



WISCONSIN
UNIVERSITY OF WISCONSIN-MADISON

Moving From Exempt to Nonexempt: How Changing Your Fair Labor Standards Act (FLSA) Status Affects You

Presented by the

**Office of Human Resources
(OHR)**





Agenda



01 | WHAT IS THE FAIR LABOR STANDARDS ACT (FLSA)?

02 | WHAT WILL CHANGE? WHAT STAYS THE SAME?

03 | HOW THIS CHANGE AFFECTS YOU:

- PAYROLL
- BENEFITS
- PAID LEAVE
- SCHEDULING & WORK HOURS

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What is FLSA?

The Fair Labor Standards Act of 1938 is the U.S. Department of Labor (DOL) federal wage and hour law. It's commonly referred to as FLSA.



FLSA protects employees against unfair pay practices and includes regulations over the workweek, minimum wage, overtime pay, and youth employment.

Everyone is covered under the law, but employees are classified as **exempt** or **nonexempt** based on the job they do.



Definitions

FLSA Exempt:

An FLSA exempt job is not subject to the overtime protections outlined in the FLSA.



FLSA Nonexempt:

An FLSA nonexempt job is subject to the overtime protections outlined in the FLSA that ensure employees receive overtime pay.



Exempt vs. Nonexempt

Exempt	Nonexempt
Paid annually/salary	Paid hourly
Typically, no additional pay for working more than 40 hours in a workweek	Overtime pay or compensatory (comp) time for working more than 40 hours in a workweek



Exemption Status Criteria

1. **Salaried:** You must be paid on an annual salary basis,
and
2. **Minimum Salary:** You must be paid above a salary threshold amount of \$684 per week or \$35,568 annually (\$17.10 per hour),
and
3. **Duty and Discretion:** Your job must fall into one of these categories: executive, administrative, professional or computer professional.

*Regardless of salary teachers, doctors, and lawyers are always exempt.



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Who is Affected?

If your current job title is classified as **exempt** and your new job title with the Title and Total Compensation (TTC) Project will be classified as **nonexempt**, **your new FLSA exemption status will change to nonexempt when TTC implements on November 7, 2021.**



What Will Change? What Stays the Same?

Moving to nonexempt changes **how you report time.**

It does NOT change your:

- employee category
- vacation and sick leave earnings



What Will Change? What Stays the Same?

Moving to nonexempt changes **overtime eligibility**.

It does NOT change:

- your job duties
- your supervisor
- policy



Future Follow-Up


- When your status changes from exempt to nonexempt, the U.S. Department of Labor requires employers to do additional follow-up.
- **Winter 2022:** You will be contacted with more information on this need for follow-up.




Follow Along With Handout

Exempt to Nonexempt “side-by-side” documents address how the change from exempt to nonexempt affects:

Academic Staff

Academic Staff Moving from Exempt to Nonexempt 	
<p>This table provides information about changes that will occur when there is a change in your exemption status effective upon implementation of the Title and Total Compensation Project (TTC). Please note that this document does not address other processes, such as consequences of the switch to Single Payroll.</p> <p>The Fair Labor Standards Act (FLSA) is a federal law through the Department of Labor that establishes a set of standards to determine which jobs are covered by the act (“non-exempt”) and which jobs are not covered (“exempt”). Every UW-Madison employee that is subject to the FLSA is given a status of exempt or non-exempt based on all job responsibilities performed for UW-Madison. This table provides information about changes that will occur when there is a change in your exemption status.</p>	
PAYROLL	
Pay Periods	All employees will be moved to a biweekly pay schedule due to UWS Single Payroll
Direct Deposit	NO CHANGE - Existing direct deposit(s) will continue, but since the frequency of pay periods will change, you may want to review your direct deposit account allocation.
General Deductions	NO CHANGE - Taxes will automatically be adjusted, except for additional withholding. Action Needed: If you have additional amounts withheld per paycheck, submit a new W4 if you would like to make adjustments.
Differentials	CHANGE - Academic Staff that become non-exempt due with TTC will receive for night differential, weekend differential and holiday premium pay
Garnishments	NO CHANGE - Existing garnishments will be automatically adjusted. Email ag1@uwsa.edu with questions.
PAID LEAVE	
Compensatory Time	CHANGE - Nonexempt A-Basis Academic Staff are eligible for comp time
Leave Reporting	CHANGE - Nonexempt Academic Staff record leave in 15-minute increments (exempt Academic Staff submit absences on the monthly leave report in half or whole day increments)
Earned Vacation	NO CHANGE

