The Fair Labor Standards Act (FLSA) and the New York State Salary Threshold
Frequently Asked Questions

1. What is the Fair Labor Standards Act (FLSA)?

The Fair Labor Standards Act (FLSA) is a federal statute originally passed in 1938 to protect workers from exploitation occurring at the time. The law introduced minimum wages and overtime pay, and created criteria for determining whether an employee is “exempt” from overtime pay requirements or is “non-exempt” and therefore entitled to overtime pay. Overtime pay is 1.5 times an employee’s regular rate of pay for all hours worked over 40 hours in a work week. Given the FLSA’s purpose of protecting workers from abuse, the law assumes employees are eligible for overtime pay (“non-exempt”) unless they meet criteria to be “exempt” from overtime.

2. How do I know if a position is exempt or non-exempt?

Under the FLSA exempt status is determined based on meeting each of the following tests, with a few limited exceptions (discussed in FAQ 4):

- Duty and Discretion Tests. The employee also must perform duties that meet the DOL’s definition of an executive, administrative, professional, or computer professional. The requirements to meet the duties and discretion tests are quite specific and are set forth in several fact sheets available on the Department of Labor’s web site at: http://www.dol.gov/whd/overtime/fact_sheets.htm.

and

- Salary Basis Test. Employee must be paid on an annual salary basis; and
• Minimum Salary (Salary Threshold) Test. For years, the FLSA’s federal minimum salary threshold has been $455 per week or $23,660 annually; however, for some time, New York State (NYS) has had a higher salary threshold. Employers are required to follow the higher threshold. The 2017 NYS salary threshold is $780 per week or $40,560 per year;

• Consistent with current practices and procedures, representatives from Human Resources are available to engage in job review audits to determine the appropriateness of classifications in order to assure compliance with the regulatory standards. As necessary, Human Resources will facilitate the use of an outside expert to conduct job audits.

3. What are the limited exceptions of types of exempt employees who do not have to meet all three of the above requirements?

Physicians, lawyers, and employees whose primary duty is teaching meet the duties and discretion tests. They do not otherwise have to meet the FLSA or NYS minimum salary threshold to be considered exempt.

4. What is the NYS salary threshold?

As indicated in question 2, the salary threshold is one test to determine whether a position is non-exempt or exempt. New York State is making a series of annual increases to the salary threshold through 2020. In December of 2017, the minimum salary threshold is $780 per week or $40,560 per year.

5. Who does this change in the law affect?

This change will apply to all exempt employees whose rate of pay is below $780 per week or $40,560 per year except those employees who are physicians, attorneys, or whose primary duty is teaching. These employees will continue to be exempt from the minimum salary threshold.
6. Will employees’ pay rate change?

No, impacted employees’ pay rate will not change as a result of the legislation changes; annual pay will simply be converted to an hourly rate. Impacted employees will now be eligible for overtime pay.

7. What will change for employees who are impacted?

Employees will be paid on an hourly scale in a biweekly cycle. They will need to begin tracking work hours in HRMS, by clocking in and out and record all non-work time as well (e.g. vacation, jury duty, bereavement, etc.). They will also be eligible for overtime pay (1.5 times their hourly rate) for all time worked beyond 40 hours in a work week.

8. How will the pay cycle transition from semi-monthly to bi-weekly?

Employees’ final semi-monthly paycheck will be received on December 29, 2017 and reflect payment for December 16, 2017 through December 30, 2017. The first bi-weekly hourly paycheck will be received on January 12, 2018 for the pay period beginning December 31, 2017 and ending January 6, 2018 (reflecting the second week of the bi-weekly pay cycle).

9. What impact will the change from being paid salaried to hourly (overtime eligible) have on employee’s benefits?

Conversion to an hourly rate due to falling below the salary threshold will not impact an employee’s benefits eligibility/status. For any questions regarding benefits, please contact the Benefits Office at (585) 275-2084.

