



HOWLING COUNSEL E-ALERT

Department Of Labor Overhauls Fair Labor Standards Act Regulations

May 18, 2016

The U.S. Department of Labor has published revised Fair Labor Standards Act (FLSA) regulations with substantial changes, ultimately resulting in more employees being subject to time keeping requirements and possible overtime wages. The effective date is **December 1, 2016**.

The FLSA sets wage and hour standards for employees. The law categorizes employees as either “exempt” or “non-exempt” for purposes of being subject to overtime requirements (paying time and a half or awarding compensatory time for every hour worked over 40 hours a week in the established work week). Employees who are “non-exempt” are subject to timekeeping requirements. At NC State, the “non-exempt” status generally corresponds to the classification of SHRA employees, along with temporaries, certain EHRA non-faculty and some students.

Currently, to be FLSA “exempt” an employee must:

1. Be paid a salary of \$466/week (\$23,660/year) = “**salary test**” *and*
2. Have duties that fall under a “white collar” exemption (executive, administrative, professional) = “**duties test**”

While the **duties test** has stayed the same, the **salary test** has changed. The DOL has increased the minimum salary threshold for exemption to nearly double the current rate to **\$913/week or \$47,476/year**. The revised regulations also include an automatic update to the salary and compensation levels every three years to reflect more accurately economic conditions. This means that most employees who earn less than this amount cannot be exempt regardless of their duties, unless an exception applies. One of the most common exceptions for universities is for employees who have teaching/instruction as a *primary* responsibility (which includes most Coaches, Teaching Assistants and Post Docs).

The changes to the salary test will affect the status (from “exempt” to “non-exempt”) of many employees across campus and may have a significant impact on a department’s budgets, administrative costs, staffing and workloads.

As a public employer in North Carolina, NC State “whenever possible” can provide compensatory time off for non-exempt employees at a rate of one and one-half hours for each overtime hour worked, instead of providing cash payments for overtime. The decision to grant compensatory time off (rather than monetary compensation) for overtime worked is solely within the discretion of management.

While the new regulations go into effect on **December 1, 2016**, preparation for the implementation has begun and will continue throughout the summer.

In order to meet the new salary requirements, departments should consider the following options to address anticipated financial and budgetary issues:

- If economically feasible and if the duties test is met for exempt criteria, raising the salaries of employees to meet the \$913/week (\$47,476/year) threshold;
- Changing employees’ hours or schedules to avoid or reduce overtime, such as a noon to 8:00 p.m. schedule for those having regular responsibilities after normal business hours;
- Using flexible scheduling to accommodate occasional hours outside of the typical scheduled workweek;
- If economically feasible, hiring additional employees to supplement the existing workforce to avoid overtime of current employees who work more than 40 hours per week on a consistent basis;
- Providing compensatory time off rather than cash time and a half; and
- Strategic budget planning in grant proposals to account for the higher salaries.

OGC and HR will be holding a series of general information sessions across campus this summer. The dates, times and locations of the informational meetings will be communicated soon through the Human Resources Advisory Council members and HR Connections.

In addition, OGC and HR will be scheduling separate meetings with individual colleges and divisions throughout the summer to provide more specific information, to answer questions that may be unique to those colleges and divisions and to provide advice on the best manner to comply.

In advance of those meetings or for specific questions in your work units, please contact Sarah Lannom, Associate General Counsel, at 515-3071 or Kathy Lambert, Interim Associate Vice Chancellor for Human Resources, at 515-4277.

For additional information on the DOL’s regulations, see this [Fact Sheet](#).