

Exempt vs. Non-exempt Employees

SRO Supervisor Forum

September 17, 2013

Fair Labor Standards Act of 1938 (FLSA)

- Sets standards for child labor, minimum wage and overtime pay.
- The Equal Pay Act in 1963 is part of the FLSA and prohibits gender-based wage discrimination
- It is essential for all supervisors to understand how to comply with FLSA and wage and hour laws.



Exempt and Non-Exempt

- Exempt Employees -- Employees who meet one of the FLSA exemption tests and who are paid on a fixed salary basis and not entitled to overtime.
- Non-Exempt Employees - Employees who do not meet any one of the Fair Labor Standards Act exemption tests and are paid on an hourly basis and covered by wage and hour laws regarding minimum wage, overtime pay, and hours worked.

Reporting Time - Exempt

- At the University of Michigan, exempt staff report time and are paid on a monthly basis.
- Absences are recorded in half-day increments (the only exception is Extended Sick Pay).
- Absence recording chart for an eight hour day work schedule:

Duration of Absence	Report on Timesheet
0.0 – 1.9 hours	0.0 hours
2.0 – 5.9 hours	4.0 hours
6.0 – 8.0 hours	8.0 hours

- More information available from the ISR Payroll site:
<http://compute.isr.umich.edu/CIS/CIS-Payroll.htm>



Reporting Time – Exempt (continued)

- Each absence is a stand alone occurrence.
 - For example, if an employee leaves 2 hours early on both Tuesday and Wednesday – they do not need to take exception time.
- If you feel someone is taking advantage of the system, it can be dealt with through discipline - but not monetarily.

Reporting time – Exempt

- Travel time
 - What if a salaried employee spends all day Sunday travelling to an off site work location or at a conference?
 - It's part of the required work for the position and does not result in additional compensation or time off.
 - But it was for a meeting for a sponsored project – how do I record that time?
 - Record only your regular schedule



Reporting Time – Non-Exempt

- Non-exempt employees are paid hourly for all time spent working or engaged in other activities considered compensable time.



Non-Exempt

- Per University of Michigan SPG 201.38

spg.umich.edu/policy/201.38

- Pay for all qualifying overtime hours (more than 40 hours of actual time worked) is paid at one-and-one-half times the staff member's regular hourly rate of pay.
- Exception time such as vacation, sick, PTO, holiday, military, reserve duty, season days, educational time, funeral, extended sick, and time for jury duty is not counted toward the 40 hours/week of time worked that is required for overtime pay.
 - Note: Season time Worked (SEW) counts towards the 40 hours.
- Pay for working more than 8 hours in a day will be at the staff member's regular hourly rate until at least 40 hours of time worked have accumulated in that week.



Non-exempt

- What if they work through their lunch period?
 - They must be paid for the time.
- What if I didn't approve the overtime?
 - They must be paid for the time. If you have an established OT policy that the employee did not follow, you may be able to issue discipline.
- I have a non-exempt employee who is going on vacation and plans to monitor and respond to e-mails each day. Is that OK?
 - No- time spent answering e-mails and phone calls is compensable time.



Non-exempt

- What about compensatory time?
 - Compensatory time does not exist. Within the same week, you have some discretion to adjust schedules based on department or employee need.
 - OT Avoidance
 - Inaccurate records
- What about travel time?
 - Non-exempt employees should be paid for travel time (Not commute time, though)



Non-Exempt

Meetings and Training

- Time spent attending lectures, meetings, and training programs is counted as hours worked unless all of the following conditions are met:
 - The meetings are held outside regular working hours and
 - Attendance is voluntary. (Attendance is not voluntary if the employee is led to believe that non-attendance would adversely affect his employment.)
- And the course, lecture, or meeting is not directly related to the employee's job. (Training is directly related to an employee's job if it is designed to make the employee more effective in the present job, not if it teaches a different job.)
- And the employee does no productive work during the meeting or training.

Non-Exempt

- During a training session, you have scheduled an hour long lunch. Due to limited time, you plan to have a speaker present materials during that lunch hour. Do you have to pay non-exempt employees for that time?
 - Yes. If they are required to attend the presentation, you must pay them for the time.

