Overtime & Fair Labor Standards Act
What is FLSA?

- Federal law passed in 1938
- Enforced by Department of Labor
- Public employers became covered in 1986
- Revised April 20, 2004
- Covers
  - Overtime
  - Minimum Wage
  - Child Labor
  - Equal Pay
  - Recordkeeping
Purpose of FLSA

- Establishes minimum wage & overtime standards
- Distinguishes between covered (non-exempt) and excluded (exempt) employees
- Establishes overtime threshold (40 hr.)
- Specifies record-keeping requirements
Critical Terms

- Hours worked
- Work week
- Regular rate
“Hours Worked”

- Principal job activity
- “Suffer” or permit to work
- Rest periods less than 20 minutes in duration (except lunch)
“Work Week”

- 168 consecutive hours during a 7-day period

- GMU standard work week:
  - 12:00 am Sun thru 11:59 pm Sat
“Regular Rate”

- Includes all forms of remuneration (e.g. shift differential, on-call pay, lump sum payments, 2\textsuperscript{nd} job salary)
- Converted to an HOURLY rate
- Is particular to each work week
Types of Positions

- **Exempt** – not covered by FLSA
- **Non-Exempt** – covered under FLSA for time-and-one-half overtime
Exempt Positions

- Meet Salary Basis, Highly Compensated, Executive, Administrative, Professional, or Computer Professional test for exemption.
- Applies to each position individually based on duties and responsibilities, not to a class, Role, working title or category of position.
Exempt Positions

- **Classified** in pay bands 4 and above if exemption tests are met (as well as Faculty)
- No overtime payments required.
- In extremely **rare** situations, may provide:
  - Compensatory time or straight-time pay for **hours worked** > 40 hours in a **work week**
  - Should be for short duration of time under special circumstances (vacancy, special project, etc.)
Exempt Positions

- Exempt employees paid for job, not hours worked
- Must meet salary basis test
- Salary must be more than $455 per week
Exemption Test

Determination Factors

- HR performs tests to determine “white collar” exemption by category
  - Executive
  - Administrative
  - Professional
  - Computer Professional
  - Highly Compensated
Exemption Test
Determination Factors

- Based on primary duties, not title
  - most important duties that account for 50% of time spent working

- Regularly exercises discretion and independent judgment

- Paid on a salaried basis for the job, not the number of hours worked
Executive Test Criteria

- Must be compensated on a salary basis of not less than $455 per week
- Primarily manages a department or subdivision; and
- Directs the work of two or more full-time employees
- Has the ability to hire, fire & discipline or recommendation changes in status
Examples of Executive Exempt Jobs

- Payroll Manager
- HR Manager
- Accounting Manager
- Building & Grounds Director
- Business Operations Manager
Administrative Test Criteria

- Must be compensated at least $455 per week
- Primary duty must be office or non-manual work; *and*
- Directly related to management policies or general business operations; *and*
- Customarily and regularly requires the exercise of discretion and independent judgment
Examples of Administrative Exempt Jobs

Usually in functional areas such as:

- HR Generalist
- Internal Auditor
- Budget Analyst
- Grants Specialist
Professional Test Criteria

- May be learned or creative professional

- Learned professional:
  requires advanced knowledge in a field of science or learning

- Predominantly intellectual

- Acquired by a prolonged course of specialized instruction
Professional Test Criteria

- **Creative Professional:**
  Primary duty must be the performance of work requiring invention, imagination, originality, or talent

- Performs work in a recognized field of artistic or creative endeavor
Examples of Professional Exempt Jobs

Learned Exemptions:
- Physician (M.D., D.D.S.)
- Certified Nurse Practitioner
- Architect
- Lawyer
- Teachers & Professors
- Clinical Social Worker

Creative Exemptions:
- Musicians and composers
- Actors and painters
- Writers
Computer Professional Test Criteria

