



On April 23, 2024, the Department of Labor (DOL) issued the highly anticipated final rule to alter the overtime pay regulations under the Fair Labor Standards Act (FLSA). The following document provides rule highlights and answers to some frequently asked questions.

RULE HIGHLIGHTS

- **Standard Salary Level:** The final rule increases the minimum salary threshold to \$43,888 on July 1, 2024, and then to \$58,656 on January 1, 2025. Institutions will need to make all necessary adjustments by July 1, 2024, in order to be in compliance with the final rule.
- **Salary Level for Highly Compensated Employees:** The final rule increases the salary level for the Highly Compensated Exemption (HCE) from its current level of \$107,432 to \$132,964 per year on July 1, 2024, and then to \$151,164 on January 1, 2025.
- **Duties Test:** The rule does not make any changes to the duties requirements.
- **Automatic Updates:** The threshold will be automatically updated every three years by tying the threshold to the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region. The automatic updates will begin on July 1, 2027.

Frequently Asked Questions

1. WHAT DOES THIS UPDATED RULE DO?

The updated rule would raise the salary threshold for determining who can be exempt from required overtime pay. In 2016 a similar rule was issued but was halted by an injunction, which may occur again this year. If the courts halt it, N.C. A&T will reassess its approach to these changes and update the campus community. The rule would take effect in two stages and does the following:

- Establishes \$43,888 as the salary threshold required to be exempt from overtime pay requirements, effective July 1, 2024.
- Increases the salary threshold to \$58,656, effective January 1, 2025.
- Requires salary threshold increases every three years based on the latest earnings data.

2. HOW WILL IT AFFECT N.C. A&T?

The overtime rule could require some employees whose annual base salary is below the new threshold to transition to hourly (non-exempt status) while other employees may see a pay adjustment to maintain their exempt status. Though the rule is being challenged in court, Human Resources is reviewing data and working with leadership to finalize which positions may be affected by the new regulations. If it is blocked by the courts, N.C. A&T will reassess its approach to these changes and update the campus community.

3. HOW WILL I KNOW IF THIS UPDATED REGULATION APPLIES TO ME?

You and your supervisor will be notified personally by Human Resources. The rule does not apply to faculty. In 2016 a similar rule was issued but was halted by an injunction, which may occur again this year. If the courts halt it, N.C. A&T will reassess its approach to these changes and update the campus community.

4. WHAT IS THE FAIR LABOR STANDARDS ACT (FLSA)?

The Fair Labor Standards Act establishes minimum wage, overtime pay, recordkeeping, and youth employment standards. The Office of State Human Resources (OSHR) policies, UNC System Office policy manual, and the University's compensation policies and processes comply with the FLSA.

5. WHAT DOES THE TERM "NON-EXEMPT" MEAN?

Non-exempt employees are covered by the overtime and recordkeeping provisions of the FLSA and are entitled to overtime pay if work exceeds 40 hours in one workweek. Overtime is paid at a premium of time and one-half of the employee's regular hourly rate and compensated either in pay or in accrual of compensatory time. Human Resources is responsible for determining the exemption status for positions at N.C. A&T, consistent with FLSA regulations.

6. WHAT DOES THE TERM "EXEMPT" MEAN?

Exempt employees are not covered by the overtime provisions of the FLSA and are paid an agreed-upon amount for the whole job, regardless of the amount of time or effort required to complete the work. Exempt employees receive a set monthly salary regardless of the number of hours worked. Exempt employees do not record hours of work.

7. WHAT CRITERIA ENABLE EMPLOYEES TO BE EXEMPT FROM THE FLSA OVERTIME PROVISIONS?

To be exempt, an employee must meet ALL standards in the following "tests":

- be paid not less than the minimum salary established by the FLSA – the "salary level test;"
- AND be paid on a salary basis as opposed to an hourly basis – the "salary basis test;"
- AND perform certain duties as outlined in one of the "duties tests."

8. WHAT IS THE SALARY LEVEL TEST?

The first stage of the FLSA salary level test revised effective July 1, 2024, requires that an employee's salary must be at least \$43,888 annually to be considered exempt from the overtime provisions. An employee with a salary less than \$43,888 annually must be classified as non-exempt. Stage two, effective January 1, 2025, requires that an employee's salary must be at least \$58,656 annually to be considered exempt from the overtime provisions. Salary is one of three standards that must be met for a position to be considered exempt.

