



POLICY TITLE	FLSA Compliance: Exempt/Nonexempt Classifications, Wages, and Work Hours	Policy Number	325
Section	Human Resources	Approval Date	June 22, 2017
Subsection	Conditions of Employment	Effective Date	June 22, 2017
Responsible Office	Office of the Vice President of Planning, Budget, and Human Resources		

1.0 PURPOSE

1.1 Utah Valley University is committed to complying with the federal *Fair Labor Standards Act (FLSA)*, the regulations implementing the FLSA, and applicable state laws governing the wages and hours of its employees. This policy sets forth and explains the University’s requirements related to exempt/nonexempt classifications; non-employee workers (temporary staff agency employees, independent contractors, and volunteers); work hours; recording hours and timekeeping; overtime pay and compensatory time; call-in pay and holiday premium pay; meal times, rest breaks, and lactation breaks; paydays and paychecks; and paycheck deductions. This policy applies to all employees of the University, including faculty, staff, administration, and student employees, with specific portions of this policy applying only to nonexempt employees.

2.0 REFERENCES

2.1 *Fair Labor Standards Act of 1938* (as amended)

2.2 29 CFR Parts 510, 516, 531, 541, 548, 553, 778, 785

2.3 Department of Labor *Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act* (May 18, 2016)

2.4 UVU Policy 202 *Payroll*

2.5 UVU Policy 210 *Independent Contractors*

2.6 UVU Policy 321 *Employment Classifications and Work Limits*

2.7 UVU Policy 327 *Additional Assignments for Full-time Exempt Staff and Executives*

2.8 UVU Policy 332 *Work-at-Home*

2.9 UVU Policy 361 *Leave of Absence*



2.10 UVU Policy 363 *Supplemental and Adjunct/Overload Pay Methods*

2.11 UVU Policy 641 *Salaried Faculty Workload–Academic Year*

3.0 DEFINITIONS

3.1 Compensatory leave: Requested and approved use of compensatory time earned and accrued by a nonexempt employee.

3.2 Compensatory time (comp time): Time off (leave) earned and accrued by a nonexempt employee at a rate of not less than 1½ hours for each overtime hour worked as compensation in lieu of monetary payment.

3.3 Exempt: A classification of employees who meet the applicable FLSA salary level, salary basis, and duties test of one or more of the executive, administrative, academic administrative, or professional exemptions or they are performing non-manual work and paid a total annual compensation that meets the highly compensated employee exemption.

3.4 Full-time employee: An employee hired into a position in which the University has a reasonable belief that the employee will work at least 130 hours per month (30 hours per week) in a 12-month measurement period. A full-time employee is eligible for benefits, including medical insurance.

3.5 Holiday premium pay: Differential rate of pay for employees who are authorized to work on days designated annually by President's Council as UVU holidays.

3.6 Nonexempt: A classification of employees who are paid either by a wage rate or by a salary that is based on a per hour wage rate who primarily perform work that is subject to the overtime provisions of the FLSA who receive time and a half for hours worked beyond 40 hours a week.

3.7 Overtime hours: As defined by FLSA, time worked beyond 40 hours in a work week.

3.8 Overtime pay: Payment for all overtime hours, which is paid at 1½ times a nonexempt employee's regular rate of pay.

3.9 Part-time (variable hour) employee: An employee hired into a position in which the University has a reasonable belief that the employee will work less than 130 hours per month (30 hours per week) in a 12-month measurement period. A part-time (variable hour) employee is not eligible for benefits, including medical insurance.



3.10 Regular rate of pay: The regular rate of pay is the weighted average of the employee's hourly rate, including the employee's hourly wage and any applicable shift differentials. Payments that are not included in the regular rate include pay for expenses incurred on the employer's behalf, weekend or holiday premium pay, discretionary bonuses, gifts and payments in the nature of gifts on special occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness.

3.11 Supervisor: A university employee charged with the responsibility for managing the performance and timekeeping of another employee.

