

**UNIVERSITY OF HOUSTON SYSTEM
ADMINISTRATIVE MEMORANDUM**

SECTION: Human Resources

NUMBER: 02.B.07

AREA: Compensation

SUBJECT: Fair Labor Standards Act

1. PURPOSE

- 1.1. The [Fair Labor Standards Act of 1938 \(FLSA\)](#) is a federal statute which establishes minimum wage, overtime pay, compensatory time, child labor, equal pay, and recordkeeping requirements. Overall responsibility for enforcing the FLSA is assigned to the U.S. Department of Labor, with specific authority for the equal pay provision delegated to the Equal Employment Opportunity Commission.
- 1.2. The purpose of this administrative memorandum is to establish the University of Houston System's policy pertaining to compliance with the FLSA.

2. POLICY

- 2.1. All faculty, staff and student employees of the System are covered by the FLSA, although specific provisions exempt certain classes of employees from its minimum wage and overtime pay/compensatory time requirements, and the System adheres to provisions of the Act in the administration of salary, wage and work hours for all employees. An employee's rights under the Act may not be waived.
- 2.2. Each component university human resources department is responsible for the day-to-day administration of this policy and for ensuring compliance with the Act. The component university chief human resources officer, or designee, will have final authority for determining exemptions from overtime provisions of the FLSA.
- 2.3. Nothing in this policy shall be used to permit discrimination or retaliation against an individual or group on the basis of race, sex, age, color, religion, national origin, disability, or veteran status.

3. POLICY PROVISIONS

- 3.1. Salary And Wage Administration: The System is exempt, along with some other State institutions of higher education, from participation in the State's Classified Plan, and has developed classification and compensation plans at all component universities which comply with FLSA. Such classification and compensation plans which prescribe the salary range authorized for each position of employment shall be administered, maintained and published by the human resources department at each component university. The presidents, provosts, deans, and academic department heads are responsible for salary administration of faculty members and other teaching and research professionals.
- 3.2. Determination Of Exemption Status Of Employees: Each employee's overtime pay and minimum wage coverage under the Act (exempt or nonexempt) is determined in accordance with the terms of the Federal regulations cited herein. All System job categories are determined as "exempt" or "nonexempt" as defined by FLSA. Attachment 1 contains the FLSA tests required to determine whether an employee's position should be in the Exempt category and therefore exempt from the FLSA overtime provisions. Specific administrative guidelines concerning compensation, work hours, etc. for each employee job category are set out elsewhere in this memorandum.
- 3.3. Equal Pay For Equal Work: The Equal Pay Act, which in 1963 was passed as an amendment to the Fair Labor Standards Act, applies to all employees of the System. It prohibits wage differentials based on sex, between persons employed in the same establishment on jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions. The law permits differences based on factors other than sex such as bona fide seniority or merit systems or systems which reward productivity.
- 3.4. Overtime And Compensatory Time: Nonexempt employees are subject to the overtime provisions of the FLSA. Compensation for all hours worked in excess of forty (40) hours in the standard workweek shall be handled in accordance with A.M. No. 02.B.02. Exempt employees are not eligible to receive compensation for hours worked in excess of the forty (40) hours in the standard workweek but may receive compensatory time off under certain circumstances (see A.M. No. 02.B.02).

- 3.5. Child Labor Provisions: The System adheres to all FLSA provisions in connection with child labor. Fourteen years is the minimum age for workers at the System in a non-hazardous job. The minor employee may only work if employment is outside school hours and is for no more than three (3) hours on a school day, eighteen (18) hours in a school week, eight (8) hours on a non-school day, or 40 hours in a non-school week; with the additional condition that work may not begin before 7:00 a.m. nor end after 7:00 p.m., except from June 1 to Labor Day when evening hours may be extended to 9:00 p.m.
- 3.6. Minimum Wage: The System is obligated to pay the federal minimum wage prescribed by FLSA. It is the policy of the System to pay all workers, including student workers, no less than the federal minimum wage.
- 3.7. Posting Of Flsa Notice: The System shall post, and keep posted, notices pertaining to the applicability of the FLSA, including minimum wage and child labor.
- 3.8. Recordkeeping Requirements: Records and reports associated with salary and wage payments required by federal and State law and by accounting systems of the System are incorporated in the payroll/personnel system.
- 3.9. Penalties: The Secretary of Labor has delegated authority to representatives of the Wage and Hour Division of the Department of Labor to undertake inspections and investigations to determine employer compliance with the law. They may enter the employer's premises to inspect and transcribe records and interview employees to determine if violations have occurred. The Department of Labor will usually seek voluntary compliance if violations are discovered; however, if this method is unsuccessful, the Act provides remedies through the courts. An employee or group of employees may sue to recover withheld wages, liquidated damages, attorney's fees and court costs, or the Department of Labor may initiate the court action. The Act also prescribes criminal penalties for intentional violations, and permits injunctive measure to ensure future compliance.

