An Introduction to FLSA: Fair Labor Standards Act

Participant Guide
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Overview

Why Are We Here?

As of July 1, 2015, the University of Wisconsin – Madison will have our own classification system. This means we will be responsible for determining the Fair Labor Standards Act (FLSA) status for our positions. This training module will introduce you to the concepts needed for a solid understanding of what the Fair Labor Standards Act is. Our training today will focus on the evaluation of a vacant position under FLSA as of July 1, 2015.

We want to build on your general knowledge and expertise of FLSA and provide you with the vital information and tools you will need to champion this review process. Beginning in summer 2014, we will be conducting a FLSA review of all current classified permanent exempt staff.

This Participant Guide is intended to be used in the Introduction to Fair Labor Standards Act training and can be used as an on-the-job reference.

This guide is intended to provide an overview of the Fair Labor Standards Act combined with the eLearning module that was a pre-requisite of the classroom portion of the training. It is recommended that you review all of the material and have it as a reference or resource guide.

Expectations

- Your participation is critical.
- Keep notes throughout the session – using your participant guide.
- Allow yourself to be a learner.
- Expect unfinished business.
- Become a champion – learn how you will champion this process and take the information you learned back to your departments.

What are your expectations for this class? What personal or departmental benefits do you anticipate from completing this class?
Session Information

Evaluations
After attending this workshop, you will receive an online course evaluation. We’d appreciate it if you would complete the evaluation so that we can continue to provide you with learning experiences that meet your needs.

Notes:

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TO LEARN MORE:
Visit ohrd.wisc.edu

• HR Design
• Reference materials
• Document downloads
• Resource listings
• Upcoming HR Design events
Learning Objectives

Upon completion of this module, you will be able to:

1. Articulate to others…
   - The principles of the Fair Labor Standards Act
   - The basic policies that govern FLSA and who they apply to
   - How this will impact positions within the UW-Madison System
2. Identify what you will be asked to do as part of the FLSA review as well as define your role in the process
3. Define the set of standards used in order to determine whether a job is exempt or non-exempt
4. Explain to others the basic principles as to why we are going through this review process
5. Identify decision points in the process of determining if a position is exempt or non-exempt
6. Identify and create solutions for simulated scenarios
7. Champion new knowledge and processes at your respective divisions
Part 1: What is FLSA and What Does it do?

Review of eLearning Module

Questions?

Clarifications?

More of?

Notes:
Why is This Important to Me?

Key Points:

- Misclassifying positions as exempt when they are non-exempt can lead to fines being assessed by the Department of Labor, civil penalties, and lawsuits.

- Misclassifying of positions can lead to employees being treated differently in like positions across campus.

- The Fair Labor Standards Act (FLSA) has an important role in the HR Design Strategic Plan. The plan recommends academic staff and university staff employee categories align with FLSA categories. That is, the academic staff employee category would include all positions that are exempt from FLSA (also known as “salaried” positions) and the university staff category would include all non-exempt (or “hourly” positions). The primary reason for doing this is to provide a clearer, more consistent way to categorize jobs. Right now, all academic staff jobs are considered exempt* while some classified staff jobs are exempt and others are non-exempt. Using FLSA as a guide means that jobs requiring similar levels of judgment and responsibility will be put into the same employee category.

- In our future state, positions will have their employment category determined by their FLSA status.

* There are some Academic Staff jobs which are paid based on number of hours worked. These are exceptions for employees whose work is variable or unpredictable. For example, a pharmacist or sign language interpreter who provides coverage on an as-needed basis.

Notes:
Current State

Summer 2014 Review
Using FLSA as a guide means that jobs that require similar levels of judgment and responsibility will be put into similar employee categories.

- In our future state, positions will have their employment category determined by their FLSA status.
- Non-exempt will be University Staff and Exempt positions will be Academic Staff.
- The HR Design plan calls for a FLSA review of all currently exempt classified staff to see if we can offer the employee the option of moving to academic staff.
Key Concept:

What Does FLSA Do?