3.12 Workweek: Seven consecutive 24-hour periods or 168 consecutive hours. UVU's workweek begins on Saturday at 12:00 a.m. and ends the following Friday at 11:59 p.m.

4.0 POLICY

4.1 Statement/Scope of Policy

4.1.1 The University classifies, pays, and sets its work hour requirements for its employees in accordance with the *Fair Labor Standards Act (FLSA)* and other applicable federal and state law. UVU employees shall comply with the requirements of this policy. UVU supervisors have additional responsibility to consistently administer this policy with respect to employees who report to them.

4.1.2 This policy applies to all persons employed part-time or full-time by Utah Valley University, including faculty, staff, executives, and student employees. Portions of this policy, as indicated herein, apply only to nonexempt employees or only to staff and executive employees. To the extent any other university policy addresses the subjects covered by this policy, this policy takes precedence and controls.

4.1.3 The University may discipline any employee who violates this policy, up to and including termination of employment from the University. A supervisor who directs or requires an employee to violate this policy, or who allows or permits an employee reporting to them to violate this policy, may be subject to disciplinary action, up to and including termination of employment.

4.2 Exempt/Nonexempt Employee Classification

4.2.1 In addition to classifying employees as either full-time or part-time (variable hour) employees (see UVU Policy 321 *Employment Classifications and Work Limits*), the University also classifies each employee as either exempt or nonexempt. Human Resources, in consultation with the Office of General Counsel as needed, shall determine the exempt or nonexempt status of employees based on the requirements of the FLSA, the FLSA's implementing regulations, other applicable legal precedents and guidance, and UVU's compensation philosophy and guidelines,



and shall notify each employee of their exempt or nonexempt status upon hire, transfer, or promotion. As legal requirements or an employee's job duties change or as departments are restructured, Human Resources may change an employee's exempt/nonexempt classification to meet legal requirements and the University's compensation philosophy and guidelines.

4.2.2 Employees classified by UVU as exempt shall meet the applicable FLSA salary level, salary basis, and duties tests of one or more of the executive, administrative, academic administrative, or professional exemptions or they are performing non-manual work and paid a total annual compensation that meets the highly compensated employee exemption. All faculty whose primary duty is teaching are classified as exempt under the learned professional exemption. Full-time exempt employees are paid on a salary basis and are not entitled to overtime compensation. Adjunct faculty are paid a fixed amount per course and are not entitled to overtime compensation.

4.2.3 Employees who do not meet the requirements in 4.2.2 are classified as nonexempt. Further, UVU may, at its discretion, classify employees who meet the requirements in 4.2.2 as nonexempt based on the University's compensation philosophy and guidelines. All employees classified as nonexempt are covered by the FLSA's minimum wage and overtime provisions. While UVU's nonexempt employees are paid on a salary basis, they shall record, and shall be compensated for, all hours worked using UVU's currently designated time keeping system. They shall also receive compensation (compensatory time or overtime pay) for all hours worked over 40 hours in a workweek.

4.3 Other Worker Classifications

4.3.1 Not all individuals performing services for the University are university employees. At times, the University engages workers who are not employed by UVU, such as independent contractors, consultants, or staffing agency temporary employees, to perform certain services. The University shall not engage such workers unless (1) they meet the applicable legal requirements to be classified as such and (2) a legally compliant agreement or arrangement is in place with or concerning those workers. (See also UVU Policy 210 *Independent Contractors*.)

4.3.2 Individuals not otherwise employed by the University who volunteer their services to the University are excluded from the definition of employee and thus are excluded from coverage by the FLSA. Individuals employed by the University in any capacity shall not volunteer their services to the University if the work is of the same type they or others at the University are employed to perform.



4.4 Work Hours

4.4.1 University offices and departments are typically open to serve students or the public Monday through Friday from 8 a.m. to 5 p.m. Department leaders may establish alternative business hours.