9. WHAT DUTIES TESTS ARE APPLICABLE TO N.C. A&T EMPLOYEES?

To be exempt, an employee must qualify under one or more of the following tests:

- Executive exemption test
- Administrative exemption test
- Professional exemption test
- Computer exemption test
- Highly compensated employee exemption test

Each duties test has specific requirements that must be met for an employee to be exempt. For example, the Executive Exemption requires that an employee a) supervise two or more full-time employees (or their FTE equivalent), b) have authority to hire and fire, or meaningfully recommend hiring and firing, and c) manage a recognized department or subdivision. More information on the exemption tests is available on the [Department of Labor website](#).

10. HOW IS THE DUTIES TEST APPLIED?

Human Resources is responsible for determining which of the FLSA exemptions would be appropriate for all staff jobs employed by the University. This determination is based on an assessment of the job as described/performed compared with the criteria for each exemption test.

11. HOW DO YOU DETERMINE NONEXEMPT/EXEMPT STATUS FOR PARTIAL-YEAR EMPLOYMENT? FOR EXAMPLE, HOW DO YOU DETERMINE EXEMPTION STATUS FOR EMPLOYEES WHO WORK FOR LESS THAN 12 MONTHS PER YEAR BUT ARE PAID THEIR SALARY OVER A 12-MONTH PERIOD?

According to the [Wage and Hour Division \(WHD\) Field Operations Handbook](#), institutions “may prorate the salary of an otherwise-exempt employee who has a duty period of less than a full year.” For example, an employee who works a nine-month schedule but receives paychecks over a 12-month period may have their checks prorated over the actual period of work (nine months) to determine whether the employee is paid at least the salary threshold.

12. CAN ROOM AND BOARD BE INCLUDED IN TOTAL COMPENSATION TO MEET THE SALARY THRESHOLD?

No. The new rule states “Total annual compensation does not include board, lodging, or other facilities.”

13. CAN OTHER BENEFITS, SUCH AS HEALTH INSURANCE, DENTAL INSURANCE AND TUITION REIMBURSEMENT, BE COUNTED TOWARD AN EMPLOYEE’S SALARY TO MEET THE SALARY THRESHOLD?

No. Similar to room and board, benefits provided to an employee such as health and dental insurance or tuition reimbursement cannot be counted toward an employee’s salary to meet the salary threshold. These would fall under “other facilities” as included in the regulatory language.

14. WHAT CONSTITUTES TIME WORKED UNDER THE FLSA?

Time worked under the FLSA includes all time spent performing job-related activities (a) that genuinely benefit the employer, (b) which the employer “knows or has reason to believe” are being performed by an employee, and (c) which the employer does not prohibit the employee from performing. These can include activities performed during “off-the-clock” time, at the job site or elsewhere, whether “voluntary” or not. Examples of work time include a) time worked before the scheduled start time; b) eating lunch at the desk, while answering the phone, serving clients, or performing any work; and c) time worked after the scheduled ending time. Examples of non-work time include a) eating lunch at desk, but not answering phone nor working, and b) meal periods of 30 minutes or longer.

15. WHO IS RESPONSIBLE FOR KNOWING WHEN WORK IS PERFORMED?

The employee’s supervisor is responsible for monitoring when work is performed. Overtime should be pre-approved by the supervisor and recorded on the time record. The supervisor is responsible for verifying and approving time records. All hours worked must be paid even in instances where pre-approval has not been granted.

16. IS LUNCHTIME OR DINNER TIME “WORK TIME” OR “REST TIME”?

Bona fide mealtime is not work time. The meal period generally should be at least 30 minutes. The employee must be completely relieved of all duties, and the employee must be free to leave the duty post. We recognize the importance and benefits of taking regular breaks and lunch periods. These key benefits include increased productivity, improved mental health, better physical health, enhanced creativity, and greater job satisfaction. While the North Carolina Wage and Hour Act does not mandate employers to provide rest breaks, an employee’s full-day work schedule should include a lunch break of at least 30 minutes.

17. IS A NON-EXEMPT EMPLOYEE PAID FOR TIME TO TRAVEL BETWEEN ONE WORK LOCATION AND ANOTHER WORK LOCATION?

Travel from one work site to another during the workday is work time. Special rules exist for out-of-town overnight travel. For specific details, please contact the University Travel Office and review the [University Travel Policy](#).

