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# Support Title FLSA Issue

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# Background

- Fair Labor Standards Act (FLSA) defines eligibility for overtime via provisions for “Exempt” and “Non Exempt”.
- Changes In 2004 Provided Greater Clarity On Definitions Of The Exemptions:
  - Professional
  - Administrative
  - Executive
  - Computer Professional
- Increased minimum salary eligible (salary test) for exemption (\$455/Week)

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# Issue

- A consistent trend in our review of Senior Administrative Associate title across campus indicated a problem.
  - Most positions that were reviewed since the rule changes were implemented, do not meet the administrative duties test provisions.

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# Administrative Duties Test

- **Administrative** – Employee whose *primary* activities are performing office work or nonmanual work *on matters of significance relating to the management or business operations* of the firm or its customers and which require the exercise of *discretion and independent judgment*.\*
- Examples: coordinator, administrator, analyst, accountant, market researcher, consultant, etc.

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# Administrative Duties Test (cont)

- The phrase “directly related to the management or general business operations” refers to the type of work performed by the employee.
  - “Factors to consider include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies.....\* ”
  - Whether the employee performs work that affects business operations to a substantial degree.....\* ”

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# Analysis

- A work group reviewed the problem and associated issues this Spring.
  - Representatives from the following:
    - Human Resources
    - Provost's Office
    - Research
    - Administrative Units
    - UT Staff Council

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# Conclusions from Analysis

- Need to update the current Senior Administrative Associate title and convert to a non exempt job type (i.e. the title will remain in the pay plan, but will convert to non exempt).
  - Requires migrating most of the current incumbents to non exempt status.
    - Separate State Compensatory Time From Federal Compensatory Time/Overtime past two years.
    - Adjust overtime balances for employees based on hours worked over 40 at 1.5 times hours accrued (less time taken).
    - Payout **may be made in time off** or in cash, except where the total exceeds the maximum accrual of 240 hours. In those cases, reconciliation must be in pay.

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# Administrative Exemption Request

- ❑ Where departments feel that individual positions meet the criteria of the administrative duties test, they may submit a written request for the exemption.
- ❑ HR will provide a form and specific detailed guidelines for this request.
- ❑ If approved, the incumbent may be reclassified to an exempt title.

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# Exemptions from Overtime

- Salary level test
- Duties test
- Salary basis test

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# White Collar Exemptions from Overtime

- Salary Level Test
  - \$455/week (\$23,660/year)
  - Absolute amount
  - Exclusive of room, board, or other facilities

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# Exemptions from Overtime

- Salary Level Test

- \$23,660 - \$100,000

- Must meet all criteria of applicable duties test

- \$100,000 or more — Highly Compensated Employees

- Exempt if meet any one of the criteria from any of the applicable white collar duties tests

- Office or non-manual work

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# Exemptions from Overtime

- Executive Exemption

- Primary duty is management of enterprise or customarily recognized subdivision, **and**
- Customarily and regularly supervises two or more full-time employees or FTEs, **and**
- Has authority to hire or fire or recommendation on hiring, firing, advancement, promotion or any other change of status given particular weight (frequency, a duty)

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# Exemptions from Overtime

## ■ Administrative Exemption

- Office or non-manual work directly related to management or general business operations of employer or customers/clients
  - Assisting with the running or servicing of the business, not “production” work
- Exercise discretion and independent judgment with respect to matters of significance
- Egs.: claims adjusting, financial services, HR, auditing, tax, marketing, quality control

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# Exemptions from Overtime

- Discretion and Independent Judgment
  - Consider whether an employee:
    - Considers options and chooses among them
    - Formulates, affects, interprets, or implements policies or operations
    - Has authority to commit the employer
    - Has authority to waive or deviate from established practices
    - Provides expert advice to management
    - Resolves problems as they arise or recommends how they be resolved

