

## Salaried Overtime-Eligible Employee FAQs

### 1. What is the Fair Labor Standards Act (FLSA)?

The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

### 2. Does Washington State govern minimum wage and overtime pay?

Yes. July 1, 2020, Washington State Labor and Industries (L&I) implemented employment rules regarding the state overtime exemptions. In these employment rules L&I finalized the minimum salary an employee must earn to be exempt from overtime which differs from the federal requirements. The L&I [salary threshold will change annually through 2028](#).

### 3. What are the recent changes to the Washington State overtime eligibility?

Effective **January 1, 2023**, an employee must earn at least **\$1,259.20 per week (\$65,478.40 annually)** and meet the “Standard Duties” test for executive, administrative, or professional employees, as defined by Washington State Department of Labor & Industries (L&I), to be ineligible for overtime pay. Currently under federal law (FLSA), an employee must earn at least **\$684 per week (\$35,568 annually)** and meet the “Standard Duties” test to be ineligible for overtime pay under the federal law. Other requirements remain the same.

### 4. Can the federal law (FLSA) salary test be used for overtime determination?

No. When the federal and state laws conflict, WVC must comply with the federal or state law whichever is most beneficial to the employee. The L&I salary threshold exceeds the federal salary threshold of **\$35,568 annually** so WVC must utilize the state threshold.

### 5. Is the salary test prorated based on Full Time Equivalency (FTE)?

No. Regardless of FTE, an employee must earn at least \$1,259.20 per week (\$65,478.40 annually) and meet the “Standard Duties” test for executive, administrative, or professional employees, as defined by L&I, to be ineligible for overtime pay.

### 6. What is the difference between a position being exempt from overtime and an Administrative/Exempt professional position?

These are two different exemptions from two different laws. Exemption from overtime (meaning ineligible for overtime) under the FLSA is based on the salary and duties test as mentioned above. In accordance with the Revised Code of Washington (RCW), for a position to be exempt from civil service, it must meet specific criteria identified in [RCW 41.06.070](#).

### 7. Can an Administrative/Exempt professional position be eligible for overtime?

Yes. As explained above, exemption from Civil Service is different than exemption from overtime. Therefore, an Administrative/Exempt professional position may be eligible for overtime, and a Civil Service position may be exempt from overtime, depending on the salary and duties test.

**8. Will this have an impact on employees who are already eligible for overtime pay?**

There will be no change to employees who are currently eligible for overtime pay.

**9. If an employee no longer meets the new salary requirement and becomes eligible for overtime, how will they be notified?**

Prior to January 2023, employees will receive an email from Human Resources notifying them that they are eligible for overtime and must enter their time and leave in ctclink effective January 1, 2023.

**10. When do employees eligible for overtime as a result of this change need to begin to track hours worked?**

Employees newly eligible for overtime due to the L&I salary test changes will begin tracking hours worked in ctclink effective January 1, 2023.

**11. Are salaried overtime-eligible employees required to take meal and break periods?**

Salaried, overtime-eligible employees receive a minimum of one (1) 30-minute unpaid meal period towards the middle of each work shift, no more than five hours after the beginning of the shift. Additionally, salaried overtime-eligible employees receive two (2) 15-minute paid rest periods for every four (4) hours worked.

**12. How many hours in a work week must salaried overtime-eligible employees work before they are paid overtime?**

Hours worked in excess of 40 hours within the work week, Sunday through Saturday, are paid overtime. Leave with pay during employees' regular work schedule is not considered time worked for the purposes of calculating overtime.

**13. So, I'll get overtime pay for work time over 40 hours a week? Does anything else change?**

Yes, there are other impacts to this change. Overtime eligible employees must be paid for all hours worked. This means they can't review/respond to emails off-work hours and all work hours must be tracked and time sheets submitted. It also means that all scheduled work hours must be accounted for – resulting in the need for overtime eligible employees to submit leave requests for all hours they are absent from work (unless they can flex their schedule to accommodate short-duration absences).

As described below, overtime eligible employees may not be allowed to take on additional work at the college, such as teaching part-time or project work paid through a stipend, as all work time must be accounted for and paid.

