

# **Frequently Asked Questions (FAQ) and Answers Fair Labor Standards Act (FLSA)**

**Note:** The FLSA and related federal regulations govern who is exempt from the statutory minimum wage and overtime provisions. The following Q&As apply to professional staff employees.

**Q1. What differentiates exempt from nonexempt employees under the FLSA?**

A1. An exempt employee must be paid on a salary basis, not an hourly rate and must perform exempt job duties as defined by federal law. Job titles alone do not determine the exempt or nonexempt status of employees.

**Q2. Are the nonexempt jobs still considered “professional” jobs?**

A2. The exemption status (exempt or nonexempt) does not change the professional nature or significance of the job at the College. It is simply a legal designation related to pay and overtime requirements under federal law.

**Q3. Does the FLSA exemption status impact membership in the NSCPA bargaining unit?**

A3. FLSA exemption status does **not** affect whether an employee is covered by the NSCPA bargaining unit, the NSCS-NSCPA Bargaining Agreement and/or Board Policies. NSCPA remains the exclusive bargaining agent for full-time professional staff employees described in Section 1.1 of the NSCS-NSCPA Bargaining Agreement.

**Q4. How are nonexempt employees compensated for overtime hours worked?**

A4. NSCPA employees can refer to the NSCS-NSCPA Bargaining Agreement which describes how compensatory time will be provided.

Non-union professional staff employees can refer to Board Policy 5032 which describes how compensatory time will be provided.

**Q5. Do nonexempt employees need to obtain prior approval from his/her supervisor prior to working overtime?**

A5. Yes.

**Q6. If an employee fails to obtain prior approval from his/her supervisor prior to working overtime, is the College still required to provide compensatory time for the hours worked?**

A6. Yes, the College still has compensatory time obligations if the supervisor knows or “should have known” that overtime work was performed and did nothing to stop it from occurring.

**Q7. How can a supervisor ensure that nonexempt employees aren't working overtime hours?**

A7. Supervisors must communicate clearly to employees about the forty (40) hour work week limit. Supervisors must enforce the requirement for employees to obtain approval prior to working overtime. Finally, supervisors must clearly inform employees that they are not allowed to work at home, work through lunch periods or work before/after assigned work hours due to the overtime/compensatory time consequences.

**Q8. Does travel time count as "hours worked" for purposes of calculating overtime/compensatory time?**

A8. Yes, time spent traveling is considered compensable work time. Travel time does not include commuting time for employees to travel to and from home.

**Q9. Does meal time or time sleeping count as "hours worked" for purposes of calculating overtime/compensatory time?**

A9. No, time spent at meals or sleeping does not count as hours worked.

**Q10. Do holidays, compensatory time, sick leave or vacation leave count as "hours worked" for purposes of calculating overtime/compensatory time?**

A10. No.

**Q11. Do paid break periods count as "hours worked" for purposes of calculating overtime/compensatory time?**

A11. Yes, federal law considers the breaks as compensable work hours that would be included in the sum of hours worked during the work week and considered in determining if overtime was worked.

**Q12. Do unpaid lunch breaks count as "hours worked" for purposes of calculating overtime/compensatory time?**

A12. No, as long as the employee is not performing work during the unpaid lunch break.

**Q13. Is on-call time considered "hours worked" for purposes of calculating overtime/compensatory time?**

A13. On-call time for purposes of calculating overtime/compensatory time is a case by case determination. Not all on-call time are hours worked.

An employee who is required to remain at work, or close thereto, and cannot use the time for his/her own personal purposes is considered on-call time and the time qualifies for calculating overtime/compensatory time.

If an employee is not required to remain at work but must be accessible by telephone, the frequency of work calls will determine whether or not the time qualifies for calculating overtime/compensatory time. If work interruptions occur so frequently that the employee is not able to use the time for his/her own personal purposes, the employee is

considered to be working and all the time qualifies for calculating overtime/compensatory time.

An employee who is allowed to be away from work but is required to be accessible by telephone will not be considered working while waiting for possible calls, if the work calls are infrequent and limited in duration so that the employee can use the time for his/her own personal purposes. However, the actual time on a work call qualifies as time for purposes of calculating overtime/compensatory time.

**Q14. When is “waiting time” considered “hours worked?”**

A14. If an employee has reported to work and is engaged to wait, the time is considered hours worked and the time qualifies for calculating overtime/compensatory time.

If an employee has been relieved from duty and can use the time effectively for his/her own personal purposes, while waiting to return to work, the time is **not** hours worked and the time does not qualify for calculating overtime/compensatory time.

**Q15. If an employee is asked a work related question while off-duty, is that considered “hours worked?”**

A15. This will be case specific. If infrequent work occurs for insignificant periods of time beyond the scheduled working hours, it can be disregarded. However, employees should track and report these type of interruptions if they become more frequent.

**Q16. If an employee is “on-call” over a holiday and is restricted to the distance they can travel from their home or work location, is this considered time worked?**

A16. When an employee has been assigned to be “on-call” on a **College designated holiday** and must stay within a certain distance to campus, this will be considered work time no matter if they are called in to work or not. The employee will receive holiday leave to use on another day.

**Q17. Is it allowable for a supervisor to change an employee’s work schedule to limit accrual of compensatory time?**

A17. Yes, flexible scheduling is allowed in order to limit compensatory time as long as the supervisor gives appropriate notice to the employee per Section 5.3 of the NSCS-NSCPA Bargaining Agreement.

**Q18. Can employees be required to attend College programs or events during non-work hours?**

A18. Yes, supervisors can assign employees to attend College programs or events that occur outside of their normal working hours and that time will be counted as hours worked. If the employee attends a College program or event as a spectator on their own accord and does not perform any work, the time is not counted as hours worked.

**Q19. May an employee stop working once they reach 40 hours worked in a week?**

A19. Employees need to work all of their scheduled weekly hours which may include more than 40 hours unless a schedule deviation or leave request is approved by their supervisor.

**Q20. Does compensatory time expire?**

A20. No, once compensatory time has been earned, it does not expire. Employees may accumulate up to a maximum of 240 hours of compensatory time. Any compensatory time earned above that will be paid through payroll. For more information on scheduling compensatory time, refer to Section 5.3 of the NSCS-NSCPA Agreement and Board Policy 5032.

**Q21. Can hours worked above 40 in a work week be carried over and applied to the next week?**

A21. No, employees will earn compensatory time at the rate of 1.5 for any work hours exceeding 40 in the work week (Sunday – Saturday).

Rev. 02/05/2020