

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

Introduction: *The FLSA and related federal regulations govern who is exempt from the statutory minimum wage and overtime provisions. All of the Nebraska State Colleges have conducted a proactive review to ensure that the Colleges are complying with federal requirements. The review was not initiated because of any complaint or alleged violation.*

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. Is the FLSA nonexempt determination considered final or can determinations be appealed or changed?

A4. The FLSA status determination will be final. Questions about how the determination was made can be directed to the College’s HR Director.

Note: new or restructured positions will require future analysis by Human Resources to ensure that they are assigned to the appropriate classification and FLSA exemption status.

Q5. How are non-exempt employees compensated for overtime hours worked?

A5. NSCPA employees can refer to the Memorandum of Understand (MOU) dated August 14, 2013, between the Board of Trustees of the Nebraska State Colleges and NSCPA 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.

Q6. Do nonexempt employees need to obtain prior approval from his/her supervisor prior to working overtime?

A6. Yes.

Q7. 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?

A7. 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.

Q8. How can a supervisor ensure that nonexempt employees aren't working overtime hours?

A8. 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.

Q9. Does travel time count as "hours worked" for purposes of calculating overtime/compensatory time?

A9. Yes, time spent traveling is considered compensable work time. Travel time does not include commuting time for employees to travel to and from home.

Q10. Do holidays, 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.