“It is the responsibility of each individual faculty or staff member acting on behalf of the University to comply with legal and regulatory requirements, policies, and procedures that apply to his or her position.”

—Policy 114: Compliance Education (excerpt)
• DOL published a pending increase to salary test for exemption
• Via Presidential directive not legislation
• Published July 6, 2015 w/60 day review and comment period
• Federal “salary test” increases to $47,476 from $23,660 annually on 12/1/16
• NY “salary test” currently at $35,100 (12/31/15)
• Expected Impact ~1,400 UR employees
The Fair Labor Standards Act (FLSA) is a federal law that sets the criteria to determine which employees are entitled to overtime based on duties performed, level of responsibility, decision-making authority and level of compensation.
EMPLOYEES EXEMPT FROM FLSA & NYS OVERTIME REQUIREMENTS

EXEMPT:

An exempt employee is an employee who, because of his or her duties and responsibilities and level of decision-making authority is exempt from the overtime provisions of the Fair Labor Standards Act (FLSA).

Exempt employees are expected to work whatever hours are necessary to accomplish the goals and deliverables of the position. Thus, exempt employees have more flexibility in their schedules to come and go as necessary to accomplish work than nonexempt (hourly) employees.

Continues…
IN ORDER TO BE EXEMPT MUST SATISFY BOTH PRIMARY DUTIES TEST AND SALARY TEST

Continues…
• Executive

• Administrative

• Professional
WHO Qualifies for Executive Exemption?

Primary Duties:

• Mgmt. of enterprise, department, or subdivision
• Regularly directs the work of 2 or more full-time staff
• Authority to hire, fire, transfer, and promote staff

Salary Test – Effective 12/1/16 (Federal):

• $913.00 per week ($47,476 annually)

NOTE: NYS Salary Test Effective 12/31/15 = $675.00 per week ($35,100 annually)

*Must comply with the higher standard; NYS typically adjusts to match the federal salary test when the federal exceeds NYS.
Primary Duties:

- Office or nonmanual work directly related to general business operations of the employer or employer’s customers
- Exercise of discretion and independent judgment with respect to matters of significance

Salary Test – Effective 12/1/16 (Federal):
- $913.00 per week ($47,476 annually)

NOTE: NYS Salary Test Effective 12/31/15 = $675.00 per week ($35,100 annually)
WHO QUALIFIES FOR PROFESSIONAL EXEMPTION?

Primary Duties:

• Work requiring advanced knowledge in a field of science or learning acquired by an advanced degree (i.e., minimum of Bachelor’s) or that is original and creative in character in a recognized field of artistic endeavor

or

• Teaching, instructing or lecturing in the activity of imparting knowledge and is employed as a teacher in a school system or education establishment

Salary Test (Federal): $913 per week ($47,476 annually)

NOTE: UR APPLIES THE FLSA SALARY TEST OF $913.00 PER WEEK TO ALL EXEMPTION TESTS
A nonexempt employee is an employee who, because of the type of duties performed, the usual level of decision-making authority, and the method of compensation, is subject to all FLSA provisions.

Nonexempt employees are required to account for all hours and fractional hours worked. Nonexempt employees must be compensated for all hours worked including overtime hours at time-and-one-half.
The job description says one thing but in reality the job is different….

CAN RESULT IN:
- Loss of exemption
- Burden on employer
- Lack of records
- Liability for back overtime & liquidated damages
WHAT IS COMPENSABLE WORKING TIME?

• “Work” is time spent for benefit of employer.

• “Hours worked” includes all time employee must be on duty, on employer’s premises, or at prescribed place of work.
EMPLOYERS MUST COMPENSATE FOR ALL TIME SPENT ON PRINCIPAL WORK ACTIVITIES

To Include:
- changing into work clothes if required
- shift changes
- cleaning work area
- calibrating equipment
- distributing materials
- pre- and post-shift work
- homework
FAILURE TO PAY WORKING TIME

• Could result in minimum wage violation

• Could result in overtime violation
UNAUTHORIZED WORK

Must pay for all work “suffered or permitted” by employer, even if not authorized
MINIMUM WAGE

NY State: $9.00 per hour (effective 12/31/15)

NY State: $9.70 per hour (effective 12/31/16)

Must comply with the higher standard; NYS typically adjusts to match the federal minimum wage when the federal exceeds NYS.

Federal: $7.25 per hour (effective 7/24/09)

NOTE: Federal minimum wage for those that work on a federal contract is $10.15 per hour effective 1/1/16.
OVERTIME PAY (POLICY 223)

If an hourly employee works over 40 hours in a workweek, overtime is due on all hours worked over 40.

Continues…
Pursuant to NYS Labor Law, all nurses (RN and LPN) who provide direct patient care cannot be required or mandated to undertake overtime work in excess of regularly scheduled hours except where specified in the regulations.
OVERTIME CALCULATION

Calculated at one- and one-half times the employee’s ‘regular rate.’ Regular rate includes:

- Hourly rate
- Shift differential
- Weekend premium
- Incentive payments
- Commission
• Fixed schedule
• Seven, consecutive 24-hour periods (168 consecutive hours)
New York State mandates ALL employees be provided:

• At least a 30-minute meal period for shifts over 6 hours.

