


**THE CALIFORNIA STATE UNIVERSITY**  
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**To:** CSU Presidents **Supersedes: HR 1993-17  
and Supplement #1**

**From:** Jackie R. McClain  **Reference: HR 2004-25**  
Vice Chancellor  
Human Resources

**Subject:** **Fair Labor Standards Act: Time and Attendance Guidelines**

In 1938, Congress enacted the Fair Labor Standards Act (FLSA), which established laws covering minimum wage, overtime, record-keeping, and child labor. Pursuant to the FLSA, certain employees are not subject to the FLSA provisions. These employees are referred to as “exempt” employees. Conversely, “non-exempt” employees are subject to the FLSA provisions.

Effective August 23, 2004, the U.S. Department of Labor (DOL) is implementing revised regulations regarding the exemption status of employees. The exemptions set forth in Part 541 of the FLSA apply only to “white collar” employees who meet the salary and duties tests outlined in the regulations. The California State University (CSU) is subject to these new DOL regulations.

Human Resources is pleased to provide the attached updated **FLSA Time and Attendance Guidelines**, which include the following information:

1. Brief Summary of the FLSA and Key Provisions
  - ◇ Minimum Wage, Overtime, Record-Keeping, Child Labor
2. The FLSA: Brief Exemption Test Overview
  - ◇ Non-Exempt, Exempt, Other Exemptions
3. Non-Exempt Employees
  - ◇ Overtime, Compensatory Time Off, and Time and Attendance Considerations
4. Exempt Employees
  - ◇ Overtime, Compensatory Time Off, and Time and Attendance Considerations
5. The FLSA Status, CSU Classifications, and the CSU Salary Schedule

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**Distribution:**

CSU Chancellor  
Vice Presidents, Administration  
Vice Presidents, Academic Affairs  
Vice Presidents, Student Affairs  
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General Counsel  
Associate Vice Presidents/Deans, Faculty Affairs  
Human Resources Directors  
Payroll Managers

6. CSU, the FLSA, and California Wage and Hour Laws
7. The FLSA and CSU Collective Bargaining Agreements
8. The FLSA Resources

**Important Campus Implementation Considerations:**

- Campuses have the on-going responsibility to evaluate each position and determine whether or not it is “exempt” or “non-exempt” pursuant to the FLSA regulations, keeping in mind that the job title may not reflect the scope of duties performed and the job title does not determine exempt status. In order for an exemption to apply, an employee’s specific job duties and salary must meet all the requirements of the DOL’s regulations. Historically, the DOL has been conservative in interpreting its regulations.
- The FLSA status for all current exempt employees must be examined carefully to ensure that exempt employees meet the new provisions of the “white collar” exemption tests which include the Executive test, Administrative test, Professional tests (Creative, Learned or Computer), or Outside Sales test.

It is important to remember that employees in exempt classifications may be considered non-exempt under FLSA if they do not meet the salary tests (e.g., their actual salary is less than \$455/week or they are paid on an hourly basis). When this happens, pursuant to the FLSA, work hours must be tracked and employees must be paid overtime for hours worked over 40 in a workweek. However, employees remain in their exempt classification.

- Campuses are encouraged to review the employment status of the following employees to ensure the new regulations do not impact the employees’ FLSA status:
  1. Part-time exempt employees paid below \$455 per week or \$1972 per month. This salary level test of \$455 per week does not apply to doctors, lawyers, “teachers” as defined by the FLSA, or outside sales employees.<sup>1</sup>
  2. Exempt employees paid on an hourly basis. This test does not apply to doctors, lawyers, “teachers” as defined by FLSA, outside sales employees, or eligible computer-related professionals paid \$27.63 per hour or more.
  3. Exempt employees in information technology classifications paid on an hourly basis of less than \$27.63 per hour.
- The “white collar” exemptions do not apply to Unit 5 (operations and support services), Unit 6 (skilled crafts), Unit 8 (public safety), and Unit 10 (Maritime Academy operating engineers) employees. Firefighters and agricultural workers are subject to different sections of the FLSA.

