Exempt and Non-Exempt Employee Pay (40.030)

Introduction
All positions at Brown University, including student employees, are governed by the Fair Labor Standards Act (FLSA) and Rhode Island labor laws. The FLSA is a federal law that mandates when overtime pay is required, as well as complementary Rhode Island labor laws. Specifically, it requires that employees who work in positions not exempt (non-exempt) from the FLSA be paid time and one-half for time worked in excess of 40 hours in one work week. FLSA has set a minimum weekly rate for exempt employees. Consequently, all employees earning less than the minimum are automatically not exempt from overtime (non-exempt).

Policy Statement
It is the policy of Brown University to be in compliance with the Fair Labor Standards Act and Rhode Island Labor Laws and to ensure that employees in exempt and non-exempt positions are classified correctly and paid appropriately. University Human Resources is responsible for determining the classification of positions as exempt or non-exempt based on FLSA criteria. University Human Resources, the Payroll Office, and departments are responsible for ensuring that all employees are paid in accordance with federal and Rhode Island laws.

Pay for Employees in Exempt Positions
Exempt employees routinely receive their full salary for any week in which they perform any work, without regard to the number of days or hours worked.

Permissible Deductions from Pay for Employees in Exempt Positions
Deductions to pay must be made in full day increments. If an exempt employee works any hours during a day they must be paid for the full day. The few exceptions to the requirement to pay exempt employees on a salary basis are listed below.

- Absences of one or more full days for personal reasons other than sickness or disability when the employee has exhausted all vacation time or the employee has requested leave without pay.
- Absences of one or more full days due to sickness or disability when the employee has exhausted all paid leave benefits or is still in the probationary period as a new hire.
- Unpaid disciplinary suspensions of one or more full days in accordance with Brown's policies.
- Deductions for unpaid leave taken in accordance with a legitimate absence under the Family Medical Leave Act or the R.I. Parental Leave Act.
- Deductions for the first and last week of employment, when only part of the week is worked by the employees.

Pay for Employees in Non-Exempt Positions
Hourly employees must be paid on set pay dates for hours worked within the corresponding pay period. Hours may not be banked or payment for wages delayed for hourly employees.

Overtime Pay for Employees in Non-Exempt Positions
According to the FLSA, all non-exempt staff who work in excess of 40 hours in a workweek are eligible for overtime pay.

- The FLSA requires employees working in non-exempt positions to be paid time and one-half for time worked in excess of 40 hours in one work week.
- Union staff should refer to their respective collective bargaining agreement for specific
information on overtime compensation.

When calculating hours worked for overtime pay the following are treated as time worked:

- Paid holidays
- Vacation days
- Administrative closing days, and
- Bereavement days.
- Sick days and summer hours are not counted as time worked for overtime purposes.

Overtime is calculated for the following respective work schedules:

- **Non-exempt employee working a 37.5 hour week.** Employees working in non-exempt positions with normal work weeks of 37.5 hours are paid additional straight time for hours worked between 37.5 and 40 hours and time and one-half for time worked in excess of 40 hours.
- **Non-exempt employee working a 40.0 hour week.** Employees working in non-exempt positions with normal work weeks of 40 hours are paid time and one-half for each hour worked in excess of 40 hours.
- **Part-time employees.** Part-time employees are paid at their regular rates of pay for hours worked up to 40 hours.

Brown's workweek for calculating overtime is Sunday through Saturday.

**Flexible Work Hours for Non-Exempt Positions**
Non-exempt employees can vary their hours worked each day as long as it is approved by their manager in advance, and their total weekly hours do no exceed 37.5 hours. For example, an employee can work 40 hours one week and 35 the next, for an average of 37.5 hours.

**Sunday Pay for Employees in Non-Exempt Positions**
In most cases, employees who work in positions which provide non-deferrable services or in departments which must operate continuously (e.g., Health Services, Animal Care Facility) are paid their regular hourly rates when Sunday work is part of their normal work week.

All other non-exempt employees on the regular payroll who work on Sundays are paid time and one-half their regular hourly rates for each hour worked on Sunday regardless of the number of hours worked in the workweek.

