

# FLSA & Overtime FAQ

## MINNESOTA STATE UNIVERSITY MOORHEAD

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

FLSA is a federal law that establishes minimum wage, overtime pay eligibility, record keeping, and child labor standards affecting full-time and part-time workers in all sectors including the private sector, and federal, state, and local government. As a public higher education institution, we are covered by FLSA.

The FLSA governs which employees may be paid a set amount and which employees must be paid overtime for all hours worked over 40 hours in a work week. There may be provisions in the [collective bargaining agreements](#) that require additional overtime considerations.

### What do the terms exempt and non-exempt mean?

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 in a work week.

- Exempt employees are not covered by FLSA overtime provisions and do not earn overtime pay. They are expected to complete the job whether 40 or more hours are required to finish the work.
- Non-exempt employees are covered by the requirements in FLSA and are eligible for overtime or compensatory time for work over 40 hours in a work week.

### How do I know if my position is exempt or non-exempt?

You can find your exemption status listed on the My Jobs tab in [Employee Home](#).

### If my position is non-exempt, will I have to track my hours?

Yes, non-exempt employees will need to track any hours worked including overtime, compensatory time, and leave requests such as vacation and sick time. Employees are **required** to document this time in their eTimesheet in [Employee Home](#). Overtime must be reported on the eTimesheet during the pay period in which it was worked.

### What is considered an FLSA work-week when it relates to hours worked?

A workweek for Minnesota State is Wednesday through Tuesday. If you are non-exempt, any hours worked over forty (40) during this time period would be paid the overtime rate of one and one-half times your regular rate of pay. Some collective bargaining units may pay overtime for hours worked in excess of the regularly scheduled workday (rather than work week).

Compensatory time may be given in lieu of overtime pay as described in the applicable collective bargaining agreement/personnel plan. **Working overtime requires prior approval from the employee's supervisor.**

### Does overtime need to be approved in advance?

Yes, working overtime **always** requires prior approval from the employee's supervisor.

### I want to change my FLSA status. Can I request this?

Typically employees are not able to initiate changes to the FLSA status of their position. The FLSA status is determined based on the position's duties and salary thresholds set by federal law. The FLSA status is reviewed by both Campus HR and the System Office when the position is created and when a position is sent for classification review.

## Can a non-exempt employee check work emails and answer work phone calls from home (or elsewhere) after work hours?

Non-exempt employees may request permission from their supervisor to occasionally work from home (with an approved telework agreement), to check messages at night, or to change their daily schedules to different hours, but all time worked, except minimal periods of time, must be recorded as “time worked.” Any alternative scheduling arrangements must be made with the employee’s supervisor in advance.

Minimal work completed outside of normally scheduled working hours does not need to be compensated. Examples of minimal work include sending a single text or phone call such as clarifying the arrival time at an offsite meeting the following day or holding a brief conversation, under two minutes, about an urgent request that needs to be completed on the following day.

## What happens if I have multiple jobs with the State of Minnesota?

If a non-exempt employee accepts other work in a position that is exempt under the FLSA (typically an IFO appointment), then they will need to manually track this time and submit the hours worked to the Office of Human Resources. The Office of Human Resources will calculate if and how much overtime the employee is owed.

## My position is FLSA non-exempt. Can I “balance hours” from one work week to another in the same pay period?

No, non-exempt employees cannot balance hours from one work week to another. You can, however, flex time within a **work week** in accordance with the applicable collective bargaining agreement/personnel plan.

## My position is FLSA exempt. Can I “balance hours” from one work week to another in the same pay period?

Yes, hours can be balanced from one work week to another for exempt employees. Exempt employees will still need supervisor approval before making any changes to their schedules. Please be sure to review the applicable collective [bargaining agreement/personnel plan](#).

## Can I be credited with compensatory time (comp time) instead of receiving overtime pay?

Yes. Employees in non-exempt positions may accrue comp time. Some [collective bargaining agreements](#) require the employee’s consent to have overtime hours paid as compensatory time.

## When I take a meal break, is that considered time worked?

Meal periods (typically 30 minutes or more) typically do not need to be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. Always review the overtime provisions within the applicable collective bargaining agreement/personnel plan because they may provide more generous compensation than the FLSA.

## How is travel time reported for non-exempt employees?

Except for the normal commute to and from work, any travel during a non-exempt employee’s normal working hours is considered time worked. This includes travel on what would otherwise be a day off, such as a weekend or holiday, if it occurs between the start and end time of the employee’s normal workday. For employees with variable work hours, the supervisor should designate the start and end times for non-workday travel (typically those which occur most frequently in the employee’s normal schedule). Any travel between two locations where work is performed is time worked.

Regardless of the time of day or day of the week, any time (other than the normal commute) that an employee is the driver of a vehicle is time worked. However, if an employee must be away overnight, time spent as a passenger in a car, plane, train, etc. outside the employee's normal working hours is not time worked unless the employee performs work while riding. In addition, any duty-free meal periods are excluded for both drivers and passengers.

**Example:** Several employees who normally work 8:00-4:30 meet at their St. Paul office at 6 AM to carpool to a 9 AM meeting in Duluth. The employees leave Duluth at 4 PM, arriving back at the office at 6:30 PM. Since the employees left and returned in the same day, the time from 6 AM to 6:30 PM (besides any duty-free meal periods) is time worked for all of the employees. Because the employees reported to their usual work site in St. Paul, they had already made their "normal commute" so no additional time could be excluded.

If the meeting in Duluth lasted several days and employees were required to be away overnight, the situation would be treated differently. The travel time which cuts across the normal workday (8:00-4:30) would be time worked for all of the employees. However, because this is an overnight trip, passenger time outside normal working hours is excluded. The additional 4 hours (6:00-8:00 AM and 4:30-6:30 PM) count as time worked only for the driver. The time before and after normal working hours is not time worked for the passengers as long as they do not engage in work while riding during those periods. (The employees could perform work while riding within normal working hours since those are already being counted as time worked.)

In addition, the passengers must not engage in work before leaving or upon returning. If the employees had to report at 5 AM to discuss assignments and prepare (not just pick up) materials, the time from 5 AM to the end of their normal workday (4:30 PM) would be time worked. Even though much of the additional time was spent as passengers, they're considered to have begun work when they were required to report and engage in work (i.e., 5 AM).

## How is commute time reported for non-exempt employees?

The normal home to work commute is excluded for employees who report to a particular location on a regular/recurring basis. This includes the commute to a permanent or temporary work location. If commuting to multiple locations is a normal part of the job (e.g., the employee works 2 days in St. Paul and 3 days in Hastings every week), the drive to and from home and each location is excluded as commuting time. Exclusion of the normal commute also applies when employees return to the office during off duty hours (e.g., come to the office for an evening meeting or hearing, called back at night because of a computer problem). If employees drive from home to a location other than the usual work site, travel time minus the normal commute is hours worked. For example, an employee with a work location in St. Paul drives directly from home to an assigned training class in Minneapolis. Any difference between the drive from home to Minneapolis and the normal commute from home to the St. Paul office is time worked.

For employees who are assigned to work out of their homes (their home is their assigned work location, and they have no other fixed or temporary office) and need to travel to various locations for work, please contact the Office of Human Resources to determine overtime eligibility for commuting.

For more information, please refer to the regulations on travel time (CFR 785.33 - 785.41) and on the Portal to Portal Act (CFR 790.1 - 790.12). Regulations and other information about the Fair Labor Standards Act are available on the federal Department of Labor website at [www.dol.gov](http://www.dol.gov)