



FAIR LABOR STANDARDS ACT (FLSA)

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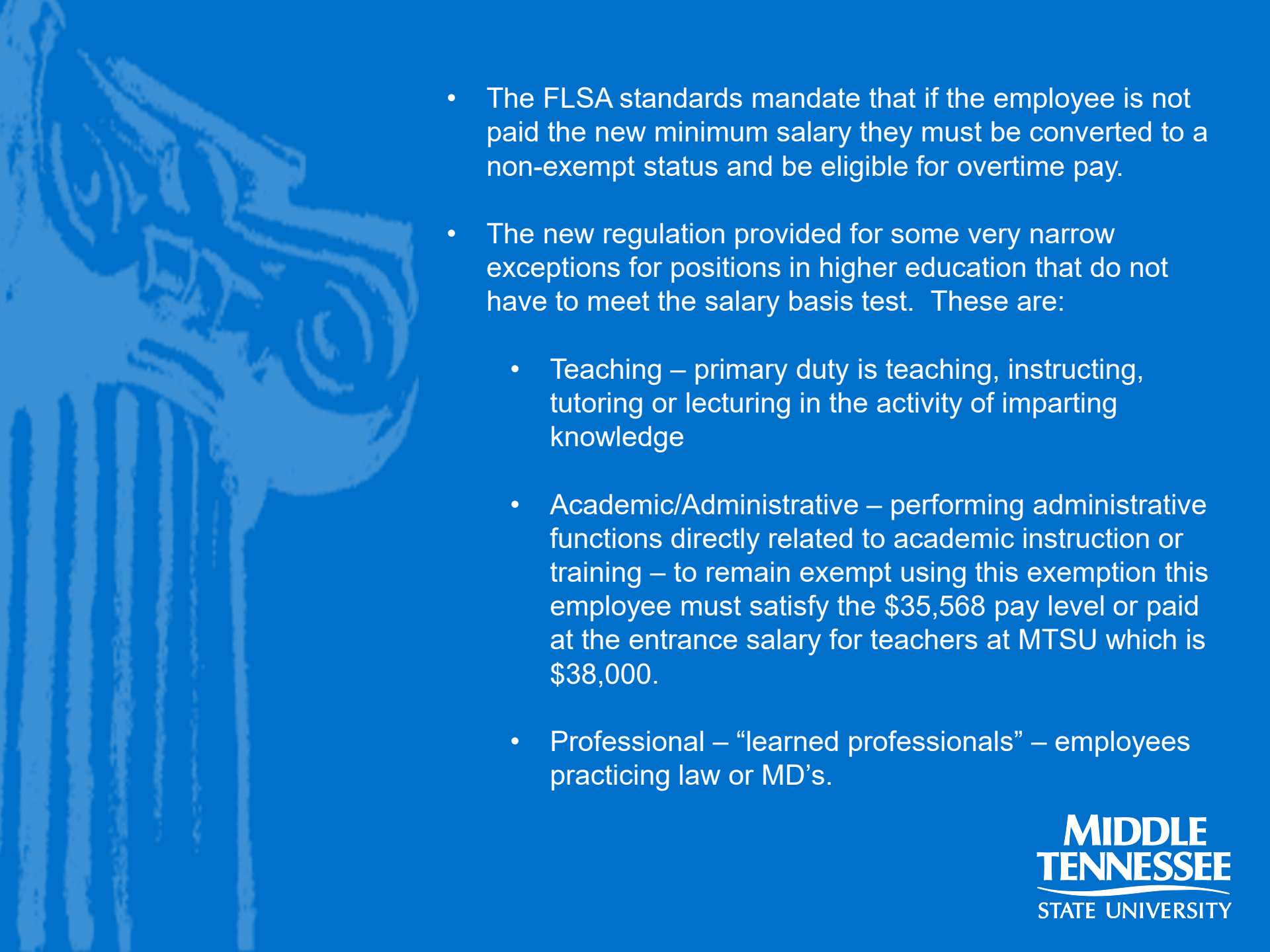
The Fair Labor Standards Act (FLSA)

- Background and Purpose
 - The Fair Labor Standards Act is a U.S. Federal Law enacted in 1938 to prohibit employers from taking advantage of employees. It includes provisions which:
 - Prohibit child labor
 - Set minimum wage
 - **Require overtime pay**
 - Require equal pay (prohibit sex based wage differentials)
 - Require record keeping
 - Based on the FLSA regulations, positions are generally presumed not to be exempt and are entitled to overtime payments.

