

# TEXAS A&M AGRILIFE

## FLSA FAQs

- What do the terms “Exempt” and “Non-Exempt” mean?
  - Exempt:
    - Employees who meet all the following conditions are considered “exempt” from the overtime and record-keeping provisions of the FLSA:
      - Employee is paid a predetermined and fixed salary not subject to reduction because of variations in the quality or quantity of work performed;
      - Amount of the salary paid meets a minimum specified amount annually (currently \$35,568); and,
      - The employee’s job duties primarily involve executive, administrative, or professional duties as defined by the regulations.
  - Non-Exempt:
    - Employees who do not meet the above criteria are classified as “non-exempt” and thus subject to the overtime and record keeping provisions of the law. Non-Exempt employees are eligible for overtime and must record all hours worked in Workday.
  - The status of “exempt” and “non-exempt” under FLSA determines whether an employee earns overtime or compensatory time for hours worked in excess of 40 hours per work week. Employees who are exempt from the requirements of this law do not earn overtime and are paid a monthly salary regardless of the number of hours worked. Employees who are non-exempt from the requirements of FLSA are paid on an hourly basis, on a biweekly pay schedule, and are eligible for overtime pay or compensatory time for hours worked over 40 in a workweek.
- Who applies the tests to determine exemption status for titles/positions at Texas A&M AgriLife?
  - AgriLife Human Resources has historically been responsible for reviewing position classifications to determine exemption status at the title or position level, as well as monitoring compliance with the minimum salary threshold and position description content. With the implementation of new System-wide Pay Plan and a single title listing used by all Texas A&M System Members, the process now involves collaboration with other System HR offices, the Pay Plan Administration committee and final decisions by the Pay Plan Administrator for consistency. Some titles that have traditionally met the exemption tests at Texas A&M AgriLife have been changed to non-exempt as a result of this collaboration and analysis, with a focus on mitigating legal risk and applying the regulations consistently across all System Members. Human Resources will continue to review submitted position descriptions for compliance with the title’s exemption status as well as monitor the minimum salary threshold for exempt positions.
- How will the newly classified non-exempt employee’s hourly pay be calculated?
  - The annual salary divided by 2080 hours will be the hourly rate.

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- How is the pay different for non-exempt employees?
  - Non-exempt employees must be paid for all hours worked. Hours worked include all the time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace. The Texas A&M University System's work week is Sunday through Saturday. The work week is particularly important in calculating overtime pay because overtime pay is paid based on the hours worked in the work week, not the pay period.
  - The most significant change associated with moving from exempt to non-exempt status is the change from being paid Monthly to Bi-Weekly (every other Friday).
  - Deductions will be split between bi-weekly checks. Longevity is paid on one paycheck each month – see longevity pay dates at <https://agrififeas.tamu.edu/documents/pay-schedule-bi-weekly-fy-20-2.pdf/>
- How will the first few paychecks look for an exempt employee who is moving to non-exempt?
  - 12/1/2019 monthly paycheck – covers November pay period (11/1 – 11/30). No changes. All benefits for November will be deducted.
  - **12/18/2019 – NEW biweekly employees will enter time for 12/15/19 – 12/28/19.**
  - 1/2/2020 – last monthly paycheck – covers December pay period (12/1 – 12/14). All benefits for December will be deducted.
  - 1/3/2020 – first biweekly paycheck – for the 10 working days in the pay period 12/15/19 – 12/28/19. Will take half of benefit deductions for the month of January.
  - **1/13/2020 – NEW biweekly employees will enter time for 12/29/19 – 1/11/20.**
  - 1/17/2020 - biweekly paycheck – for the 10 working days in the pay period 12/29/19 – 1/11/20. Will take half of benefit deductions for the month of January.
  - **1/27/2020 – NEW biweekly employees will enter time for 1/12/20 – 1/25/20.**
  - 1/31/2020 biweekly paycheck – for the 10 working days in the pay period 1/12/20 – 1/25/20. No benefit deductions will be taken.

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- Why is the biweekly check less than half of the monthly check? There are 26 pay periods, rather than 24 pay periods in a year. While a biweekly check is less than half the amount of the monthly check, there will be 2 times a year a non-exempt employee will be paid 3 times in one month.

