Guidance for managing Non-Exempt Staff

Q1: What law regulates the payment of overtime?

A: The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

Q2: Generally speaking, describe the legal requirements associated with tracking non-exempt work.

A: Non-exempt employees must be paid time and one-half for all hours worked more than 40 in a workweek.

The University’s standard workweek is 12:01 a.m. Sunday through midnight on the following Saturday. (Some units have approval for an alternative workweek.)

For all FLSA non-exempt employees, departments are required to maintain records showing the number of hours worked each workday and workweek. Non-exempt employees must certify the number of hours worked and supervisors must also signify acceptance of these reported hours.

- The University’s timekeeping tools and processes satisfy the requirements of this law.

Leave time and holidays do not count as time worked. Compensatory leave (straight time leave accrual) is accrued only when an employee is declared essential and is required to work during authorized University closings (e.g., inclement weather).

Overtime leave (time-and-one-half leave accrual) may be granted in lieu of overtime.

- A non-exempt employee may not elect to waive payment of overtime or receive compensatory leave (straight time accrual) in place of payment.
- Although the manager should approve overtime in advance, any verifiable hours worked beyond 40 must be paid at time and one-half.
- Managers may adjust an employee’s schedule within a workweek to avoid or minimize payments. For example, if an employee works an extra four hours on Monday, the manager may reduce the employee’s work schedule on Friday by four hours so that the employee does not work more than 40 hours.
during that workweek. Each workweek stands alone in calculating regular
and overtime hours worked.

- If an employee occasionally works seven additional minutes or less, the time
  will not be counted as additional hours worked. However, if an employee
  occasionally works more than seven minutes, but less than 15 minutes, this
time will be rounded up to the next 15-minute increment and 15 minutes of
additional work time will be counted. If early arrivals or late departures occur
on a regular basis and/or multiple times during a workweek, actual minutes
should be counted for the entire workweek. Remember: Any additional time
worked must be pre-approved; failure to arrive and depart timely could
result in formal disciplinary action if overtime is accrued without approval.

Q3: Are non-exempt jobs considered "professional" jobs?

A: The exemption status does not diminish the professional nature and
significance of any job at the University. It is simply a legal designation for pay
purposes. The University considers all employees as "professionals" and
emphasizes appropriate job titles, merit pay, and professional development for
all staff.

Within the University Staff system, all Operational and Administrative positions
are FLSA Non-exempt. All Management and Professional, and Executive Staff are
FLSA Exempt.

Q4: Are departments required to pay overtime to non-exempt employees who work
over 40 hours a week, or do departments have the discretion to provide time off?

A: Departments may provide either paid overtime or overtime payment as
overtime compensation.

- To receive overtime compensation, an employee must be required and
  authorized by the manager to work additional hours – employees may not
  approve or authorize their own additional hours.

A non-exempt employee may accrue not more than 120 hours of overtime
leave, which is equal to 80 hours of overtime worked. Management can set a
lower maximum overtime leave accrual.

Q5: If a non-exempt employee works overtime without obtaining prior approval from
his/her supervisor, is the department obligated to compensate?
A: Yes. Overtime must always be authorized in advance by the supervisor. However, it still accrues as a liability when the employee works overtime and the supervisor permitted the work to be performed and did nothing to stop it from occurring. Management should ensure that employees understand the requirement for pre-approval of overtime worked, and manage performance accordingly.

Q6: If a non-exempt employee works through the lunch hour, should that time be considered overtime?

A: Yes, it is considered overtime if working through the lunch hour results in the employee working more than 40 hours in that workweek. Again, overtime must always be authorized in advance by the supervisor, including work done during the lunch hour. As with other policies, it is management’s responsibility to ensure that employees obtain prior approval for working overtime, and initiate progressive discipline in cases of consistent disregard for policy.

Q7: How best can a department ensure that non-exempt employees aren't working at home? through lunch? after hours?