WHAT IS THE COMMON THREAD AMONG ALL EXEMPTION TESTS??

There is one common thread among all the exemption tests that are used to determine whether a position is exempt or not and that's the **salary basis test**. What does this mean?

- In order to be considered exempt the incumbent has to be compensated a certain minimum salary. This is the salary basis requirement.
- On September 24, 2019, the Department of Labor announced that the minimum salary level was being increased from \$455 per week or \$23,660 annually to \$684 per week or \$35,568 annually effective January 1, 2019.
- Employees that are being paid less than \$684 per week or \$35,568 are no longer eligible to be considered exempt.

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- The FLSA standards mandate that if the employee is not paid the new minimum salary they must be converted to a non-exempt status and be eligible for overtime pay.
 - The new regulation provided for some very narrow exceptions for positions in higher education that do not have to meet the salary basis test. These are:
 - Teaching – primary duty is teaching, instructing, tutoring or lecturing in the activity of imparting knowledge
 - Academic/Administrative – performing administrative functions directly related to academic instruction or training – to remain exempt using this exemption this employee must satisfy the \$35,568 pay level or paid at the entrance salary for teachers at MTSU which is \$38,000.
 - Professional – “learned professionals” – employees practicing law or MD’s.

Steps to Ensure Compliance

- Compliance with the FSLA changes are required - this is not optional
- All exempt positions have been reviewed to ensure they meet the salary basis test or if they meet the requirements for one of the limited exceptions (teaching, academic/administrative, or professional)
- Those that do not meet the new salary basis test will be converted to a new employee category – administrative/professional non-exempt. They will continue to accrue two days per month in annual leave and maintain eligibility in the ORP program
- The new administrative non-exempt positions will now become eligible for overtime pay if they work more than 40 hours in a work week. The employee will be required to track their hours worked via the Web Time Entry system.

IMPACT ON SUPERVISORS AND AFFECTED EMPLOYEES

- If you have an employee that was formerly exempt and effective December 16, 2019 will become non-exempt, there are adjustments that you will have to make in structuring their work and accounting for their time.
- The following slides outline some frequently asked questions regarding what types of activities need to be considered time worked. As a supervisor you will need to be aware of these to comply with the FLSA regulation and ensure that your employee is being paid appropriately.

COMMON QUESTIONS REGARDING COMMENSABLE HOURS

Question: How is employee commuting time back and forth to work treated?

Answer: Commuting to and from work is expressly excluded from hours worked by the employee.

Question: My employee travels from place to place during the regular work day. Are those hours considered work hours?

Answer: Time spent traveling from place to place during the course of a day is included in the hours worked.



Question: What if my employee has to travel out of town. How do I track their hours?

Answer: If an employee's trip takes place in a single day, then all of the time spent traveling will be included in the hours worked by the employee.

Question: How about overnight travel?

Answer: When an employee travels out of town or overnight, only those hours spent traveling during the employee's normal working hours are included in the hours worked calculation, unless the employee is performing work during travel.

Consider this scenario in calculating hours worked:

Assume a non-exempt employee normally works from 8:00 AM to 4:30 PM – Monday- Friday.

The employee leaves on a plane at 6:00 PM to meet with potential students. The employee prepares his/her notes while on the plane.


He/she arrives and continues working in the hotel room.

The employee departs for the meeting on Saturday – 7:30 AM, taking a taxi and arrives for the meeting at 8:00 AM.

The employee leaves the meeting at 1:30 PM and departs on a 3:00 PM flight home.