Non-Exempt Or Exempt

- Provides a set of standards to determine:

<table>
<thead>
<tr>
<th>Non-Exempt</th>
<th>Exempt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covered by FLSA</td>
<td>Not covered by FLSA</td>
</tr>
<tr>
<td>Hourly positions</td>
<td>Salaried positions</td>
</tr>
<tr>
<td>Overtime pay or compensatory time for more than 40 hrs/week</td>
<td>Normally no additional compensation for overtime work</td>
</tr>
</tbody>
</table>

*Per the State of Wisconsin: An hourly rate for payroll calculation purposes only is used for all classified employees – both exempt and non-exempt.

*Per the US Department of Labor: Hourly rate used to calculate wages is not the determining factor as to exempt or non-exempt.

The FLSA provides a set of standards to determine which jobs are covered by the act ("non-exempt") and which jobs are not covered ("exempt").

- Non-exempt positions are considered hourly positions and must receive overtime pay or compensatory time for hours worked over 40 in a workweek.

- Exempt positions are considered salaried positions and do not normally receive additional compensation for overtime work. For more information on FLSA please refer to the US Department of Labor website: [http://www.dol.gov/compliance/laws/comp-flsa.htm](http://www.dol.gov/compliance/laws/comp-flsa.htm)

- All classified employees, both exempt and non-exempt use an official hourly rate for payroll calculation purposes only, per the State of Wisconsin. The US Department of Labor has determined that while an official hourly rate is used to calculate wages, it is not the determining factor as to whether or not an employee is considered or treated as an “hourly” employee (non-exempt) or “salaried” employee (exempt) (see Wisconsin Human Resources Handbook Chap 504.020).
Part 2: How do we Comply?

How Do We Comply?

- Determine Federal and State Laws
- Determine Exempt or Non-Exempt
- Determine Exemptions such as:
  - Executive
  - Administrative
  - Professional
  - Learned and Creative
  - Computer Employees
  - Exemptions to Exempt

As stated previously, we are required to comply with the federal and state laws regarding wage and overtime provisions. They do not always agree and in those cases, we will comply with the more stringent of the two laws. The law that requires us to pay the employee more is the law that we will follow.

http://oser.state.wi.us/docview.asp?docid=4271

As we go forward, we will be pointing out when the state law is more stringent than the federal law.

We will be taking a look at each of these exemption categories in detail in order to comply with FLSA.

Notes:
How do we Comply?  Exempt Vs. Non-Exempt

Non-Exempt:

✓ Non-exempt employees are guaranteed minimum wage and entitled to overtime pay at time and one-half for all hours worked over 40 in a defined work week. This is also known as Premium Pay.

✓ The Fair Labor Standards Act defaults all positions to non-exempt unless it meets the tests for exemption

Exempt:

- Exempt from federal and state overtime laws when they clearly meet the requirement of the exemption.

- Employees are exempt when they pass 3 tests:
  1. Salary Level
  2. Salary Basis
  3. Job Duties

An employer must determine whether each of its covered employees qualifies as “exempt” or “non-exempt” from the overtime pay requirements of the FLSA, and this determination is very fact-specific and often complicated.

In general, employees who perform certain types of “white-collar” work, are paid at least $455 per week, and are compensated on a salary rather than hourly basis, are exempt from the overtime pay requirements. The employee’s job title or position is not determinative.

Employers often use the terms “salaried” and “exempt” interchangeably; however, they mean two different things. While many, and possibly even most, employees who are paid on a salary basis will qualify as “exempt” it is possible to be a “salaried” non-exempt employee who is entitled to overtime pay.

Notes:
How do we Comply? Exempt Vs. Non-Exempt

Exempt:
Employees are exempt when they pass 3 tests:

1. **Salary Level**
2. **Salary Basis**
3. **Job Duties**

1. **Salary Level:** To meet the salary level test, an employee must earn a minimum salary of $455 per week or $23,660 per year.

