computer-Related Exemption

- Compensated either on a salary or fee basis at a rate not less than \$455/week or, (if hourly) \$27.63/hour
- Employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the primary duties (or combination thereof) described below:
  - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications
  - 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
  - The design, documentation, testing, creation or modification of computer programs related to machine operating systems

## Outside Sales Exemption

- Does not have to be paid on a salary basis (can be paid commission only)
- Primarily makes sales or obtains orders for contracts for services or for the use of facilities for which consideration is paid by a client or customer
- Is customarily and regularly engaged away from the employer's place of business

# Highly Compensated Exemption

- Must be paid \$100,000\* annually, which includes at least the regular salary minimum paid on a weekly basis (\$455/week)
  - This annual salary for the highly compensated exemption may consist of commissions, nondiscretionary bonuses and other nondiscretionary compensation
- Customarily and regularly performs at least one of the exempt duties or responsibilities of the executive, administrative or professional exemption
- Primarily performs nonmanual office work

\*Will increase to \$107,435 annually on January 1<sup>st</sup>, 2020 by the Department of Labor

# Technologists and Technicians

- Primarily performs work that requires advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment
- Must have advanced knowledge in a field of science or learning
- Must have acquired the advanced knowledge in a prolonged course of specialized intellectual instruction (appropriate academic degree or combination of degree and experience)

# Nonexempt Employees



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# Requirements for Nonexempt Employees

- Paid at a regular hourly pay rate
- Record total daily or weekly straight-time earnings
- Record total overtime earnings
- Notate additions to or deductions from wages
- Record total wages paid each pay period
  - The University workweek is seven consecutive days commencing at 12:01 a.m. on Monday and ending 168 hours later at 12:00 midnight on Sunday
- Produce paychecks that reflect the dates of the pay period and hours worked

**All official time records for the University of Arizona are maintained in UAccess**

# Minimum Wage Requirements

- The federal minimum wage for covered, nonexempt employees is currently \$7.25 per hour
  - Arizona's current minimum wage is \$11.00 per hour
- University of Arizona pays the minimum wage of \$11.00 per hour as of January 1, 2019\*

\*Arizona Minimum Wage will increase to \$12.00 per hour as of January 1, 2020

# Overtime Pay Requirements - FLSA

Hours	Pay Rate
First 40 hours worked	Paid at regular rate of pay
Vacation/Sick/Other leave hours	Paid at regular rate of pay
Time worked during nights/weekends (within 40 hours of work for the week)	Paid at regular rate of pay
Time worked in excess of 40 hours worked in a week (with supervisor approval)	Paid at overtime rate (1.5x regular rate)
Time worked in excess of 40 hours worked in a week (without supervisor approval*)	Paid at overtime rate (1.5x regular rate)

\*performance issue, not a pay issue

Hours must be recorded in the UAccess Timesheets

# Overtime Pay Requirements - University of Arizona

- Generally, compensatory time off is the preferred means of compensating nonexempt employees for overtime hours worked here at UA
- When a nonexempt employee ***works more than their FTE, but less than 40 hours in a workweek***, the employee must be compensated by one of the following methods:
  - pay at the employee's regular rate of pay, or
  - accrual of compensatory time at regular time for each hour worked over the normal FTE
- When a nonexempt employee ***works more than 40 hours in a workweek***, the employee must be compensated by one of the following methods:
  - pay at time and one-half of the employee's regular rate of pay for each hour worked over 40, or
  - accrual of compensatory time at time and one-half for each hour worked over 40
  - Supervisors are responsible for managing the comp time hours an employee is allowed to accrue established by the University of Arizona

# Compensable Time: Work-Related Travel

## It is considered payable time?

Regular commute travel time	No
Travel time on <u>work days during regular hours</u> as a <u>passenger</u> or <u>driver</u>	Yes
Travel time on <u>work days outside of working hours</u> as a <u>passenger</u>	No, unless working while traveling
Travel time on <u>work days outside of working hours</u> as a <u>driver</u>	Yes
Travel time on <u>non-work days during regular hours</u> as a <u>passenger</u> or <u>driver</u>	Yes
Travel time on <u>non-work days outside of working hours</u> as a <u>driver</u>	No, unless it's in excess of regular commute time
Travel time on <u>non-work days outside of working hours</u> as a <u>passenger</u>	No, unless working while traveling
Meal periods during travel time	No
Travel time to airport	No, unless it's in excess of regular commute time
Travel time to workplace while on work trip (e.g. hotel to job site)	No, unless it's in excess of regular commute time

# Compensable Time: Rest and Meal Periods

Rest and meal periods:

- The FLSA does not require rest or meal periods, Arizona does not expand on this requirement
- When employers offer short breaks (usually lasting about five to 20 minutes), they are paid time
  - The University of Arizona has policies that govern allowable breaks and meal periods
  - ALVSCE employees are encouraged to a 15-minute paid break for every 4-hours of work and an unpaid 30-minute meal period for an 8-hour work day

## Compensable Time: On call

### On-call duty:

- If an employee is required to remain on University premises, hours spent on-call are paid
- If an employee is not required to remain on University premises, hours spent on call are not paid
  - Hours spent actually working are always paid

# Compensable Time: Preparing for Work

Changing clothes and preparing for working:

- If an employee is required to wear protective clothing or go through certain preparations to begin work, that time is paid
  - Such as Animal Cage Washers putting on their personal protection equipment
  - Employees working with hazardous chemicals or contagions

# Summary

## Nonexempt employee

- Does not need to meet any one of the FLSA exemption tests
- Covered by wage and hour laws regarding minimum wage, overtime pay and hours worked
- Compensable time may include travel, meetings and training, on-call duty, and changing clothes and preparing for work

## Overtime

- Compensated at 1.5x their hourly rate (cash or comp time)
- Based on actual hours worked (vacation, sick leave, holidays other paid leave is excluded)
- **If an employee works unauthorized overtime, it must be paid; unauthorized overtime is a disciplinary issue**

# Resources

## Federal Government

- [FLSA](#)
- [Reference Guides for FLSA](#)
- [Fact Sheets for FLSA](#)

## University of Arizona

- [Meals and Break Periods](#)
- [FLSA and Overtime Rules](#)
- [On-Call and Call-back status](#)
- [Positive Time Reporters](#)
- [Family Resource Map](#)

## ALVSCE

- [Grapevine](#)
- Please contact your Business Office, Division Business Services or Human Resources directly if you have specific questions or concerns