**Holiday Pay for Employees in Non-Exempt Positions**
Non-exempt, benefits eligible employees who work on a designated University holiday shall receive their regular rates of pay plus straight time for each hour worked (i.e. 2 times their normal hourly rate for the first 7.5 hours). All hours worked over 7.5 on a holiday are paid time and one-half. Non-exempt employees on the regular payroll who are not benefits eligible must be paid at time and one-half for all hours worked on a University holiday.

**Pay During Summer Hours for Employees in Non-Exempt Positions**
During the summer, many departments observe Summer Hours, 8:00 a.m. to 4:00 p.m. with an hour for lunch (35 hours per week); however, staff continue to be paid for 37.5 hours. In departments that observe summer hours, full time, non-exempt staff who work more than 35 hours but less than 37.5 are not provided with additional compensation. Employees working in non-exempt positions are paid additional straight time for hours worked between 37.5 and 40 hours.

**Dual Employment for Employees in Non-Exempt Positions**
Non-exempt employees must notify their supervisor of any work arrangement outside of their primary
department because of the potential impact on overtime pay for the primary department. If the employee's total time worked exceeds 40 hours, the hours which caused the weekly hours to exceed 40 in the workweek will be paid at the overtime rate.

When a staff member works at two different hourly rates of pay and is eligible for overtime, the rate of pay (for purposes of calculation of overtime) is the weighted average of the two hourly rates during the work period for which the calculation is made. Overtime pay is calculated at the rate of one and one-half times the weighted average of the two rates.

**Pay for Seminars, Training, and Travel for Employees in Non-Exempt Positions**
Non-exempt employees whose travel keeps them from home overnight must be paid for all time traveling during the hours corresponding to the employee's normal working hours, including travel hours on Saturdays, Sundays, and holidays. All travel time for a one-day work assignment in another city counts as time worked, except meals and time traveling between the employee's home and point of departure (e.g., airport). Any time a non-exempt employee spends working while traveling (e.g., answering emails, taking calls, etc.) is counted as hours worked. Required seminars and training sessions count toward time worked, but meals and breaks do not. However, if a non-exempt employee is required to attend meals or social events for Brown, the time is counted as hours worked.

The following do not count toward hours worked: meal periods, riding as a passenger outside of normal work hours, time spent sleeping, time spent waiting at the airport outside of normal work hours, and travel between home and worksite.

**On-Call Pay for Employees in Non-Exempt Positions**
The following rules apply to On-Call Pay for Employees in Non-exempt positions:

- When a non-exempt employee is on-call and is required to remain on Brown's premises, he/she is considered to be working and must be compensated.
- If a non-exempt employee is not required to remain on Brown premises, but must carry a beeper or is required to provide contact information, is not working.
- If an employee is called in to work, he/she must be paid for a minimum of three hours or the actual hours worked, whichever is greater.
- In instances when his or her presence is not required and a phone call suffices, an employee is paid for the length of the phone call.

**Pay During Administrative Closings and Delays for Employees in Non-Exempt Positions**
Designated employees who provide non-deferrable University services may be required to stay at work or report to work regardless of circumstances. For pay implications in such situations, please see the Administrative Closings Due to Inclement Weather policy (20.052).

**Definitions**

**Exempt Employee:** An employee is exempt from being paid overtime if she or he:

- Manages a department or unit including employment related decisions for at least two (2) full time equivalents (FTEs).
- Performs work requiring advanced knowledge acquired by a prolonged course of specialized instruction and study (minimum: Bachelor's degree).
- Produces work that is original and creative that depends on the employee's invention or imagination or talent.
- Performs work that relates to management policies and business operations that involves the exercise of discretion and independent judgment regarding significant matters.
- Responsible for the design, development, documentation, and analysis of computer systems or programs.
Non-exempt Employee: At Brown, an employee is considered non-exempt if she or he:

- Earns less than $923 per week ($48,000 FTE salary)
- Is a grade 8 and below
- Does not meet any of the exemptions stated above

Job Description: Job descriptions are written statements that describe the major duties and responsibilities of a specific job. Job descriptions also include information about the knowledge, skills and qualifications needed to do the job, and the reporting relationships with other positions.