18. WHAT IS THE DEFINITION OF OVERTIME?

Overtime is time worked by a non-exempt employee that exceeds 40 hours in one workweek.

19. MUST OVERTIME BE APPROVED IN ADVANCE?

In support of the supervisor's continued awareness of unit work volume, individual productivity, and available funds to pay overtime compensation, the supervisor must provide prior approval for a non-exempt employee to work overtime. While overtime must be approved in advance, all worked time, whether approved or not, must still be compensated. Supervisors facing scenarios in which an employee works unapproved time, should consult with Employee Relations & EEO for guidance.

20. WHAT IS COMPENSATORY OR "COMP" TIME?

Under the FLSA, comp time is paid time off the job earned and accrued by an employee in lieu of cash payment for work performed in excess of 40 hours per workweek. The FLSA requires that comp time be earned at a rate of one-and-one-half hours for each hour worked over 40 in one workweek. Accrual of comp time in lieu of pay must be agreed upon by the employee and supervisor prior to the work being performed.

21. ONE OF MY NON-EXEMPT EMPLOYEES HAS EARNED COMPENSATORY TIME OFF. NOW THAT THE EMPLOYEE IS BECOMING EXEMPT, CAN THEY RETAIN THE COMPENSATORY TIME BALANCE?

In accordance with the Fair Labor Standards Act, exempt employees are ineligible to earn or retain a compensatory time off balance, and the balance must be paid off in full, effective with the change to exempt status. As per the University's [Policy on Overtime and Compensatory Time for SPA \[SHRA\] Non-Exempt Employees](#), "When an employee leaves the University or transfers to another University department, the department the employee is leaving must pay the employee for all accumulated and unused CTO (Compensation Time Off)."

22. MAY A NON-EXEMPT EMPLOYEE VOLUNTEER TO WORK UNPAID HOURS IN THEIR REGULAR JOB IN ADDITION TO THEIR REGULAR SCHEDULE?

No. All non-exempt employees must be compensated for all hours worked in their regular job.

23. MAY A NON-EXEMPT EMPLOYEE WAIVE THEIR RIGHTS TO OVERTIME COMPENSATION?

No. All non-exempt employees must be compensated for all hours worked at the appropriate pay rate.

24. CAN THE SUPERVISOR MAKE A NON-EXEMPT EMPLOYEE LEAVE EARLY ON FRIDAY SO THE EMPLOYEE'S TOTAL HOURS WILL NOT EXCEED 40 IN THE WORKWEEK?

This is one method to effectively manage work time and the department budget.

25. CAN EXEMPT EMPLOYEES MAINTAIN SEPARATE OVERTIME RECORDS AND RECEIVE OVERTIME?

Exempt employees are ineligible to receive overtime payment or compensatory time off. There are instances, however, when a supervisor might permit flexible work hours to accommodate, for example, an exempt employee who worked an excessive number of hours in a prior workweek or who routinely

works more than 40 hours in one workweek. Any such accommodation should be on an hour-for-hour basis.

26. WHO MUST COMPLETE A TIME RECORD?

Regardless of exemption status, all employees are required to maintain accurate timekeeping and use of leave. For non-exempt employees, you must ensure accurate recording of your work hours, including start and end times, lunch breaks, and any overtime. Non-exempt employees must record all time worked and all paid and unpaid leave used. Exempt employees do not record their hours worked but must record all leave used. However, some FLSA-exempt employees may be required to complete detailed records of hours worked, based on the business needs of the work unit.

27. WILL THE FINAL RULE BE CHALLENGED IN COURT?

Yes. On May 23, a group of 13 local and national associations and Texas businesses filed suit in federal court in Texas, challenging the U.S. Department of Labor's rule setting new minimum salary thresholds for the white-collar overtime pay exemptions under the FLSA. The suit claims that the salary threshold that goes into effect on January 1, 2025, is so high it will result in more than 4 million individuals being denied exempt status, even though these individuals could be reasonably classified as exempt based on their duties, and in doing so, the rule violates both the statutory language of the FLSA and prior court decisions. The suit also challenges the automatic updates.

N.C. A&T Human Resources is working collaboratively with the Division of Business & Finance and the Division of Legal Affairs, Risk and Compliance (DLARC) and continues to monitor reliable resources such as the U.S. Department of Labor Wage & Hour Division, the College and University Professional Association for Human Resources (CUPA-HR), the Society for Human Resources (SHRM) for regular updates and guidance on DOL's overtime final rule and the court case underway.