A: To avoid overtime claims for work at home, managers must communicate and may document in writing that overtime for home work will not be permitted. However, even if such notice has been made, management acceptance or permitting work done at home creates an overtime liability under the FLSA and the employee must be appropriately compensated for the time. The same holds true for employees who work through their lunch hour or work before and after their shift. Management must clearly state that overtime must be approved prior to being worked and, if an employee works, compensate for it and initiate progressive discipline consistent with the Standards of Conduct. Contact your Human Resources representative for more information.

Guidance for Managing Exempt Staff

Q8: Generally speaking, describe the legal requirements associated with managing an exempt employee.

A: Exempt employees shall be paid an established monthly or annual salary and are expected to fulfill the duties of their position regardless of hours worked. The workweek for full-time exempt employees is normally considered to be 40 hours; however, greater emphasis is placed on meeting the responsibilities assigned to the position than on working a specified number of hours. Exempt
employees are not eligible to receive overtime compensation or compensatory time off.

Generally speaking, exempt employees are expected to be present at work during their scheduled work times in order to perform work that is essential to the unit’s operations. They are also expected to arrive at a certain time in order to assure that the workplace is properly staffed for business.

- Management should discuss with their exempt employees how their expectations of work relate to time spent at work.
- Management can ask exempt employees to inform them if they will not be at work during some hours of a typical work day. It is not only common courtesy, but it is necessary so that others who need to coordinate with that employee can be informed of the change in work schedule for the day.

Q9: Can detailed records be kept for exempt employees for purposes other than compensation or salary?

A: Yes. In some cases, detailed records may be required for employees who charge a percentage of their salary to various grants or who are working on a number of accounts and the work charged to each account varies, or for other purposes, such as management reports. The recording of time, however, cannot be used to “dock pay” for time not worked. In the same way, exempt employees do not earn overtime if they work more time.

Q10: Since exempt employees' time is not rigidly controlled, how do I address issues of work time and work absences?

A: You should discuss with the exempt employees the expectations of the position, including the need to be present in order to perform work that is essential to the unit's operations or the need to arrive by a certain time in order to assure that the workplace is properly staffed for business. Discussions should focus on the responsibilities of the exempt employee and how those expectations relate to time spent at work.

You may also discuss your expectation that the exempt employee needs to be present during certain days of the week in order to attend meetings, meet predetermined deadlines, and to consult with his/her colleagues.

Q11: What if the exempt employee fails to maintain the schedule discussed above or fails to be present during crucial times of the year?
A: You may then need to formally counsel or warn the employee about his/her failure to meet the performance expectations of the position. Corrective action for the employee can be issued that is consistent with the Standards of Conduct.

Q12: May I require an exempt employee to inform me when he/she intends to be absent from work for several hours during a typical work day?

A: You may certainly ask any employee to inform you if they will not be at work during some hours of a typical work day. The information is necessary so that others who need to coordinate with that employee can be informed of the work schedule. It is also common courtesy. If an employee fails to keep you informed, you may discuss the matter with the employee, emphasizing the performance-related aspects of the employee's failure to keep you informed.

Q13: Is there a way for departments to compensate exempt employees for work that seasonally requires more than 40 hours per week?

A: Unfortunately, there is no way to compensate an exempt employee for time worked beyond 40 hours per week. The emphasis for the exempt employee is on what it takes to get the work done. One week might require more than 40 hours; one week might require fewer than 40 hours.

The University’s Reward and Recognition program does provide an avenue for recognizing an employee's significant contributions to the overall objectives of the University. These rewards are typically provided to employees in recognition of teamwork, special project completion, identification/implementation of new or modified business practices, exemplary effort, employee appreciation and skill acquisition.

Q14: What alternatives to timekeeping does a manager have to handle abuses of time by an exempt employee?

A: We suggest that a manager clearly identify coverage expectations and work requirements of the employee's position. It is expected that employees be available to clients and colleagues. These expectations should be outlined in the job description and measured in the performance review process. For other strategies in addressing these types of issues, please contact your human resources partner.