What about Work-Related Social Events?

- Due to the nature of how Exempt and Non-exempt employees are paid, it can create issues when a social event (such as a baby shower) is scheduled during the work day.
- To avoid inequity, this type of social event should be scheduled during lunch breaks or after hours.
- Attendance at short events such as Coffee Daze should be limited to paid break time.
- What about SRC/ISR sponsored events?
 - Many are scheduled to coincide or include lunch time. Any additional time required would be considered work time. For example, SRC All Staff Meeting.



FLSA Violations - Penalties

- Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to \$1,100 for each violation.
 - ***Note: It is a violation to terminate or in any other manner discriminate against an employee for filing a complaint or participating in a legal proceeding under FLSA.***



Most Common Employer FLSA Mistakes

1. Considering any employee who is paid a salary as an exempt employee who is not eligible for overtime pay without qualifying the employee for a specific job-related FLSA exemption.
 - Existing job titles already classified and reviewed by University.
 - This is why job reclassifications that move an employee from non-exempt to exempt are closely scrutinized – if it is ever determined that the work that they are doing doesn't meet the exemption requirements, we could be on the hook for back OT.
2. Not paying for unauthorized overtime – working unauthorized overtime is a disciplinary issue not a compensation one.
3. Making automatic pay deductions for meal breaks without making sure that an employee has actually taken the unpaid break time.

Charging Time

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Topics to Cover....

- This presentation is an extension of the previous exempt/non-exempt discussion
- Additional broad policies and guidelines
- General ET and time-reporting topics
- Additional scenarios, as well as follow-up ones based on previous presentation
 - Some examples have clear “answers.” Many do not. Our goal today is to generate discussion!



Policies and guidelines review

- General charging time guidelines (SRO)
 - Which account to charge for which task?
 - Meetings, social events, conferences, etc.
- SRSR policy (SRO)
- Core Hours (SRO)
- Recording absences (ISR)
- Sick and vacation time (ISR)



Electronic Timekeeping (ET)

- General procedures & FAQ
 - (<http://compute.isr.umich.edu/CIS/CIS-Payroll.htm>)
- ET training guide
- Supervisor approval of timesheets
- Modifying timesheets after processing

Some example scenarios...

- An exempt employee needs to leave one and a half hours early every day for family care issues. S/he then asks whether it's acceptable to report one day of vacation on that month's ET even though s/he is actually working that day. Is that acceptable?

Some example scenarios...

- An exempt employee asks to change from a regular 8-hour day to four 10-hour days. Is this acceptable and, if so, what's the procedure to follow?
- A few months later, the same employee requests another change from four 10-hour days to three 9-hour days, one 8-hour day, and one 5-hour day. Is this acceptable?

Some example scenarios...

- It has come to your attention that someone on your team has been asked to do some work on another project they were not assigned to. What are some of the first things you should consider and/or ask?
- What do you do if you notice a staff member charging time to non-project account (e.g., overhead) and you're not sure what it was for?

Some example scenarios...

- You have two staff members (one exempt and one non-exempt) who are attending the same conference. It so happens that the travel day for this conference is on a Sunday. How would the two staff members report this time? Do they get paid extra for this time?



Some example scenarios...

- An exempt staff member has had an unusual schedule over the past week (taking a weekday off, but working an 8-hour day on Saturday). How should s/he report the time in ET for that week?

Some example scenarios...

- Two employees, one exempt and one non-exempt, have injuries that require extended sick time off of work. During this time off, is it acceptable for them to check work-related email/voicemail? Is it required? And do they need to respond to work-related issues or requests?
 - What about high-priority or emergency issues during non-sick/vacation off-work hours?

Some example scenarios...

- Two employees, one exempt and one non-exempt, would like to attend a one-hour baby shower for a colleague that has been scheduled during normal working hours (e.g., 2:00 p.m.). Can they attend? If so, do they get paid for this time? How do they report it in ET?

Some example scenarios...

- Someone on your team is confused about having to project their time in ET for the last two weeks of the month. How do you advise them?
- This same staff member later ends up charging hours to a project that are markedly different from what they were projected. What questions should you be asking, and to whom?

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