

FLSA Frequently Asked Questions

Why is FLSA important?

The University is, as are all other major employers, covered by the Fair Labor Standards Act (FLSA) which requires that certain employees receive overtime pay for any hours over 40 worked during the employer's work week.

What happens if the University is not in compliance with these requirements?

All employers must make good faith efforts to be in compliance. Employers who willfully fail to comply may be subject to substantial financial penalties.

What do the terms "exempt" and "non-exempt" mean?

Positions whose responsibilities meet the exemption test and the employees occupying them are "exempt" from the requirement to pay overtime. Jobs with primary responsibilities that do not meet the exemption test are classified as "non-exempt" and the employees occupying them will be eligible for overtime pay.

What are the criteria used to determine if a position can be classified as exempt?

- Positions whose primary responsibilities involve managing a department or unit including employment-related decisions for the work of at least 2 full time equivalents.
- Work requiring advanced knowledge acquired by a prolonged course of study with a Bachelor's Degree as the minimum.
- Producing work that is original and creative that depends on the employee's invention, imagination or talent.
- Positions directly related to management/operations that include the exercise of discretion and independent judgment with respect to matters of significance.
- Computer employees whose primary duty is the application of systems analysis techniques and procedures; the design, development, documentation, analysis, creation, testing or modification of computer systems or programs or machine operating systems.

Who determines whether jobs are exempt or non-exempt?

Human Resources determines the exempt status based on the job description and discussions with the employee and supervisor as needed.

Why does FLSA prohibit tracking hours worked and sick and vacation time on an hourly basis for exempt staff?

Exempt staff are paid a salary to perform a job. They use discretion to determine how to perform their work and decide how much effort they wish to commit to it. Consequently, there are times when they need to work more than 37.5 hours, and they do not receive additional compensation for those hours. If exempt employees take off an hour here and there, they cannot have their sick or leave balances reduced for those hours.

What about exempt staff who work part-time?

At Brown, any employee earning less than \$923 per week (\$48,000 FTE) is automatically classified as non-exempt. All the various work arrangements, e.g., 5 hours a day/4 days, or 7.5 hours a day/3 days, etc., make it a little less straightforward to manage, but the concept remains the same. You have hired someone to do a job that you expect can be performed within a specified period of time whether it be 30 hours or 37.5. Some weeks the work may take more time, but exempt staff are hired to complete a job, and are not paid hourly. Consequently, part-time exempt staff do not automatically receive additional compensation when they need to work additional hours to get the work done.

All the non-exempt staff reporting to me are scheduled to work 8:30 to 5:00, but sometimes I know some staff take a short lunch break or come in early to finish a project. Are they eligible for additional pay?

Yes, if they worked more than their scheduled hours.

One of my non-exempt staff members specifically stated that she was willing to volunteer to work overtime hours without compensation. Do I still have to pay her?

Yes, staff may not volunteer to work additional hours without compensation.

One of the non-exempt staff reporting to me continues to work overtime, even though I have told him not to do so without prior approval. Do I need to pay him overtime anyway?

Yes, if he worked more than 40 hours you need to pay him. However, Brown's policy states that staff who fail to obtain prior approval for overtime can be disciplined. You should contact your HR Generalist to discuss the matter.

May I grant compensatory time off in lieu of overtime pay for hours worked over 37.5?

No, all hours worked in a work week must be paid.

Do staff earn additional pay if they work more than 7.5 hours on a particular day?

They will not earn additional pay if you adjust their schedule so that they do not exceed 37.5 hours for the week.

Who is responsible for ensuring that staff input hours worked into Time Tracking in Workday and are paid for overtime hours?

It's a shared responsibility, but supervisors have direct responsibility for managing staff and ensuring compliance with policy and practices. The employees that have the Timekeeper role have a shared responsibility with managers for ensuring non-exempt staff are entering hours.

Where can I get more information about these policies and practices?

If you still have questions, contact Compensation Services at ext. 3-9026 or 3-9320 for clarification on any FLSA policies and practices.