University Staff

University Staff Moving from Exempt to Nonexempt 	
<p>The Fair Labor Standards Act (FLSA) is a federal law through the Department of Labor. The law determines which jobs are covered by the act (“non-exempt”) and which jobs are not covered (“exempt”). Every UW – Madison employee that is subject to the FLSA has an exempt or non-exempt status based on all job responsibilities performed for the university. This table provides information about changes that will occur when there is a change in your exemption status.</p>	
PAYROLL	
Pay Periods	NO CHANGE 26 pay periods for all University Staff (Non-Exempt and Exempt)
Direct Deposit	NO CHANGE
General Deductions	NO CHANGE Email payroll@ohr.wisc.edu if you have questions or if a deduction such as parking, Van Pool, Rec Fees, etc. is missed
Taxes	NO CHANGES
Garnishments	
PAID LEAVE	
Compensatory Time	CHANGE Non-exempt staff are eligible for compensatory time instead of overtime pay. Divisions have the option regarding how to use compensatory time.



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Payroll - Earnings Statements



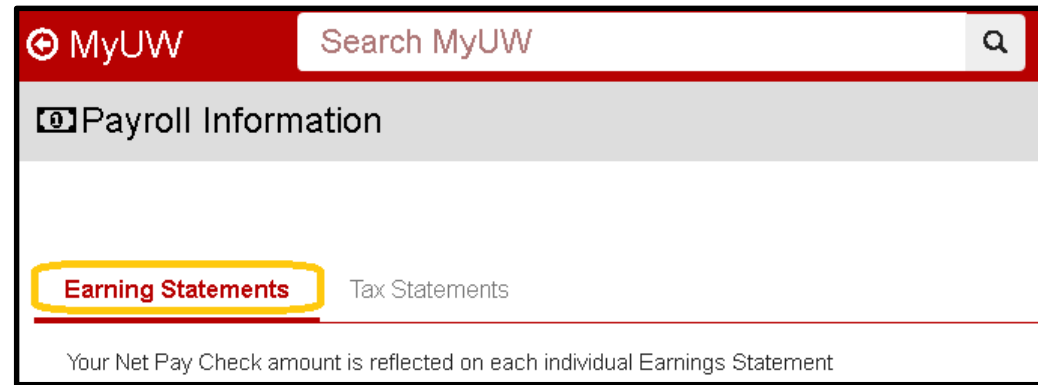
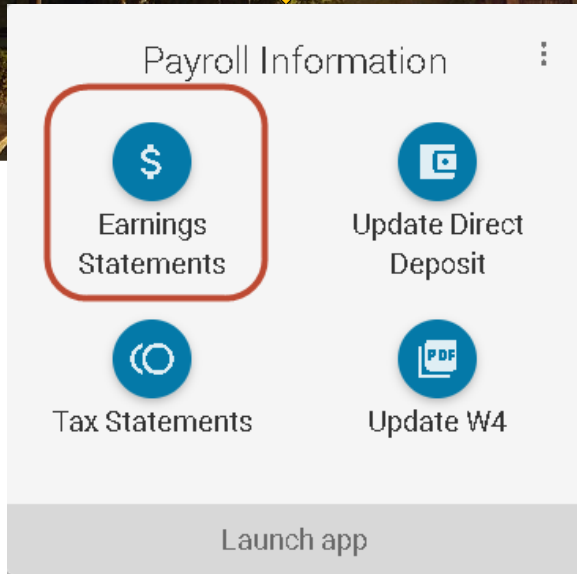
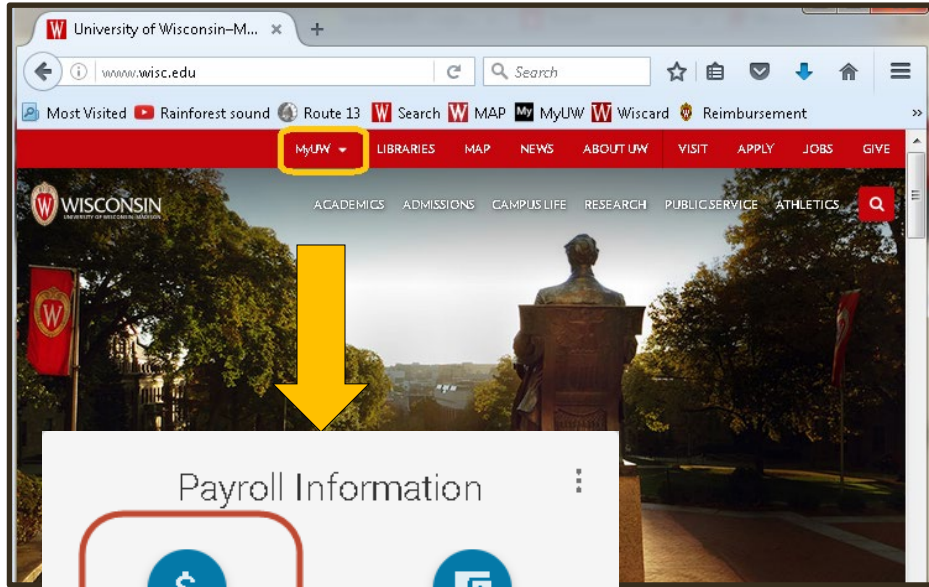
Review your earnings statement each pay period, particularly if you made changes to:

