# DOL SALARY THRESHOLD CHANGES

# FAQs FOR ADMINISTRATORS

## 11/19/2019

*Please note: This document is updated as questions come in so each question has an individual revision date.*

## EFFECTIVE DATE – CHANGE TO NON-EXEMPT

Q: What will be the effective date for employees that will change from exempt to non-exempt?

A: This is dependent on their current pay frequency. Employees that change from exempt to non-exempt and are currently paid **biweekly** will be effective December 22, 2019. Employees that change from exempt to non-exempt and are currently paid **monthly** will be effective January 1, 2020. (Rev 09/26/19)

Q: Does this mean an employee who is paid monthly and moves from exempt to non-exempt will start tracking time on a Wednesday?

A: Yes. It is in the employee’s best interest to receive their entire December paycheck therefore the time –tracking will not need to begin until January 1. (Rev 9/26/19)

Q: Employees who become nonexempt on January 1, 2020 will do so in the middle of a work week. If they work over 40 hours during that week, will they receive overtime compensation? What hours worked are counted for that week, for overtime compensation calculation?

A: Hours worked Wednesday January 1 through Saturday January 4 will count towards hours worked for that week. The employee will receive overtime compensation for that week only if he/she works more than 40 hours during those four days. The employee only becomes eligible for overtime effective January 1, so hours worked before that will not be counted for that week.  (Rev 9/26/19)

## RAISE TO FLSA MINIMUM INCREASES

For additional information, please see the [“Raise to FLSA Minimum Strategy”](https://uwmadison.app.box.com/files/0/f/9126971281/1/f_93100789987) presentation.

Q: How will “Raise to FLSA minimum” increases be entered into HRS?

A: Employee ID/Empl Rcd and the amount of the increase will be collected by OHR via spreadsheet. The spreadsheet will then be used to upload the adjustments into HRS, using a special new reason code. These increases will not need to be individually entered into the Rate/Title System. (Rev 8/31/16)

Q: What will be the effective dates for the Raise to FLSA Minimum adjustments?

A: *​*Effective dates for Raise to FLSA Minimum adjustments will be:

A-Basis : January 1, 2020​

C-Basis: January 3, 2020​

H-Basis: December 22, 2019 (Rev. 11/18/19)

Q: Is there a minimum or maximum amount/percent established for use under the “Raise to FLSA minimum” code? Can the raise to minimum code be used to increase the employee only to the new minimum of $35,568 or can it be used to increase the employee above the new minimum?

A: The “Raise to FLSA Minimum” code can be used to increase the employee’s **base rate** to the following amounts:

* + $35,568 - $36,000/A-Basis
  + $29,101 - $29,455/C-Basis
  + $17.10 - $17.31/H-Basis

There is no maximum amount that can be given for a “Raise to FLSA Minimum” as long as the total **base** salary does not exceed the amounts listed above. Please note the “Raise to FLSA Minimum” code cannot be used unless Salary/FTE combination gets employee to new minimum. (Rev 11/5/19)

Q: Raising salaries for groups of employees to the FLSA minimum will create compression and inequities. How can we address those issues?

A: There are two scenarios in which compression or inequities can arise. The process for addressing the inequities differ depending on the situation.

* Scenario #1: Employee receiving a “Raise to FLSA Minimum” adjustment needs an Internal Equity as a result of the raise to FLSA minimum:
  + Divisions will review situations and make determinations as to appropriate increases. A second column has been added to the Division’s DOL Threshold Population spreadsheet to indicate the amount of the equity increase.
  + If a division submits a “Raise to Minimum” and related “Equity” increase via the spreadsheet, the increases will be entered into HRS as two separate transactions.
* Scenario #2: Employee did not receive a “Raise to FLSA Minimum” adjustment but adjustments for coworkers or subordinates creates compression:
  + Enter Internal Equity adjustment request in Rate/Title. Include those employees that have created the compression in the justification. (Rev 11/15/19)

Q: What is the earliest effective date for a “Raise to FLSA minimum” increase?

A: The effective date for a raise to FLSA minimum using the new code is January 1, 2020 for A-Basis and C-Basis employees. (Rev 11/6/19)

Q: Will the maximum of Range 1 be increased in order to accommodate Raise to FLSA Minimum increases?

A: No. If pay plan is approved, Range 1 for Academic Staff will be raised by that amount but it will not be increased to the new threshold.(Rev 11/7/19)

Q: Can we use the Central Funds for Compensation Adjustments for “Raise to Minimum”?

A: No. However, the new pay initiatives can be used to address equity and compression that result from the raise to minimum. (Rev 11/7/19)

Q: Should we look at doing other appropriate pay adjustments as needed – such as “promotion/progression” or “change in duties” – before we use “Raise to Minimum”?