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# Exemptions from Overtime

- Discretion and Independent Judgment
  - Consider whether an employee:
    - Carries out major assignments in conducting the operations of the business
    - Performs work that affects business operations to a substantial degree
    - Has authority to negotiate and bind the employer on significant matters
    - Represents the employer in handling complaints, arbitrating disputes or resolving grievances

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# Exemptions from Overtime

- Academic Administration
  - Administrative functions directly related to academic instruction or training in an educational establishment, department, or subdivision
  - Egs.: administrators involved with faculty and curriculum, academic department administrators, lab administrators, academic counselors

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# Exemptions from Overtime

- **Learned Professional Exemption**
  - Work requires advanced knowledge, predominantly intellectual in character
  - Consistent exercise of discretion and judgment in science or learning
  - Prolonged course in specialized intellectual instruction, typically in a recognized discipline
  - Egs.: teaching, accounting, law, education, medicine, engineering
  - Egs.: degreed physician assistant, registered nurse, scientist, executive chef, librarian
  - Teachers do not have minimum salary requirement

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# Exemptions from Overtime

- **Creative Professional Exemption**
  - Work requiring invention, imagination, originality or talent in a recognized field or artistic endeavor
  - Differentiated from work dependant on intelligence, diligence, and accuracy
  - Egs.: music, writing, acting, graphic arts

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# Exemptions from Overtime

- Computer Professional Exemption
  - Application of systems analysis techniques and procedures, including consulting with users, to determine hardware and software specifications
  - Design of computer systems based on and related to user specifications
  - Creation or modification of computer programs based on and related to system design specifications
  - Creation or modification of computer programs related to machine operating systems

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# Exemptions from Overtime

- **Computer Professional Exemption**
  - ❑ A combination of previous listed duties
  - ❑ Note discretion and judgment deleted
  - ❑ Does not include maintenance or repair
  - ❑ Not computer users
  - ❑ Paid \$455/week or more, or
  - ❑ \$27.63/hour or more

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# Exemptions from Overtime

- Primary Duty
  - All exemptions require analysis of primary duty
    - Primary = Principal, main, major, or most important
      - Percent time spent on tasks no longer a condition of exempt status

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# What Overtime is

- Over 40 hours of work in a workweek for non-exempt employees
- Compensate at time and one-half

# What State Comp Time Is

- Combination of paid time and hours worked >40 hours in a week.
- Paid out in time—straight time.

This Time Report has reached final approval - no updates can be made

<Prev Week

Next Week>

	Mon 01/15	Tue 01/16	Wed 01/17	Thu 01/18	Fri 01/19	Sat 01/20	Sun 01/21
Hours Worked				8.00	9.00		
Hours Absent	8.00 UTHol	8.00 Emgcy	8.00 Emgcy				

\* See Notes Below \*

**Total Hours Worked:** 17.00 **Total Hours Absent:** 24.00

**State Comp Time Hours Earned:** 1.00 **FLSA Over Time Hours Earned:** 0.00

Notes:

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# State Comp Vs Overtime

- The exempt employee earned 1 hour of state comp time.
- In this case, if the employee converted to non exempt, how much overtime would be earned?

0—The employee must work >40 hours to earn overtime

# State Comp Vs Overtime

< PREVIOUS WEEK      Hours Appointed: 40.00      FLSA Status: Exempt      NEXT >

	Mon 06/11	Tue 06/12	Wed 06/13	Thu 06/14	Fri 06/15	Sat 06/16	Sun 06/17
Hours Worked	<input type="text"/>	<input type="text" value="12"/>	<input type="text" value="12"/>	<input type="text" value="12"/>	<input type="text" value="8"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="Enter 8 Hours Per Day"/>							
Vacation	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Sick Leave	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Floating Holiday <input type="text" value="8"/>	<input type="text" value="8"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Leave Type for This Row <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Leave Type for This Row <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Total:	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Non exempt employee works 44 hours and takes 8 hours floating holiday:

In this case a non exempt employee earns:

1. 8 hours of state comp time at straight time.
2. 6 hours of overtime (4 hours @ 1.5 time), that can be paid out in cash or in time off.