4.4.2 Supervisors are responsible for establishing work schedules for employees that are consistent with university policies and procedures, including overtime provisions. Full-time nonexempt employees are expected to work 40 hours per week, generally eight hours a day, with an unpaid meal period each workday of between 30 minutes and one hour, as directed and approved by their supervisor.

4.4.3 Employees are required to be to work on time. A nonexempt employee who is late, regardless of the reason (including inclement weather), shall, with the approval of his or her supervisor, either make up the lost time by adjusting his or her work schedule or use accrued leave or leave without pay.

4.4.4 Full-time exempt staff and executive employees are expected to work as many hours as needed to complete their job duties and at least 40 hours per week, generally eight hours per day, in accordance with a work schedule established by the supervisor.

4.4.5 Full-time faculty work hours and workloads are addressed separately in UVU Policy 641 *Salaried Faculty Workload–Academic Year*.

4.5 Time and Leave Reporting

4.5.1 All full-time employees, both exempt and nonexempt, shall report all absences from work using UVU’s currently designated time keeping system no later than two weeks after the absence. Supervisors shall notify Human Resources if they have an employee with an unplanned absences of more than three days.

4.5.2 Nonexempt employees shall complete and submit a semi-monthly time record that accurately reflects the hours actually worked per week, including approved and unapproved overtime, on-call time, stand-by time, and approved leave time.

4.5.3 The University strictly prohibits off-the-clock work for nonexempt employees. Supervisors shall not permit or instruct nonexempt employees reporting to them to work off the clock. Examples of “off the clock” work include performing work-related functions prior to or after the workday without recording this time. Nonexempt employees shall not work after hours, work at home, or check their UVU work-related communications outside of their regular work schedule unless pre-approved to do so by their supervisor. In such approved instances, nonexempt employees shall include such time worked in their time record for that workweek.



4.5.4 Nonexempt employees who fail to report work hours correctly or who work off the clock may be subject to disciplinary action, up to and including termination of employment. Supervisors who direct a nonexempt employee to submit an incorrect time record, knowingly approve an incorrect time record, or direct a nonexempt employee to work off the clock may be subject to disciplinary action, up to and including termination of employment.

4.6 Overtime Pay and Compensatory Time (Nonexempt Employees)

4.6.1. Nonexempt employees are expected to work a reasonable amount of overtime when requested to do so by their supervisor, particularly in unusual or emergency circumstances. Overtime shall not be worked at the option of the nonexempt employee and, unless necessitated by a natural disaster or other emergency situation, must have prior approval of the appropriate supervisor. Nonexempt employees who work unauthorized overtime shall be paid overtime, but may be subject to disciplinary action, up to and including termination of employment.

4.6.2 Nonexempt employees who work more than 40 hours in a workweek shall be compensated for their overtime hours. Overtime hours shall be compensated through (1) compensatory time accrued at a rate of 1½ hours for each overtime hour worked or (2) overtime pay for each overtime hour worked paid at the overtime pay rate of 1½ times the employee's regular rate of pay.

4.6.3 Nonexempt employees who earn compensatory time may accrue a maximum of 120 hours of compensatory leave. Once a nonexempt employee has accrued 120 hours of compensatory leave, any additional overtime hours worked shall be paid as overtime pay.

4.6.4 Supervisors shall arrange for a nonexempt employee's use of compensatory leave as soon as possible after it is accrued and within a reasonable period after the employee's request, if such use does not unduly disrupt university operations or endanger public health, safety, or property.

4.6.5 Nonexempt employees, with appropriate supervisor approval, may be authorized for overtime work other than adjunct teaching within their department/division, and in exceptional circumstances that are for the benefit of the University, in another university division. Authorization for overtime work in another division requires prior approval by the executive leader of both the nonexempt employee's division and the division in which the overtime work will be performed. Information and forms related to these additional overtime assignments are available through Human Resources.