Q15: Can supervisors and managers use records pertaining to time worked to document performance issues or scheduling concerns for Exempt employees as long as they are not used for pay purposes?
A: It's certainly legal to track the time of an exempt employee. It's also legal to take disciplinary action that is consistent with the Standards of Conduct for an employee that is not working according to communicated expectations. What's not legal is to dock pay.

Exempt employee work schedules are dependent upon job requirements and are established by their immediate supervisors and department management.

Performance management is the key to managing exempt employees. Scheduling and managing the work of exempt employees requires regular performance communication between the supervisor and employees.

Q16: Can you describe typical work hours for an exempt employee?

A: Working beyond or outside of the normal business hours and on weekends is acceptable/expected within an exempt role in order to complete the work.

Typical business hours at the University are 8 am to 5 pm Monday through Friday. The expectation is that employees are present and working during this timeframe. Changes in an employee’s work schedule must be pre-approved by his/her supervisor and/or department head.

Based on the nature of the work requirements and agreement of the supervisor, an exempt employee may not always work within the confines of an 8 am to 5 pm business day. Some days may be shorter and some days may be longer than a traditional 8-hour work day based on business need. Supervisors should be clear with their employees about such variances in their work hours.

Based on the nature of an exempt employee’s role, it is permissible for a supervisor to require an exempt employee to work additional hours beyond 40 hours in a work week without additional compensation (including working events at the University, checking/responding to emails away from any work location, and taking/making phone calls that are work-related.) The extra time worked is considered part of the scope of the employee’s job duties.
Q17: Is the FLSA status (exempt/non-exempt) determination of a UVA Job title considered final or can determinations be appealed or changed based upon management comment?

A: The FLSA status has been determined for each title by University Human Resources. Individual positions require analysis by Human Resources to ensure that each is assigned to the appropriate title.

Q18: Is professional development (e.g., reading at home, weekend classes, etc.) that is necessary to maintain a license or certification considered time worked?

A: For exempt employees, professional development activities outside of working hours are not considered time worked. For non-exempt employees, such activities outside of working hours may be considered time worked, for example, if mandatory or required for professional licensing or certification - and if agreed to in advance of the activity by management. Contact your human resources partner with specifics to determine if training and development activities should be compensated as time worked.

Q19: I’m hiring a UVA Health System employee to perform work for me as a wage employee in the evening. Are there any special rules that apply?

A: Several pay and administrative issues can occur when both the University and the UVA Health System employ the same individual. Before hiring a current UVA Health System employee to work for the University, contact your HR partner for assistance.

Note that complying with FLSA guidelines is the responsibility of EVERY SINGLE PERSON at the University, not just managers, supervisors, or HR professionals. Individuals (managers, supervisors, employees, etc.) can be held personally liable for willful violations.

Please note these important risks associated with failure to comply with FLSA regulations:

- The Secretary of Labor has the power to initiate investigations to determine whether an employer has violated any FLSA provisions.
- Generally, the employer has the burden of proof in FLSA cases and the lack of accurate records could seriously impair an employer’s ability to defend itself in litigation.
- The employer is subject to potential FLSA lawsuits by employees seeking back overtime wages, including payment of damages (double back pay); payment of attorney’s fees; civil money penalties; fines for cases of repeated willful violations; and other injunctive and equitable relief.
• Courts have ordered employers that failed to maintain proper records to pay fines - for example, a $120,000 fine was ordered in 1997. The court found the employer in that case failed to maintain accurate records of employees’ actual work hours during each workday and workweek.

• The U.S. Department of Justice can criminally prosecute persons who commit willful violations of the act. The penalty is a fine of up to $10,000.

• Finally, an employer cannot retaliate against an employee for “whistle blowing”; that is, it cannot discharge or otherwise harm an employee for filing a complaint or participating in an FLSA proceeding.