



July 1, 2024

The U.S. Department of Labor issued new guidelines in determining the Fair Labor Standards Act (FLSA) exemption from overtime eligibility of positions at our institution. Effective July 1, 2024, the salary level required for an exemption will increase to \$844 per week (equivalent of \$43,888 per year for a 12-month obligation).

In response, Human Resource Management will be performing the FLSA duties test, which includes the salary test, to determine if currently 'exempt' employees should be reclassified to 'non-exempt' status, eligible for overtime pay for any hours worked beyond 40 hours in a work week. *Where appropriate, Human Resource Management will notify employees of their new non-exempt status.*

When a non-exempt employee's work week exceeds 40 hours, the excess hours are eligible for overtime pay at 1.5 times the employee's regular rate of pay. Buffalo State management has elected to pay overtime as it is earned rather than utilize FLSA compensatory time for excess hours worked.

UUP represented professional employees will continue to have a professional obligation vs. a defined number of hours in the work day or work week. However, we will need to document hours worked for the purpose of reporting work hours that exceed 40 hours in a work week (Thursdays through Wednesdays). For employees in the UUP bargaining unit, paid time off (using vacation, sick, or holiday accruals, or paid holidays) is not counted as hours worked in that week.

Non-Exempt employees must:

1. Obtain **advanced** written approval from their supervisor in order to work overtime hours. This can be an email from the supervisor to HRM (HR@buffalostate.edu) authorizing an exact number of overtime hours for a set time period (ex. "4 hours of overtime for July 1-3").
2. Record their hours of work each day on the FLSA timesheet in the SUNY HR online Time and Attendance System and submit it to their supervisor at the end of each payroll period. The number of daily hours worked must be recorded.
3. Continue to submit monthly time/attendance records in the SUNY HR online Time and Attendance System (TAS) which documents leave accruals and charges.

Payroll calendars are available at hr.buffalostate.edu/payroll.

Time and Attendance System guides are available at hr.buffalostate.edu/attendance-records.

Please contact the Human Resource Management Office at ext. 4822 with any questions.



TRAVEL TIME, REMOTE ACCESS / CELL and SMART PHONE, MEETINGS and TRAINING GUIDE

The following guidance is provided to ensure compliance related to travel, meetings, training, remote access and cell/smart phone usage. Ensuring that all work is properly compensated requires vigilance. Off-the-clock work, whether voluntary or involuntary, cannot be permitted.

Travel Time

§785.38 Travel that is all in the day's work.

Commuting time is expressly excluded from the hours worked by an employee. On the other hand, time spent by an employee in travel as part of his/her principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time. However, if the employee goes home instead of returning to his employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked. Commuting time is expressly excluded from the hours worked by an employee.

§785.39 Travel away from home community.

Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly worktime when it cuts across the employee's workday. The employee is simply substituting travel for other duties. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days. Thus, if an employee regularly works from 9 a.m. to 5 p.m. from Monday through Friday the travel time during these hours is worktime on Saturday and Sunday as well as on the other days. Regular meal period time is not counted. As an enforcement policy the Divisions will not consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

§785.41 Work performed while traveling.

Any work which an employee is required to perform while traveling must, of course, be counted as hours worked. An employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when he is permitted to sleep in adequate facilities furnished by the employer.

Out-of-Town Travel Example

If the trip is out-of-town and overnight, then only those hours spent traveling during the employee's normal working hours are included in the hours worked—unless the employee is performing work during the travel.



For example, assume a non-exempt employee normally works from 8:00 a.m. to 5:00 p.m., Monday-Friday. The employee leaves on a plane at 5:00 p.m. on Friday to meet with potential out-of-state students. The employee prepares his notes on the plane. He arrives and continues reviewing the file in the hotel. He departs for the meeting at 7:30 a.m. on Saturday, taking a taxi and arriving at 8:00 a.m. He leaves the meeting location at 1:30 p.m. and departs on a 3:00 p.m. flight home. In this case, the time spent as a passenger on the plane to the meeting is not compensable, with the exception of the time spent preparing notes or otherwise performing work. Similarly, the employee must be compensated for the additional time preparing for the meeting in his hotel room. On Saturday, the taxi drive would not be compensable (unless the employee was preparing in the taxi), but the time spent in the meetings and the trip home (until 5:00 p.m.) would be counted toward hours worked.

Coaches and Athletic Trainers Example

If the coach's trip takes place in a single day — for example, a visit to an in-state recruit who lives in a town 60 miles from campus — then all of the time spent traveling will be included in the hours worked by the coach. If the trip is out of town and overnight, then only those hours spent traveling during the coach's normal working hours are included in the hours worked — unless the coach is performing work during the travel. For example, if a coach normally works from 7 a.m. to 7 p.m., and the team boards a bus to an out-of-state meet at 7:30 p.m., arriving at the hotel at 11:30 p.m., then the time spent as a passenger on the bus is not compensable. If the coach was reviewing team-related paperwork, preparing a game plan or watching film on his tablet, however, then the time spent doing so would be included in the hours worked. Similarly, if the coach was responsible for supervision of the student athletes while on the bus, then the time would be included.

Remote Access / Cell and Smart Phone

Non-exempt employees may be able to work outside of normal hours, such as accessing networks remotely and using cellphones and smartphones to communicate with others. These actions are all likely "work" under the FLSA, and thus would need to be included in the hours worked by that employee. In addition, due to the application of some legal principles developed for a 1960s workforce, time spent waiting for a call or in between an e-mail and response may also become time that must be included in the employee's work hours.

The law requires that the employee be paid for those working hours — particularly if those hours would cause the employee to work more than 40 hours in the work week. If an institution does not want to pay for the time, the work must not be performed. This could involve prohibiting remote access or smartphone usage, limiting the use to normal working hours, and/or crafting working hours to accommodate these tasks as part of the employee's "normal" schedule.



Meetings and Training

As a general rule, meetings and training sessions must be included in working hours. Only when the meeting meets the following four criteria can it be 'excluded' from work hours:

1. attendance is outside of the employee's regular working hours;
2. attendance is in fact voluntary;
3. the course, lecture or meeting is not directly related to the employee's job; and
4. the employee does not perform any productive work during such attendance.

Given the standards, most conferences attended by non-exempt employees must be included in work hours. "Working" lunches or similar lunch meetings typically do not meet these criteria and must be included in work hours. It's also important to remember that providing the food that is eaten during the lunch does not change the meeting from working hours to non-working hours. Only when all four of the above criteria are met can a meeting be excluded from working hours.

Resources:

<https://www.dol.gov/agencies/whd/overtime/salary-levels>

<https://www.cupahr.org/advocacy/key-issues/flsa/>