TO: Indiana Public Libraries

FROM: Indiana State Library

RE: **Fair Labor Standards Act - Overtime provisions as they apply to public libraries**

DATE: August 12, 2016 (updated 6/28/18)

**Q: What are FLSA overtime pay requirements?**

A: Employees must be paid at least the federal minimum wage of $7.25 per hour. Non-exempt employees must be paid overtime at 1 ½ time their normal pay wage for each hour worked past 40 in any given work week.

The law requires that even if employees are paid every two weeks, the employer has to look at the hours worked by employees each week to determine if overtime pay is warranted. For example, if Sally is non-exempt and works 44 hours the first week of the pay period and then 36 hours the second week of the pay period, she must still be paid overtime for the 4 hours she worked extra during the first week of the pay period. The employer cannot average the two weeks together to avoid paying overtime.

**Q: What does exempt and non-exempt mean?**

A: The overtime and minimum wage provisions provided by the FLSA are applicable only to employees classified as nonexempt. Employees classified as nonexempt are eligible to enjoy the minimum wage and overtime requirements of the FLSA. Employees classified as exempt cannot benefit from (do not qualify for) the minimum wage or overtime provisions of the FLSA.

**Q: How do I know if an employee is exempt or non-exempt?**

A: There is a 3-factor test to determine whether or not an employee is considered exempt from the FLSA minimum wage and overtime provisions. The employee must meet each factor of the test in order to be considered exempt. If even one of the factors is not met, the person is not considered exempt and is thus eligible for overtime pay for hours worked over 40 in a work week.

The 3-factor test to determine if an employee is exempt from the FLSA is as follows:

1. Salary basis: According to the Department of Labor (DOL), the employee must regularly receive a predetermined amount of pay each pay period (on a weekly or less frequent basis) and the compensation is not reduced because of variations in the quality or quantity of work performed.
2. Salary level: Employee must be paid at least a $455 salary per week which is $23,660 annually.
   * There are special rules for using non-discretionary bonuses to meet up to a maximum of 10% of the new salary threshold. See: <https://www.dol.gov/whd/stateandlocalgovernment/ca_tutorial/media/OT%20Examples%20Final.htm>
   * According to the DOL, the monetary value of insurance, retirement, and other benefits the employer pays for the benefit of the employee may not count toward the minimum salary requirement of the 3-factor test to determine whether an employee is exempt.
3. Job duties: The employee must perform certain duties such as executive, administrative, or professional.
   * Executive – According to the DOL, the employee’s “primary duty is management of the enterprise or of a customarily recognized department or subdivision; customarily and regularly directs the work of two or more employees; has authority to fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees is given particular weight.”
   * Administrative – According to the DOL, the employee’s “primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.”
   * Professional – According to the DOL, the employee’s “primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction **OR** primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.”

The salary basis and salary level tests do not apply to computer related occupations paid at least $27.63 per hour. There are also special rules for highly compensated individuals (employees who earn more than $100,000 per year)

See: <https://www.dol.gov/whd/overtime/fs17a_overview.pdf> for more information about what qualifies as executive, administrative, or professional work or for more information about the requirements for computer related occupations or the rules regarding highly compensated employees.

**Q: Can we use compensatory time off (comp time) instead of pay to reimburse non-exempt employees for hours worked over 40 in a given work week?**

A: Yes, public employers may provide comp time instead of overtime pay. However, the following must be followed if the public employer will provide comp time instead of overtime pay:

* Comp time accrues at time and a half, just the same as overtime pay. For example, if a non-exempt employee works 41 hours in a work week, and the library provides comp time instead of overtime pay, the employee has earned 1 ½ hours of comp time.
* Comp time may generally be accrued up to a maximum of 240 hours (This would be the total comp time accrued for working 160 hours overtime).
* Employers must allow employees to use their accrued comp time when the employees request unless doing so would “unduly disrupt the operations of the agency.”
* There must be an established policy or agreement in place (which states that comp time will be provided instead of overtime pay) prior to the time the employee works the overtime.

**Miscellaneous facts:**

According to the DOL, “the FLSA states that public sector employees may not volunteer to do the same work for which they are employed.”

According to the DOL, employers must post a notice explaining the FLSA provisions “in a conspicuous place such as a lunch room or employee lounge area.”

See example here: <https://www.dol.gov/whd/regs/compliance/posters/wh1385State.pdf>

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**Sources:** The Information in this memo was taken from:

* The DOL website: <https://www.dol.gov/whd/overtime_pay.htm>;

In the interest of brevity, this memo is intended to be a high level view of the FLSA overtime provisions and is not intended to be complete description of all FLSA provisions. For more information about FLSA requirements, please visit the DOL website. For specific questions about FLSA requirements, contact the DOL at <https://www.dol.gov/general/contact> or 1-866-487-9243.