

# FLSA FAQ

**1. What is the updated salary threshold?**

The updated FLSA salary threshold is \$47,476.

**2. What if my annual salary is under \$47,476?**

All employees under this amount will be evaluated. Those who do not meet the criteria to maintain exempt status will be moved to a non-exempt biweekly pay schedule by December 1, 2016.

**3. As a manager, what should I do to prepare for my employee becoming non-exempt?**

You should prepare to have individual discussions with each affected employee. The Office of Human Resources will be offering training sessions to provide managers the information they will need in order to conduct these conversations.

**4. What is a work week at The University of Southern Mississippi?**

USM's work week is Saturday through Friday, which is used to calculate overtime pay.

**5. What is considered overtime?**

At USM, non-exempt employees are scheduled to work 40 regular hours per work week, and they are compensated for overtime (via pay or compensatory time) for any hour over 40 that occurs in that work week.

**6. Do I need to receive approval from my supervisor to work overtime before I actually work?**

Yes, employees must obtain approval from their supervisor before working any overtime.

**7. What is flex time?**

Flex time is when an employee works additional hours in one work day and is allowed to take time off on another work day (in the same work week) without recording overtime hours. This is a way of adjusting an employee's hours per day to prevent the employee from exceeding forty hours in any single work week.

**8. What is compensatory time?**

Compensatory time is the process of crediting an employee for personal hours in lieu of monetary overtime compensation. Compensatory time, unlike flex-time, can be used at any point in the future. Compensatory time must be credited at no less than 1 ½ hours of compensatory time for each overtime hour worked. There are specific recordkeeping requirements for utilizing compensatory time, please refer to policy #2207 in the USM Employee Handbook for further information regarding compensatory time.

**9. Can I request an employee to work overtime on Friday and then provide them with time off during the next week in order to avoid an overtime payment?**

No, the Fair Labor Standards Act clearly defines a work week as a regularly reoccurring period of seven consecutive workdays. Any hour over 40 that occurs in the work week must be paid (via overtime pay or compensatory time) within that same week.

In this scenario, the manager would only have two options:

Schedule the employee time off earlier in the week so that he or she would not exceed 40 hours.

Do not schedule time off earlier in the week and compensate the employee (via pay or compensatory time)

**10. Why did I not get paid overtime during a holiday week?**

Overtime is calculated on actual hours worked, not hours paid. Vacation, Sick Leave, and Holidays count as hours paid not actual hours worked, so this would be why one would not receive overtime in a week in which your paid hours exceeded 40, but your actual worked hours did not.

**11. Can an employee waive overtime hours? What if my employee really wants to help out the department?**

Due to federal guidelines, an employee may not “opt-out” of receiving overtime compensation (via payment or compensatory hours)

**12. Do I have to pay an employee for overtime if my grant does not allow it?**

Yes, The University of Southern Mississippi is required to comply with the federal regulations in the Fair Labor Standards Act and must pay overtime regardless of the source of funding.

**13. What if the employee is aware that he or she is not allowed overtime, but is still working hours that exceed 40 in a work-week because of the need to get things done?**

The Department of Labor is very clear on this situation. Section V, Subsection B 785.13 of the Fair Labor Standards Act states that it is the duty of management to exercise control and see that work is not performed when they do not want it to be performed. Organizations cannot sit back and reap the benefits without compensating for them. Creating a rule against such work is not enough. The Department of Labor’s stance is that management has the power to enforce the rule and that they must make every effort to do so. If employees work overtime after they have been told they are prohibited from doing so, disciplinary steps must be followed to ensure that the violation will not occur. Whether overtime has been approved or prohibited, the employee must be compensated once overtime has been worked.

**14. How do I determine what my hourly rate of pay?**

Your hourly rate of pay can be calculated by dividing your annual salary by 2080

**15. Will the change in pay frequency affect my sick and vacation accruals?**

Yes, hourly employees accumulate sick and vacation hours based on hours worked.

