

## Exempt and Non-Exempt Employees

### Definitions

The Fair Labor Standards Act (FLSA) of 1938 established laws covering minimum wage, overtime pay, recordkeeping, and youth employment standards affecting full and part-time employees in the private sector and in Federal, State, and local governments. The FLSA contains some exemptions from these standards that apply to specific types of businesses, kinds of work or duties, and salaries.

Exempt employees are not subject to (are exempt from) the overtime pay provisions, or both the minimum wage and overtime pay provisions of the FLSA. Their positions and employment provisions pass FLSA tests regarding salary level, salary basis, and standard duties. They are not eligible for overtime or Compensatory Time Off (CTO).

Non-exempt or covered employees are subject to the minimum wage and overtime provisions of the FLSA. Work hours must be tracked and maintained. Employees must be paid overtime at a rate of time and one-half the regular rate of pay for any hours worked over 40 in a work week. Overtime is not paid for hours worked over 8 in a day until 40 hours have been worked in that week.

Time and Attendance Considerations from CSU Office of the Chancellor, FLSA: Time and Attendance Guidelines

### Exempt Employees:

- Are expected to accomplish assigned work without regard for the number of hours worked. The expectation is a 40 hour work week; an employee's responsibilities should consist of at least 40 hours/week.
- Work hours are not tracked. If necessary to work extended hours, managers may authorize informal adjustments in work hours.
- May be assigned specific office hours without jeopardizing the exemption status. Office hours should accommodate the department's operations, other employees with whom they interface, and clients.
- Are not charged for absences of less than a full day: docks, leave and holiday pay are taken in whole day increments. However, earned leave credits may be taken in less than full-day increments if employee is on FML.

### Non-exempt employees:

- Are charged for absences of less than a full day: leave pay and deductions in increments of less than a whole day are permitted.
- Rest periods/breaks of 5 to 20 minutes are counted as hours worked; bona fide meal periods of 30 minutes or more are not counted as hours worked.
- CTO in lieu of overtime is allowed pursuant to the terms of the specific CBA.
- CTO hours are subject to maximum accruals set by the FLSA, however CSU policy and CBAs can set lower minimums. Hours accrued above maximum must be paid.

Note: The FLSA status of all classifications is provided in the CSU Salary Schedule. For the FLSA status of new positions, please contact Classification & Compensation in HR. <http://www.calstate.edu/HRAdm/SalarySchedule/Salary.aspx>

### Collective Bargaining Agreements and the FLSA

The CSU and its employee unions may negotiate more generous provisions than provided by the FLSA; the more generous prevail. Please refer to the specific Collective Bargaining Agreement (CBA) for supplemental information regarding work hours, overtime and CTO. In cases where the FLSA is more generous, the FLSA takes precedence. You can find all the CBA's on our website. [http://www.calstate.edu/LaborRel/Contracts\\_HTML/current\\_cba.shtml](http://www.calstate.edu/LaborRel/Contracts_HTML/current_cba.shtml)

To insure compliance and avoid grievances, we strongly suggest that you contact Labor Relations: Bryan Kauffman, ext. 53672, Diane Rosenfield, ext. 54371, Stephen Blecha, ext. 86863, or Katon Dalton, ext. 81875 for guidance regarding any situations about which you have questions.