

Proposed Changes in the Fair Labor Standards Act (FLSA) -- Part 2

Information on this page was current as of the day of publication. For the latest information visit the [Auburn University FLSA page](#).

This issue of “Good to Know,” which covers the “tests” for FLSA Exemption Status, is the second in a series designed to help you better understand the FLSA, and the *proposed* changes that may impact many Administrative and Professional employees at Auburn University. (Refer to last week’s [“Good to Know”](#) for more information on the proposal.)

- **Regulation: Fair Labor Standards Act (FLSA)** requires that most U.S. employees be paid at least minimum wage for all hours worked, along with overtime premium for all hours worked in excess of 40 in a workweek.
- **Covered Employees:** Employees -- “Student” and “non-student” -- whose jobs are designated as “Non-Exempt” (*not exempt from the obligations and requirements for the accurate recording of working time, right to a minimum wage and overtime pay provisions of the FLSA.*)
- **Accountable Parties: Faculty, A&P and Staff Supervisors** – Any employee who directly supervises other employees whose jobs, by virtue of the work they are performing, or the minimum salary test, are designated as “Non-Exempt.”

Subject FLSA Provision: “Exemption Tests” – There are two tests that determine a job’s FLSA designation:

- 1) **“Minimum Salary Level”** – Employees who earn \$23,660 per year or less do not meet the “Minimum Salary Level” test, and therefore have their jobs designated as Non-Exempt. They must keep accurate records of hours worked and be paid overtime premium of 1.5 times their hourly rate for hours worked in excess of 40 hours in the designated workweek. This is the test which the Department of Labor is proposing to change from \$23,660 to \$50,440. This could change the FLSA exemption status of many jobs from Exempt to Non-Exempt.
- 2) **“Duties Test”** – Employees who earn more than \$23,660 may have their jobs designated Exempt if their **primary** job duty(ies) passes one or more of the following tests, as specified by the [Department of Labor \(DOL\), Fact Sheet #17A](#):
 - Executive Exemption: **Primary duty** is management of the enterprise or a department; regularly directs the work of two or more employees; authority to hire or fire other employees, or their recommendations regarding employment status or advancement of other employees is given particular weight.
 - Administrative Exemption: The employee’s **primary duty** is the performance of office or non-manual work related to the management or general business operation of the employer or customers. **Primary duty** also includes the exercise of discretion and independent judgement with respect to matters of significance.
 - Professional Exemption: **Primary duty** is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; **primary duty** is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor. “Teachers are exempt if ... they are employed and engaged ... as a teacher in an educational establishment.” The **“Minimum Salary Level”** test does “...not apply to bona fide teachers.” (Refer to: [DOL, Fact Sheet #17D](#))
 - Other Exemption categories include Computer Employee; Outside Sales Exemption, and Highly Compensated Employees. (Refer to: [DOL, Fact Sheet #17A](#))

The Human Resources Compensation team at Auburn University applies these tests to determine job FLSA status. Questions or comments regarding this “Good to Know!” bulletin can be directed to Human Resources at 844-4145 or univhr@auburn.edu.