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<sup>1</sup> Refer to FLSA regulations and FLSA White Collar Exemption Guidelines for more information.

**The FLSA and CSU Collective Bargaining Agreements:**

The CSU and its employee unions can negotiate more generous provisions than provided in the FLSA. Refer to the respective collective bargaining agreement for supplemental information regarding work hours, overtime and compensatory time off. However, where the FLSA is more generous, the FLSA provisions supersede provisions of a collective bargaining agreement.

**FLSA-Related Resources:**

A comprehensive library of FLSA resources including the new DOL regulations can be found on Human Resources Administration's policy Web site at: <http://www.calstate.edu/HRAdm/Policies/flsa.shtml>.

Faculty and academic-related questions may be directed to Cordelia Ontiveros at (562) 951-4503. All other questions may be directed to Human Resources Administration at (562) 951-4411 or your campus attorney. This document is available on the Human Resources Administration's Web site at: <http://www.calstate.edu/HRAdm/memos.shtml>.

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Attachment



**California State University**  
**Office of the Chancellor**

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**The Fair Labor Standards Act (FLSA):  
Time and Attendance Guidelines**

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**Human Resources Administration**  
**2004**

**The FLSA: Time and Attendance Guidelines  
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## **Brief Summary of the FLSA and Key Provisions**

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In 1938, Congress enacted the Fair Labor Standards Act (FLSA), which established laws covering minimum wage, overtime, record keeping, and child labor. The FLSA requires that non-exempt employees be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. A summary of each key provision is provided below:

### ***Minimum Wage***

The current federal minimum wage is \$5.15 per hour.

### ***Overtime***

Employers are required to pay non-exempt employees time-and-a-half of their “regular rate of pay” for hours worked over 40 in a workweek.<sup>1</sup> Regular rate of pay includes supplementary earnings such as shift differentials and non-discretionary bonuses. For more information regarding overtime, refer to Systemwide Human Resources’ FLSA Web site at: <http://www.calstate.edu/HRAdm/Policies/flsa.shtml>.

### ***Record-keeping***

Employers are required to keep certain records for non-exempt employees. There is no required form for the records, but the records must include accurate information about the employee and data about the hours worked and wages earned. The following is a listing of the basic records that an employer must maintain:

- Employee's full name and social security number.
- Address, including zip code.
- Birth date, if younger than 19.
- Sex and occupation.
- Time and day of week when employee's workweek and/or workperiod begins and ends.
- Hours worked each day and total hours worked each workweek/workperiod.
- Regular hourly pay rate, including the basis on which employee's wages are paid.
- Total daily or weekly straight-time earnings.
- Total overtime earnings for the workweek.
- All additions to or deductions from the employee's wages.
- Total wages paid each pay period.
- Date of payment and the pay period covered by the payment.

### ***Child Labor***

The FLSA provides restrictions regarding age, hours of work, and type of work that apply to the employment of minors. For more information, refer to CSU’s policy on the Employment of Minors.

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<sup>1</sup> Different rules may apply for employees who are on alternate work schedules or who have “work periods” other than 40 hours.

## **The FLSA and a Brief Exemption Test Overview**

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The FLSA is enforced by the U.S. Department of Labor (DOL), Wage and Hour Division. In order to be exempt from the FLSA provisions, the following three tests must be met except where otherwise noted:

- **Salary Level Test of \$455 Per Week or \$1972 Per Month** (certain exceptions apply)
- **Must Be Paid on a Salary Basis/Fee Basis** (certain exceptions apply)
- **Must Pass One of the Standard Duties Tests:** Executive, Administrative, Professional (creative, learned and computer professionals), and Outside Sales.

In addition, special consideration should be given to the **Highly Compensated Employee** exemption. Refer to CSU's guidelines on the FLSA and White Collar Exemption for more information.

### ***Non-Exempt***

Non-exempt employees are subject to the minimum wage and overtime provisions of the FLSA. Work hours must be tracked and maintained, pursuant to the FLSA's record-keeping requirements. The employee must be paid overtime for any hours worked over 40 in a workweek.

