



Overview of Changes

The following frequently asked questions provide answers to the most common questions that managers or employees may have regarding application of the new rules for the Fair Labor Standards Act (FLSA).

The U.S. Department of Labor has declared an adjustment to the Fair Labor Standards Act (FLSA) effective July 1, 2024. This change mandates certain roles, presently categorized as FLSA exempt (non-overtime eligible), to transition to an FLSA non-exempt (hourly overtime eligible) status. This shift ensures that employees in these positions are entitled to overtime compensation.

The U.S. Department of Labor's adjustment raises the minimum salary threshold for a position to be classified as FLSA Exempt to \$43,888 annually or \$844 weekly, starting July 1, 2024. Employees earning below this updated threshold will be required to shift to an FLSA overtime eligible status to align with the new federal standards.

This change has no impact on an employee's status under the Civil Service Act (CSA) (e.g., status remains the same as classified as CSA, Faculty, or NFE). The requirements for Civil Service exemption are separate and distinct from FLSA exemption requirements. For the purposes of this document exempt and nonexempt is only referring to FLSA status.

Here are the highlights of the impact:

- Any non-teaching staff member affected by this regulatory update and paid below \$43,888 annually or \$844 weekly may transition to non-exempt status (hourly) and be overtime eligible on June 22, 2024.
- This regulation does not affect an employee's job title, job level, or role as described in the position description. However, the department may choose to modify the work hours or participation in activities beyond a normal 40-hour workweek to manage overtime.
- Impacted employees will be required to record their hours worked and leave time accurately.
- Any overtime must be approved in advance by the supervisor.

What is the FLSA?

The Fair Labor Standards Act (FLSA) is a federal wage and hour law administered by the U.S. Department of Labor. It establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

The FLSA provides a set of standards to determine which jobs are subject to hourly and overtime pay requirements or those that are exempt from the requirement and may be paid on a salary basis. Positions not exempt from hourly and overtime requirements are considered hourly positions.



and must receive overtime pay or compensatory time for hours worked over 40 in a workweek. Workweeks may not be averaged.

Positions exempt from hourly and overtime rules, are considered salaried positions, and do not normally receive additional compensation for work over 40 hours in a workweek. Positions that may be exempt from hourly and overtime requirements must meet the salary basis and duties tests. For more information on FLSA please refer to the US Department of Labor [website](#).

Who is entitled to overtime pay and how is it calculated?

Positions that are not exempt from hourly and overtime requirements under the FLSA must be paid overtime or be provided compensatory time at least 1.5 times their regular rate of pay for any hours worked beyond 40 in a workweek.

- In accordance with SDBOR [Policy](#), overtime is compensated as one hour of regular earnings and a half an hour of compensatory time accrual.
- A workweek is defined as Sunday-Saturday.
- Leave and holiday hours do not contribute to overtime hours.

Can I opt out of this change?

No. This is mandated by the U.S. Department of Labor in accordance with federal regulations. It applies to all employers and employees covered by the Fair Labor Standards Act.

Does this change mean I am now a Civil Service Employee?

No. This change has no impact on an employee's status under the Civil Service Act (CSA) (e.g., status remains the same as classified as CSA, Faculty, or NFE). The requirements for exemption from Civil Service classification are separate from FLSA hourly and overtime pay or salary basis requirements.

What positions are affected?

The SDBOR office of human resources will review to ensure compliance with the updated regulations. After final determinations are made, impacted employees will be notified.

My salary meets or exceeds the new minimum. Why is my position being converted to hourly and overtime eligible?

Groups of positions that perform similar duties at a similar level may be reviewed together. If it is determined that those positions are hourly overtime eligible, all positions in that group may be changed regardless of the current salary of the individual positions.

Who is excluded from these changes?

According to the FLSA, an employee whose primary duty is teaching, instructing, or lecturing to impart knowledge and is performing that duty as an employee of an educational institution is exempt from the minimum salary basis threshold requirements.



How does this impact part-time employees?

The salary minimum is not prorated for part-time positions that meet the duties test requirements. If the salary paid to an individual working part-time does not meet the annual salary threshold, the position will become hourly overtime eligible, unless the function of the position excludes the job from meeting the salary threshold requirement.

How does this impact employees working on a 9, 10, or 11-month schedule?

For those working on a 9, 10, or 11-month schedule the weekly salary threshold will be used to determine FLSA exemption. If the salary paid to an individual working on a 9, 10, or 11-month schedule does not meet or exceed the weekly salary threshold, the position may become overtime eligible, unless the functions of the position exclude the job from meeting the salary threshold requirement.

Will my pay be the same?

If your position is converted to hourly overtime eligible, your current salary will be converted to an equivalent hourly rate, and you will be paid based on the hours worked each week. Your pay may vary based on the number of hours you work each week. If you are approved to work overtime, you will be paid 1.5 times your regular rate of pay for any hours beyond 40 in a workweek. Overtime is compensated as one hour of regular earnings and one half-hour of compensatory time accrual in accordance with SDBOR [Policy](#).

How will my hourly rate be determined if my position is converted to hourly and overtime eligible?

In most cases, an employee's regular hourly rate will be determined by dividing current annual salary by the current annual standard hours. If the standard hours are 40 per week, that is the equivalent of 2,080 hours in a year (40 hours/week x 52 weeks). For individuals working a 9, 10, or 11-month schedule the hourly rate will be determined based on the employee's annual standard hours.

How will I be paid for working overtime if my position is converted to hourly and overtime eligible?