A: Yes, if there are other pay adjustments that are due and appropriate, those should be processed first (for example, a change in duties or promotion). (Rev 8/31/16)

## HOURS WORKED

Q: What if graduate assistants don’t mind working more than their FTE and not being compensated for it?

A: This is considered “volunteering” and Regulations 29 C.F.R. §553.103 states employees of public employers can volunteer their services provided “such services are not the same type of services which the individual is employed to perform for such public agency.” Performing the same/similar job duties as the position you are hired to perform and not recording the time would be considered “volunteering” and is not allowed. (Rev 9/26/19)

Q: What if a Principal Investigator (PI) tells a staff member (ex. postdoc, academic staff or university staff) to not record all of his/her hours worked, or to lie about his/her hours worked?

A: It is not up to any non-exempt employee or a PI to make a decision or evaluation about whether to comply with federal law. Even if an employee is willing to “volunteer” to work extra hours or for less than the minimum salary, UW-Madison and the PI are legally required to pay him/her the minimum salary or pay him/her for all the hours worked.

If any employee is asked to lie about his/her hours or sees any others employees being asked to work undocumented overtime, he/she should report the violation to the Divisional Human Resources Office or the Office of Human Resources/Workforce Relations. It is illegal for employers to fire, retaliate, or discriminate against an employee for filing a complaint. (Rev 9/26/19)

Q: If the recording of hours for a Project/Program Assistant (PA) takes him/her over the University of Wisconsin-Madison Maximum Levels of Graduate Assistantship Appointments of 75%, what happens? Is there an issue if the PA works 100% and records 100% hours?

A: Students who are appointed as PAs need to stay within the appointed percentage worked each week. For example, if a student is appointment at 50%, he/she can work no more than 20/hours per week. (Rev 11/15/19)

Q: Research Associates: There is an issue/concern with recording hours for international employees – sometimes, the home country pays some of the salary directly (not through UW Payroll). However, when the employee actually tracks/records his/her hours worked, he/she must list all hours worked at UW-Madison. The concern is that the hours will be overstated, so won’t it make it look like they’re working a lot, and being paid too little?

A: This may be a Joint Employment situation in which the work performed by the employee benefits UW-Madison as well as the home country and therefore the salaries from both places can be added together to see if the employee meets the salary threshold. If the combined salaries meet the threshold, the employee is exempt and no tracking of hours is needed. Please see the [Fair Labor Standards Act - Joint Employment](https://uwmadison.app.box.com/file/552227242010) document in the FLSA Toolkit for more information. (Rev 11/8/19)

Q: If an A-Basis nonexempt academic staff employee works on a legal holiday, do they receive additional compensation?

A: No, A-Basis nonexempt academic staff are not eligible for holiday premium pay. If they work on the legal holiday, the legal holiday hours not used will be retained in their leave bank. (Rev. 10/18/16)

Q: C-Basis academic staff employees do not have a leave bank. If a C-Basis nonexempt academic staff employee works on a legal holiday, do they receive additional compensation?

A: C-Basis nonexempt employees must be paid for all hours worked. If a C-Basis employee works on the legal holiday they should report the hours on their timesheet. (Rev. 11/15/19)

Q: C-Basis academic staff employees currently get paid for every day in a month, even if there is a legal holiday. Will C-Basis nonexempt academic staff employees receive pay if they do not work on a legal holiday?

A: Payroll Coordinators should enter in the prorated hourly amount per the employee’s schedule when a legal holiday falls on the employee’s regular workday. E.g. an employee is scheduled to work 4 hours every Monday. The employee does not work on 1/20/2020 (MLK) due to lab being closed for the holiday, PYC should report 4 hours. (Rev. 11/15/19)

## MULTIPLE JOBS - TOTAL COMPENSATION

Q: If a Research Assistant also holds a Project Assistant position, would they be subject to the FLSA because of the Project Assistant positions or considered a non-employee because of their Research Assistant position?

A: The positions should be considered separately. The primary duty test only extends to the duty analysis for individual positions and not the overall status of the individual as either an employee subject to the FLSA or a staff member who is not an employee subject to the FLSA.

For example, if an individual is a 25% Research Assistant (RA) and a 50% Project Assistant (PA), we only “count” the hours worked in the PA as subject to the FLSA. We do not have to have the employee track their hours in the RA position. (Rev 8/23/16)

In addition, if the employee is a 25% Research Assistant and a 50% Project Assistant and makes $15,000 in the RA and $35,000 in the PA, they do not meet the minimum salary threshold because the only compensation applied to the salary threshold is the $35,000 in the PA position. The $15,000 does not “count” because the RA is a non-employee. (Rev 8/23/16)

Q: If an employee holds more than one job, can the employee have more than one FLSA status designation?