4.7 Call-in and Holiday Premium Pay (Nonexempt Employees)

4.7.1 Nonexempt employees who are called in to work outside of regularly scheduled work hours to work on critical operational duties shall be paid the greater of all time worked or four hours. Such critical operational duties are performed physically at a university campus, facility, or worksite and are determined and authorized by the nonexempt employee's vice president (or vice



president's designee). The rate of pay for these hours shall be at the regular rate of pay or at overtime pay as applicable. Call-in pay shall not be paid on a UVU holiday. When a nonexempt employee is asked to work on a UVU holiday, the holiday premium rate of pay shall supersede call-in pay.

4.7.2 Nonexempt employees required by their supervisors to work on a UVU holiday (between 12:00 a.m. and 11:59 p.m. on the day of the UVU holiday) are eligible for holiday premium pay. Part-time nonexempt employees receive 1½ their regular hourly pay rate for each hour worked on a UVU holiday. Full-time nonexempt employees receive two times their regular hourly rate of pay for each hour worked on a UVU holiday.

4.8 Meal Periods and Rest Breaks (Nonexempt Employees)

4.8.1 Full-time nonexempt employees shall take one unpaid duty-free meal (lunch) period of not less than 30 minutes and no longer than one hour each workday, generally in the middle of the workday or as otherwise scheduled with the employee's supervisor. Nonexempt employees may not miss meal periods to shorten a work day without supervisor approval.

4.8.2 Full-time and part-time nonexempt employees may take one 15-minute paid rest break for every four hours worked. Rest breaks are not to be used (1) to offset late arrival or early departure from the worksite, (2) to extend the meal period, or (3) to accumulate paid time off from one day to the next.

4.9 Payment of Wages, Deductions, and Administrative Pay Corrections

4.9.1 Full-time exempt and nonexempt employees are paid on a salaried basis. Part-time (variable hour) employees, with the exception of adjunct faculty, are paid on an hourly rate basis. Adjunct faculty are paid a fixed amount per course taught spread in even payments across the term of the course instructed (typically a semester); additional non-teaching assignments are paid on an hourly rate basis and shall be pre-approved by the department chair, reported, and compensated in accordance with UVU Policy 321 *Employment Classifications and Work Limits*.

4.9.2 All employees receive their pay on a semi-monthly basis. Employees are paid one half month after the completion of a pay period. Pay for the first half of the month (days 1–15) is paid the first working day of the following month. Pay for the second half of the month (day 16–last day) is paid on the 16th of the following month.

4.9.3 When a payday falls on a Saturday, pay is generally issued on Friday. When a payday falls on a Sunday, pay is generally issued on Monday. If a payday falls on a UVU holiday during the



week, pay is generally issued the working day immediately prior to the holiday. The Payroll Office publishes a detailed pay schedule on its website.

4.9.4 Utah Valley University shall make all legally required deductions from employees' pay. These deductions include Social Security, payroll taxes, etc. Employees may also authorize the University to make other deductions related to benefits or otherwise, such as for health insurance premiums or retirement account contributions. The University also complies with all court orders related to wage garnishment.

4.9.5 Utah Valley University takes all reasonable steps to ensure that all employees receive the correct amount of pay in each paycheck and that employees are paid promptly on the scheduled payday. In the event that there is an error in the amount of pay, including an improper deduction from pay, the employee should promptly bring the discrepancy to the attention of the Payroll Office so the discrepancy can be corrected as quickly as possible. If an employee has been underpaid, the University will either correct it in the next regular paycheck or issue a separate check for the difference. Payroll will notify the employee of the method used. If an employee has been overpaid, a correction shall be made in the following paycheck to correct the error.

4.10 Reporting Concerns

4.10.1 Employees and supervisors shall immediately report any actual, threatened, or perceived violation of the University's policies or applicable law governing its FLSA compliance and pay practices, including the University's timekeeping policies to Human Resources or the Payroll Office.

4.10.2 Employees who believe they have been misclassified as exempt under the FLSA may ask the Associate Vice President for Human Resources in writing to review the classification. The Associate Vice President for Human Resources shall determine whether a review is warranted, and if so, will review the classification and provide a response to the employee in a timely manner. There are no additional internal reviews or appeals.

