“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)
• Understand the difference between exempt & nonexempt status
• Review how jobs are designed & analyzed
• Discuss regulatory compliance related to compensable work time, calculation of overtime & definition of workweek
• Understand & apply university compensation policies, procedures & practices relative to regulations
• Review time reporting & record-keeping requirements
• Become familiar with our culture of compliance & consequences of noncompliance
THE STORY

- FLSA Investigation
- New York State Kronos Investigation
- Meal Period Legal Matter
- The More Things Change, The More Things Stay The Same!
- In Addition To Your “Day Job” As a Supervisor, Compliance Knowledge and Enforcement of Policies, Practices, and Procedures Are Also Your Key Responsibilities!
A systematic process for collecting information on the important work-related aspects of a job.
EFFECTIVE & DEFENSIBLE JOB ANALYSIS

- Yields a thorough, clear job description
- Assesses the frequency and importance of task behaviors (percent of time spent on each duty and responsibility is important)
- Accurately assesses the necessary knowledge, skills, abilities and other characteristics required by the job
- Yields information about the relationship between job duties and job evaluation systems
APPLICATIONS OF JOB ANALYSIS

- Recruitment and Selection – Skills, education, minimum years of experience
- Training & Career Development – Succession planning
- Compensation – Attract, motivate, reward, retain qualified staff
- Strategic Planning & Organizational Management
- Employee Relations
- Affirmative Action & EEOC
### Written Description of What Job Entails
- Job Title
- Summary
- Equipment Used
- Environment or Working Conditions
- Activities (Total 100%)
- Minimum Education & Experience

### Personal Traits/Experience Needed To Do the Job
- Knowledge
- Skills
- Abilities
- Other Characteristics
• A valid functional description must exist to support a pay/salary grade assignment at local department level; 
  
  AND

• The functional description will also be the basis for determining whether the job is HOURLY or SALARIED.

• From that, a University classification description is assigned (e.g., Secretary III, job code 0557, pay grade 7 or Administrative Assistant, job code 1256, salary grade 51).
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…
EMPLOYEES EXEMPT FROM FLSA & NYS OVERTIME REQUIREMENTS (CONTINUED)

- 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 12/31/16 (NYS):
- $727.50 per week ($37,830 annually)

Salary Test – Effective 12/31/17 (NYS):
- $780.00 per week ($40,560 annually)

NOTE: An increase to the federal SALARY TEST was scheduled to occur 12/1/16 to $913.00 per week ($47,476 annually). On 11/22/16 a federal judge issued an injunction that delays the implementation indefinitely.
WHO QUALIFIES FOR ADMINISTRATIVE EXEMPTION?

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 12/31/16 (NYS):

• $727.50 per week ($37,830 annually)

Salary Test – Effective 12/31/17 (NYS):

• $780.00 per week ($40,560 annually)

NOTE: An increase to the federal SALARY TEST was scheduled to occur 12/1/16 to $913.00 per week ($47,476 annually). On 11/22/16 a federal judge issued an injunction that delays the implementation indefinitely.
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): $455 per week ($23,660 annually)

NOTE: An increase to the federal SALARY TEST was scheduled to occur 12/1/16 to $913.00 per week ($47,476 annually). On 11/22/16 a federal judge issued an injunction that delays the implementation indefinitely.

NOTE: AS A MATTER OF PRACTICE UR APPLIES THE NYS SALARY TEST OF $727.50 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
NY State: $9.70 per hour (effective 12/31/16)

NY State: $10.40 per hour (effective 12/31/17)

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 who work on a federal contract is $10.20 per hour effective 1/1/17 and is scheduled to increase to $10.35 per hour effective 1/1/18.
OVERTIME PAY (POLICY 223)

If an hourly employee works over 40 hours in a workweek, overtime is due on all hours worked over 40.
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.
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 previously* required that ALL employees receive:

ONE DAY OF REST IN SEVEN

* DOL GUIDANCE - NO LONGER APPLIES TO UR
While work schedules were historically limited to working no more than 12 consecutive days, management reserves the right to schedule staff based on operational needs and may limit or increase the number of hours and/or days per week that an employee may be scheduled to Work (Policy 172).
WAGE DEDUCTION

• Deductions from the employee’s wages are permitted with written authorization from employee AND if the deduction is for the benefit of the employee.

• NYS regulations on Wage Deduction and Recoupment of Wages were finalized Oct 9, 2013.

• Wage Recoupment is administered by University Payroll — Wage Overpayment Recovery Policy Statement.
MEAL PERIODS (POLICY 172)

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.

Continues…
• 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 AND 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></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Missed Meal Period (rare occurrence)</td>
<td>Interrupted Meal Period</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**FALSIFICATION OF A TIME RECORD IS A VIOLATION OF UNIVERSITY POLICY AND IS GROUNDS FOR DISCIPLINARY ACTION, INCLUDING TERMINATION.**

UNIVERSITY EXCEPTION LOG 9.15

THIS LOG MUST BE RETAINED FOR SIX YEARS
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.

Continues…
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.
• 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 an hourly 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 the employee is merely required to carry a cell phone or a pager and be available to work.
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
(Appplies 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 AND SEMINARS

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

Continues…
• 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 a workweek
• **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
• Functional Job Descriptions are the basis for determining whether a job is HOURLY or SALARIED.

• Hourly paid staff must be paid to the minute for all time worked.

• Hourly paid staff must be paid overtime at a rate of time-and-one-half.

• All staff are eligible for an uninterrupted meal period if they work a shift of more than six hours.

• Hourly paid staff are eligible for rest periods at the discretion of the supervisor.
HELPFUL HINTS

• Accurate Time Records, Daily & Weekly
• Maintain Exception Log
• Edit HRMS When Necessary
• Retain Documentation For 6 Yrs
• Employees Cannot Waive Rights Under The Law
• Integrity Hotline 756-8888
QUESTIONS ????

Contact:

ASK–URHR, 275-8747

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

Compensation, 275-9115