- your benefits
- tax withholding
- general deductions, **or**
- if there has been a change to your appointment.



Where do you find your Earnings Statements?

1. Go to www.wisc.edu
2. Choose MyUW tab
3. Log in with NetID
4. Click on Payroll Information
5. Select Earnings Statements





IRS Withholding Calculator

- Use the IRS Withholding Calculator to check payroll tax withholding throughout the year.
- Access this calculator at any time to determine if you want to adjust your tax withholding.

www.irs.gov/Individuals/IRS-Withholding-Calculator



Timesheet Changes



Contact your local HR professional for questions about how to record time on your timesheet.

hr.wisc.edu/contact/



Benefits Enrollments

Will NOT change due to FLSA

- State Group Health
- State Group Life Insurance
- Income Continuation Insurance
- Supplemental Dental
- Preventative Dental (No Health)
- VSP
- Individual Family Life Insurance
- AD&D Life Insurance
- Accident Insurance
- UW Employee Inc. Life Insurance
- Flexible Spending Account
- Health Savings Account
- Wisconsin Retirement System





Wisconsin Retirement System (WRS)

Your employee category will not change. The minimum hours remain the same regardless of exemption status.

University Staff (General Category)

- Calendar Year (January 1 – December 31)
- 1 year of Creditable Service = minimum of 1,904 hours

FA/AS/LI (Teacher Category)

- Fiscal Year (July 1 – June 30)
- 1 year of Creditable Service = minimum of 1,320 hours
(FT, 100% FTE employees earn ~ 174 hours each month)

Creditable service is based on hours paid



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Paid Leave - Sick / Personal / Vacation

	Academic Staff (exempt to nonexempt)	University Staff (exempt to nonexempt)
Leave Benefits Sick, personal holiday, legal holiday, and vacation	NO CHANGE	NO CHANGE
Leave accumulation/ allocation schedule	NO CHANGE (Fiscal Year)	NO CHANGE (Calendar Year)
Leave Reporting	Report “no leave taken” each month. Report leave time in 15- minute increments as it is taken.	Report leave time in 15- minute increments as it is taken.



Overtime and Compensatory “Comp” Time

As an employee with FLSA nonexempt status, you can either earn comp time or be paid overtime in a week, but not both.



Overtime Pay

- As an employee with FLSA nonexempt status, you can earn overtime by working more than 40 hours in a work week (Sunday through Saturday).
- Overtime pay is paid at time and a half.
- You must receive approval to work overtime by your division/unit before working it.
- Paid leave time does not count as hours worked to earn overtime.



Comp Time

- As a nonexempt employee who has worked overtime, you may accumulate comp time instead of receiving a cash payment on their paycheck for overtime
- Each hour worked over 40 hours would convert to 1.5 hours of comp time off. Partial hours would be prorated.