The Fair Labor Standards Act stipulates those employees in hourly overtime eligible positions be paid at least 1.5 times their regular rate of pay for any hours they work beyond 40 in a workweek (Sunday-Saturday). An employee may work more than 8 hours in a day, but if the cumulative work time for the week does not exceed 40 hours, no overtime will be paid. Overtime is compensated as one hour of regular earnings and a half an hour of compensatory time accrual in accordance with SDBOR [Policy](#).



Is paid time off included for the purposes of determining overtime?

No, paid time off (annual, sick leave, holiday, etc.) does not constitute “work time” and does not contribute to the calculation of overtime. For example, if an employee takes a vacation day on Monday and works four 10-hour days for the rest of the week, no overtime will be paid.

What is compensable time?

Compensable work includes working time, travel time (including driving and airport layovers), training that is required for the position, and any additional activities that are required for or related to the work of the position. Examples include working lunches, setting up for an event, after hours work calls, and answering emails at home.

What is non-compensable time?

Non-compensable time includes lunch hours (when released from all responsibilities or restraints), time spent “on call” (if reasonably free from restrictions), travel time (when the employee is free to pursue own interests).

What is inconvenience pay and who is eligible?

SDBOR [Policy](#) 4.5.1 Section 1.12 addresses inconvenience pay.

As an hourly overtime eligible employee, is time spent on-call considered hours worked?

SDBOR [Policy](#) 4.5.1 Section 1.13 addresses on-call time.

Can I volunteer to work additional hours?

No. Federal law prohibits employees from “volunteering” to do their jobs. All hours worked should be accurately reflected on the day they were completed in the timesheet. Falsifying of time worked by an employee and/or supervisor will result in disciplinary action.

If my position is converted to hourly overtime eligible, will I be able to work overtime?

Any overtime must be approved in advance by your supervisor.

As an hourly overtime eligible employee, can I be required to work overtime?

Yes, in some situations you may be required to work more than 40 hours in a workweek. Under the FLSA, overtime eligible employees are entitled to receive one and a half times their regular pay for



hours worked over 40 in a workweek. However, there is no maximum limit on the number of hours an employee can work in a week.

If I am converted to an hourly overtime eligible position, do I lose flexibility of where and when I work?

Regardless of whether your position is hourly overtime eligible or salaried and exempt from overtime, your work schedule should be discussed with and approved in advance by your supervisor. Employees in hourly overtime eligible positions and their supervisor have an obligation to ensure all time worked is tracked in the SDBOR timekeeping system and reported accurately to ensure approved overtime is compensated according to FLSA guidelines. Eligibility for remote work should be discussed with your supervisor and pre-approved in accordance with the remote work policies.

If I am an hourly overtime eligible employee, can I respond to emails and text messages outside normal working hours?

All work time, regardless of hourly overtime eligible or salaried exempt classification, should be discussed and approved in advance by your supervisor. Employees in hourly overtime eligible positions and their supervisors have an obligation to ensure all actual time worked is tracked and reported accurately to ensure approved overtime is compensated according to FLSA guidelines using the SDBOR timekeeping system.

As an hourly overtime eligible employee, can I still work early or late?

Employees who are hourly overtime eligible can make arrangements and obtain prior approval from their supervisor to work from home, to check messages at night, or to change their daily schedules to different hours. However, all time worked must be accounted for and recorded as time worked in the SDBOR timekeeping system. All overtime and any alternative work arrangements must be approved in advance by the employee's direct supervisor.

How much overtime is allowed?

The amount of overtime allowed for any employee is at the discretion of each individual department and the staff member's supervisor, subject to SDBOR [Policy](#) compensatory time accrual limits.

Will this change how I record my work time?

Yes, if your classification has changed, there will be some impact to how you record and structure your work time.

- You will need to accurately report your hours worked on your timesheet.
- You will need to request approval in advance to work any overtime hours.
- You will need to request approval in advance to work remotely or outside your regular schedule.



If I am converted to an hourly overtime eligible position, how does this change the way I use leave?

For full-time and hourly overtime eligible employees, appropriate leave is taken when there are insufficient hours worked or paid in a week.

- Each workweek (Sunday-Saturday) should account for a minimum of 40 hours.
- Each day does not need to be 8 hours and employees may flex time within the workweek to avoid incurring overtime.
- Leave can be taken in 15-minute increments.
- Hourly overtime eligible employees must enter both Holiday Pay and Administrative Leave on their timesheet to be paid correctly for those hours.

If I am converted to an hourly overtime eligible employee, does this change how Holiday and Administrative Leave are applied?

SDBOR [Policy](#) 4.5.1 Section 1.10 addresses Holiday Pay and SDBOR [Policy](#) 4.5.1 Section 1.11 addresses Administrative Leave.

If I am converted to an hourly overtime eligible position, how do I accrue and use Compensatory (Comp) Time?

Compensatory Time is accrued on hours worked over 40 in one work week (Sunday-Saturday).

- It will be available to use or pay out with supervisory approval as soon as it is accrued in the following payroll month.
- It is requested and used like other leave types (annual, sick, etc.).
- In accordance with SDBOR [Policy](#), the maximum accumulation of compensatory time is 80 hours with the exception of production workers for the SDSU College of Agriculture and Biological Sciences who may accrue up to 160 hours.
- Compensatory Time exceeding the maximum accumulation must be paid or used.
- Compensatory Time will normally be used prior to other leave types.

Does this document apply to the January 1, 2025, changes?

No. This communication solely addresses the change effective from July 1, 2024. Updated information will be provided when the January 1, 2025 regulatory effectiveness is determined.