Monthly pay VS Biweekly pay		
	Monthly	Biweekly
<b># of paydates in a year</b>	12	26
<b># of paydates each month</b>	1	2 (sometimes 3 depending on the month)
<b>Gross/base pay</b>	monthly salary	Hourly rate * hours worked (Hourly rate = Annual salary/2080 hours)
<b>Working days for each</b>	21 - 23 depending on the month	10 working days each pay period
<b>Longevity</b>	paid once a month	paid once a month
<b>Federal Income Tax</b>	calculated based on monthly tax tables, W4 status & allowances	calculated based on biweekly tax tables, W4 status & allowances
<b>Social Security &amp; Medicare</b>	calculated based on a standard rate	calculated based on a standard rate
<b>TRS/ORP</b>	calculated based on a standard rate	calculated based on a standard rate
<b>Total Insurance deductions</b>	full insurance deduction which is for the <u>prior</u> month	insurance deductions are halved on each paydate - this insurance deduction is for the <u>current</u> month
<b>Parking</b>	full deduction	deductions are split in half on each paydate
<b>All other deductions</b>	full deduction	full biweekly deduction

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- What are the pay dates for non-exempt employees?
  - Non-exempt employees are paid biweekly according to the schedule at <https://agrillifeas.tamu.edu/documents/pay-schedule-bi-weekly-fy-20-2.pdf/>
- How do employees enter time worked in Workday?
  - Employees can refer to this Workday job aid for entering time [https://apps.system.tamus.edu/resources/download/WorkdayServices/Job\\_Aids/Enter\\_Time.docx](https://apps.system.tamus.edu/resources/download/WorkdayServices/Job_Aids/Enter_Time.docx)
  - Employee can refer to this Workday job aid to entering their time off [https://apps.system.tamus.edu/resources/download/WorkdayServices/Job\\_Aids/Managing\\_Your\\_Time\\_Off.docx](https://apps.system.tamus.edu/resources/download/WorkdayServices/Job_Aids/Managing_Your_Time_Off.docx)
- What is considered overtime?
  - Non-exempt employees are paid overtime for hours worked over 40 in the work week (Sunday - Saturday). Nonexempt employees earn FLSA overtime whenever the hours they actually work in a workweek exceed 40. FLSA can only be earned for hours worked. Paid leave—such as vacation and paid sick leave—and holidays do not count when determining FLSA overtime hours. This is not a pro-ratable number of hours; part-time non-exempt employees must work over 40 hours in a workweek before they are paid overtime or accrue overtime comp time.
  - State comp time is awarded if an employee hasn't worked over 40 hours, but the total hours worked and hours of paid leave or holiday pay exceed 40 hours. State comp time is 1 hour of time for every hour over 40 (combined work and paid absence) in a workweek.
- Is overtime calculated daily?
  - No, overtime is calculated based on the work week, which is Sunday through Saturday.
- How is overtime calculated?
  - It is important to note that overtime is based on the number of hours worked in the work week, not the pay period. Hours that are not actually worked (holidays, sick, vacation, etc.) do not count towards calculating overtime. FLSA overtime is accrued hours actually worked over 40 in a workweek. When overtime hours include hours worked and paid leave hours, the hours worked over 40 becomes FLSA, and the remaining hours become state comp time.
  - The FLSA overtime rate is 1 ½ hours of comp time or 1 ½ times the regular rate of pay.
- Are there other things to be considered when moving from exempt to non-exempt?
  - In order to appropriately budget, you may want to make changes to the dates for automatic withdrawals from a bank account for loans, such as mortgages or car notes.
- Can non-exempt employees work overtime whenever they believe it is required to get the job done?
  - No. Overtime must be approved in advance by the department head/unit head or their designated representative. The supervisor may also adjust the schedule within the same work week to manage overtime.

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- Is answering email while “off duty” considered work?
  - Time spent answering e-mail that amounts to more than de minimus (insubstantial or insignificant) amounts of time each week is considered work time and must be reported in Workday.
- Are non-exempt employees required to take a lunch break?
  - Employees are expected to take a lunch break; however, there may be circumstances when employee and supervisor agree to modify the typical schedule. Working through lunch should be the exception, not the norm, and must be approved in advance by the supervisor.
- If a non-exempt employee does not leave the office while having lunch, is the meal time considered work time?
  - No, regardless of whether or not the employee is physically able to leave the premises, time spent for meal periods or lunch time is not considered work time unless the employee actually performs work during this time.
- How do supervisors approve an employee’s work time in Workday?
  - [https://apps.system.tamus.edu/resources/download/WorkdayServices/Job\\_Aids/Approve\\_Time.docx](https://apps.system.tamus.edu/resources/download/WorkdayServices/Job_Aids/Approve_Time.docx)
- Can a supervisor allow an employee to work through lunch?
  - If an employee works through lunch it is considered work time and must be reported in Workday.
- What counts as work time?
  - DOL Fact Sheet # 22: Hours Worked under the FLSA: <https://www.dol.gov/whd/regs/compliance/whdfs22.pdf>
- How is travel time paid for non-exempt employees who go out of town for work?