A: No. Regardless of how many concurrent jobs an employee holds, the employee’s status must be either exempt or nonexempt. For example: Employee X, whose total salary is below the minimum salary threshold, holds a part-time instructional academic staff position as a lecturer. The employee also holds a part-time position as a recreational specialist. If Employee X’s primary duty is teaching as a lecturer, then the employee’s designation is exempt because teaching is the employee’s primary duty, and the employee qualifies for the “teacher” exemption regardless of salary. But if the primary duty is determined to be work as a recreational specialist, the FLSA designation will be nonexempt because total salary is under the minimum salary threshold. (Rev 11/15/19)

Q: If an employee has two positions with the University and they are equal FTEs (ex: two 33% PA appointments), how is their FLSA status determined?

A: The FLSA status of the employee is based on the employee’s primary duty for the University across both positions as described in the previous question. (Rev 8/25/16)

Q: If an employee has multiple jobs across campus or across UW System, how will we monitor the other appointment to ensure the employee’s FLSA status is accurate?

A: If an employee has multiple jobs, the division is responsible for evaluating the Multiple Jobs report monthly to determine any impacts of data changes made on job records to ensure the employee’s total salary meets the salary threshold.

Additionally, divisions are responsible for reviewing the Exception Compliance report delivered to Cypress immediately following a confirmed payroll to ensure the employees total earnings across their multiple jobs are meeting the FLSA salary threshold. (Rev 10/18/16)

Q: How often should the division evaluate employees’ total compensation including multiple jobs, fluctuations in FTE, changes in status, etc.?

A: An Exception Compliance Report is being developed by the Service Center. This report is intended to track employees potentially eligible for a change in FLSA Status from exempt to non-exempt, accounting for exceptions due to job duties (such as teaching) that are legal exceptions to the rule. This report runs immediately after a confirmed payroll and should be monitored every payroll and appropriate changes made as necessary. (Rev 10/18/16)

Q: If an employee has two positions and one is non-exempt and the other is a “non-employee” (ex. Research Assistant), will the employee receive two paychecks?

A: Yes, the employee will receive a bi-weekly paycheck for the non-exempt position and a monthly paycheck for the Research Assistant. (Rev 11/19/19)

## COMP TIME

Q: How is Comp Time tracked and paid out for academic staff and for University staff and is there a difference? Is comp time for academic staff tracked and paid out on a fiscal year basis and comp time for university staff tracked and paid out on a calendar year basis?

A: *Pending.* (Rev 11/16/19)

Q: Are Divisions required to offer compensatory time as an alternative to paid overtime?

A: No. Comp time is not required – it is optional. A division, school or college may decide it will not offer comp time. (Rev 8/31/16)

Q: If comp time is earned and the employee changes from non-exempt to exempt (or takes a new position at UW-Madison), does the comp time have to be paid out?

A: When an employee changes from non-exempt to exempt, any earned comp time must be paid out by the department. When an employee takes a new position at UW-Madison, the old department must pay out any earned comp time unless the new department has agreed to allow the employee to carry it over into the new position. (Rev 8/31/16)

## RECRUITMENTS & NEW HIRES

Q: When should we start notifying new hires that they may be affected by this change? If we are making a hire now, for a start date later this fall, should we notify the employee of this possibility?

A: If making an offer for January 1 or later to an employee who will be affected by this change (pay is below the threshold and the title is one that will be affected), we need to include special notice language in appointment letters. Revised appointment letters and recommended wording for recruitments/postings have been posted in Recruitment Toolkit as well as in BOX. (Rev 8/31/16)

Q: What will happen when new academic staff positions are posted with a salary range that has a minimum below the new threshold?

A: Positions will continue to be titled using the title most appropriate to the job duties. If the person selected via recruitment will earn less than the new salary threshold, he/she will be an academic staff non-exempt employee, will be paid hourly and will receive overtime compensation for any hours worked over 40 in a workweek. (Rev. 9.26.19)

## EMPLOYMENT POSTERS

Q: Do divisions need to post a new version of the FLSA Minimum Wage poster?

A: No, this is not required. OHR posts all employment posters centrally, which meets Campus requirements. A school, division or college is not required to post this (or any other) employment poster, but certainly can post these if they would like. (Rev 9/27/19)

## TUITION REMISSION – PA’S (PROGRAM/PROJECT ASSISTANTS)

Q: PA’s must meet a certain level of earnings over the course of the semester in order to get tuition remission. Before the salary threshold changes, these employees were paid a set salary and there was no danger of them not meeting the earnings requirement. Now that these employees will be paid hourly, we run the risk of these employees not meeting the earnings requirement and therefore putting their remission in danger. How will this be monitored?