10. How will the employee’s hourly rate be determined?

In most cases, an employee’s regular hourly rate will be determined by dividing current annual salary by the current annual standard hours. If the standard hours are 40 per week, that is the equivalent of 2080 hours in a year (40 hours/week x 52 weeks). So, if an employee’s annual salary is $40,000 and the employee has a standard of 40 hours per week, $40,000 divided by 2080 equals an hourly rate of $19.23. If the employee
works in excess of 40 hours in a week, then they will receive overtime pay of 1.5 times the regular hourly rate. The overtime rate in this example would be $28.85 per hour.

However, if when exempt, the employee also received components of pay which were added to base salary to account for working off-shifts or being on-call, those premiums will be backed out to establish a base hourly rate and University Policy will now apply for Shift Differential, On-Call Pay, Call-In Pay. See University Policies at http://www.rochester.edu/working/hr/policies/.

11. How is overtime calculated?

Overtime is paid at a rate of 1.5 times an employee’s regular hourly rate of pay for all time worked over 40 in the work week. The computation of “time worked” does not include paid time out of the workplace (e.g., sick leave, vacation time, etc.). For more details, see University Policy #223 http://www.rochester.edu/working/hr/policies/pdfpolicies/223.pdf.

12. What impact will a change to the hourly (overtime eligible) pay cycle have on paycheck deductions?

Both semi-monthly and bi-weekly pay cycles have two paychecks per month where standard deductions (medical, parking, etc) are withheld. For these deductions, the semi-monthly deductions occur with each paycheck (mid-month and end of month) and bi-weekly deductions occur in the first two paychecks each month.

Bi-weekly standard deductions in January 2018 will occur in the pay periods ending January 6 and 20, rather than the semi-monthly pay periods ending January 15 and January 31. Since the January 6 paycheck will only reflect one week of the bi-weekly pay cycle (Q8 above), the deductions will constitute a relatively larger portion of the overall paycheck. Depending on your personal circumstances, you may decide to temporarily adjust other deductions (e.g. direct deposit to a savings account, voluntary contributions to a retirement program, etc) to minimize this impact (see below for additional information on other types of deductions and how to make updates).

A number of deductions will be adjusted automatically, including: United Way contributions, URGIFT donations, Athletic Club deductions, Parking deductions, Health Care deductions, Dental Plan deductions, Flexible Spending Account and Health Savings Account deductions, and Long Term Care, Optional Life Insurance and MetLife
Auto & Home deductions. Employees will **not** need to make any changes for these types of deductions.

If paycheck deductions are made on a flat dollar amount basis, employees will want to review their selections since the same flat dollar amount will be deducted bi-weekly rather than semi-monthly or monthly, unless adjustments are made.

Examples of situations where employees often choose to make flat dollar amount deductions are direct deposit to a savings account, additional tax withholdings, and voluntary contributions to the retirement program. You may review your current selections and make adjustments through HR Self-Service at [www.rochester.edu/people](http://www.rochester.edu/people). For direct deposit, you may call the Payroll Office (275-2040) with questions. For voluntary contributions to the University’s retirement program, you may call TIAA at 1-800-410-6497 for assistance; *note voluntary contribution changes must be submitted by 1/6/2018 to be effective with the first 2018 bi-weekly paycheck.*

13. **How does this change affect an employee’s part-time status?**

As is the case under current regulations, pay for part-time appointments (including those for part-time faculty) will not be pro-rated under the new regulations. If the part-time employee’s salary falls below the new threshold, then the employee would be non-exempt *unless* working as a physician, an attorney or an employee whose primary duty is teaching. This is the case even if the full-time salary for that position is above the threshold.

For example, an employee might be hired on a 0.75 appointment to a position that would pay $53,500 for 1.0 FTE. This person would receive a salary of $40,125. Since $40,125 is below the proposed new minimum salary threshold, the employee is non-exempt *unless* working as a physician, an attorney or an employee whose primary duty is teaching.

