

UCSD Academic Personnel DOL Implementation Guidelines

Compliance with Department of Labor Increase in Minimum Salary Threshold: Salary Scale Increases and Reclassification to Non-exempt Academic Appointees

The Department of Labor is changing the minimum salary required to achieve the professional exemption from FLSA overtime eligibility requirements. The minimum salary required to achieve exempt status will be \$47,476/yr which equates to \$913 per week effective December 1, 2016.

Salary Scale Increases for Full-Time Academic Appointees to Remain Exempt

Beginning on November 20, 2016, the salary scales for Assistant Specialist, Steps 1 and 2, and for Coordinators of Public Program I, Steps 1 and 2, will be raised above the DOL threshold of \$47,476 per year so full-time appointees in those series will remain exempt. As of October 21, 2016, UCSD had no appointees in these titles at these steps.

UCOP was able to reach an agreement with the DOL regarding the salary threshold for academic year Academic Coordinator I, Steps 1-3, resulting in no change to that scale. Because the current salary level when adjusted for 12-months is greater than \$47,476, DOL agreed that it meets the threshold.

The Office of Postdoctoral & Visiting Scholar Affairs will publish information about postdoc salary scale changes. <http://postdoc.ucsd.edu/>

Reclassification to Non-Exempt: Junior Specialists and Part-Time Academic Appointees Below the DOL Salary Threshold

Beginning on November 20, 2016, non-instructional academic appointees who are currently exempt from earning overtime will be reclassified as non-exempt because their earnings fall below the new Department of Labor overtime threshold of \$913 per week (monthly exempt salaried employees must be paid at least \$3,956.34 per month to remain exempt).

- The University must comply with the DOL rule by December 1, 2016.
- To facilitate a smooth transition, the University has chosen to implement the necessary measures to comply on November 20, 2016, which is the first day of a biweekly pay period.

These Implementation Guidelines are intended to assist with the transition from exempt to non-exempt status. If you have further questions, please contact Kelly Maheu at kmaheu@ucsd.edu.

New title codes have been issued for non-exempt academic appointees. Payroll guidelines and instructions regarding the new non-exempt title codes will be provided at a later date.

1. Appointees determined to be non-exempt:
 - a. They must be appointed in the appropriate non-exempt version of their title effective November 20, 2016.

- b. New appointment letters (consistent with APM – 137) must be issued and include the appropriate hourly rate of pay. Academic Personnel is preparing letters requiring the General Campus and SIO Dean’s and VC’s signatures. The Graduate Division is sending the letters to affected Visiting Graduate Students in the Junior Specialist title. The Office of Postdoctoral Affairs will send letters to postdocs. And, the VC Health Sciences will send letters to affected employees in Health Sciences.
 - c. Their current monthly salaried appointments must be ended effective November 19, 2016.
 - d. As of November 20, 2016, non-exempt appointees will be paid biweekly on an hourly basis. These appointees will receive their last monthly salaried basis partial paycheck on December 1 for work between November 1 through November 19.
 - i. It is important that appointees review their personal budget situation, automatic bill pay, and deductions to plan for the biweekly pay conversion.
 - e. The 2016 Transition Assistance Vacation Cash Out Program offers eligible appointees who are transitioning from a monthly to a biweekly pay cycle an option to assist them in meeting their financial obligations during the transition period. Affected eligible appointees may apply for a vacation accrual cash out payment. Completed and signed [applications](#) should be submitted to Payroll at Mail Code 0952.
 - f. Affected appointees may also apply for an [emergency loan](#) through the USE credit union.
 - g. Appointees transitioning from monthly to biweekly pay will have factor accrual of vacation and sick leave, rather than table accrual.
2. Appointees who will be classified as non-exempt and overtime eligible include all Junior Specialists, as well as part-time appointees in specific titles (i.e., research and academic administrative titles - see Appendix) whose earnings fall below \$913 per week. New non-exempt title codes and salary scales with the hourly rates have been issued for impacted titles.
3. How to Determine FLSA Status:
- a. As mentioned above, all Junior Specialists will be non-exempt and eligible for overtime as of November 20, 2016.
 - b. Non-instructional appointees whose earnings fall below the threshold will be non-exempt.
 - c. To help in determining if a part-time employee’s earnings are likely to fall below the threshold, please see the [DOL Threshold Percentage chart](#). This tool identifies for each affected series, rank and step the minimum percentage of effort at which an appointee’s earnings would be expected to meet or exceed the annual threshold
 - d. Note that the FLSA salary threshold tests whether the appointee earns at least \$913 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.
 - e. 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.
 - f. 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.
4. 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 \$913 per week for the entire fiscal year, that appointee should be classified as non-exempt and overtime eligible.
5. 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.
6. 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 account when determining FLSA status.
7. 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.
8. 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.
9. 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 5/8th VA and 3/8th 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).

10. 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.

11. 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).

Please visit the Academic Personnel DOL web page for lists of affected titles, key dates, helpful tools, new title codes and salary scales, and links to campus payroll and timekeeping information.