

## **UCSD Academic Personnel Fair Labor Standards Act (FLSA) Implementation Guidelines**

The Department of Labor periodically changes the minimum salary required to achieve the professional exemption from FLSA overtime eligibility requirements. In July 2024, the DOL reset the threshold for overtime exemption. However, that decision was vacated by a Federal Judge on November 15, 2024, and the threshold returned to the amount set on January 1, 2020.

With the reinstatement of the January 1, 2020 minimum salary threshold, and following consultation with Systemwide Labor Relations, the University has decided to retain the \$844 per week threshold that was put into effect on July 1, 2024, for academics.

All faculty, including lecturers, as well as other teaching titles, will be unaffected by this rule regardless of how much they earn because the minimum salary threshold does not apply to those who have the primary duty of teaching and imparting knowledge. Additionally, the DOL does not consider undergraduate and graduate students engaged in research and extracurricular activities employees and therefore they are not subject to minimum wage or overtime provisions of the FLSA. Non-faculty, non-student academic appointees in research or administrative positions, however, must meet both the duties test and salary test.

Non-faculty, non-student academic appointees in research or administrative positions, however, must meet both the duties test and salary test. Pursuant to the revised overtime rule that had taken effect on July 1, 2024, non-faculty, non-student academic appointees in research or administrative positions making less than \$844 each week (equivalent to \$43,888 per year for a full-year employee) regardless of the number of days or hours worked were reclassified to non-exempt status.

Both full-time and part-time academic appointees must earn at least \$844 per week to remain exempt. Academic appointees who do not meet both the salary threshold and the duties test will be reclassified to non-exempt overtime eligible.

Separately, academic appointees that meet the definition of a “covered health care employee” and provide patient care, health care services, or services supporting the provision of health care in the following titles: Medical Residents and Interns, Dental Residents, Non-Physician Clinical Trainees, and Clinical Psychology Interns, are subject to the minimum salary thresholds under California Senate Bill 525 (SB 525). SB 525 set a new hourly minimum wage for health care workers and a new exempt minimum wage (which is the greater of 150% of the new health care worker minimum wage for a full-time exempt employee or 200% of the regular California minimum wage). While the enactment of this law was delayed until October 2024, academic appointees were reclassified to non-exempt status and/or had their salaries raised to meet the new minimum wage (\$23/hour) or exempt threshold (\$71,760/year) effective June 1, 2024, per the initial requirements in the law.

1. Current appointees and new hires determined to be non-exempt:
  - a. Appointment letters (consistent with APM – 137) must note the non-exempt title ([UCOP Title lookup table](#)) and include the appropriate hourly rate of pay.
  - b. Appointees transitioning from monthly to biweekly pay will have factor accrual of vacation and sick leave, rather than table accrual.
2. How to Determine FLSA Status:
  - a. Non-instructional appointees whose earnings fall below the threshold will be non-exempt.
  - b. Note that the FLSA salary threshold tests whether the appointee earns at least \$844 per week. Therefore, annual pay rate and percentage of appointment are only general guides to determining FLSA status; actual regular earnings must also be monitored.
  - c. Please note that percentage of effort threshold calculations for titles with salary ranges, and for appointees paid off- or above-scale, must be done separately.
  - d. Also note that other factors of an appointee's employment may affect FLSA status, including whether the appointee holds multiple concurrent appointments in different titles, or receives a regular stipend that increases weekly earnings.
3. Appointees with fluctuating appointment percentages may be non-exempt.
  - a. For an exempt appointee, temporary reductions in appointment at the employee's request may not affect FLSA status; see FMLA instructions for further information.
  - b. If an appointee's percentage of time is reduced for funding reasons or other business reasons, this may trigger a switch to non-exempt status.
  - c. Frequent shifts from exempt to non-exempt status are inadvisable; it is a great inconvenience to the appointee to shift from monthly to biweekly pay and back again, and it could jeopardize UC's compliance with FLSA regulations.
    - i. If available funding is expected to be insufficient to guarantee that an appointee will remain above \$1,128 per week for the entire fiscal year, that appointee should be classified as non-exempt and overtime eligible.
4. Appointees on Leave
  - a. Exempt appointees on leave are generally not required to be reclassified as non-exempt.
  - b. Exempt appointees whose earnings fall below the threshold because they are on partial leave without pay may potentially retain their exempt status.
5. Multi-location appointments
  - a. If an appointee holds concurrent appointments at more than one UC campus/location, then the appointee's primary duties as well as earnings from both locations must be taken into consideration when determining FLSA status.
6. The teaching exception and split appointments
  - a. Under the FLSA, a University employee can only have one FLSA status, overtime exempt or non-exempt/overtime eligible. In determining whether an employee with multiple appointments is exempt or non-exempt, the University must review the appointee's primary duty for the University. Appointees with below-threshold earnings who hold part-time research/administrative appointments and concurrent teaching appointments may be

classified as exempt or non-exempt, depending on the individual's primary duty. For an employee to be designated as exempt, the appointee's primary duty at the University should be the performance of exempt tasks.