   Even if an employee works part-time, the salary test must be met. There is no provision in the FLSA for reducing or prorating the required salary level of $455 per week, with few exceptions (computer, outside sales etc....) Even if the other parts of the test are met, an employee who is paid less than the minimum salary level will not qualify as "exempt" and the employer will be required to pay overtime. This should rarely be an issue however, because most part time employees do not work more than 40 hours per week. In addition to salary, the following compensations are included in calculating an employee’s salary; commission on sales, percentage of sales or profits, flat sums, bonus payments, paid time off (PTO) and any other hourly, flat, or piece pay rate.

2. **Salary Basis:** Employee must receive a predetermined fixed salary that is not subject to reduction due to variations in the quality or quantity of work performed.

   To meet the salary basis test, an employee must regularly receive a predetermined, fixed salary for each pay period in which he/she performs any work. The general concept is that the employee is paid a flat rate regardless of the quantity or quality of the work they actually perform. For example, a company accountant is likely busy around tax season, and may work well over forty hours per week. During other times of the year, the company accountant is not as busy, but his salary is not reduced because he works fewer hours during those times. As a result, the accountant is paid on a salary basis.

   *How your compensation is set up in HRS does not dictate whether a person is paid hourly or salaried.*

   *The tracking of hours for the purposes of billing, sick leave reporting, mandatory office hours, etc., does not dictate whether a person is paid hourly or salaried.*

3. **Job Duties:** Employee must meet the criteria specified in one or more of the following exemptions:
   - Executive
   - Administrative
   - Professional
   - Highly Compensated
   - Computer Employees
Executive Exemption

Executive Duties Test

1. Primary Duty is management of a customarily recognized department or subdivision
2. Customarily and regularly directs the work of two or more employees
3. Authority to hire or fire other employees or whose suggestions and recommendations as to hiring, firing, advancement, promotion or other change of status of other employees are given particular weight.

Primary Duty is management of a customarily recognized department or subdivision:

- Primary Duty
- Principal, main, major, or most important duty they perform
- Factors to consider (but not limited to)
  - Relative importance of the exempt duties
  - Amount of time spent performing exempt work
  - Relative freedom from direct supervision
  - Relationship between the employee’s salary and the wages paid to other employees for the same kind of non-exempt work
- Employee does not devote more than 20% (40% in retail or service establishments) of work time to activities that are not directly and closely related to exempt work (State Rule) UW-Madison is considered the employer, so the 40% rule does not pertain to any units providing retail service on campus.

Notes:

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Executive Exemption

Primary Duty is management of a customarily recognized department or subdivision:

Examples of management duties include:

• Interviewing, selecting, and training employees
• Setting and adjusting pay and work hours
• Maintaining production or sales records
• Appraising employee productivity and efficiency
• Handling employee complaints and grievances
• Disciplining employees
• Planning and apportioning work among employees
• Determining the techniques to be used; the type of materials, supplies, machinery, equipment or tools to be used; or the merchandise to be bought, stocked and sold
• Providing for the safety and security of employees or property
• Planning and controlling the budget
• Monitoring or implementing legal compliance measures

Primary Duty is management of a customarily recognized department or subdivision:

 ✓ Customarily recognized department or subdivision
   ➢ Must have permanent status and continuing function
   ➢ Need not be physically within the employer’s establishment and may move from place to place
     ✓ Continuity of the same subordinate personnel is not essential to the existence of a recognized unit
     ✓ The employee in charge of each branch establishment is in charge of a recognized subdivision
   ➢ Does not include a mere collection of employees assigned from time to time to a specific job

Notes:
Executive Exemption

Customarily and regularly directs the work of two or more employees

- A frequency that must be greater than occasional
  - Less than constant
- Includes work normally and recurrently performed every workweek
- Does not include isolated or one-time tasks

Customarily and regularly directs the work of two or more employees

- The phrase “two or more other employees” means two full-time employees (or full-time equivalent)
  - Full time generally means 40 hours per week
- Supervision of the same employees can be distributed among two or more exempt executives
  - Hours worked by an employee cannot be credited more than once

Notes:

Authority to hire or fire other employees or whose suggestions and recommendations as to hiring, firing, advancement, promotion or other change of status of other employees are given particular weight.