4.10.3 Utah Valley University prohibits retaliation against an employee who makes a good faith report or appeal under this policy.

5.0 PROCEDURES

5.1 Other Worker Classifications

5.1.1 Employees who wish to engage a temporary staffing agency employee shall first obtain approval from their Dean or Vice President (or their designees) and shall then contact Human



Resources and/or the Procurement and Contract Services Department to ensure compliance with this policy, UVU Policy 210 *Independent Contractors*, and procurement policies and procedures.

5.2 Time and Leave Reporting (Nonexempt Employees)

5.2.1 Nonexempt employees shall be paid for all hours that UVU suffers or permits (requires or allows) them to work. All work time shall be recorded by the minute in the University's currently designated timekeeping system. As hours are rolled up to the weekly total, time submitted each day shall be rounded to the nearest quarter-hour increment. Total daily employee time from one to six minutes will be rounded down, but employee time from seven to fourteen minutes will be rounded up and counted as a quarter hour of work time.

5.2.2 Generally, time worked by nonexempt employees shall be submitted no later than two working days after the last working day of the pay period. To ensure timekeeping accuracy, nonexempt employees are required to review and certify the accuracy of their time entries for each workweek. Following a nonexempt employee's certification of accuracy, the employee's supervisor, or the supervisor's designee, is also required to certify the accuracy of the employee's time entries.

5.2.3 Work time includes all time during which a nonexempt employee is required to be on UVU's premises, on duty, or at a prescribed place. Worktime generally begins when nonexempt employees arrive at their work area to begin their principal work activity and all time that follows until the employee ceases such principal activity, excluding time clocked out for a meal break. It generally does not include the time an employee spends parking or walking from (or to) his or her car to his or her work area to begin work.

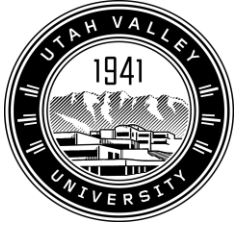
5.2.4 Following are examples explaining which activities are considered "work" and are compensable:

1) *Lectures, Meetings, and Training Programs*: When UVU requires or permits a nonexempt employee to attend lectures, meetings, or training during the employee's regular work hours, the training time shall be compensable "on the clock" time. Nonexempt employee training time shall be paid unless all four of the following criteria are met: (a) attendance is outside of the employee's regular working hours; (b) attendance is in fact voluntary; (c) the course, lecture, or meeting is not directly related to the employee's job; and (d) the employee does not perform any productive work during such attendance.

2) *Waiting Time*: Whether a nonexempt employee is compensated for "waiting time" depends on whether the employee was "engaged to wait" (which is work time) or the employee was "waiting to be engaged" (which is not work time). For example, an administrative assistant who reads a book while waiting for dictation or a firefighter who plays checkers while waiting for an alarm is working during such periods of inactivity. These employees have been "engaged to wait" and must therefore be compensated for such waiting time. To be considered completely relieved from

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duty, and thereby “waiting to be engaged,” the employee must definitely be told in advance that he or she may leave the job and/or not have to commence work until a definitely specified hour has arrived. For example, if an employee decides to come to work before his or her scheduled start time and, before clocking in or doing any work for the University, sits at his or her desk and balances a personal checkbook, this would be “waiting to be engaged,” which is not compensable.

3) *On-Call Time:* A nonexempt employee who is required to remain on the employer’s premises is working while “on call.” Whether an employee who is required to remain on call away from work depends on the facts, including considering additional constraints on the employee’s freedom, how quickly the employee must respond, how far the employee can travel, how many calls they must respond to, and other similar factors. In such cases, the time an employee spends responding to calls is generally compensable, but whether the remainder of the on-call time is compensable depends on the facts.