**16. Will I need to make any changes to my automatic withdrawals?**

The employee is responsible for contacting all businesses to whom he or she has granted the authority to make automatic withdrawals in order to make modifications to the withdrawal dates.

**17. When will I receive my last monthly pay check?**

Your last monthly check will come to you on November 30<sup>th</sup> and it will include pay for the dates November 1<sup>st</sup> 0 November 18<sup>th</sup>.

**18. When will I receive my first bi-weekly pay check?**

You will receive your first biweekly check on December 16<sup>th</sup> and it will be for hours worked/leave taken November 19<sup>th</sup> – December 2<sup>nd</sup>

**19. Will there be a loan available to help bridge the gap in pay?**

Yes, for individuals who need assistance, a loan is available to bridge the gap in pay. The loan is 80 hours paid at the employee's hourly rate of pay. The loan must be paid back via payroll deduction starting with the pay period ending December 16, 2016 and the last loan re-payment will be the pay period ending June 16, 2017. (Note: The loan is optional and only for people who elect to use it. Additional information will be forthcoming regarding the loan.)

**20. Will there be information sessions I can attend?**

Yes, open sessions will be provided on both campuses on the following dates to answer any questions.

- September 26th - Hattiesburg Campus, Scianna Hall Room 2004 from 2pm- 4
- September 29th - Gulf Park Campus, Hardy Hall Room 316 from 10am-11
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**21. Who do I email my questions to regarding FLSA?**

Please email [flsa@usm.edu](mailto:flsa@usm.edu)

**September 22, 2016**

**22. Can I choose to transition to the bi-weekly pay schedule before 11/19/16?**

No, unfortunately we are transitioning all employees at one time.

**September 26, 2016**

**23. First time to request bi-weekly time sheet Dec 16th or another day?**

Since we have to be in compliance on 12/1/16 the departments will start completing the time sheets effective 11/19/16.

**24. Do we include the holidays as "worked" for calculation?**

No, overtime is only earned when you work exceed 40 regular hours in a work week. Regular worked hours do not include holiday, vacation, or sick. For example, if I work 10 hours on Monday, then 8 Tuesday – Thursday, and then receive 8 hours of holiday on Friday I would have 34 worked hours and 8 hours of holiday. I did not exceed 40 regular work hours for that work week, so I will not get paid any overtime. If they did actually work the holiday it would be counted as hours worked.

**25. What time keeping system are we required to use?**

Employees are required to use the system in place in their department. Paper time sheets is the most common method.

**26. How will my leave accrual work now? Give example MO1 vs BW**

Monthly employees accrue leave each month, and biweekly employees accrue leave each pay period. At the end of the 26 pay periods you accrue the same amount annually.

**27. If we are denied OT and our job doesn't get done in a timely manner, are we going to be penalized on our performance appraisal?**

No, OT being denied will not affect your performance appraisal.

**28. Is 6 months the only option for repayment of the loan?**

After receiving feedback from the campus community the University has agreed to extend the repayment period of the bridge loan using two different repayment options. The first repayment option results in the loan being repaid over 40 payments by June 2018. The second option will result in the loan being repaid over 66 payments by June 2019.

**29. The employee handbook and the FLSA FAQ are conflicting about holiday time, can you explain this?**

Yes, the holiday policy in our handbook is the result of State of Mississippi policy. This state law provides that state employees who work a holiday in which the university is closed will be credited compensatory time at 1 hour for every hour worked, so if you worked 8 hours on Christmas Day, you would get 8 hours of compensatory time.

The Fair Labor Standards Act is a federal law that states that an employee who is classified as non-exempt must be paid a 1 ½ times their hourly pay rate for every hour that is worked over 40 regular hours. The law does allow public agencies to provide compensatory time at 1 ½ hours per every hour worked over 40. Holidays are not considered as regular worked hours unless the employee is working on that day. The FLSA does not require that an employer pay an employee holiday pay or compensate them in any manner for working on a holiday.

The two documents reflect different information as they refer to different laws.