This is how you would calculate the hours worked:

- The time spent on the plane is not compensable, except for the time the employee spent on reviewing or preparing his/her notes or performing similar work.
- The employee must be compensated for the additional time they spent in preparing for the meeting in their hotel room.
- Time spent in the meeting with prospective students and the trip home (until 4:30 PM) would also be counted towards hours worked.




Question: My employee accesses the MTSU computer network from home and answers emails sometimes. Does that have to be counted towards work time?

Answer: Accessing computer networks remotely and/or using cellphones and smartphones to communicate with others regarding work matters will be considered work time by the FLSA.

Question: Sometimes I call my employee at home to obtain or provide work information. Is this considered time worked?

Answer: If the employee is responding to work related phone calls or emails, this is considered work time. Time spent waiting for a call or responses to emails will also be considered time worked.



Question: My employee says they don't mind answering emails or receiving calls at their home and says I don't have to worry about paying them. Is this okay?

Answer: ABSOLUTELY NOT! The employee cannot agree that he/she will not be paid for the hours spent on these tasks outside of normal workday.

Question: What if I send my employee to a meeting outside the campus? Is that time considered hours worked?

Answer: Generally, attending meetings and training sessions must be included in the calculation of working hours. Only when the following four (4) criteria are met can the hours be excluded from work hours:

- Attendance is outside the employee's regular working hours;
- Attendance is voluntary;
- The course, lecture or meeting is not directly related to the employee's job and;
- The employee does not perform any productive work during such attendance.

Question: As an exempt employee, frequently my employee would work through lunch. Is that still okay?

Answer: No. The employee is entitled to a one hour lunch period. If they work through their lunch, that has to be considered time worked.

Question: I didn't give permission for my employee to work through his/her lunch. Do I still have to pay them?

Answer: Yes. However, if they persist in working through their lunch period, you may issue a disciplinary action advising that this behavior must stop.

Question: Two employees are driving to a work function after normal work hours. One is driving and the other employee is a passenger in the vehicle. Are either employees eligible for hours worked during the drive to the event?

Answer: The employee driving the vehicle would be entitled to hours worked, whereas the other employee that is the passenger is not entitled to hours worked under these circumstances.

Question: I have an employee who is eligible for on-call pay. How is that handled?

Answer: It's dependent on several circumstances. If the employee is on call and not allowed to leave the premises, any type of on-call would be considered hours worked.

If the employee is allowed to leave the premises, but is called back to work due to an emergency, the employee would be paid consistent with the provisions in MTSU Policy 802-Hours of Work.

HOW CAN I MANAGE THESE CHANGES?

- Supervisors will have to establish guidelines with their newly non-exempt employees. This is a change for your employee and you'll have to communicate with them your expectations.
- If you want to limit overtime hours, you may need to prohibit the employee from remote access or using smartphones after normal work hours.
- Alternatively, if access is necessary and payment of overtime limited, the employee's schedule may be adjusted to accommodate these tasks as part of the employee's normal work hours.

Tracking Hours on PipelineMT

- Employee needs to enter “actual” hours worked on WTE Timesheet
- Employee will enter sick leave or annual leave used
- Adjusting Work Schedules
 - Depending upon the weekly needs of the office you can adjust work schedules accordingly
- Workweek begins on Saturday and ends on Friday
- Employee needs to enter at least 37.5 hours a week (if full-time)

Approving Timesheets

- Recommend that you instruct employee to record their time daily
- Approver can review timesheet throughout the month
- Approver **MUST** approve timesheet for employee to be paid

Approving Timesheets

- How to Approve Timesheet
 - Log into PipelineMT
 - Click on Employee Tab
 - Click on Time Sheet Link
 - Select Approve or Acknowledge Time Radio Button
 - Select Time Sheet and Pay Period
 - Click on Employee Time Sheet to Review
 - Take Action – Approve, Return for Correction, etc.
 - Quick Reference Guide for Approvers - https://mtsu.edu/hrs/training/docs/WTE_QUICK_REF_INSTRUCTIONS_APPROVERS_PROXIES.pdf