

FLSA Toolkit for Managers and Staff

This document has been prepared to provide you with important guidance related to the Fair Labor Standards Act (FLSA). The FLSA is the federal law that determines whether a position is eligible for overtime pay. Compliance with these standards is enforced by the U.S. Department of Labor (DOL).

When new positions are created, they undergo a comprehensive review process by JHU Compensation to determine if they are Exempt or Non-exempt.

Exemption Status	FLSA Payment Rules
Exempt	Paid a predetermined and consistent salary every pay period, regardless of the actual amount of hours worked. Employees in these positions are not required to track time worked, since their paid salary amount is the same each pay period, regardless of their hours worked.
Non-exempt	Paid based on actual hours worked. Employees in these positions are required to report all time worked and be paid overtime (1½ times their regular rate of pay) for time worked beyond 40 hours in a standard 7 day workweek.

With few exceptions, only positions that meet all three of the specific tests explained below can be considered Exempt from overtime under the FLSA.

Three Tests: Salary Basis, Duties and Salary Level

1. **Salary Basis Test** - must be paid a consistent amount each paycheck which does not fluctuate based on hours worked
2. **Duties Test** – must perform exempt job duties. The typical categories of exempt job duties include executive, professional, administrative, computer and outside sales.
3. **Salary Level** – an employee’s annual salary (this means their actual annual earnings, not the annualized full time equivalent salary that they would earn if they worked 37.5 or 40 hours) must be at least \$47,476 per year or \$913 per week (effective December 1, 2016). The salary level test does not apply to teachers, medical practitioners or lawyers.

Based on the Compensation review, if any one of the three tests are not met and no exception exists, then an employee:

- Must be classified as non-exempt within the payroll system
- Must receive overtime pay at 1 ½ times the employee’s regular hourly rate for any time worked beyond 40 hours in a workweek
- Must enter hours worked information into the e210 system and have time reviewed by their Manager *on a weekly basis*

Part-time or Casual Employees in Typically Exempt Jobs

The same three FLSA tests apply to employees who are paid less than the annual salary requirement due to reduced hours. In those situations, if an employee’s annual earnings are less than \$47,476 (or \$913 per week), the employee will have an FLSA status of non-exempt, even if they are working in a role that is considered exempt for full-time staff. Your departmental HR contact will need to be involved prior to hiring employees into this situation or changing employee’s hours, so that important system changes (known as an “FLSA override”) can be put into place with an ISR and the e210 can be completed correctly for all hours worked.

University Workweek

For payroll purposes, the standard JHU workweek consists of seven days, 12:01 a.m. Monday, through midnight the following Sunday. There are some areas across the University that define employees' workweek differently, based on operational needs. Please discuss this with your departmental HR support contact if you require further clarification.

Overtime Payments at JHU

There are several standard hours options across the University. Overtime payments are handled differently within Schools and Departments that operate on a 37.5 hour standard workweek and those that operate on a 40 hour standard workweek.

Standard Hours	Standard Overtime (same regular hourly rate)	Premium Overtime (1½ times regular hourly rate)
37.5 hour workweek	Paid for hours between 37.5-40	Paid after 40 hours worked
40 hour workweek	N/A	Paid after 40 hours worked

Calculating an Employee's Hourly Rate

- For employees who work a 37.5 hour standard weekly schedule:
Annual Salary/1,950 hours = Hourly rate for overtime purposes
- For employees who work a 40 hour standard weekly schedule:
Annual Salary/2,080 hours = Hourly rate for overtime purposes

What Counts Towards Overtime?

Only time worked is counted toward the 40 hours per week required for non-exempt employees' overtime pay. Benefit time including vacation, sick, holiday, bereavement time and jury duty does not count toward worked time for overtime payment purposes in any given workweek.

	NON-EXEMPT	EXEMPT
Pay schedule	Bi-monthly (24 pay dates per year)	Bi-monthly (24 pay dates per year)
Overtime pay	1 ½ times regular rate of pay for all hours worked above 40 in a workweek	Not eligible
Reporting work time	Report all hours worked on weekly E210	E210 completed monthly to record benefit time
Holiday pay	Paid standard benefit time, unless holiday is worked. Managers should work with HR to ensure proper compensation when the holiday is worked.	Paid standard benefit time
Reduction to Part-time	No change in FLSA status	May require reclassification to non-exempt if salary falls below \$47,476 annually

Employees Whose Work Hours Vary Depending on the Workweek

Overtime is based on hours worked over 40 hours in the designated 7 day workweek. Each workweek stands alone for overtime purposes. Averaging hours worked over two or more workweeks is not permitted. For example, if an employee works 50 hours in one week and 30 hours the next week, their time cannot be averaged into 40 hours each week. The employee must be paid for 10 hours of overtime worked in week one.

Waiving Overtime Payment

A non-exempt employee is not able to waive payment of overtime compensation due to federal law.