**30. For those of us taking classes, will our supervisors now be able to deny us from taking classes because tasks are no longer being completed in our allotted 40 hours?**

The policy for taking classes during the work day has always required manager approval. Your manager could deny you from taking classes during the work day for this reason or any other reason.

**September 27, 2016**

**31. Can I cash in some vacation time rather than take out the loan?**

Mississippi Code 25-3-97 states the following, "At no time will an employee be paid for accrued leave while still employed in state service."

**32. If for some reason I get a raise that bumps me up to \$47,476, will I go back to a monthly pay cycle?**

We cannot give you a concrete guarantee about something that may occur on a future date. Right now, we are planning on transitioning all employees to a bi-weekly pay frequency in the near future. If we had already transitioned employees by this point you would stay bi-weekly. A pay frequency does not automatically make an individual exempt or non-exempt.

We understand your concern, but unfortunately we cannot provide concrete answers regarding situations that may happen at a future date as we are not sure at what point or direction of the process we will be in at that point.

**33. What will my gross pay look like after these changes take place?**

We have added an Employee Pay Calculator tool to our website, which breaks down your gross pay for the different pay frequencies.

**34. What are the consequences if the loan form is not completed?**

We would like everyone to return the loan form for our records; however if the loan form is not returned by the due date we will assume that you did not wish to take the loan.

**35. How and when do employees enroll for the bridge loan option?**

Due to changes in the repayment methods we had to revisit the setup of the Master Promissory Note. Once the modifications have been made and approved by legal we will email the form directly to you. Deadline to turn the form in to Human Resources is October 14<sup>th</sup>.

**September 28, 2016**

**36. Does this transition from a monthly to a biweekly pay cycle mean we no longer get paid for the Christmas holiday?**

No, if you are eligible to receive holiday pay you will receive it regardless of your pay cycle. Please view policy 3005 regarding holiday pay eligibility in the Employee Handbook for further information.

**37. My department is lowering my base pay so what I make in overtime will equal my current annual salary is this legal?**

Yes, in Department of Labor Fact Sheet 70 confirms that this is a legal practice. The Fair Labor Standards Act only requires that an employee be paid minimum wage for all hours worked and an hours that are worked in an excess of 40 be compensated at 1 ½ times the regular rate or credited at 1 ½ hours of compensatory time. Please note that this practice is currently only occurring in one department on campus.

**September 29, 2016**

**38. Define volunteer activities.**

You cannot work and volunteer in your same capacity. If you are made to volunteer that time is compensable.

**39. What happens after I max out my comp time at 240 hours?**

The Department of Labor Regulations state that an employee must be paid at 1 ½ times their regular hourly rate for any overtime that occurs after an employee has reached 240 hours of compensatory time.

**40. Do I no longer accrue or work OT until I use the comp time or is it that I am paid for all OT hours that I work after I reach 240?**

After you reach 240 that decision is up to the manager.

**41. What will be the rule concerning international travel and on-site coordinator overseas?**

International travel would be coordinated in the same manner that all travel is coordinated. If you are working you must be paid, and if you work over 40 regular hours in a work week you must be paid at time ½ your hourly rate or credited comp time at 1 ½ hours for all hours worked over 40. Please take a look at our travel fact sheet at <https://www.usm.edu/employment-hr/fair-labor-standards-act> and let me know if you have any questions once you review that document.

**September 30, 2016**

**42. Is comp time an option in lieu of overtime wages? How is that handled or accounted for?**

Yes, comp time is an option in lieu of overtime. Comp time is tracked by the department. Currently, an agreement must occur between the employee and the manager about whether comp time or monetary payment of overtime is received. However, we have reviewed Supreme Court cases in which the employer is given the authority to have a comp time only policy. If the university moves to a comp time only policy we will notify employees of this change.

**43. Can it be combined with overtime and is there a limit to how much comp time can be accrued?**

A decision could be made between you and your manager before the overtime occurs to split it between monetary payment and comp time credit. You can only accrue 240 hours of comp time. Once you accrue 240 hours any overtime after that point would have to be paid at 1 ½ your hourly rate. The employer can make an employee use their comp time before using personal time, etc.