14. **Can an hourly-paid employee check emails and voice mails from home?**

Checking e-mails and voicemails is considered work time, and hourly employees must report and be compensated for all time worked. All overtime, including for checking emails or voicemails from home, must be approved by the employee’s supervisor in
advance. It’s recommended that a supervisor/manager and employee discuss general manager expectations about checking e-mail and voicemails in advance.

15. Can an hourly-paid employee still work flexible schedules?

Yes, provided the arrangement has been approved by an employee’s supervisor and the employee is still reporting all hours worked. As a rule of thumb, work schedules, including flexible work schedules, or arrangements to work from home on occasion, need to be managed and approved by an employee’s supervisor -- just the same as when the employee was exempt.

16. For faculty whose primary duty is not teaching or who are not physicians, does being paid hourly mean that faculty member will be considered staff instead of faculty?

No. A faculty appointment remains a faculty appointment even if the faculty member needs to track hours worked. The only change is that the FLSA’s new higher minimum salary threshold means that more non-teaching or non-physician faculty will need to record work on an hourly basis.

17. Can employees opt out of this change (or supervisors opt an employee out of this change) if the employee wants to continue to be considered a salaried or exempt employee?

No, the change is due to labor laws which the University must comply with.

18. How does an hourly-paid employee record their time?

Hourly-paid employees need to accurately record all work time and non-work time (e.g., vacation time, jury duty, bereavement, etc.) in the Human Resources Management System (HRMS). Hourly employees must be compensated for all hours worked including overtime hours at 1.5 times the employee’s regular hourly rate of pay for hours worked over 40 in a work week. Applicable University compensation related polices such as: Call-In, On-Call, and Shift Differential, etc., apply.

http://www.rochester.edu/working/hr/policies/
Additionally, New York State requires that all employees take a minimum 30-minute uninterrupted meal period for shifts over 6 hours. During the meal period, by law, employees may not perform any work whatsoever. Employees do not need to swipe in and out for meal periods as HRMS automatically deducts the designated amount for a meal period for an employee once the employee has worked more than six (6) consecutive hours. In the rare situation a meal period is not taken, the meal period must be paid and a meal override in HRMS is required. If the employee’s original meal period was missed or interrupted, you must document it on the University exception log and take at least a 30-minute uninterrupted meal period before the end of the scheduled shift. See University Policy #172 – Work Schedules – Meal and Rest Periods. [http://www.rochester.edu/working/hr/policies/pdfpolicies/172.pdf](http://www.rochester.edu/working/hr/policies/pdfpolicies/172.pdf)

**19. Can hourly-paid employees still attend professional conferences?**

Yes. Professional development activities apply to exempt and nonexempt employees, and there is no blanket prohibition on traveling or participation in professional development activities. However, nonexempt hourly-paid employees must account for the hours of their travel time, and for the hours of conference attendance. It is expected that this will be managed at the departmental level to avoid incurring unnecessary travel time. Additional information on this topic is available to supervisors.

**20. How can I prepare?**

- Print a copy of the biweekly pay cycle calendar for your reference at [www.rochester.edu/adminfinance/finance/payroll/calendars/](http://www.rochester.edu/adminfinance/finance/payroll/calendars/).
- Review policy 413 on Time Management.
- Review the resources provided on the HR Compliance webpage at [http://www.rochester.edu/working/hr/compliance/](http://www.rochester.edu/working/hr/compliance/).
- Make changes to any automatic payments you have set up for personal bills so that you have adequate funds available in your bank account when you are switched to a biweekly pay cycle.
- Check your retirement, direct deposit, and tax withholding deductions and determine if you want to adjust them based on the new biweekly pay cycle. Since you will be paid more frequently, but less each pay period, you may opt to adjust your pay allocations.
- Talk to your supervisor or [HR Business Partner](mailto:HRBusinessPartner@rochester.edu) if you are concerned or have questions.