### ***Exempt***

Exempt employees are not subject to the minimum wage and overtime provisions of the FLSA and are not eligible for overtime or compensatory time off.<sup>2</sup> To be exempt, the employee's position and employment provisions must pass the following tests: Salary Level, Salary Basis and Standard Duties tests. Refer to CSU's guidelines on the FLSA's and White Collar Exemption Tests for more information.

### ***Other Exemptions***

Certain classifications of agricultural workers and firefighters in the California State University are classified as "exempt," but are subject to special provisions of the FLSA due to the nature of the work performed.

- Agricultural employees in specified CSU classifications are exempt from the minimum wage and overtime provisions of the FLSA, but can earn and be paid compensatory time off, as provided in the CSU/CSEA collective bargaining agreement, Appendix C.
- Firefighter employees are subject to special provisions regarding allowable workweek calculations under the FLSA. Refer to Appendix C of the CSU/CSEA collective bargaining agreement.

## **Non-Exempt Employees**

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### ***Overtime***

- Overtime must be paid for hours worked over 40 in a workweek. The overtime rate is time and one-half times the "regular rate of pay," as defined by the FLSA.
- Pursuant to CSU policy and collective bargaining agreements, holiday, sick and vacation leave pay are considered hours worked for the purposes of overtime calculation.

### ***Compensatory Time Off (CTO)***

- Non-exempt employees can earn CTO in lieu of overtime at the rate of time and one-half for every hour worked over 40 in a workweek.

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<sup>2</sup> Some collective bargaining agreements allow for certain "exempt" employees to earn and be paid CTO.

- For non-represented employees, the FLSA requires that CTO in lieu of overtime is allowed upon mutual agreement of the employee and employer, prior to the performance of such work.
- For represented employees, in accordance with the FLSA, CTO in lieu of overtime is authorized pursuant to terms of the appropriate collective bargaining agreement.
- Part-time employees must be paid at their regular straight-time rate for hours worked in a workweek over the assigned part-time timebase, but less than the 40-hour-per week overtime threshold. In this situation, CTO is not permitted. A non-exempt employee with a less-than-full-time timebase earns overtime or CTO in lieu of overtime only for hours worked over 40 in a workweek.
- CTO hours are subject to maximum accruals which can vary by type of job. CTO maximum accruals are set by the FLSA; however, CSU policy and collective bargaining agreements can set lower CTO accrual maximums.
- Employees who have accrued the maximum CTO hours, as defined by the FLSA, must be paid overtime for any additional overtime hours worked. Also, refer to collective bargaining agreements for supplemental CTO requirements.

### ***Time and Attendance Considerations***

- Work hours must be tracked for non-exempt employees. Refer to the Record-Keeping section above and the FLSA for more information.
- If a supervisor or manager knows or has reason to believe that a non-exempt employee is working over 40 hours in a workweek, the employee must be paid overtime, regardless if the overtime was approved or not approved. Managers and supervisors must be attentive to practices that can incur overtime expense, such as a non-exempt employee who arrives at the work station and begins work 15 minutes before the start of his/her work schedule.
- Travel required by the employer during the non-exempt employee's normal work hours is usually counted as hours worked, even if the travel occurs on the employee's normal day off.
- Although the FLSA does not require rest and meal periods, the FLSA does address how these breaks are to be regarded in terms of hours worked. Rest periods/breaks of five (5) to twenty (20) minutes are counted as hours worked. Bona fide meal periods of 30 minutes or more are not counted as hours worked.
- Leave pay and deductions in increments less than a whole day are permitted for non-exempt employees.

## **Exempt Employees**

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### ***Overtime and CTO***

- Exempt employees are expected to accomplish assigned work without regard for the number of hours worked. If exempt employees need to work extra hours in the business day or week, they do not receive overtime or CTO.
- Exempt employees are not eligible for overtime or CTO unless otherwise permitted by a collective bargaining agreement.
- **Special attention should be given to employees in exempt classifications who do not meet the FLSA's salary-related exemption tests. Although in exempt classifications, these employees could be eligible for overtime.<sup>3</sup> Refer to CSU's guidelines on the FLSA's White Collar Exemption tests for more information.**

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<sup>3</sup> The SCO's Payroll system allows employees in exempt classifications to be paid overtime via Earnings ID series beginning with "OF"; however, the hourly rate must be calculated manually for employees in exempt classifications. Refer to the SCO's Payroll Procedures Manual for more information.

