



UUP Fact Sheet: Fair Labor Standards Act – Overtime Eligibility

What is the Fair Labor Standards Act (FLSA)?

The Wage and Hour Division of the Department of Labor was created with the enactment of the Fair Labor Standards Act of 1938. FLSA originated as part of President Franklin D. Roosevelt's New Deal domestic program. This landmark legislation had a significant impact on the labor movement.

The act has gone through several amendments throughout the years to include child labor protections, extension of coverage to government workers (1966), the addition of the equal wage act, Consumer Credit Protection, and the addition of the Family Medical Leave Act.

The FLSA requires employers to pay employees the minimum wage—and overtime pay of at least 1.5 times the regular hourly rate of pay—for employees who work more than 40 hours in a week. Overtime is applicable for “non-exempt” (overtime-eligible) employees.

FLSA Section 13.1(a) allows for certain employees to be exempt from the protections in the Act. These overtime-exempt duties include executive, administrative, professional, computer, and outside sales. There are additional exemptions for certain higher education faculty and professionals. For an employee to be exempted from FLSA overtime provisions, they must pass a salary test and job duties test. Such tests are performed by human resources personnel, following U.S. Department of Labor standards to determine what jobs are overtime and non-overtime exempt. The determination of exempt or non-exempt is only based on job title in limited circumstances where the position requires independent judgement. The position is obtained only after advance knowledge in a prolonged and specific field of study.

What does this mean for a UUP member?

- a. UUP non-exempt employees are overtime eligible:
 - a. In Section 3s(1)(C) Compensatory Time: Under certain prescribed conditions, employees of State or local government agencies may receive compensatory time off, at a rate of not less than one and one-half hours for each overtime hour worked, instead of cash overtime pay. State and local government employees may accrue up to 240 hours. An employee

must be permitted to use compensatory time on the date requested unless doing so would “unduly disrupt” the operations of the agency.

- i. If a non-exempt employee is assigned to work, no more than a 40-hour work week but works more than 37.5 hour work week they will accrue the worked 2.5 hours in “gap time” compensatory time. Any assigned time worked additional time over 40 hours will be accrued at time and a half the employee’s hourly rate.
 - ii. Holiday, sick or vacation time are excluded from the calculation.
 - iii. This value of unused compensatory time hours is paid out on separation from state employment at time and a half of the current salary.
- b. Some campuses have local understandings that eliminate the 240 compensatory time requirements before overtime is paid.

What does this mean for UUP exempt employees?

- a. These employees are not overtime eligible, but they can negotiate comp time with their supervisor. (See contract Appendix A-29)
- b. They also have defined performance programs or term appointments which give them some protection from added duties or gives us the member the ability to negotiate for more pay.

Additional Overtime and Other Supplemental Payment Information:

- US Department of Labor, Wage and Hour Division General Guidance: <https://www.dol.gov/agencies/whd/overtime/general-guidance>
- US Department of Labor, Wage and Hour Division Overtime Exemptions: <https://www.dol.gov/agencies/whd/overtime/fact-sheets>
- As of Jan. 1, 2020, the new federal overtime rule raised the salary threshold to \$684 a week (\$35,568 annualized) from \$455 a week (\$23,660 annualized) for overtime eligibility. <https://www.dol.gov/agencies/whd/overtime/2019/index>

SUNY Supplemental Payments for Exempt Employees:

- SUNY 'Also Receives' Policy: https://www.suny.edu/sunypp/documents.cfm?doc_id=899
- SUNY 'Extra Service' Policy: https://www.suny.edu/sunypp/documents.cfm?doc_id=419

UUP Contract:

- Link to the contract: <https://uupinfo.org/contract/pdf/20162022NYSUUPAgreement.pdf>