- Factors include, but are not limited to:
  - Whether it is part of the employee’s job duties to make suggestions and recommendations
  - The frequency with which suggestions and recommendations are made or requested
  - The frequency with which the employee’s suggestions and recommendations are relied upon
- Suggestions and recommendations may be reviewed by a higher level manager
- The exempt executive need not have authority to make the ultimate decision
- Making an occasional suggestion regarding a change in status of a co-worker does not meet the “particular weight” standard
Administrative Exemption

Administrative Duties Test

1. Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers.

2. Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers.

Management or General Business Operations

- Refers to the type of work performed by the employee.
- Work must be directly related to assisting with the running or servicing of the university.
- Does not include non-supervisory employees working on a manufacturing production line or selling a product in a retail or service establishment.

Examples include: Finance, Accounting, Purchasing, Budgeting, Human Resources, Marketing, Safety and Health, Employee Benefits, Research, Legal and Regulatory Compliance and Computer Network, Internet and Database Administration.

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Administrative Exemption

Administrative Duties Test

Primary duty includes the exercise of **discretion and independent judgment** with respect to matters of significance

Definition of Discretion and Independent Judgment

- The comparison and evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered.
- Must be exercised with respect to “matters of significance,” which refers to the level of importance or consequence of the work performed.
- Decisions and recommendations may be reviewed at a higher level and, upon occasion, revised or reversed.

Factors include, but are not limited to:

- Whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices
- Whether the employee carries out major assignments in conducting the operations of the business
- Whether the employee performs work that affects university operations to a substantial degree, even if the employee’s assignments are related to operation of a particular segment of the university
- Whether the employee has authority to commit the employer in matters that have significant financial impact
- Whether the employee has authority to waive or deviate from established policies and procedures without prior approval
- Whether the employee has authority to negotiate and bind the university on significant matters
- Whether the employee provides consultation or expert advice to management
- Whether the employee is involved in planning long- or short-term university objectives
- Whether the employee investigates and resolves matters of significance on behalf of management
- Whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances

Factors do not include:

- Applying well-established techniques, procedures or specific standards described in manuals or other sources
- Clerical or secretarial work
- Recording or tabulating data
- Performing mechanical, repetitive, recurrent or routine work
Professional Exemption: Two Types

Learned Professional Exemption
1. The employee’s primary duty must be the performance of work requiring advanced knowledge
2. In a field of science or learning
3. Customarily acquired by a prolonged course of specialized intellectual instruction

Creative Professional Exemption
1. The employee’s primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor

Notes:
Professional Exemption: Two Types

Learned Professional Exemption
The employee’s primary duty must be the performance of work requiring advanced knowledge

Advanced Knowledge:
1. Predominantly intellectual in character
2. Includes work requiring the consistent exercise of discretion and judgment
3. The advanced knowledge is generally used to analyze, interpret or make deductions from varying facts or circumstances
4. Not work involving routine mental, manual, mechanical, or physical work
5. Cannot be attained at the high school level

In a field of science or learning
- Occupations with recognized professional status
  - Distinguished from the mechanical arts or skilled trades

Customarily acquired by a prolonged course of specialized intellectual instruction

Customarily:
- Exemption is also available to employees in learned professions who:
  - Have substantially the same knowledge level and
  - Perform substantially the same work as the degreed professionals,
  - But attained the advanced knowledge through a combination of work experience and intellectual instruction
- Examples: Lawyer who did not attend law school, Chemist who does not have a chemistry degree
- Must consistently exercise discretion and judgment (State law more stringent)
- Performs work that is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time (State law more stringent)
- Examples of Learned Professionals who meet the Professional Exemption include: Accountants, Engineers, Chefs, Athletic Trainers, Embalmers, Lawyers and Teachers
- Examples of related professions that are considered non-exempt include: Accounting clerks and bookkeepers who normally perform a great deal of routine work, Cooks who perform predominantly routine mental, manual, mechanical or physical work, Paralegals and legal assistants, Engineering technicians.
Professional Exemption: Two Types

