Fair Labor Standards Act (FLSA)

The purpose of this session is to address variable hour employees that may be performing FLSA Exempt work for the University.

- The Fair Labor Standards Act was passed in 1938
- Established a minimum wage
  - Delaware $7.75/hour
- Provided standards
  - Equal Pay
  - Workweek
  - Overtime Pay
  - Record Keeping
  - Youth Employment
Fair Labor Standards Act

- Hours worked include all the time an employee is required or permitted to be on duty on the employer's premises or at a prescribed workplace.
- Overtime must be paid if the employer "knows or has reason to know" that the employee is working.
- Hours in excess of 37.5 hour per week compensated at the regular rate.
- Overtime pay is based on the regular wage rate.
- Covered non-exempt employees must receive overtime pay for hours worked over 40 per workweek.
- One-and-one half times the regular rate over 40 in the same workweek.
Non-exempt Position Responsibilities

Position responsibilities generally considered non-exempt:

- Follows experiment protocols
- Repairs, calibrates, and maintains highly complex equipment and/or machinery
- Recommends changes to or modifies equipment to meet specific requirements
- Collects, prepares, processes specimens, records research data
- Maintains chemicals and equipment inventory and related log books to ensure laboratory/facility safety
- Assists students with course selection
- Reconciles monthly financial statements
- Assists with budget development
- Supports the preparation of applications or renewals for grants and contracts
- Updates and maintains web pages
- Safeguards confidential/sensitive information
Fair Labor Standards Act

- White collar exemptions: Executive, Administrative, Professional, Outside Sales, and Computer Employees (Minimum salary, $455/week).

- To be considered an Exempt employee, an employee must generally be paid on a salary basis and his/her job duties must meet the Department of Labor’s standards for one of the categories of exemptions.
# Fair Labor Standards Act

## Department of Labor, Wage and Hour Division Fact Sheets

<table>
<thead>
<tr>
<th>#17A Overview</th>
<th>#17D Learned Professional</th>
</tr>
</thead>
<tbody>
<tr>
<td><a href="http://www.udel.edu/002210">http://www.udel.edu/002210</a></td>
<td><a href="http://www.udel.edu/002213">http://www.udel.edu/002213</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>#17C Administrative</th>
<th>#17E Computer Professional</th>
</tr>
</thead>
<tbody>
<tr>
<td><a href="http://www.udel.edu/002212">http://www.udel.edu/002212</a></td>
<td><a href="http://www.udel.edu/002214">http://www.udel.edu/002214</a></td>
</tr>
</tbody>
</table>
Variable hour jobs that meet the FLSA criteria for Exemption can be paid a fixed dollar amount (salary) over a contract period.

Hours for these positions will be recorded at a standard weekly amount.

This means that hours are not tracked through UD Time.
Identify jobs that you think may be Exempt.

Review the Department of Labor FLSA Fact Sheets to determine if, in your opinion, the job may meet Exemption criteria.

Complete the FLSA Checklist, a new form that was created by Human Resources to provide information about part-time variable hour jobs. The form is to be used ONLY when you are requesting to pay an individual a fixed dollar amount (salary) over a contract period.

The form can be found online at:  http://www.udel.edu/002250
HR Liaison Actions

Special Note About Students Who Have Been Traditionally Paid on fixed dollar amount (salary) over a contract period.

University students who participate in activities generally recognized as extracurricular are generally not considered to be employees within the meaning of the Fair Labor Standards Act. Students serving as residence hall assistants who are participants in a bona fide educational program, and receive remuneration in the form of reduced room rates, tuition credits, and the like are not employees under the Fair Labor Standards Act.

Please contact Class & Comp if you believe you have someone who fits this category.
HR Liaison Actions

This form must be completed in its entirety, signed by the Business Officer or Unit HR Manager and forwarded to HR-Classification & Compensation (by e-mail: HR-class@udel.edu, campus mail or fax: 831-1482).

University of Delaware
Fair Labor Standards Act – Exempt/Non-Exempt Status Checklist

Exempt/Non-Exempt status is based on regulations outlined under the Fair Labor Standards Act. Exemption from the Act is determined by a salary basis test and job duties, which must meet the Department of Labor’s standards for one of the four categories discussed below. See: Department of Labor, Wage and Hour Division, Fact Sheet #17A.