In the event an examination is initiated by Wage and Hour representatives, or the Equal Employment Opportunity Commission, department heads shall immediately be directed to the component university chief human resources officer. The Act forbids discharge of or discrimination against any employee who files a complaint alleging noncompliance or who participates in legal proceedings under the law.

- 3.10. Administration: Each component university's chief human resources officer is responsible for administering and interpreting the Fair Labor Standards Act for the component university. All inquiries, as well as requests for special exemptions or interpretations, are to be submitted to the component university human resources office.

4. REVIEW AND RESPONSIBILITY

Responsible party: Associate Vice Chancellor for Finance

Review: Every five years, on or before March 1

5. APPROVAL

Approved: Carl P. Carlucci
Executive Vice Chancellor for Administration and Finance

Renu Khator
Chancellor

Date: June 9, 2009

6. REFERENCES

Exhibit A – Definitions of Executive, Administrative and Professional Employees

EXHIBIT A
Fair Labor Standards Act
Definitions of Executive, Administrative and Professional Employees

The following exemption requirements, prescribed in Federal regulations issued pursuant to the Fair Labor Standards Act, are defined in terms of duties, responsibilities, and salary. These federal guidelines are followed to determine whether a position is exempt or non-exempt. An employee is exempt as an executive, administrator or professional when all of the conditions listed below for the particular category are met. A special proviso for determining the exemption status of higher-paid personnel in each of the three categories is also authorized for use.

Executive

An executive employee must meet all of the following requirements in order to be exempt from the Fair Labor Standards Act (FLSA) minimum wage and overtime provisions:

1. Duties – Primary duties consist of the management of the enterprise or of a customarily recognized department or subdivision thereof; and
2. Supervision – Customarily and regularly directs the work of two or more other employees; and
3. Authority – Has the power to hire or fire employees, or whose recommendations are given substantial weight in such decisions, including promotions; and
4. Discretion – Customarily and regularly exercises discretionary power; and
5. Work responsibility – Devotes at least 80 percent of work hours in a workweek to the performance of activities closely related to items (1) through (4); and
6. Compensation – Is paid not less than \$155 per week exclusive of board, lodging or other facilities.

Special Proviso – An employee who is paid on a salary basis at least \$250 per week, exclusive of board, lodging or other facilities, and who performs work in (1) and (2) above, is deemed to be an “executive” and therefore exempt.

Administrative

An administrative employee must meet all of the following requirements in order to be exempt from the FLSA minimum wage and overtime provisions:

1. Duties – primary duties consist of either
 - a. the performance of responsible non-manual or office work directly related to the management of policies or general business operations; or
 - b. the performance of responsible work that is directly related to the academic instruction or training carried on in the administration of an educational establishment; and
2. Discretion – Customarily and regularly exercises discretion and independent judgment and has authority to make important decisions; and

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3. Supervision –
 - a. regularly and directly assists a person employed in an executive or administrative capacity; or
 - b. performs under only general supervision work requiring special training, experience, or knowledge; or
 - c. executes special assignments and tasks under only general supervision; and
4. Work Responsibility – Devotes at least 80 percent of work hours to activities in (1) through (3) and
5. Compensation – Is paid not less than \$155 per week exclusive of board, lodging, or other facilities.

Special Proviso – An employee who is paid on a salary basis at least \$250 per week, exclusive of board, lodging or other facilities, and who performs work described in (1) and (2) above, is deemed to be in the “administrative” classification and therefore exempt.

Professional

A professional employee must meet all of the following requirements to be exempt from the FLSA wage and overtime provisions.

1. Duties – Primary duties consist of the performance of:
 - a. advanced learning acquired by a prolonged course of specialized intellectual instruction as distinguished from general academic education, apprenticeships, or routine training; or
 - b. original or creative work depending primarily on invention, imagination, or talent; or
 - c. teaching, tutoring, instructing, or lecturing for a school system or educational institution; and
2. Discretion – Work requiring consistent exercise of discretion and judgment; and
3. Work product – Predominantly intellectual and varied in character, as distinguished from routine or mechanical duties, and which cannot be standardized in relation to a given period of time; and
4. Work responsibility – Devotes at least 80 percent of work hours to activities in (1) through (3); and
5. Compensation – Is paid not less than \$170 per week exclusive of board, lodging, or other facilities.

Special Proviso – the 20 percent test on non-exempt work does not apply to a professional employee who is paid on a salary basis at least \$250 per week, exclusive of board, lodging, or other facilities, provided the employee performs work described in (1) and (2) above.