• An additional 20-minute (paid) meal period if they begin working before 11:00 a.m. and continue working past 7:00 p.m.
• Employee must be relieved of all duties
• Free to leave post of duty (but can be confined to premises)
• If interrupted, must be provided another 30-minute, uninterrupted meal period
• In rare situations, if a meal period is not provided, employee must be paid (override in HRMS required)
ALL EMPLOYEES MUST RECORD ANY MISSED OR INTERRUPTED MEAL PERIODS ON THE UNIVERSITY EXCEPTION LOG:

- Record as soon as possible
- Include the reason for the missed or interrupted meal period
- Indicate the length of interruption (if applicable)
- Record time the full meal period was taken
<table>
<thead>
<tr>
<th>Date</th>
<th>Employee Name and ID</th>
<th>Exceptions (choose 1 of the 3)</th>
<th>Signatures &amp; HRMS Edit (required)</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Missed Meal Period (rare occurrence)</td>
<td>Employee Signature</td>
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<td>Length of interruption: ________</td>
<td>Time: ____________</td>
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<td>Time full meal period taken: ________</td>
<td>Check one:</td>
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<td>□ Work Related □ Other Please explain (required):</td>
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<td>Intermittent Meal Period</td>
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<td>Time full meal period taken: ________</td>
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<td>□ Work Related □ Other Please explain (required):</td>
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<td></td>
<td>Other Nonwork Time (required for SHM)</td>
<td>Supervisors/Timesheet Approver Signature</td>
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<td>HRMS Edit Occurred</td>
</tr>
</tbody>
</table>

FALSIFICATION OF A TIME RECORD IS A VIOLATION OF UNIVERSITY POLICY AND IS GROUNDS FOR DISCIPLINARY ACTION, INCLUDING TERMINATION.
REST PERIODS
(POLICY 172)

Rest Periods are defined by the law as short breaks of 5 – 20 minutes.

They are NOT mandated by law, but if you provide them, they must be counted as time worked and must be compensated.

DO NOT PUNCH OUT FOR BREAKS!
Breaks for Nursing Mothers:

NYS mandates that a reasonable break time each day shall be provided to allow employees to express breast milk for nursing children.

The break time may be a separate unpaid break, or the use of a paid meal or rest period may be utilized.
Blood Donation:

NYS mandates that employees be allowed **unpaid leave** of up to three hours per calendar year to donate blood at off-premise locations.

For donations on-premise (University designated) employees shall be allowed **paid time** to donate blood two (2) times per year without the use of accumulated leave time.
SHIFT DIFFERENTIAL (POLICY 226)

• Additional compensation for hourly paid staff required to work an evening or night shift

• Must be included in employee’s regular rate for calculation of overtime.
CALL-IN PAY (POLICY 214)

- Hourly paid employees entitled to at least 4 hours of regular, straight-time pay if called into work.
- Call-in pay not applicable if employee is on call or if hours are scheduled in advance.
- If hours worked constitute overtime, employee is paid OT.
ON-CALL TIME

• Compensation IS REQUIRED when employee is required to remain on premises or so close to premises that they cannot use the time for their own purposes.

• Compensation IS NOT REQUIRED if employee is merely required to carry a cell phone or a pager and be available to work.
ON CALL (POLICY 220)

• University provides compensation for hourly staff required to be on call.

• Staff members on call must be readily available to come to University within approximately 30 minutes of request.

• Staff called to work while on call will be paid the regular rate of pay for actual hours worked or the equivalent of at least 4 hours at New York State minimum wage in addition to the appropriate on-call pay.
HOLIDAY PAY (POLICY 330)

• Hourly paid employees who work on a University-designated holiday will receive double time for hours worked.

• When a legal holiday, which is also a University holiday, falls on Saturday or Sunday, the University officially observes the holiday on Friday or Monday, respectively.

• Hourly employees who do not work either the University or legal holiday receive one-fifth their standard weekly hours as holiday pay.
TRAVEL TIME
(Applies to Hourly Paid Staff)

• Home-to-Work Travel
  Ordinary Situation
  Emergency Situation
  Travel in the Course of a Workday
  Special One-day Assignment in Another City

• Travel All In the Day’s Work
• Travel Away from Home — Overnight
• Work Performed While Traveling
Training programs are considered working time (must be paid) unless you can answer “yes” to ALL of the following:

1. Attendance is voluntary
2. Attendance is outside employee’s regular working hours
3. Not directly related to employee’s job
4. Employee does not perform work during the seminar
• Employee’s full name and social security number (as required by law)
• Address, including zip code
• Birth date, if younger than 19
• Sex and occupation
• Time and day of week when employee’s workweek begins (maintained at local department level)
• Hours worked each day
• Total hours worked each workweek
• Basis on which employee’s wages are paid
• Regular hourly pay rate
• Total daily or weekly straight-time earnings
• Total overtime earnings for the workweek
• All additions to or deductions from employee’s wages
• Total wages paid each pay period
• Date of payment and the pay period covered by the payment
Docking is generally prohibited, but, there are exceptions:

- Absences from work for one or more full days for reasons other than sickness or disability
- Offset amounts received for jury fees, witness fees, or military pay
- Penalties imposed in good faith for violating safety rules of major significance
- Unpaid disciplinary suspensions of one or more full days for good faith violations of workplace conduct rules
- Unpaid leave taken pursuant to Family and Medical Leave Act
TIME MANAGEMENT

EFFECTIVE MARCH 2008 “COMP TIME” POLICY ELIMINATED. FOCUS IS ON:

• Accurate daily time reporting for hourly paid staff (to the minute)

• Each workweek stands alone and overtime pay is required for hours worked beyond 40 hours in week

• NO carrying time over to the next week in the biweekly pay period

• As always, NO banking of time into the future

• Salaried staff were never eligible for comp time
QUESTIONS ????

Contact:

ASK–URHR, 275-8747

Your HR Business Partner
(http://www.rochester.edu/working/hr/contact/contact_list.html)

Compensation, 275-9115