



## Fair Labor Standards Act (FLSA)

### **Q: What is the FLSA?**

The FLSA was first enacted by congress in 1938 and ensures a minimum wage for workers and establishes the overtime rate for hours worked over 40 in one week. The FLSA also requires employers to accurately track a record the time worked by non-exempt workers. That is Creighton must pay its biweekly (non-exempt) employees at least the state minimum wage of \$9.00 per hour and record the hours worked by these employees.

### **Q: What if I don't make \$684 per week (\$35,568 per year); will you simply increase my salary to meet the required exempt wage?**

A: As you know, market rates and internal equity considerations are used to determine the pay range for positions and the appropriate pay rate for an individual performing the duties and tasks of the position. Also, the minimum salary basis test of the FLSA is unrelated to market data for positions. Simply raising an individual's salary to maintain the exemption classification is incongruent with the University's compensation philosophy of being competitive with relevant markets, would cause pay equity issues, and artificially inflate market rates for certain positions.

### **Q: What does this mean for me?**

A: This means your employment classification will change from exempt to non-exempt. As a non-exempt employee you will be paid on an hourly basis. You will also be eligible for overtime pay at one-and-a-half times your base rate which would be applied to all hours worked over 40 hours in one week.

### **Q: Will my pay cycle be affected?**

A: Yes, your pay cycle will change from monthly to biweekly.

### **Q: Do I have to clock in and out now?**

A: Once your classification changes to non-exempt you will need to track your hours worked and submit a timesheet to your manager for approval.

### **Q: Will I be paid for overtime?**

A: Creighton is not required to offer overtime hours to employees. With that said, as a non-exempt employee you will be paid overtime for all hours worked over 40 hours in one work week. Please note that holiday, vacation, and sick hours do not count as hours worked.

### **Q: What if I don't want to be hourly?**

A: You cannot give up your rights under the FLSA, nor is Creighton allowed to ignore the provisions of the law. Creighton will be required to track and record your hours worked and pay you for each hour worked.



**Q: Can I submit my job description for review?**

A: You can submit your job description to your manager for review. With that said, there are two parts of the FLSA exemption test (salary basis test, and duties test). If you do not meet both portions of the test, then, by law, Creighton must classify you as non-exempt.

**Q: My co-worker does similar work to me and they are still exempt, how is that fair?**

A: The FLSA exemption test consists of 2 parts, the salary basis test and the duties test. If one portion of the test is not satisfied, then Creighton must classify the employee as non-exempt. Thus, although two people perform similar duties (and the duties meet the exempt portion of the test), but one makes less than the minimum salary basis portion of the exemption test whereas the other makes more, then the employee making less than the minimum salary basis must be classified as non-exempt.

**Q: Will my vacation and sick accruals be affected?**

A: The annual accrual will not change when you are classified as non-exempt. With that said, your accruals for vacation and sick will occur on a biweekly basis (26 times a year).

**Q: Will my salary grade level change?**

A: No, your pay grade will not change when you transition to a non-exempt classification.

**Q: What “tests” do positions have to meet now in order to be exempt?**

A: The first portion of the exemption test is the salary basis test which states that “an employee must be paid on a salary basis of not less than \$684 per week.

The second portion of the exemption test is the duties test which varies based on the type of exemption.

1. Executive Exemption -

- The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

2. Administrative Exemption –

- The employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
- The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.



### 3. Professional Exemption -

- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

### 4. Creative Professional –

- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

### 5. Computer Employee –

- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
  - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  - 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  - 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  - 4) A combination of the aforementioned duties, the performance of which requires the same level of skills
- The computer employee exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in the primary duties test described above, are also not exempt under the computer employee exemption.