

Department of Labor Fact Sheet: Higher Education Institutions and Overtime Pay Under the FLSA

BY ANTHONY J. DRAGGA • JUNE 12, 2018

Under the Fair Labor Standards Act (FLSA), employees who work more than 40 hours per week must be paid overtime unless they fall under one of several exemptions. Recently, the U.S. Department of Labor's (DOL) Wage and Hour Division issued a new fact sheet that discusses the applicability of the "white collar" exemptions of the FLSA to jobs that are common in higher education institutions. These positions include teachers, coaches, professional employees, administrative employees, graduate teaching assistants, research assistants, and student residential assistants.

To qualify for an exemption under the FLSA, an employee must satisfy three tests:

1. The employee must be paid on a salary basis that is not subject to reduction based on the quality or quantity of work (the "salary basis test"), rather than, for example, on an hourly basis;
2. The employee must receive a salary at a rate not less than $455 per week (the "salary level test"); and
3. The employee's primary duty must involve the kind of work associated with the exempt status sought, such as executive, administrative, or professional work (the "duties test").

Student-employees are addressed at length in the fact sheet. The DOL notes that many working students are hourly, nonexempt workers who generally do not work more than 40 hours a week. Some students, however, receive a salary or other non-hourly compensation while working as teaching assistants, research assistants, or residential assistants. The fact sheet notes that teaching assistants whose primary duties are teaching qualify for the teacher exemption. The DOL does not generally consider research and residential assistants to be employees when they are enrolled in educational programs, and therefore they are usually not entitled to minimum wages or overtime compensation.

This fact sheet emphasizes the distinctive nature of many higher education positions and the need for a tailored analysis of higher education employees' duties to determine whether or not they are exempt from the FLSA's overtime and minimum wage provisions.

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Client Tip: The misclassification of employees is a commonly-litigated area of employment law, and violations can result in severe financial penalties. Therefore, it is important to evaluate an employee's actual job duties, qualifications, and education for determining whether an employee is exempt under any of the "white collar" exemptions. Additionally, the employee must also meet the salary basis test, currently a salary at a rate not less than $455 per week. Additional fact sheets addressing other wage and hour topics can be found on the DOL's website.

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