Notes:

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Learned Professional Exemption (Continued)

Customarily acquired by a **prolonged course of specialized intellectual instruction**

Prolonged Course of Specialized Intellectual Instruction

1. Specialized academic training is a prerequisite for entering the profession
2. Best evidence that an employee meets this requirement is possession of the appropriate academic degree
3. The learned professional exemption is *not* available for occupations that may be performed with:
   - Only the general knowledge acquired by an academic degree in any field
   - Knowledge acquired through an apprenticeship
   - Training in the performance of routine mental, manual, mechanical or physical processes
4. The exemption also does *not* apply to occupations in which most employees acquire skill by experience
Professional Exemption: Two Types

Creative Professional Exemption

The employee’s primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Recognized Field of Artistic or Creative Endeavor

Examples include:

Music: Musicians, composers, conductors, soloists

Writing: Essayists, novelists, short-story writers, play writers; Responsible writing positions in advertising agencies

Acting

Graphic Arts: Painters, photographers, cartoonists,

Journalists

- Employees of newspapers, magazines, television and other media are not exempt if they:
  - Collect, organize and record information that is routine or public
  - Do not contribute a unique interpretation or analysis
  - Their work product is subject to substantial control

- Journalists may be exempt if they:
  - Perform on-air in radio or television
  - Conduct investigative interviews
  - Analyze or interpret public events
  - Write editorials, opinion columns or commentary

Invention, Imagination, Originality or Talent

- A creative professional must perform work requiring invention, imagination, originality or talent

- Creative professional work does not include:
  - Work that primarily depends on intelligence, diligence and accuracy
  - Work that can be produced by a person with general manual ability and training

- Exempt status is determined on a case-by-case basis, depending on the extent of the invention, imagination, originality or talent exercised

Must consistently exercise discretion and judgment (State law more stringent)

Performs work that is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time (State law more stringent)
Highly Compensated Exemption

The regulations contain a special rule for “highly-compensated” workers who are paid total annual compensation of $100,000 or more. A highly compensated employee is deemed exempt under Section 13(a)(1) if:

- The employee earns total annual compensation of $100,000 or more, which includes at least $455 per week paid on a salary basis;
- The employee’s primary duty includes performing office or non-manual work; and
- The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

Thus, for example, an employee may qualify as an exempt highly-compensated executive if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption as an executive.

Here is a link to the info from DOL:

Notes:

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Computer Employee Exemption

**Job Duty Requirements for Exemption**

**Computer Employees Duties Test**

- **Employees Primary Duty is:**
  1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.
  2. 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.
  3. The design, documentation, testing, creation, or modification of computer programs related to machine operating systems.
  4. Or a combination of the above requiring the same level of skills.

**AND...**

**Computer Employees Duties Test (Cont.)**

1. Must consistently exercise discretion and judgment (State Law)
2. Performs work that is predominately intellectual and varied in character.

With the exception of:
- Trainees or employees in entry level positions who do not work independently.
- Employees engaged in the operation, manufacture, repair, or maintenance of computers.
- Employees whose work is dependent on computers but who are not in computer systems analysis and programming occupations.

While these 3 groups do not qualify for the Computer Employees Exemption they may qualify under another exemption.

**Notes:**

- And is compensated at an hourly rate.
- The employee must be compensated at a rate not less than $27.63 an hour.
Exceptions to Exemptions

Three Exceptions to Exempt

**“Blue Collar” Positions**
- Blue collar positions perform work involving repetitive operations with hands, physical skill and energy.
- No matter how highly paid, blue collar workers NEVER become exempt employees.

**20% Wisconsin rule**
For positions that meet the Executive or Administrative Exemption:
- If the position devotes more than 20 percent (40 percent in retail or service establishments) of work time to activities that are not directly or closely related to exempt work, the position is non-exempt.