***Time and Attendance Considerations***

- Exempt employees must be paid for the full week if any work is performed during that week, except under the following circumstances:
  - Employees are not required to be paid for the entire week if the absence is due to personal reasons. In this case, campuses are permitted to dock pay or use earned vacation/personal holiday leave in full-day increments.
  - Employees are not required to be paid for the entire week if the absence is due to illness or injury. In this case, campuses are permitted to dock pay or use a wage replacement benefit such as earned sick leave (in full-day increments), a disability plan, and/or worker’s compensation.
  - Docking pay is permitted in increments less than a week for infractions of safety rules of major significance or disciplinary suspensions imposed in good faith for infractions of workplace conduct rules.
  - Exempt computer employees may be paid at least \$455 per week on a salary basis *or* on an hourly/intermittent basis at a rate not less than \$27.63 an hour.
  - Exempt employees’ pay can be offset by amounts employees receive as jury or witness fees, or for military pay.
  - Employers are not required to pay the full salary in the initial or terminal week of employment, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act (FMLA).
- Work hours are not tracked for exempt employees. When it is necessary for employees to work extended hours, managers may authorize informal adjustments in work hours.
- Exempt employees may be assigned office hours without jeopardizing the exemption status.
- Docks, leave and holiday pay are taken in whole day increments. However, if the exempt employee is on FMLA leave, earned leave credits may be taken in less than full-day increments.

**The FLSA Status, CSU Classifications and CSU Salary Schedule**

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The FLSA status for all classifications and skill levels is provided in the CSU Salary Schedule. It is important to note that the FLSA status field in the CSU Salary Schedule refers to a classification’s or skill level’s exemption status under the Standard Duties test only and does not reflect impact of the Salary-Related tests applied to an employee in that classification. As previously noted, part-time employees in exempt classifications who are paid below \$455 per week (or \$1972 per month) are considered non-exempt under the FLSA.<sup>4</sup> Similarly, hourly/intermittent employees (except certain computer-related professionals) who are appointed in exempt classifications are considered non-exempt under the FLSA because they do not meet the Salary Basis test. In both cases, hours must be tracked and overtime must be paid for any hours worked over 40 in a workweek, even though the employee remains in an exempt classification or skill level. (The salary tests do not apply to doctors, lawyers, “teachers” as defined by the FLSA, or outside sales employees.)

CSU firefighters and agricultural workers are noted in the CSU Salary Schedule with the FLSA status of “O” for other to denote the special FLSA regulations that apply to these employees.

**CSU, the FLSA and California Wage and Hour Laws**

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The CSU is subject to the FLSA and generally not subject to California wage and hour laws. In some cases, however, the CSU may make policy decisions to follow some of the California wage and hour laws

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<sup>4</sup> Does not apply to doctors, lawyers, “teachers” as defined by the FLSA, and outside sales employees.

which typically are communicated to campuses via coded memoranda. For questions regarding the applicability of a specific wage and hour law to the CSU, please contact your campus attorney.

### **The FLSA and CSU Collective Bargaining Agreements**

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The CSU and its employee unions can negotiate more generous provisions than provided in the FLSA. Refer to the collective bargaining agreements for supplemental information regarding work hours, overtime and compensatory time off. However, where the FLSA is more generous, the FLSA provisions supersede provisions of a collective bargaining agreement.

### **The FLSA Resources**

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The DOL provides a wide range of resources available to employer and employees. Refer to DOL's Fair Pay Web site at: <http://www.dol.gov/fairpay> or via telephone at 1-866-4USWAGE (1-866-487-9243) or TTY 1-877-889-5627.

Human Resources Administration's FLSA policy Web site provides current FLSA-related policies, technical instructions, and links to additional tools and resources. This site can be found at: <http://www.calstate.edu/HRAdm/Policies/flsa.shtml>.