Responsibilities
Compensation Services:

- Responsible for administering a comprehensive FLSA Compliance Program.
- Responsible for ensuring that all employees are paid in accordance with federal and Rhode Island laws.
- Responsible for reviewing positions to determine whether the positions are exempt or non-exempt from the overtime provisions of the FLSA.
- Responsible for reviewing all employee pay complaints.

Payroll Office:

- Responsible for administering a comprehensive FLSA Compliance Program.
- Responsible for ensuring that all employees are paid in accordance with federal and Rhode Island laws.
- Receives requests for payroll adjustments, processes adjustments and communicates with employees and departments regarding FLSA compliance.

Exempt employee:

- Responsible for submitting a complaint in writing to Compensation Services if he or she believes pay is incorrect. The complaint should include the dates and circumstances of the pay deduction and whether it has occurred on other occasions.

Non-exempt employee:

- Responsible for notifying supervisor of any work arrangement outside of his or her primary department.
- Responsible for submitting accurate time each week via Time Tracking in Workday, Kronos, or FAMIS for approval. Supervisors/Timekeepers may enter time on behalf of a non-exempt employee who is not able to submit time due to illness, vacation or if employee has been terminated.

Supervisor:

- Responsible for ensuring all non-exempt employees are paid in accordance with state and federal laws.
- Responsible for reviewing and approving non-exempt employees’ time each week via Time Tracking in Workday and FAMIS. The Timekeeper has the authority to review and approve time
in lieu of the supervisor.

- Responsible for taking action to stop an employee who is working in excess of normally scheduled hours without prior approval.
- Authorize in advance any time worked by non-exempt employees in excess of employee's normal work week hours.
- Responsible for entering time on behalf of a non-exempt employee who is not able to submit time due to illness, vacation or the employee has been terminated.

**Timekeeper:**

- Responsible for reviewing and approving non-exempt employees' time each week via Time Tracking in Workday and Kronos.
- Responsible for entering time on behalf of a non-exempt employee who is not able to submit time due to illness, vacation or the employee has been terminated.
- Responsible for reviewing various Workday reports to ensure correct and timely payment for hours worked.

**Procedures**

**Tracking and Authorizing Hours for Employees in Non-Exempt Positions**

Non-exempt employee duties in tracking and authorizing hours worked:

- Non-exempt employees are required to record all hours worked each week to ensure they are compensated accurately.
- Each week, non-exempt staff must submit their time worked via Time Tracking in Workday, FAMIS, or Kronos to their supervisor/Timekeeper for review and approval.
- Non-exempt employees who believe they are not being compensated for all hours worked should contact Compensation Services.

Supervisory duties in tracking and authorizing time follows:

Supervisors must authorize in advance all time worked in excess of the number of hours in an employee's normal work week.

- This allows the supervisor time to determine if the employee's schedule either in the current or following week should be adjusted to accommodate the increased hours.

Supervisors who are aware, or who have reason to suspect, that a non-exempt employee is working in excess of the normally scheduled hours without prior approval, must take action to stop the employee.

- If an employee continues to work unauthorized overtime, the employee must be informed in writing that this cannot continue and, if such behavior continues, disciplinary action will result.
- Whether or not overtime has been approved in advance, it must be paid if it is worked.

**Complaint Procedures**

If an employee believes his or her pay has been improperly reduced, the following steps should be taken:

1. The employee should submit the complaint in writing via memo or e-mail to Compensation Services. The complaint should include the dates and circumstances of the pay deduction and whether it has occurred on other occasions.
2. Compensation Services will review the complaint and the pay records, and then interview the supervisor and the employee to determine if the pay deduction was in compliance with Brown policy.
3. If the deduction(s) was improper, the money will be reimbursed to the employee as promptly as possible.
4. The resolution of the situation will be documented and placed in the employee's Compensation Services file.

Frequently Asked Questions

Related Policies
- General Conditions of Employment
- Essential Positions

Related Information
- Fair Labor Standards Act (FLSA)
- Rhode Island Labor Laws
- Family Medical Leave Act
- Rhode Island Parental and Family Leave Act
- Compliance with the Fair Labor Standards Act (FLSA) Online Module

Policy Owner Approved by

Vice President for Human Resources, Assistant Vice President and University Controller

Contact(s)
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