4) *Travel Time:* Whether nonexempt employee travel time is compensable work time depends on the kind of travel involved.

a) A nonexempt employee who travels from home before the regular workday and returns to his or her home at the end of the workday is engaged in ordinary home to work travel, which is not compensable work time.

b) Time spent by a nonexempt employee in travel as part of their principal activity, such as travel from job site to job site during the workday, shall be counted as hours worked.

c) Time spent by a nonexempt employee who works at a fixed location in one city who is given a one-day assignment in another city and returns home the same day is all compensable, minus the time the employee would normally spend commuting to the regular job site.

d) Travel that keeps a nonexempt employee away from home overnight is travel away from home. Travel away from home shall be compensable work time when it occurs during the employee’s workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. Time spent in travel away from home outside of the employee’s regular working hours as a passenger on an airplane, train, boat, bus, or automobile is not compensable work time assuming the employee is not working on work projects during that time. If an employee drives a car after his or her working hours to travel away from home, the time spent in the car is compensable work time.

5) *Sleeping Time and Certain Other Personal Activities:* Time spent by a nonexempt employee staying overnight on travel for their job is generally not compensable unless the employee is on duty during that time, such as when the employee is supervising students. A nonexempt employee who is required to be on duty for fewer than 24 hours is working even though he or she is permitted to sleep or engage in other personal activities when not busy. An employee



required to be on duty for 24 hours or more may agree with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than eight hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. No reduction is permitted unless at least five hours of sleep is taken. Supervisors should contact Human Resources to assist with a bona fide sleeping period request.

5.2.5 Meal Periods and Rest Breaks (Nonexempt Employees)

5.2.5.1 Meal periods shall be duty-free, which means the nonexempt employee must be completely relieved from duty during meal periods. The employee is not relieved if he or she is required to perform any duties, whether active or inactive, during the meal period. Meal periods are unpaid and shall not be included when calculating total hours worked in a workday. Accordingly, nonexempt employees shall accurately account for their off-duty meal period time as "off the clock" in the University's time keeping system.

5.2.5.2 Full-time and part-time nonexempt employees may take one 15-minute paid rest break for every four hours worked. Rest breaks are not to be used (1) to offset late arrival or early departure from the worksite, (2) to extend the meal period, or (3) to accumulate paid time off from one day to the next.

5.2.6 Lactation Breaks

5.2.6.1 To allow any employee to express breast milk for her child, reasonable daily paid break periods shall be granted to employees for a year after an employee begins inducing lactation for her adopted child or after the birth of her biological child.

5.2.6.2 For nonexempt employees, any breaks taken in excess of normally provided paid breaks will be unpaid breaks.

5.3 Overtime Pay and Compensatory Time (Nonexempt Employees)

5.3.1 For purposes of calculating overtime, UVU's workweek begins on Saturday at 12:00 a.m. and ends the following Friday at 11:59 p.m.

5.3.2 Holidays, vacation leave, personal leave, sick leave, premium holiday work hours, and compensatory leave are not counted as time worked in calculating overtime hours.

5.4 Call-in and Holiday Premium Pay

5.4.1 If a UVU holiday falls on a Saturday or Sunday and the University observes the holiday on the following Monday or previous Friday, the supervisor shall determine which day the nonexempt employee is eligible for holiday premium pay.



5.4.2 Exempt employees in positions that are critical to the operation and safety of the University who are required by their supervisor to work on a UVU holiday shall receive equal time off at a time mutually determined by the employee and the employee’s supervisor, if required by their supervisor to work on a UVU holiday.

5.4.3 Employees shall be eligible for holiday premium pay only if their supervisor is requiring the employee to work on a UVU holiday. Nonexempt employees who work UVU holiday hours without their supervisor’s authorization shall not be eligible for holiday premium pay, shall be paid their regular hourly rate for those hours, and may be subject to discipline.

POLICY HISTORY		
June 22, 2017	Regular policy approved to replace temporary emergency policy and former regular policy	UVU Board of Trustees
December 1, 2016	Temporary emergency policy replaced Policy 325 Workload for Full-time, Non-Faculty Employees.	UVU Board of Trustees
September 6, 2001	Policy 325 Workload for Full-time, Non-Faculty Employees approved	