<table>
<thead>
<tr>
<th>Department of Labor, Wage and Hour Division Fact Sheets</th>
</tr>
</thead>
<tbody>
<tr>
<td>#17A <a href="http://www.udel.edu/002210">http://www.udel.edu/002210</a></td>
</tr>
<tr>
<td>#17C <a href="http://www.udel.edu/002212">http://www.udel.edu/002212</a></td>
</tr>
</tbody>
</table>

After reviewing Fact Sheet #17A, please answer the following questions for each worker that, in your opinion, could be classified as exempt. For all jobs, please provide the following:

<table>
<thead>
<tr>
<th>Proposed Job Title:</th>
<th>Employee Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Empl ID (if available):</td>
</tr>
<tr>
<td>Proposed Date of Hire:</td>
<td>Department:</td>
</tr>
<tr>
<td>Semi-Monthly Comp Rate:</td>
<td>Supervisor:</td>
</tr>
<tr>
<td>Contract Dates:</td>
<td>Date Completed:</td>
</tr>
<tr>
<td>Proposed Weekly Hours:</td>
<td>Completed By:</td>
</tr>
<tr>
<td>Comments:</td>
<td></td>
</tr>
</tbody>
</table>


HR Liaison Actions

Provide information about the job so that HR Class/Compensation can fully understand the job context and compensation.

<table>
<thead>
<tr>
<th>Proposed Job Title:</th>
<th>Employee Name:</th>
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<tr>
<td></td>
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</tr>
<tr>
<td>Comments:</td>
<td></td>
</tr>
</tbody>
</table>

Context of position with a brief description of at least three major functions of the job, required minimum education and experience.

Sample:
The position will serve as the Interim Director of a graduate program until a permanent replacement is identified.
- The position will manage and facilitate strategic planning related to a graduate program.
- The position will supervise and facilitate research efforts.
- This position requires a PhD. and experience leading and managing a program.
HR Liaison Actions

The completed form must be signed by the College Business Officer or Unit HR Manager.

<table>
<thead>
<tr>
<th>Context of position with a brief description of at least three major functions of the job, required minimum education and experience.</th>
</tr>
</thead>
</table>

Signature (College Business Officer/Unit HR Manager) ___________________________ Date ___________________________

Please submit the completed form to HR-Classification & Compensation, Office of Human Resources, 413 Academy Street (first floor), Newark, DE 19716. Classification & Compensation will respond to the applicable College Business Officer/Unit HR Manager with a determination of the FLSA status. Note, if the job changes and/or compensation drops lower than the amount indicated for the applicable exemptions, a new checklist must be completed prior to the approval of any change.
HR Liaison Actions

Sections within the checklist require a response that is directly related to the specific exemption Administrative, Learned Professional, Creative Professional, or Computer Professional.

A. **ADMINISTRATIVE EMPLOYEE.** See: Department of Labor, Wage and Hour Division, Fact Sheet #17C. Answer the following to determine whether a worker should be classified as an exempt administrative employee.

1. Is the employee’s primary duty performing office or non-manual work directly related to the management or general business operations of the University or its customers?  
   - [ ] Yes  
   - [ ] No  
   - [ ] Don’t Know

2. Does the employee exercise discretion and independent judgment with respect to matters of significance? That is, does he/she evaluate and compare possible courses of action and then make a decision or recommendation after considering the various possibilities?  
   - [ ] Yes  
   - [ ] No  
   - [ ] Don’t Know

3. Is the employee paid the equivalent of at least $455 per week on a salary basis?  
   - [ ] Yes  
   - [ ] No  
   - [ ] Don’t Know

B. **LEARNED PROFESSIONAL EMPLOYEE.** See: Department of Labor, Wage and Hour Division, Fact Sheet #17D. Answer the following to determine whether a worker should be classified as an exempt learned professional:

1. Is the employee’s primary duty to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized
Once evaluated by HR Class/Comp, a completed copy will be returned to you for action.

If the position is determined to be Exempt, you will complete a JED for the job. If the position is determined to be Non-Exempt, the individual will continue to be paid through UD Time.

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**For Office of Human Resources Use Only**

<table>
<thead>
<tr>
<th>Determination:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Exempt</td>
<td>☐ Non-Exempt (process necessary documentation to include in UD Time and pay on an hourly basis)</td>
</tr>
<tr>
<td>☐ Administrative</td>
<td>☐ Learned Professional</td>
</tr>
<tr>
<td>☐ Creative Professional</td>
<td>☐ Computer Professional</td>
</tr>
</tbody>
</table>

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**Classification & Compensation**

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**Date**

---

cc: CBO or HR Manager
    HR Payroll & Records

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How to Pay Employees on an Exempt Status

If it is determined by Class & Comp that a student is a non-employee (RA’s, Peer Mentors, etc) you will complete a JED to pay them a fixed per pay amount.

