

FLSA Guide for Kenyon College Supervisors

U.S. Department of Labor's Fair Labor Standards Act (FLSA): 2020 Changes



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1. A Brief Guide to the U.S. Department of Labor's Fair Labor Standards Act (FLSA)

On Saturday, June 25, 1938 a landmark law was established known as the Fair Labor Standards Act of 1938 (FLSA). In its final form, the act applied to industries whose combined employment represented only about one-fifth of the labor force. In these industries, it banned oppressive child labor and set the minimum hourly wage at 25 cents, and the maximum workweek at 44 hours. The Fair Labor Standards Act (FLSA) determines whether a position is eligible for overtime pay. If a position is “exempt” it means that the position is not eligible for overtime pay. If a position is “non-exempt” it means that the position is eligible and must receive overtime pay at time-and-one-half for any hours worked above 40 hours in one workweek. The Fair Labor Standards Act (FLSA) impacts: Set minimum wage: Required overtime pay: Required recordkeeping: Prohibited child labor.

2. Fair Labor Standards Act Update, January 1, 2020

In January 2020, the U.S. Department of Labor implemented a revised rule to extend overtime protection to any employee making less than \$35,568/per year, barring Department of Labor mandated job exceptions, like “teachers” (i.e. professors, coaches, instructors, etc.) This means that any non-teaching employee earning less than this salary will be a non-exempt employee, eligible for overtime. The rule will raise the minimum salary level for exempt positions from its previous amount of \$455 per week (the equivalent of \$23,660 per year) to \$684 per week (the equivalent of \$35,568 per year) on January 1, 2020. The former salary threshold for overtime eligibility was less than the national poverty level for a family of four. The purpose of the DOL’s decision regarding overtime eligibility is to:

- ✓ Encourage employers to hire more employees rather than pay overtime premiums
- ✓ Provide more income to middle class employees, resulting in economic growth
- ✓ Increase payroll tax contributions to Social Security and Medicare

The DOL has affirmed its intent to update the standard minimum salary levels more regularly, but did not include any mechanism to automatically update the threshold.

FLSA at Kenyon College

Non-Exempt Employees

1. Eligibility for overtime pay for hours worked above 40 in one workweek
2. Must report hours worked through Banner web time-entry
3. Paid bi-weekly
4. Defined paid Sick/Personal/Family Leave policy (if benefits eligible)

Exempt Employees

1. Employee must be paid on a salary basis, not an hourly basis
2. Duties must meet the criteria for executive, professional, administrative, computer or outside sales activities
3. Compensation rate (pro-rated if less than full-time) must be at least \$35,568 annually (\$684 per week) effective January 1, 2020
4. Paid monthly

3. Supervisor Overview: Overtime Rules for Non-Exempt Employees

Managing Overtime Overtime may occasionally be necessary and should be pre-approved by the supervisor; however, whether pre-approved or not, it must always be paid. A clearly defined approval process can assist you and your employees in managing both time and budget resources. Supervisors and employees should review the updated section of the Staff Handbook which addresses overtime policies at Kenyon. <http://www.kenyon.edu/directories/offices-services/human-resources/employee-handbooks/administration-and-staff-handbook/wage-and-salary-policies/>

Definition of Employ By statutory definition the term “employ” includes “to suffer or permit to work.” The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place. “Workday”, in general, means the period between the time on any particular day when such employee commences their “principal activity” and the time on that day at which they cease such principal activity or activities. The workday may therefore be longer than the employee’s scheduled shift.

Application of Principles Employees “suffered or permitted” to work: Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example: an employee may voluntarily continue to work after the end of a shift to finish an assignment. The reason they stayed longer than their normally scheduled shift is immaterial. The hours are work time and are compensable. The employee may also be allowed to come in late on another day (during the same workweek only) in order to balance their weekly hours to the expected weekly schedule. It is the responsibility of the supervisor to monitor and approve changes to the weekly schedule.

On-Call Time An employee who is required to remain on-call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message where they can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.

Rest and Meal Periods Rest periods of short duration, usually 15 minutes or less, are common (and promote the efficiency and happiness of the employee) and are customarily paid as working time. These short periods must be counted as hours worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any unauthorized extension of the break may result in disciplinary action. Bona fide meal periods (typically 30 minutes to one hour) generally are not compensated as work time. The employee must be completely relieved from duty for the purpose of taking the meal period. The employee is not relieved if they are required to perform any duties, whether active or inactive, while eating.

Mobile devices Mobile devices expand the opportunity for work to be performed outside of normal work hours. These activities must be counted as paid work time (and potentially overtime) for non-exempt employees. You may need to set expectations with employees about answering emails or calls outside of normal hours.

Lectures, Meetings and Training Programs Attendance at lectures, meetings, training programs and similar activities need not be counted as working time only if four important criteria are met: Attendance is voluntary; outside of working hours; not job related and no other work is concurrently performed.