For positions that meet the Learned Professional Exemption:
- If the position devotes more than 20 percent of time to activities that are not an essential part of and necessarily incident to exempt work, the position is non-exempt.

For positions that meet the Creative Professional or Computer Employee Exemption:
- If the position devotes more than 20 percent of time to activities that are not directly or closely related to exempt work, the position is non-exempt.

**Nurses**
Registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption.
- Many registered nurses, however, are paid by the hour, not on a salary basis, and thus are entitled to overtime pay.

Licensed practical nurses generally do not qualify as exempt learned professionals.
Exemption Review

Exemption Category Review

- Employee must meet the criteria specified in one or more of the following exemptions:
  - Executive
  - Administrative
  - Professional
    - Learned
    - Creative
  - Highly Compensated
  - Computer Employees

Questions:

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SVH: HR Design Intro to FLSA 6.11.2014 (revision date 9.03.2014)
Part 3: Application

Decision Chart

Questions:

Group Activity / Skills Practice:

Evaluate positions based on the information you have learned today

Instructions:

- Read each of the job descriptions provided.
- Consult with your team to determine the exemption status and the reasoning for your decision.
- Once consensus is made within your team, document your findings in the table.
- Be prepared to share your findings with the class.
Skills Practice / Group Activity De-Brief

- Obstacles?
- Common questions?
- Best practices?
- On-line tool for July training and FLSA review

Notes:

Questions:
Key Take Aways:

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Learning Objectives Re-cap:

Are you able to:

1. Articulate to others…
   - The principles of the Fair Labor Standards Act
   - The basic policies that govern FLSA and who they apply to
   - How this will impact positions within the UW-Madison System

2. Identify what you will be asked to do as part of the FLSA review as well as define your role in the process

3. Define the set of standards used in order to determine whether a job is exempt or non-exempt

4. Explain to others the basic principles as to why we are going through this review process

5. Identify decision points in the process of determining if a position is exempt or non-exempt

6. Identify and create solutions for simulated scenarios

7. Champion new knowledge and processes at your respective divisions

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Appendix – eLearning Module Content

What is FLSA?

Fair Labor Standard Act Definitions

The Fair Labor Standards Act (abbreviated FLSA and sometimes pronounced “flissa”) is a federal law that establishes labor standards for public and private sector employers.

The Fair Labor Standards Act was created to protect employees and ensure that they be properly compensated for the work they perform.

The law defines a standard work week, establishes a national minimum wage and establishes parameters for working minors. In addition, the law guarantees overtime for certain positions.

FLSA is the federal law of broadest application governing minimum wage, overtime pay and youth employment. The law is enforced by the Wage and Hour Division of the U.S. Department of Labor.
The State of Wisconsin also has minimum wage and overtime pay requirements. When you are looking at and comparing State vs. Federal law:

- Look at the differences between the two
- The law that will require you to pay your employees more is the law that you have to follow

Wisconsin currently has minimum wage rates the same as the Federal rates. The UW-Madison must adhere to the law because all institutions of higher education are covered by the FLSA. UW-Madison is also a Wisconsin employer and is also covered by state minimum wage and overtime pay requirements. We must comply with both.

For your reference:

http://www.dol.gov/whd/minwage/america.htm
Almost every employee in the United States is protected by the federal FLSA. Employees not protected by the FLSA may be covered under state wage-hour laws.

FLSA identifies organizations / businesses covered by the law – The UW-Madison must adhere to the law because all institutions of higher education are covered by the FLSA.

There are two types of coverage: Enterprise and Individual
**Key Concepts**

**Who is an employee?**

FLSA makes a distinction between employees and independent contractors because in order for FLSA to apply, there must be an employment relationship between the “employer” and “employee”

UW System Administration policy on defining whether the work someone is doing for the university is that of an employee or an independent contractor is provided for your reference.

http://www.wisconsin.edu/fadmin/fppp/fp31at1.pdf
http://www.wisconsin.edu/fadmin/fppp/fppp31.htm

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**Notes:**

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What Does FLSA Do?