**14. Can employees "volunteer" to work longer hours and not be paid?**

No. Salaried overtime-eligible employees cannot "volunteer" to work longer hours without pay. They must be paid for overtime (1.5 times regular pay) for all time worked above 40 hours within the work week, Sunday through Saturday, in accordance with FLSA and L & I rules.

**15. Will I need to submit an absence request?**

Yes. As an overtime eligible employee, you must account for all work hours. However, depending upon the needs of your work area and contingent upon supervisor approval, you might be able to flex your schedule to make up the time missed.

**16. If an employee works more than 40 hours in one week, can they adjust their hours worked the next week to avoid overtime?**

No. An employee must be paid based upon the hours worked in a single week, Sunday through Saturday, in accordance with the FLSA. Averaging of hours over 2 or more weeks is not permitted. Thus, an employee cannot be compensated at straight time for working 45 hours one week and 35 hours the next week, in order to average 40 hours per week.

**17. Are salaried, overtime-eligible employees covered by Civil Service Rules that apply to classified staff?**

No. Civil Service rules do not apply to salaried, overtime-eligible positions. These positions are exempt from Civil Service under [RCW 41.06.070](#). The exemption is based on the specific duties and responsibilities of the position.

**18. Are salaried overtime-eligible employees able to “flex” their schedules to keep hours worked at 40 per week?**

Yes, salaried overtime-eligible employees that work longer on one day may work less hours on another day in order to keep the total hours for the week (Sunday through Saturday) at a total of 40 hours.

**19. How is overtime calculated for salaried, overtime-eligible employees?**

Overtime is calculated based on the weekly salary. An example is included below.

Weekly salary / 40 hours = rate of pay  $\$700/40 = \$17.50/\text{hour}$

Rate of pay x 1.5 = overtime rate  $\$17.50 \times 1.5 = \$26.25$

If the employee worked 50 hours in the week their total pay would be:  $\$700 + (10 \times \$26.25) = \$962.50$

**20. Must salaried, overtime-eligible employees submit a timesheet showing daily hours worked?**

Yes. Salaried, overtime-eligible employees must complete a timesheet in ctclink each pay period and account for all hours worked, leave taken, and any leave without pay.

**21. Will salaried, overtime-eligible employees receive their full salary even if they do not work the full week?**

No. Salaried, overtime-eligible employees that do not work a full week (40 hours) must have their time covered by either leave or leave without pay.

**22. What effect will this change have on my ability to travel?**

Salaried overtime-eligible employees may continue to travel for work. Time spent in travel status may be eligible for overtime depending upon the situation. Please contact Human Resources at 509-682-6445 to discuss the travel plan specifics and how to report the time.

### **23. Can salaried overtime-eligible employees teach classes?**

No. Salaried overtime-eligible employees are not eligible to receive quarterly teaching contracts. The Faculty Negotiated Agreement requires that admin/exempt employees teaching credit-bearing classes receive a quarterly teaching contract. Salaried overtime-eligible employees are not able to receive a separate teaching contract in lieu of overtime.

### **24. Can salaried overtime-eligible employees receive stipends for other duties?**

Generally, no. However, if the stipend covers the entire year (24 equal payments) and the total amount of the stipend + the employee's annual contracted salary exceeds the current minimum threshold for overtime eligibility of \$65,478.40, and the "Standard Duties" test is met, then the employee may receive the stipend and the overtime exemption continues. If you are currently receiving a stipend for additional duties and the combined total of the stipend and your salary do not exceed the salary threshold, the stipend payment will cease effective 1/1/23. Please speak with your supervisor about next steps.

### **25. What if employers do not comply with the new regulations?**

Employers may be assessed civil money penalties (CMPs) of up to \$1,000 for each violation for repeated or willful violations of the minimum wage and overtime requirements of the Act.

CMPs are intended to discourage employers from future noncompliance and are not tied to the amount of the back-wage liability incurred. They will ordinarily be assessed based on violations occurring within a two-year investigation period. Where violations are determined to be willful, the investigation will cover a three-year period.

### **26. Where can I learn more about this?**

You can learn more on the [Washington State Labor & Industries site](#) where you will find resources such as [FAQs](#), [implementation schedule](#), and [fact sheets](#) or you may contact Human Resources at 509-682-6447. Additional information is referenced in [WAC 296-128-500](#) through WAC 296-128-545.