For example:

If you work 40.5 hours in a week and are earning comp time, you would be paid for 40 regular hours and accumulate 0.75 hours of comp time.



Comp Time (cont.)

- You can accumulate up to 80 hours of comp time – after that, it must be paid out as overtime pay as it occurs per policy.
- Divisions/units may have their own specific practices and procedures. **They determine and approve the accumulation and use comp time before it is earned.**
- While other leave time for Academic Staff is managed on a fiscal year basis, comp time is managed on a calendar year for all employees.
- Any comp time credits that are unused by April 30 (from the previous year) will be paid as cash in your May 1 paycheck.



Paid Leave & Overtime/Comp Time

As a nonexempt employee, **you must be paid overtime or receive comp time for every hour you work over 40 hours in a workweek.**

- Working over 8 hours in a day but less than 40 hours in a workweek, does not result in overtime or comp time.
- You must get approval before working overtime or receiving comp time.
- For overtime or comp time, hours worked does not include hours of paid leave (sick time, vacation, personal holidays, etc.).
- Divisions/Units may have specific guidelines about working overtime or earning comp time. Check with your division contact.

You will need to record all hours worked and leave taken in 15-minute increments.



Example: Full Time Nonexempt Employee

Irene works 47 hours in a work week. She will receive:

- 40 hours of pay at her regular hourly rate
 - **AND** - 7 hours of overtime pay
 - **OR** - 10.5 hours of comp time earned (indicated by checking the comp time box on timesheet)

Timesheet		Additional Elements		Show all columns by default										
Select for Delete				Date	Status	Shift In	Break Out	Break In	Shift Out	Punch Total	Time / Absence Code	Quantity	Sched Hrs	Comp Time
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sun	11/10								0.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mon	11/11	<input type="checkbox"/>	7:00:00AM	12:00:00PM	12:30:00PM	3:30:00PM	8.00		0.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Tue	11/12	<input type="checkbox"/>	6:00:00AM	12:00:00PM	12:30:00PM	6:00:00PM	11.50		0.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wed	11/13	<input type="checkbox"/>	7:00:00AM	12:00:00PM	12:30:00PM	3:30:00PM	8.00		0.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Thu	11/14	<input type="checkbox"/>	6:00:00AM	12:00:00PM	12:30:00PM	6:00:00PM	11.50		0.00	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Fri	11/15	<input type="checkbox"/>	7:00:00AM	12:00:00PM	12:30:00PM	3:30:00PM	8.00		0.00	<input type="checkbox"/>



Example: Part Time Nonexempt Employee

Santiago is scheduled to work at 50% FTE (20 hours per week). If he works 25 hours in a work week, he will receive:

- 20 hours of pay at regular hourly rate
 - **AND** - 5 hours of regular pay at regular hourly rate
- All hours worked under 40 in a work week are paid at the regular hourly rate (“straight time”) regardless of assigned FTE.



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What Counts As “Work”?

- **Whenever you are performing services for the benefit of the employer, it counts as “work.”**
- The way you schedule and record your work changes when FLSA exemption status changes from exempt to nonexempt.



Counting Work: Exempt to Nonexempt

Exempt Employees	Nonexempt Employees
<p>May be in work status beyond their regularly scheduled hours without accumulating overtime or comp time.</p>	<p>Hours an employee works beyond their regular scheduled hours may still be considered hours worked and need to be paid.</p>
<p>May often work over 40 hours per workweek and may be required to do work outside of standard office hours.</p>	<p>Must be paid for all hours worked. Employees cannot work “off the clock.”</p>
<p>Divisions, work units, and supervisors determine expectations and guidelines for these employees.</p>	<p>Once a supervisor allows an employee to work, knows the employee is working, or becomes aware that the employee has worked, the employee must be paid even if the work was not preapproved and even if it was performed at home.</p>



Working Beyond Scheduled Work Hours

- As a nonexempt employee, in most cases you should not work, and supervisors should not assign work, outside of your scheduled work hours.
- Some exceptions to working beyond your scheduled work hours may include:
 - You cannot leave your shift due to an emergency within your division/unit.
 - You are waiting for coverage to arrive to relieve you.