The principles which apply in determining whether time spent in travel is compensable time depend upon the kind of travel involved.

  - DOL Travel Time: <http://webapps.dol.gov/elaws/whd/flsa/hoursworked/screenER49.asp>
  - TWC Travel Time: [http://www.twc.state.tx.us/news/efte/h\\_travel\\_time.html](http://www.twc.state.tx.us/news/efte/h_travel_time.html)
  - Code of Federal Regulations, CFR 785.33 Travel Time [http://www.ecfr.gov/cgi-bin/text-idx?SID=59d3de2b2625a475a1d42ce462f71a4a&mc=true&node=pt29.3.785&rgn=div5#sg2\\_9.3.785\\_132.sg6](http://www.ecfr.gov/cgi-bin/text-idx?SID=59d3de2b2625a475a1d42ce462f71a4a&mc=true&node=pt29.3.785&rgn=div5#sg2_9.3.785_132.sg6)
  - Home to Work Travel:

An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.
  - Home to Work on a Special One Day Assignment in Another City:

An employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.

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- Travel That is All in a Day's Work:  
Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.
- 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 work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy the Wage & Hour Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.
- What should a supervisor do if an employee is working unapproved overtime, for example, sending emails after work hours?
  - The employer is required to pay for all time worked by non-exempt employees. A corrected timesheet should be submitted to account for the time worked and the supervisor should have a conversation with the non-exempt employee about working outside the normal work schedule without prior approval. If this repeatedly continues after having the discussion, consult with AgriLife Human Resources.
- Can a supervisor adjust the schedule so that an employee works more than 40 hours during the busy months without paying overtime and a reduced number of hours in the less busy months so that he/she receives full salary at end of the year?
  - No. Overtime is calculated by the work week, which is Sunday through Saturday. It is not possible to adjust the schedule outside the work week so that overtime is not incurred.
- Can an employee offer to work on their own time without any expectation of payment?
  - No, non-exempt employees must be compensated for all hours actually worked.
- Can an employee decide to waive payment of overtime?
  - No, the overtime requirement may not be waived under any circumstances due to federal guidelines.
- What if an employee works overtime without the permission of the supervisor?
  - Regardless of whether the overtime was approved, the employee must be paid accurately for hours worked, including overtime. However, the employee may be subject to disciplinary action for repeatedly working overtime that has not been approved in advance. Consult with AgriLife Human Resources for more information.
- My grant doesn't allow for overtime. Do I still have to pay it?
  - Yes, Texas A&M AgriLife is required to comply with the FLSA rule and must pay overtime regardless of the source of funding.

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- Can a supervisor make adjustments in the schedule before overtime occurs?
  - A supervisor may adjust the schedule within the same work week (Sunday-Saturday) before over time has been worked. If you have an employee who works more than eight hours in one day, you may require him or her to work fewer hours on another day in the same workweek to avoid overtime.
  - Please note that the supervisor may not avoid overtime by adjusting the schedule in a different work week.
- Who decides whether overtime is paid or banked as comp time?
  - The department or unit head determines whether nonexempt employees earn comp time or overtime pay. For every hour worked over 40 hours, a nonexempt employee will earn either 1 ½ hours of FLSA compensatory time or overtime pay at 1 ½ times their regular pay rate. In most cases, employees receive 1 ½ hours of comp time.
- Can a unit/department pay overtime rather than banking compensatory (comp) time?
  - Yes. The default is to bank comp time. The department can manually change the default for each employee to pay overtime rather than bank comp time. If this is something the department would like to do please contact your Payroll office for further instructions.
- Can a unit/department bank compensatory (comp) time for *temp/casual or student assistant* positions?
  - No, if a temp/casual employee who is hourly paid or student assistant works more than 40 hours a week, the unit/department does *not* have the option to bank comp time because these positions are not set up in Workday to bank the hours. The hours must be paid.
- What are the rules about use of comp time?
  - In general, employees may take comp time whenever they wish, unless doing so would disrupt departmental operations. Employees may be required to use their FLSA comp time or to use it before using vacation.
  - Employees must use all their FLSA comp time before going on leave without pay or using the sick leave pool, unless the unpaid leave is for military duty, disciplinary suspension, workers' compensation, or Family and Medical Leave Act (FMLA) leave.
- Does comp time expire?
  - Employees keep their rights to FLSA comp time until they use it or are paid for it. When they leave employment, they'll be paid for any remaining time or, with supervisor approval, remain on the payroll to use it up.
  - State comp time is different from FLSA. Non-exempt employees earn state comp time when the total of their hours worked, paid leave and holidays for a workweek are greater than 40. There is no limit to how much State comp time can be accrued but it must be used within 12 months after the end of the workweek in which it was earned.