Key Concept:

What is a Workweek?

Employees within the University have different workweeks.

Key Concept:

What is Work?

Key Points:

Determine hours worked:

Employers should require non-exempt employees to provide the employer with information about the time they spend working. This usually takes the form of timesheets or time cards. (It is worth noting that employers may also require exempt employees to provide information regarding hours worked.) It is important that this information be accurate since it forms the basis of the employer’s minimum wage and overtime pay calculations. Hours worked generally do not include time spent commuting to or from work, breaks of more than 20 minutes or meal times of more than 30 minutes.
**What Does FLSA Do?**

**Key Concept:**

**How is Overtime Calculated?**

Fair Labor Standards Act Identifies

- **How is overtime calculated?**
  - The Overtime Formula for Non-Exempt Employees (Premium Rate)
    
    \[
    1.5 \times \text{Regular Rate} \times \text{Overtime Hours}
    \]
  - Regular Rate
    
    *“All remuneration for employment” paid to an employee in a workweek divided by all hours worked in that workweek.

- If an employee receives compensation in addition to hourly wages, the regular rate will be higher than 1.5 times the employee’s hourly rate.

All covered employees who do not qualify for a specific exemption are considered “non-exempt” from the FLSA overtime pay and minimum wage requirements. Employers must pay nonexempt employees overtime pay for all hours worked over 40 hours in a workweek at a rate not less than one and one-half times their regular hourly rate of pay.

An employee may not waive his/her right to overtime pay. Even if an employee is instructed or agrees to work a maximum of 40 hours per week, any hours actually worked over 40 hours will be subject to overtime pay requirements. An employer generally may, however, discipline an employee who works unauthorized overtime.

FLSA requires that overtime be calculated on a weekly basis, not by pay period.

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**Notes:**

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What Does FLSA Do?

**Key Concept:**

### Non-Exempt Or Exempt

<table>
<thead>
<tr>
<th>Non-Exempt</th>
<th>Exempt</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Covered by FLSA</td>
<td>- Not covered by FLSA</td>
</tr>
<tr>
<td>- Hourly* positions</td>
<td>- Salaried positions</td>
</tr>
<tr>
<td>- Overtime pay or compensatory time for more than 40 hrs/week</td>
<td>- Normally no additional compensation for overtime work</td>
</tr>
</tbody>
</table>

*Per the State of Wisconsin: An hourly rate for payroll calculation purposes only is used for all classified employees—both exempt and non-exempt.*

*Per the US Department of Labor: Hourly rate used to calculate wages is not the determining factor as to exempt or non-exempt.*

The FLSA provides a set of standards to determine which jobs are covered by the act (“non-exempt”) and which jobs are not covered (“exempt”).

Non-exempt positions are considered hourly positions and must receive overtime pay or compensatory time for hours worked over 40 in a workweek.

Exempt positions are considered salaried positions and do not normally receive additional compensation for overtime work. For more information on FLSA please refer to the [US Department of Labor website](http://www.dol.gov/compliance/laws/comp-flsa.htm).

All classified employees, both exempt and non-exempt use an official hourly rate for payroll calculation purposes only, per the State of Wisconsin. The US Department of Labor has determined that while an official hourly rate is used to calculate wages, it is not the determining factor as to whether or not an employee is considered or treated as an "hourly" employee (non-exempt) or "salaried" employee (exempt) (see [Wisconsin Human Resources Handbook Chap 504.020](http://www.dol.gov/compliance/laws/comp-flsa.htm)).
What Does FLSA Do?

**Notes:**

**Key Concepts:** (Good to Know)

FLSA also creates rules for:
- Compensatory Time
- Minimum Wage
- Improper Deductions
- Safe Harbor

FLSA includes provisions limiting the scope of employment for youth workers under 18 years of age. Employers are advised to consult state and local laws for other child labor provisions. **We will not be covering this area in our training today** – as these situations are rare here at the UW – Madison and each situation is handled on a case by case basis.