- Employed as a computer systems analyst, programmer or software engineer or similar skilled worker
- Primary duties consist of:
  - Applications of systems analysis techniques or
  - Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs
  - Design, documentation, testing, creation, or modification of computer programs related to machine operating systems
Highly Compensated Employees

- Must perform non-manual work and
- Paid more than $100,000 per year and
- Perform at least one of the duties of an executive, administrative or professional employee
Non-Exempt Employees

- Job duties do not meet the Executive, Administrative, Professional or Computer Professional or Highly Compensated test criteria
Non-Exempt Positions

- Classified in Pay Bands 1 - 3 and includes all hourly positions
- **Must** receive 1 1/2 times their *regular rate* for all *hours worked* in excess of 40 in a *work week*
- If leave was taken during the week, non-exempt employee receives *regular rate* (straight time, 1 hour = 1 hour’s pay) for *hours worked* in excess of scheduled hours up to 40 during a *work week*
Examples of Non-Exempt Jobs

- Office Services Assistant/Office Services Specialist/Executive Secretary
- Carpenter/Electrician/HVAC Tech
- Police Dispatcher/Police Officer
- Enrollment Services Asst/Specialist
- Fiscal Technician
Non-Exempt Employees

3 potential types of overtime compensation

- Straight Time Overtime
- Time-and-one-half Overtime
- Overtime Leave
Non-Exempt Employees

Straight Time Overtime

- Employee has physically worked less than 40 hr in the work week
- Paid at 1 times the employee’s hourly rate of pay
Non-Exempt Employees

Time-and-one-half Overtime

- Based on **WORKED** time (not leave time)
- Employee has **WORKED** over 40 hours in a work week
- Paid at 1-1/2 times the employee’s regular rate of pay for each hour worked beyond 40
Non-Exempt Employees

Overtime Leave

- Based on **WORKED** time (not leave time)
- Employee has **WORKED** over 40 hours in a work week
- Granted at 1-1/2 times Leave for each one hour worked beyond 40.
Examples of Compensable Time

- Performing principal duties
- Performing principal duties or closely related duties outside of work hours
- Travel time between job sites (PW, Arlington and Fairfax Campuses)
- Employer required training
- Breaks (<20 minutes)
- Pre- and postliminary activities (checking job locations, fueling cars, picking up mail at P.O., putting away tools at the end of the day)
Examples of Compensable Time

- Preparatory work related to principal duties
- “Waiting” or “standing by” for work
- “Unauthorized” work performed (with or without Supervisor’s knowledge)
- Employee arrives early to work & begins working
- Meal time if an employee is not “free” from work duties
Examples of Compensable Time

UNAUTHORIZED WORK

- Work not requested but “suffered or permitted” is counted as time worked
- Standard is whether the employer knows or has reason to believe the work is being performed
Second Jobs

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<thead>
<tr>
<th>FIRST JOB (FT CLASSIFIED)</th>
<th>SECOND JOB (HOURLY)</th>
<th>OVERTIME PAYMENT?</th>
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<tr>
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- If all jobs are hourly (not classified) all hours over 40 per week = overtime
- If 1st job is part-time classified, Departments must consult with HR Generalist
FLSA Violations

- U.S. Department of Labor enforces FLSA
- Burden of proof is on the employer
- Employees can sue their employers for the recovery of back wages & liquidated damages for up to 3 years if violation is found to be willful
- Employer cannot retaliate against employee for “whistle blowing”
Potential DOL Penalties

- Unpaid wages (2 - 3 years of back wages)
- Fines ($10,000)
- Imprisonment (6 months)
- Liquidated damages (2x)
- Attorney’s fees and costs
- Individual liability
FLSA and DOL

- Fastest growing area of class litigation is wage and hour claims
- FLSA violations resulted in back wages of $212 mil in 2003 and $170 mil in 2002
- A 21% increase in one year
- DOL assessed $10 mil in civil penalties!