What is “De Minimus” Work?

If as a nonexempt employee, you do work outside of scheduled work hours, you may be entitled to overtime or comp time if:

- you are working over 40 hours in a workweek
- and**
- you are doing work that is more than “**de minimus.**”



De Minimus Work

De minimus work is insubstantial or insignificant periods of time beyond the scheduled working hours.

- De minimus work should not occur on a regular basis.
- Time worked must consist of “uncertain and indefinite periods of time involved of a few seconds or minutes duration.”
- There must be practical administrative difficulties in precisely recording the time for payroll purposes.
- Any part of your regular work schedule is not considered de minimus and therefore would be paid.
- Employers cannot decide at random that parts of your job are de minimus and would not be paid



Meal and Break Periods

- Paid time includes meals in which you are **not completely relieved of duties** or meals that are less than 30 minutes (e.g., working while eating lunch at desk) and breaks of less than 15 minutes.
- Unpaid time includes meal periods of 30+ minutes in which you are **completely relieved of duties** (i.e., can leave the work site).



Meals/Break Periods: University & Academic Staff

Nonexempt University Staff:

- Working more than 4 hours but less than 6 consecutive hours in a single shift are expected to take a 15-minute paid break each day.
- Working more than 6 consecutive hours in a single shift must take a minimum of a 30-minute unpaid lunch during their shift, in addition to two 15-minute paid breaks each day.
- Lunches and breaks may not be combined to create a longer break, or to modify your start or end shift times.
- Modification of these lunch and break provisions may only occur through a written work unit policy or through express written consent of your supervisor.

Nonexempt Academic Staff:

- It is also recommended that nonexempt Academic Staff take a similar break, but Campus policy does not require this.



Talk With Your Supervisor

Divisions/units may establish guidelines regarding work schedules, changes to those schedules, overtime/comp time usage, and/or overtime/comp time approval.

- With nonexempt status, you may need to use leave time when arriving late or leaving early (15 minutes or more), as determined by your division/unit.
- If you work certain scheduled hours, you must obtain approval from your supervisor to make changes to these hours according to the procedures of your division/unit.



Failing to Follow Procedures: Employees

If you “fail to follow” your division’s/unit’s procedures for scheduling and hours of work, you may be subject to disciplinary consequences. Examples of “fails to follow” may include:

- Working **less than** scheduled daily hours without use of leave or without receiving prior approval.
- Working **more than** scheduled daily hours without approval.
- Working **more than** 40 hours in a week (overtime) without prior approval.
- Deliberately failing to accurately report hours worked or leave time used on timesheet.



Failing to Follow Procedures: Supervisors

Supervisors are expected to follow all University policies and the FLSA regulations. Supervisors may be subject to disciplinary consequences for:

- Allowing or encouraging employees to inaccurately report hours worked.
- Failing to comply with division/unit time and leave reporting procedures.
- Allowing or encouraging employees to volunteer to do their own job to try to avoid paying overtime or comp time.



Preparing for Change

To prepare for the change from exempt to nonexempt, talk to your supervisor to find out:

- Your standard hours of work.
- The procedure for reporting your absence or late arrival.
- The process for approving your standard hours of work.
- The process for accumulating and using overtime or comp time if you work over 40 hours in a work week.
- If you're able to make changes to your standard work hours and the process to request these changes.
- Your break and lunch schedule.



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General Resources

1. Your supervisor and your division's Human Resources staff
2. UW-Madison FLSA Website:

hr.wisc.edu/flsa/

All session materials will be posted here



Additional Helpful Resources

[Overtime Policy](#)

Leave Benefits Policies

- [Sick Leave](#) [Leave reporting: Section VII (1-2)]
- [Vacation](#) [Leave reporting: Section VIII (2-3)]
- [Personal and Legal Holidays](#)

Standard hours and break time information

- [Chapter 14 Work Schedules](#)

What is Compensable Hours Worked?

- [OHR PowerPoint](#)

Volunteering vs. Working

- [Same Type of Services Defined](#)
- Section IV.h of the [Overtime Policy](#)



Thank you for watching!

FLSA Website

hr.wisc.edu/flsa