

Fair Labor Standards Act Looking to the Future



Presentation Outline

What is the Fair Labor Standards Act (FLSA)?

- New Rule – Key Provisions
- What does this Mean For CSU?

Planning for the Future

- Campus Implementation Plan

Meeting the Challenge

- Overtime Defined
- CSU Determination Process
- FLSA Exemptions

Q & A



What is the FLSA?

Fair Labor Standards Act

- Regulations established in the 1930s
 - Previous revision – 2004
 - President Bush's Administration expanded exemption criteria
- Wage and Hour Division within the Department of Labor
 - Minimum Wage
 - Child Labor Laws
 - Time Worked
 - Overtime Exemptions
- Fines and penalties for noncompliance



New Rule - Key Provisions

Ruling issued May 18, 2016

- Effective date December 1, 2016

Salary threshold: \$913 per week, \$47,476 annually

- Set at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census region, currently the South

Automatic update of the salary threshold every three years

- Beginning on January 1, 2020



What does this Mean for CSU?

Campus-wide impact

Financial impact

- Salary equity

Organizational/cultural changes

- Changes to internal processes, structures, and systems
 - Perception of nonexempt positions
 - Tracking of hours worked
- Change management
 - Communication
 - Training for employees and supervisors



FLSA Financial Impacts

Financial impact of wage and hour noncompliance

- **Back pay for 2 years**, or 3 years for willful noncompliance
- Liquidated damages (double back pay) for willful noncompliance
- Punitive damages for retaliatory conduct
- Legal fees, costs and pre- and post-judgment interest
- Penalties - up to \$1,100 per employee
- Remedies under Equal Pay Act

Planning for the Future



Human Resources Oversight

Develop a rollout plan for the campus

- Work with departments, colleges and divisions to implement changes
 - Offer supervisor training
 - Offer employee information sessions

Review/classify AP and State Classified positions in TMS

- Specific job duties and the salary must meet all the requirements of the FLSA regulations to be exempt
- Job titles do not determine exempt status

When the FLSA exemption status is questionable

THE DESIGNATION WILL BE NONEXEMPT



Exempt versus Nonexempt

Time Worked and Overtime Exemptions

- FLSA established guidelines for determining whether positions are eligible for overtime (nonexempt) or are exempt from overtime
 - Salary Basis Test – Positions paid on a salary basis with a minimum salary threshold (\$47,476)
 - Duties Basis Test – Positions evaluated based on “exempt” duties
 - Computer Exemption
 - Administrative Exemption
 - Professional Exemption
 - Executive Exemption
 - Agricultural Exemption

Departmental Oversight

Assessment of Implementation Method

- Maintain Exempt Classification
 - Raise salary base (meet \$47,476), and
 - Review primary duties
- Reclassify as nonexempt
 - Overtime cash payment/compensatory time accrual
 - Change employee to nonexempt status and track time for six months, then determine salary or overtime basis
- Evaluate Work/Life Balance
 - Redefine work week (flexibility in work schedules)
 - On-call requirements
 - Reallocation of duties
 - Additional staff



Departmental Action

Update impacted AP, Research & Post-Doc positions in TMS for HR review

Assess best implementation method for employee groups

Develop procedures and processes for tracking time worked

- Standardized Timesheet
- Train supervisors on new expectations
- Increase supervisor oversight of work hours
 - Supervisor approvals
- Track work hours for all nonexempt employees
 - Flextime options
 - Include paid leave and holidays in calculations
 - Employee accountability
- Compensate for Travel

Do not include exempt staff in tracking of work hours



Meeting the Challenge



Overtime Defined

Nonexempt positions must be paid for overtime hours worked at one and one-half times the hourly rate for all hours worked over 40 hours per week

Overtime includes

- Work performed before scheduled shifts
- Work performed during designated lunch breaks
- Time spent donning/removing of required uniforms or safety equipment

Compensatory time can be accrued in lieu of overtime pay

- CSU Compensatory Time Off Policy

<http://policylibrary.colostate.edu/policy.aspx?id=716>

Overtime Consideration

Work Time Activities

- Reading/responding to business emails
- Making/receiving work phone calls
- Creating/revising presentations
- Reviewing admission applications
- Time spent setting up/breaking down presentation materials
- Working/assisting at departmental events

Not Work Time Activities

- Passenger in a vehicle
- Social dinner with colleagues
- Down time in hotel room
- Breaks taken between work related activities

CSU Determination Process

HR Classification/Compensation and Employment Units are tasked with determining exemption status of Administrative Professional and State Classified positions in accordance with statutory provisions and established guidelines

- Faculty positions are exempt from FLSA overtime requirements

All positions are individually reviewed to determine FLSA overtime exemptions

- Various actions may change a current exemption status:
 - * Law
 - * Position FTE/Change in Pay
 - * Position duties
 - * Other relevant factors/DoL Opinion Letters

***Any position not passing the Salary Basis Test
is automatically designated nonexempt***

Salary Basis

- Paid \$913 per week

FLSA Exemptions Assessment

YES

Job Duties

- Primary duties of the position as they relate to the defined criteria for the five exemption categories

YES

Job Complexity

- Discretion and independent judgment rather than daily routine decisions with regard to matters of significance

YES

Exemption

- Meets additional criteria for Computer, Executive, Professional, Administrative or Agricultural exemption

YES

Exempt from Overtime

NO

Does not meet requirements for exemption from overtime under FLSA

Nonexempt Designation

Administrative Exemption

Primary duty must be the performance of office or non-manual ***work directly related to the management or general business operations***

- ***Exercise of discretion and independent judgment with respect to matters of significance***
 - Discretion and independent judgement will not be satisfied by the mere use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources
 - ***Matters of significance refers to the level of importance or consequences of the work performed*** and not whether an employee's failure to perform certain duties will cause the employer to experience financial loss

Professional Exemption

Performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and includes work requiring the consistent exercise of discretion and judgement

- Advanced knowledge must be ***in a field of science or learning***
- Advanced knowledge is customarily ***acquired by a prolonged course of specialized intellectual instruction***
 - Not obtained at the high school level and must generally be applied for purposes of analyzing, interpreting or making deduction from varying facts or circumstances

Executive Exemption

Managing the enterprise or recognized department of enterprise

- Customarily and regularly direct the work of at least two full-time employees
- Authority to hire or fire other employees, or the suggestion and recommendation as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight



Computer Exemption

To qualify for the computer employee exemption, the following tests must be met

- Compensation is ***either*** on a salary or fee basis at a rate not less than \$913 per week ***or***, if compensated on an hourly basis, at a rate not less than \$27.63 an hour
- Employment as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing specific duties
- ***Inapplicable to employees engaged in the manufacture, repair, or maintenance of computer hardware and related equipment***

Agriculture Exemption

Special Exemption

- Farming in all its branches includes cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities
 - Raising livestock, bees, fur-bearing animals or poultry
 - Practicing operations (including forestry or lumbering) performed by a farmer or on a farm
 - Farming operations including preparation for market, delivery to storage or to market or to carriers for transportation to market



Q & A