– A new job code will be established for this category, Student Non-Employee. Resident Assistants will continue to use the RA Job Code.

If a graduate student is determined to be exempt from FLSA, you will complete a JED to pay them a fixed per pay amount.

– A new job will be established for this category, Grad Student Exempt.

If other variable hour employees have been determined to be exempt from FLSA, you will complete a JED to pay them a fixed per pay amount.

– You will use the Supplemental Professional Job Code (4A1001)
FLSA Determination- Exempt

• FLSA Checklist will be provided to Records Management by Class & Comp

• Department will need to provide Records Management with the employee’s Offer Letter (this can be scanned and emailed to hrsystemsadmin@udel.edu or sent through campus mail with support documentation checklist)

• Department will need to complete a JED
JED Completion Steps
(Example is for a Supplemental Professional)
The Action depends on if the employee is currently a Supplemental Professional in the System, if they are use Pay Rate Change. If they are not Supplemental Professional use Data Change.
The Action Reason depends on if the employee is currently a Supplemental Professional in the System, if they are use Adjustment. If they are not Supplemental Professional use Title Change.
HRMS: Manage Workforce
UNIVERSITY OF DELAWARE

Job Data (JED)
If you have any questions, please contact Payroll & Systems Administration at (302) 831-8677 or email hrsystems.admin@udel.edu.

Symbol Key: ∗ Required Information

Employee:

Position Information
- Job title: Supplemental Professional (4A1001)
- Check delivery: 1020 Recreation & Intramurals (1020) (lookup)
- Supervisor: 164 Evans, Catherine M(164) (lookup)
- HR Liaison: 192 Stassi Truitt (27431) (lookup)
- EM group:
- Directory indicator: Listed No Address or Phone
- Works in Wilmington?: No
- Room:
- Location:
- Department:
- Estimated hours:
- Salary admin. plan: Supplemental Professional (205)
- Salary grade:
- FTE: (between 0 and 1.0)
- Union code: N/A
- Union title: N/A
- Bargaining unit: None
- Union seniority date:

Enter Estimated Weekly Hours
Always 205

Click Next Step
Job Data (JED)
If you have any questions, please contact Payroll & Systems Administration at (302) 831-8577 or email hrsystemsadmin@udel.edu.

Symbol Key: * Required Information

Employee: 

Contract Information

- FICA status: Subject (N)
- Tenure status: 8 Contract Status Only
- Tenure track start date: 04/17/2013 (use format mm/dd/yyyy)
- Tenure granted date: 
- Contract type: Fiscal Contract (F)
- Contract terms: Renewable-Term
- Contract period: Enter a period between 5 and 12
- Contract begin date: 07/01/2014 (use format mm/dd/yyyy)
- Contract end date: 06/30/2015 (use format mm/dd/yyyy)

Additional jobs:

<table>
<thead>
<tr>
<th>Job code</th>
<th>Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>(lookup)</td>
<td>(lookup)</td>
</tr>
</tbody>
</table>

Click Next Step
Choose those the form is to be routed through

Acknowledge the FLSA exemption approval
Show calculation of how you determined the per pay amount

Click Next Step
HR Liaison Actions

- If current Contract is ending, do one of the following actions:
  - Complete a JED to Terminate if employee will no longer be working
  - Complete a JED if the current contract is extending. Department will need to provide a reappointment/extension letter.
  - Complete a JED to change the employee to Misc Wage and convert them to hourly
  - Complete a JED to put employee on Unpaid Leave – this should only be done if you know that the employee will not be working but will be coming back to work within a 6 month period of time. You will have to do a return from leave JED to put them on an active paid status when they return. If their job has changed you will need to complete and submit the FLSA Checklist to Class & Comp.
  - If the employee will have a different contract that you believe is exempt, submit an FLSA Checklist to Class & Comp to review. If job is determined to be exempt, process a JED to update information to reflect the new contract.
Tips

• Do not give exempt Offer Letters (Fixed Amounts) until Class & Comp has determined whether the job is Exempt
  – Example when speaking to a prospective employee- We have a job that we would like you to perform in the Fall doing xyz. We believe this job is exempt and would expect to pay $5,000 for the completion of this work. If Class & Comp does not determine this job to be exempt, we will discuss what your hourly rate will be once that determination has been made.

• If you have an employee who will be working in the future in a job that you believe to be exempt, complete the FLSA Checklist ahead of time.
Fair Labor Standards Act

Questions?

aca-help@udel.edu

http://www.dol.gov/whd/flsa