# State Comp Vs Overtime

An exempt employee works 44 hours and takes 8 hours floating holiday:

If the employee were to convert to non exempt, the results would be:

< PREVIOUS WEEK      Hours Appointed: 40.00      FLSA Status: Exempt      NEXT >

	Mon 06/11	Tue 06/12	Wed 06/13	Thu 06/14	Fri 06/15	Sat 06/16	Sun 06/17
Hours Worked		12	12	12	8		
<input type="text" value="Enter 8 Hours Per Day"/>							
Vacation							
Sick Leave							
Floating Holiday	8						
Leave Type for This Row							
Leave Type for This Row							
Total:	0.00	0.00	0.00	0.00	0.00	0.00	0.00

1. 8 hours of state comp time at straight time.
2. 6 hours of overtime (4 hours @ 1.5 time)  
14 hours

*If the employee took 12 hours of comp time, payout owed is 2 hours*

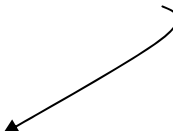
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# Comp Time Use

- Employees are “churning” comp time.
- Example:
  - Employee works:
    - 10 hours Monday
    - 8 hours each Tues, Wed, Thurs
    - 6 hours on Friday and claims 2 hours of comp time on Friday.
  - Employee earned and used 2 hours of comp time. The comp time entry on the timesheet on Friday is not necessary.

# Computing the Payout

Comp Time earned in conjunction with PTO and hours worked <40



E	F	G	H	I	J	K	L	M	N
CT Earned	Portion of CT That Is State Compensatory Time (Verified By Department)	Balance of CT That Is Federal Compensatory Time	Federal Comp Time times 1.5	CT Used	Balance from Federal CT Earned Minus CT Used	Maximum Federal Compensatory Time Allowed	Hourly Rate	Amt Owed If Payed All Compensatory Time Off	Amt Owed If Only Paid Off That In Excess of Federal Law
104.5	69.25	35.25	52.88	109	0	240	\$24.48	\$0.00	\$0.00
111	83	28	42.00	117	0	240	\$24.91	\$0.00	\$0.00
151	83	68	102.00	169	0	240	\$20.29	\$0.00	\$0.00
99.7	59.15	40.55	60.83	99	0	240	\$21.12	\$0.00	\$0.00
71	30	41	61.50	71	0	240	\$18.37	\$0.00	\$0.00
190.75	12	178.75	268.13	209	70.875	240	\$26.29	\$1,863.30	\$0.00

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# Overtime Balances

- Will be added to employee's time sheet after September 1
- May be paid out in cash (voucher) or time off.
  - Departments have 2 years to draw down the balances
  - Portion that is in excess of 240 hours must be paid in cash.
  - When voucher payment is made, you must take the time off the time system (use ETA module).

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# FAQs

- Who pays in case of a transfer?
  - Current Department
- What if the employee is no longer in the title?
  - They will still get the overtime if it was a promotion/transfer
  - If a reclass, we assume the work did not change until the effective date.
- What happens if the exception is approved?
  - HRS will consult with department on a different title and department will submit a reclassification
  - There will not be a requirement to pay back overtime

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# Managing the Change

- Workshops for departments
  - FLSA overview
    - Rules/Tests
  - Managing Overtime
  - Drawing down accruals
- Workshops for employees
  - FLSA overview
  - Exempt vs Non Exempt status

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# Timeline and Next Steps

- Week of 6/11
  - Complete analysis of title review option
- Week of 6/25
  - Communication to incumbents in the title
  - Communication to Departments
    - Employee lists with accruals
    - FLSA informational handout
    - Exemption requests: forms and process details

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# Timeline and Next Steps (cont.)

- 6/25
  - Begin Informational workshops for departments
  - Begin informational workshops for employees
- 8/1
  - Deadline for exception requests
  - Departments submit verified comp time reports to HRS
  - Process vouchers where payout is appropriate
- 9/1
  - Implement FLSA status changes
  - Begin payout and drawdown