Utah Valley University
Compliance with FLSA Overtime Rule

APPROVED BY PRESIDENT’S COUNCIL
10/6/2016

On May 18, 2016, the Department of Labor (DOL) issued a Final Rule that increases the salary threshold under which certain workers may be exempt from FLSA overtime provisions. These new rules will go into effect on December 1, 2016. Along with the new rules, the DOL issued specific guidance for higher education institutions.

Key Provisions of the Final Rule

The Final Rule focuses primarily on updating the salary and compensation levels needed for Executive, Administrative, and Professional workers to be exempt. Specifically, the Final Rule:

1. Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South ($913 per week; $47,476 annually for a full-year worker);
2. Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally ($134,004); and
3. Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption.

The effective date of the Final Rule is December 1, 2016. The initial increases to the standard salary level (from $455 to $913 per week) and highly compensated employee total annual compensation requirement (from $100,000 to $134,004 per year) will be effective on that date. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

UVU Position Analysis and Classification

In addition to guidance provided by the DOL, the position analysis and classification was informed by UVU’s Compensation Philosophy (full document available at http://www.uvu.edu/hr/docs/compensation/comp_philosophy.pdf).

Based on current projections, a change in classification is expected for over 250 employees at the university.

Positions That Meet the Teaching Duties Test

Teachers are exempt if their primary duty is teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. The salary and salary basis requirements do not apply to bona fide teachers.

- Full-time faculty meet the teaching duties test and remain classified as exempt.
- Adjunct faculty, whose primary assignment is teaching, meet the teaching duties test and remain classified as exempt. UVU will re-emphasize work standards that do not allow adjunct faculty to have a nonexempt assignment in addition to teaching.
• Full-time staff positions, including athletic coaches, with the primary duty of teaching, tutoring, instructing, or lecturing remain classified as exempt.

Positions That Meet the Academic Administrative Duties Test and Salary Threshold

To qualify for the academic administrative exemption, all of the following tests must be met:
1. Must be paid at least equal to the entrance salary for teachers at UVU established for 2016-17 at $42,625; and
2. The position’s primary duties must be directly related to academic instruction. May include positions such as academic counselors and advisors and intervention specialists who respond to student academic issues. (Note: Feedback from the CUPA-HR National Conference in September 2016 was that this exemption should be very narrowly applied.)

Implementation at UVU:
• Employees in positions Grade 38 or higher on UVU’s current exempt salary schedule who qualify for the academic administrative exemption remain classified as exempt.
• Employees in positions Grade 38 or higher on UVU’s current exempt salary schedule who meet the duties portion of the academic administrative exempt but earn $40,625 to $42,624, based on Vice President recommendation, will receive a base salary increase to $42,625 and remain classified as exempt.

To promote equity, all employees in positions performing same/similar duties within the same grade level will be classified similarly as either exempt or nonexempt based on the FLSA and UVU criteria above.

Note: While Salary Grades 38 and 39 will remain on the Exempt Salary Schedule, only those positions meeting the Academic Administrative Exemption will be placed in these salary grades. Additionally, the minimum initial salary placement for these positions will be $42,625 during 2016-17.

All Other Currently Exempt Staff Positions

To qualify for an exemption, all of the following criteria must be met:
1. The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $913 per week or $47,476 annually; and
2. The employee’s primary duty must meet a white collar duties test (i.e., executive, administrative, learned professional, etc.)

Implementation at UVU:

To promote equity, all employees in positions performing same/similar duties within the same grade level will be classified similarly as either exempt or nonexempt based on the FLSA and UVU criteria below.
• Employees in positions Grade 40 or higher on UVU’s current exempt salary schedule who meet the salary threshold and one or more duties test remain classified as exempt.
• Employees in positions Grade 40 or higher on UVU’s current exempt salary schedule who meet one or more duties test but earn less than $47,476 will receive a base salary increase to 90% of the midpoint of grade 40 ($47,867) and remain classified as exempt.
• Employees in positions Grade 39 on UVU’s current exempt salary schedule who earn at least $47,476 and who meet one or more duties test were reviewed to determine if market data supported a reclassification from Grade 39 to Grade 40. If a reclassification is supported by market data and with approval of the Vice President, the position will be reclassified to Grade 40 and remain classified as exempt.

• Based on reviews by Vice Presidents of additional key positions performing same/similar duties, where the majority of those employees earn at least $47,476, and where the positions meet one or more duties test, the positions were reviewed to determine if market data and internal equity supported a reclassification. If a reclassification is supported by market data and internal equity and with approval of the Vice President, the position will be reclassified to Grade 40 and remain classified as exempt.