7. Without salary appointments

- a. Generally, if the without salary appointee is not earning compensation from UC, they are not considered an employee covered by the Fair Labor Standards Act.
- b. Holding a without salary teaching appointment does not by itself automatically mean that an appointee is exempt (per the FLSA teaching exception).
  - i. An administrative/research appointee with below-threshold earnings will be classified as non-exempt, even if they hold a WOS teaching appointment.

8. Affiliate appointments

- a. The terms of the affiliation agreement between UC and the affiliate govern the employment status of UC faculty placed at affiliate institutions. However, the affiliation agreement will not always be available to you for review.
- b. If the UC faculty member is not earning compensation from UC, and placed at an affiliate institution, they are not considered a UC employee covered by the Fair Labor Standards Act.
- c. If the UC faculty member is earning compensation from UC, and placed at an affiliate institution, they are considered a UC employee covered by the Fair Labor Standards Act.
- d. HHMI/Ludwig appointees continue to be defined as employees of HHMI/Ludwig; however, if an affiliate employee holding a without salary UC faculty title who is appointed to an administrative title does not by itself automatically mean that an appointee is exempt (per the FLSA teaching exception).
  - i. An administrative/research appointee with below-threshold earnings will be classified as non-exempt, even if they hold a WOS teaching appointment.
- e. UC faculty with split appointments, i.e, those with 5/8<sup>th</sup> VA and 3/8<sup>th</sup> UC appointments may be classified as exempt or non-exempt, depending on the individual's primary duty. For an employee to be designated as exempt, the appointee's primary duty at the University should be the performance of exempt task (see #8 above).

9. Recall appointments

- a. Faculty Recalls are exempt, due to the teaching exception.
- b. Non-faculty Recalls are exempt or non-exempt, depending on the duties performed and salary earned.

10. Advising PIs/Supervisors

- a. As hourly-paid employees, non-exempt appointees must record their time on a daily basis and submit timesheets to report their hours for each biweekly pay period, and the supervisor will be required to review and approve the hours reported every other week.
  - i. Provide supervisors with the appropriate method of timekeeping, whether in electronic or paper format and review with them the expectations as to timekeeping and record retention.
- b. The work week is defined as Sunday through Saturday.
- c. Time worked as well as vacation leave and sick leave hours taken must be recorded in increments of ¼ hour (15 minutes).

- d. Non-exempt appointees will be paid for all hours (and partial hours) worked.
- e. Overtime and time worked beyond appointment percentage.
  - i. Part-time appointees who work more than their stated appointment percentage, but less than 40 hours in a week, will receive pay for the extra hours (or partial hours) worked at their straight-time hourly rate.
  - ii. A non-exempt appointee will receive pay at 1.5 times their hourly rate for any time worked in excess of 40 hours in a week, regardless of their appointment percentage.
  - iii. Overtime will be compensated in pay unless your campus allows for compensatory time arrangements (“comp time”).
  - iv. All overtime/additional time worked in excess of appointment percentage must be approved in advance by the supervisor.
    - 1. If an appointee submits a timesheet that reports non-approved time, they still must be paid for that time.
    - 2. However, working unapproved overtime/additional time can be cause for disciplinary action. Also, if an appointee is regularly working overtime/additional time, the appointee’s appointment percentage should be adjusted.
- f. Other compensable time for non-exempt appointees includes:
  - i. *Donning and Doffing*. Time spent changing into or out of protective clothing or engaging in special washing or cleaning procedures is considered time worked.
  - ii. *Travel Time*. If the appointee does not have regular working hours, the supervisor will assign regular work hours for any workweek during which travel will occur for the purpose of identifying and tracking compensable travel time. The travel during the appointee’s regular working hours is considered time worked. Travel time outside of the assigned regular work hours is not time worked, unless actual work is performed during that time.
  - iii. *Rest Breaks*. The University makes accommodation for breaks during the work day. Meal breaks are not considered compensable time (i.e., a lunch break should not be recorded as time worked).