A: Per the [Regent Policy](https://www.wisconsin.edu/regents/policies/nonresident-tuition-remission-delegated-to-chancellors/) and [Wis. Stat. 36.27(3),](https://docs.legis.wisconsin.gov/statutes/statutes/36/27) there is strong language that states in order to remain eligible for tuition remission, all that is required is that the employee have at least a 33% appointment. We find nothing in the statute or the Regent Policy that addresses actual earnings. As such, the move to hourly will not endanger tuition remission as long as the PA has a 33% appointment.

It should be noted that the Dean of the Graduate School has stated that it is an expectation that these employees work the number of hours associated with their FTE on a weekly basis. They should work no more and no less than the hours associated with that FTE. In instances where the employee goes below the required hours, those hours should be supplemented with leave time. (Rev. 11/18/19)

## DISCIPLINE/ENDING APPOINTMENTS

Q: How will discipline be affected (if at all) if the employee is changing from academic staff exempt, to academic staff non-exempt?

A: Discipline of academic staff employees will not change based on the exempt or non-exempt nature of the employee’s position. Academic Staff members are governed by Academic Staff Policies and Procedures (ASPP), regardless of whether they are exempt or non-exempt. (Revised 9/6/16)

Q: If a post-graduate appointment needs to be reduced in FTE (or ended), what is best practice?

A: Post-graduate trainee appointments are typically “at-will” in nature and typically terminal in nature. There should be a legitimate non-discriminatory business reason for ending or reducing a trainee’s appointment. Post-graduate trainees should receive appointment letters, and the end date should be identified in the appointment letter. If no appointment letter is provided, if no end date is identified, or if an appointment is ended prior to the end date identified in the appointment letter, a term letter should be provided to the trainee indicating that the appointment has been ended. (Rev 9/6/16)

## ON-CALL AND DIFFERENTIAL PAY

Q: Are non-exempt academic staff eligible for differential pay?

A: No, non-exempt academic staff will not be eligible for differential pay. (Rev 9/27/16)

Q: Are non-exempt academic staff eligible for compensation for being on-call?

A: Yes, non-exempt academic staff are eligible and must be compensated for having to be on-call as defined by the Department of Labor (DOL). The DOL defines On-Call as:

*“An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.”*(Per [DOL Fact Sheet #22](https://www.dol.gov/whd/regs/compliance/whdfs22.pdf)) (Rev 9/27/16)

## POSTDOCTORAL EMPLOYEES

Q: What is the difference between a “postdoctoral” employee and a “post-degree training” employee?

A: Post-degree training employees (formerly called Employees-in-Training or EIT’s), are a larger more general group of employees working here after bachelor’s or master’s degree. Postdoctoral employees (postdoc) are a smaller subset within that group – referring only to those working here after a PhD/doctorate degree (includes Postdoctoral Fellow X10NN, and Postdoctoral Trainee X30NN, and Research Associates X01NN). (Rev 10/14/16)

## APPOINTMENT CHANGES/FLUCTUATIONS

Q: What happens when an employee has a change in their appointment (FTE increase or decrease, change in salary, leave of absence, etc.) that changes their FLSA status from Exempt to Nonexempt or from Nonexempt to Exempt?

A: Changing payroll frequency requires additional work and coordination on the part of many people including HRS Coordinators and Payroll Staff, HR staff, and employees. To minimize the number of changes in payroll cycles, these guidelines have been established:

* When an employee changes to Nonexempt, the employee will **change from the monthly payroll to the biweekly payroll** as soon as possibleso all hours can be correctly recorded in each work week.
* When an employee changes to Exempt, the employee will not immediately change payroll – instead, the employee will **remain on the biweekly payroll.** UW-System is beginning the process to move to a single payroll and all employees will eventually to move to a biweekly schedule. (Rev 11/16/19)

Q: If an employee has a temporary reduction in their FTE that will reduce their earnings so they are below the threshold, what should be done?

A: When the division processes an employee change (examples: change in FTE or change in status such as LOA or termination of an appointment) – *regardless of whether permanent or temporary* -- the division is responsible for evaluating the employee’s overall employment, and taking action to ensure compliance. If the earnings will be below the threshold because of the change, and the employee is not otherwise exempted under FLSA, the employee must be moved to nonexempt status. (Rev 10/18/16)

Q. What about temporary reduction due to FMLA?

A. Leave under FMLA may be unpaid. An employee that is otherwise exempt from the FLSA as a salaried executive, administrative, professional, or computer employee can take unpaid leave under FMLA and not endanger their status as exempt under the FLSA. (Rev. 11/19/19)