Travel Time

- **Home to Work Travel** An employee who travels from home before the regular workday and returns to their home at the end of the workday is engaged in ordinary home to work travel, which is not compensable work time.
- **Home to Work on a Special One-Day Assignment in Another City** If an employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day, the time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count the time the employee would normally have spent commuting to the regular work site.
- **Travel that is All in a Day's Work** Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday is work time and must be counted as hours worked.
- **Travel Away from the Home Community** Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's normal workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. Time that is spent in travel away from home outside regular working hours when the employee is a passenger on an airplane, train, boat, bus or automobile is not considered work time.

For more information, visit the U.S. Department of Labor's Wage and Hour Division at dol.gov/whd/flsa.

4. Frequently Asked Questions

What should be discussed with non-exempt employees regarding overtime?

Supervisors should set expectations and department schedules or behaviors in order to manage hours worked within budgets. It is important to clearly communicate expectations regarding working hours to non-exempt employees. Considerations include:

- Guidelines for using mobile devices outside of normal work hours to respond to calls or emails
- Expectation to seek approval for overtime
- How to track and report time worked
- Adjusting weekly work schedules when work must occur outside of normal business hours

Communicating a clearly defined overtime approval process to non-exempt employees can assist you in managing both time and budget resources. However, while non-exempt employees should seek pre-approval before working overtime, it is important to remember that all overtime must be paid, whether pre-approved or not.

Are there exceptions to the new salary threshold for exempt employees under the FLSA? Yes. Salaried employees not subject to the salary threshold test include faculty, athletic coaches and others.

Non-exempt employees in my area would like to have flexibility in their work hours. Is this possible? Yes. Alternate scheduling is allowed within the same workweek. For example, if an employee normally works 8 hours a day, and has a personal appointment on Monday that only allows them to work 6 hours, the supervisor and employee can agree that the employee will make up the 2 hours later in the same workweek. Another example would be if a typical schedule is 8 hours a day during the day, and the department needs an employee to work a special event for 4 hours during the evening. The schedule may be changed to give the employee 4 hours of time off at another time during the same workweek.

Can non-exempt employees telecommute? The College does not currently have a formal telecommuting policy. Any telecommuting arrangement should be evaluated on a case-by-case basis. Several factors for evaluation include: the type of work performed, including collaboration and level of interaction with others; the employee's ability to work independently with little direct or daily supervision; and the supervisor's ability to monitor and evaluate the employee. Additionally, there need to be clear expectations about work schedules and accurate tracking of hours worked for non-exempt employees.

Must an employee be paid for overtime even if I did not approve it? Yes. Overtime hours worked by non-exempt employees, even if unapproved, must be paid. Therefore, it's important to establish overtime rules and communicate them to everyone in your department. You can help by establishing rules regarding seeking approval in advance for projects or events that may be deadline driven and require additional hours.

Does time spent answering emails or using a mobile phone for work outside of normal hours count towards overtime for non-exempt employees? For non-exempt employees who respond to emails or calls outside of normal work hours or while on lunch breaks on a "regular" basis, that time is counted as work time for overtime purposes. If a non-exempt person responds to emails or calls "very occasionally," then court cases have considered that to be "de-minimis" and therefore not counted for overtime purposes. However, supervisors have discretion to establish overtime approval processes. If an employee continues to work overtime without supervisor approval, then the supervisor could begin taking possible disciplinary action with the employee.

Can I require overtime for non-exempt employees? Yes. Supervisors can require overtime work when necessary and with pay. Whenever possible, you should give advance notice to employees.

Can I offer a non-exempt employee "comp time" (unpaid time-off taken in a future workweek) instead of overtime? No. FLSA regulations state that non-exempt staff are to be paid for overtime hours worked. Other forms of payment, such as compensatory time off, (unless it is within the same workweek) are not to be used. Remember that rearranged work schedules may be an option in lieu of overtime, as long as the hours worked do not exceed 40 in a single workweek. These types of schedules provide flexibility for both the department and the employee. If an employee's hours worked exceed 40 in a single workweek, they must be paid overtime. Please talk with human resources if you want to further explore special or alternate scheduling options.

If I require evening work in my area for an event or other function, can I reduce a non-exempt staff member's daytime hours and replace them with evening work as long as they don't work more than 40 hours in a workweek? Yes, you can adjust the work hours of an employee to meet needs. Advance notice of such changes should be given to the employee if possible. You can rearrange hours from day to day within the same week, but the regulations do not provide you with the discretion to move hours from one week to the next without incurring overtime for the week in which the hours worked exceed 40 (even if the hours worked in the preceding week were less than 40).

Can a non-exempt employee waive overtime? No, employees don't have the option of waiving the legal requirements.

If you have any questions regarding the information contained in this Guide, please contact the Office of Human Resources for assistance.

