

## **A White Paper on the Fair Labor Standard Act (FLSA) for Southwestern Supervisors**

### **Non-exempt and exempt: What do these terms mean and why does it matter?**

**In the past few years you may have heard the terms exempt and non-exempt being used more frequently. It's important for you as supervisors to understand what the difference is and why you should be concerned about it.**

### **Definitions**

The terms come from a body of legislation called the Fair Labor Standards Act (FLSA). The FLSA was written to protect workers from being required to work long hours without extra compensation. It was also designed to provide an incentive for employers to hire additional workers. At the time the legislation was written, it was cheaper to hire more workers than to pay the overtime wages to fewer workers.

- Employees who work in non-exempt positions are not exempt from the overtime pay requirements of the FLSA. They keep records of the specific times they work so that they are paid overtime when they work more than 40 hours in a workweek. Overtime is paid at 1.5 times the employee's hourly rate.
- Employees in exempt positions do not receive overtime pay no matter how many hours they work in a workweek. Since they don't receive overtime pay, there is no need for them to keep records of the specific hours they work. The University uses a Leave Report to keep track of all leave and vacation accruals, not to track the hours worked by exempt employees. Exempt employees need only report leaves of absence and the use of vacation time on the form.

### **Examples**

The FLSA includes language that makes distinctions between exempt and non-exempt work. The legislation has simply defined some work as exempt and some work as non-exempt.

Examples of non-exempt positions include opticians, customer service workers, pharmacy assistants, office coordinators, skilled trades, technical and clerical, service maintenance, inside sales, production workers, and many others. Employees in these positions often explain procedures, apply policy, are usually supervised, and typically require varying degrees of analytical and interpersonal skills. They are vital in representing the business to the public and in carrying out its activities.

The law defines other occupations as exempt. These positions create, interpret, and apply policy, decide what the organization will do, and exercise discretion about significant matters. Examples include financial analysts, investment counselors, and program administrators. Other exempt occupations may require advanced degrees or the exercise of creativity, such as actors, writers of original publications, social workers, certified public accountants, and scientists. People in executive occupations manage other employees and are also exempt.

The fact is that the law has made a distinction between the two types of work. The FLSA is designed to provide protection for employees who carry out the work of the University. As a supervisor, it is part of your role to make sure that this protection is provided.

### **How exemption status is determined at Southwestern**

The Human Resource department has the responsibility for determining the exemption status for non-faculty positions at Southwestern.

Determining exemption status is a very complex process. When reviewing a job for exemption determination, the HR department analyst considers the primary purpose of the position and how the tasks fit with the purpose. The analyst may use organization charts, compare similar positions, use field manuals, and read through FLSA guidebooks and legal opinion letters written by the Department of Labor (DOL), the agency that administers the FLSA. The analyst may also consult with peer institutions to see whether or not they have exempted similar positions. Sometimes the analyst will seek legal counsel before determining exemption status. Many interrelated factors come into play, and in some instances it may be a court of law that makes the ultimate determination.

### **Why it matters**

Over the years, there has been a great deal of litigation related to exemption decisions. Employers who exempt positions must be prepared to defend each exemption decision, and may be subject to paying fines and back pay if they exempt positions that do not meet the requirements for exemption. In recent years, the number of court cases and the amounts of fines and back pay owed by employers has increased dramatically in this area, surpassed only by the fines and awards associated with discrimination lawsuits.

It's important to remember that the intent of the law is to protect the worker from abuse by the employer. It is your job as a supervisor to make sure that all of your employees are treated fairly and in accordance with the requirements of the law. This is the right course of action for the good of the employees and for the good of Southwestern.

### **What you need to do**

If you supervise a mixture of exempt and non-exempt employees, the law requires you to manage their time differently.

As a supervisor, you can require your exempt employees to keep a regular schedule, and you need to let them know that at times it may be necessary for them to work outside their regular schedules. The FLSA does not require exempt employees to track their time, and the employer should not require it, unless it relates to effort reporting. Pay should not be docked because an exempt employee's work schedule varies. Southwestern does require exempt employees to use a Leave Report to keep track of leave and vacation accruals. The report is not used to track the hours worked by exempt employees.

On the other hand, you need to make sure your non-exempt employees are recording all actual time worked, and that you are clear about your procedures for recording time and working overtime. The law requires

Southwestern to pay for any and all work permitted or suffered, so you need to make your expectations clear. If you require your employees to request permission to work overtime, you can discipline them if they work without permission, but Southwestern still must pay them for their time and you need to approve the overtime reflected on their time sheets.

### **How to do it well**

A best practice with managing exempt and non-exempt employees and their time is to make sure they understand you manage them differently not because you want to exercise arbitrary control over one group or because you value your non-exempt employees less, but because the law requires it. Once everyone understands, it becomes easier to move past value judgments and toward getting your work goals accomplished.

### **Where to get more information**

You can call the Human Resources department at extension 1435 for more information about exemption determinations. You can also check out the Web site for the [Department of Labor](#).

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