After Hours Work for Non-exempt Employees

Non-exempt employees should be working only during their regularly scheduled hours. Work performed outside of the normal workday must be authorized in advance by their manager and hours must be tracked carefully to ensure payment for all hours worked. **This includes all work-related activities, including checking emails on mobile devices or home computers.**

Schedule Adjustments

In situations where non-exempt employees work beyond their normal scheduled hours, it is acceptable to give them the flexibility of taking equal time off within the same workweek in order to keep their hours worked during that workweek at or below 40 hours. **If the time off is not able to be granted within the same workweek, the FLSA requires that the non-exempt employees receive overtime pay for all hours worked over 40 hours in a workweek.**

Unauthorized Overtime

Ideally, non-exempt employees must obtain the approval of their supervisor prior to working overtime because there are budget implications. Even in situations where an employee does not obtain advance approval, they must be paid for all hours worked. Working overtime without supervisory approval may result in disciplinary action.

Training Time

When a non-exempt employee is required to attend training, the time should be considered compensable hours worked, unless ALL four of the following criteria are met:

1. Attendance is outside of the employee's regular work hours
2. Attendance is voluntary
3. The training is not directly related to the employee's job
4. The employee does not perform any productive work for JHU during such training

Meal Breaks

Non-exempt employees are required to be **completely** relieved from all duties and responsibilities during their meal break. Meal periods that last 30 minutes or more generally will not be compensated as work time. If an employee is interrupted during their meal break (this includes answering work-related phone calls, questions or emails), the time must be counted toward hours worked. Any breaks that are 20 minutes or less must be paid as worked time and cannot be deducted from hours worked.

Recording Hours on the e210

Non-exempt employees are required to submit hours worked details on a weekly basis, via the E210 system. All hours worked must be reported to the nearest quarter hour (15 minute intervals). The E210s must be completed by no later than the Wednesday following each workweek. Weekly reminders are part of the E210 workflow to remind employees of their responsibility to submit hours worked. Managers need to review and verify hours worked each week. Anytime a non-exempt employee reports overtime hours on their E210, their manager must initiate payment using a *Bonus Supplemental ISR*. The ISR process needs to be initiated in the same week that the overtime hours are reported to ensure timely payment to the employee. Overtime earned in a particular workweek needs

to be paid on the regular pay day for the pay period in which the wages were earned. Please keep in mind that non-productive time during which no work is performed (i.e. vacation, holiday, sick leave) will not be counted in the calculation of overtime pay. For details related to E210 procedures, please review the *FLSA Compliance Training for JHU Non-Exempt Staff*, available at <http://hrnt.jhu.edu/index.cfm>, under the *DOCS* Tab, titled *FLSA Compliance Training*.

Waiting Time

If a non-exempt employee is required to stay at the work site after normal working hours, in anticipation of additional work that will be assigned to them, then their waiting time is considered compensable. If non-exempt employees are able to leave their work site, but they are advised that they may be contacted for additional assistance, then their time after leaving the work site is not considered compensable as long as there are no restrictions placed on their personal freedom.

Travel Time

There are special circumstances involved with whether travel time is compensable, addressed in detail in below. Travel time involving non-exempt employees should be reviewed with your appropriate HR contact to ensure the hours worked are calculated and paid appropriately.

Travel Scenario	Appropriate Payment Rules
Commute Time	General commute time to and from an employee’s work location is not considered compensable time. If the employee is required to report to a meeting or pick up supplies from a special location, the travel time from the meeting site or special location to the work location or to their home is compensable.
Travel During the Workday	Travel as part of the employee’s job must be counted as hours worked. If the employee stops for a personal errand during the workday, that time is not compensable. Time spent picking up other passengers and driving them to a specific location is work time; however, time spent by passengers traveling in a car outside of their normal workday hours is not compensable.
Out of Town Travel – Special One Day Assignment	Travel for one day special assignments is considered hours worked, excluding a meal period and the commute time between the employee’s home and the airport or train station. Time spent traveling on an airplane or train to and from the other town is considered compensable time for a special one day assignment.
Overnight Travel	Travel away from home, at the request of the employer, is compensable time with several considerations. Overnight travel time is considered compensable for regular working hours during normal workdays, along with corresponding work hours on nonworking days (e.g., weekends, holidays). Time spent in overnight travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus or automobile when the employee is free to relax, is not considered compensable time. When an employee is the driver of the vehicle, those hours must be compensated as work time. If the employee performs work while traveling, e.g. preparing for a meeting, reviewing documents, making phone calls, etc., this time constitutes hours worked even if the travel time would otherwise not be compensable.

Enforcement of FLSA Regulations

Employers have an obligation to ensure that all non-exempt employees are paid appropriately for all hours worked, including overtime pay for hours worked beyond 40 in a workweek. Supervisors and Managers of non-exempt employees are the most important link to meeting this critical Federal Regulatory requirement. **Managers who fail to ensure that non-exempt employees are paid for**

overtime hours worked are violating a Federal Law and are placing themselves and the University in serious compliance jeopardy.