• Employees in positions Grades 30 through 39 on UVU’s current exempt salary schedule will be reclassified to nonexempt and assigned to grade levels on the 2016-17 nonexempt wage schedule effective December 1, 2016.

To ensure continued compliance with FLSA duties test, Human Resources will perform regular reviews of new and existing positions to assess exemption status. This review may result in a revision to the classification of the respective position(s).

*Note*: *The minimum initial salary placement into Grade 40 or higher on the exempt salary schedule will be $47,867.*

**Compensatory Time and Leave Accrual**

As a public employer, UVU will allow nonexempt employees to accumulate and use compensatory time at a rate of one and one-half times each overtime hour worked. While federal law allows public employees to accrue up to 240 hours of compensatory time, UVU is establishing a limit of 120 hours of accumulated compensatory time effective December 1, 2016. Overtime hours worked will default to compensatory time up to the established university limit. Accrued compensatory time may be used in the same manner as vacation leave. Any compensatory time hours in excess of 120 hours will be paid by the employee’s department as overtime. This limit of 120 hours of accumulated compensatory time limits UVU’s liability at employee termination and/or at the conclusion of grants and contracts. Further, UVU will continue the practice of paying out accumulated compensatory time when an employee changes positions within the University.

UVU policy provides exempt employees 24 hours (3 days) more vacation time accrual per year than nonexempt employees during the first 14 years of employment. As nonexempt employees have the ability to accrue compensatory time, no change to vacation accrual policy is recommended. However, for those employees whose classification changes from exempt to nonexempt on December 1, 2016, an additional 24 hours (3 days) of personal leave will be granted on January 1, 2017, for use during the 2017 leave year.

**Pay Basis and Record Keeping**

As allowed by the FLSA, full-time nonexempt staff will continue to be paid on a salary basis and use the TIMS system to accurately record hours worked and leave used. Currently, nonexempt staff report time on an exception basis (record leave and overtime). Once a modification to the TIMS system is made (projected by March 1, 2017), nonexempt employees will be required to use the TIMS system to clock in and out at the beginning and end of their work day and at the beginning and end of the meal period as
defined by policy. Based on recorded work/leave hours including overtime/unpaid leave, pay and leave adjustments will be made to ensure accurate pay for time worked.

UVU Compliance Timeline To Date

- March 2014 to present: Monitored issues and progress since initial announcement
- February/March 2016: Framed initial issues and potential impact with President’s Cabinet
- May 18, 2016: Direct communication with PELC following new rule announcement
- April 2016 to present: Weekly meetings of the FLSA Compliance Committee, which includes HR, General Counsel, VP of Planning, Budget and Human Resources, AVP of Academic Administration
- August 26, 2016: First general campus communication to all full-time employees sent via HRMatters
- Sept. 13, 2016: Meeting with the Academic Affairs Council
- Sept. 19 to Sept. 23, 2016: Meetings with Vice Presidents and Deans
- Sept. 20, 2016: Meeting with PACE General Board
- Sept. 26, 2016: Second general campus communication to all full-time employees sent via HRMatters
- Oct. 3, 2016: UVU Employee Forums (3)
- Oct. 11, 2016: Meeting with Academic Affairs Council
- Ongoing: Information gathering, education, and exploration of possible strategies; general communication with employees including written messages, website, etc.

Moving Forward

- Final decisions (including review of current practice of not allowing nonexempt employees to have additional assignments including adjunct teaching) are expected to be made by President’s Council in October.
- Human Resources and Budget Office will calculate salary adjustment costs and identify university resources to support the additional costs.
- Human Resources will directly contact all exempt employees and their supervisors to communicate FLSA classification determinations. We expect these communications to take place in late October/early November.
- Employee/supervisor FLSA trainings are expected to occur in late October/early November.
- The FLSA Compliance Committee will bring policy revisions to President’s Council for temporary emergency and regular process in October/November and temporary emergency approval by the Board of Trustees by December 1, 2016.
- Human Resources will recommend revisions to exempt/nonexempt salary scales for approval by the Board of Trustees by December 1, 2016.
- UVU is scheduled to be in compliance with the new Department of Labor requirements by the deadline of December 1, 2016.

In summary, as of December 1, 2016, more UVU employees will be nonexempt and eligible for compensatory time and/or overtime pay.