

December 1, 2016 FLSA Salary Basis Changes: Frequently Asked Questions

What changes are required by the new Fair Labor Standards Act (FLSA) Rule?

Effective December 1, 2016, the federal Department of Labor has changed the rule defining what it means to be an 'exempt' employee. The new rule will increase the number of employees who will be 'nonexempt' and thus entitled to overtime. In order to be 'exempt' from the overtime provisions of the FLSA, you must meet three criteria: (1) be paid on a 'salary basis', (2) earn more than the 'salary basis' limit, and (3) perform duties that are considered 'exempt' (generally, managing, supervising, or performing work that requires a professional degree). The new rule is changing the second of these three requirements. For 15 years, the 'salary basis' limit has been around \$23,660. Beginning December 1, 2016 the limit will be increased to \$47,476. This means that all employees who currently meet all three of the criteria to be considered 'exempt' will become 'nonexempt' if their annual salary is less than \$47,476 (\$913 per week).

How will I know which of my employees will be affected by this rule change?

MMB had developed two reports in OBIEE to identify the affected employees, one called "FLSA Salary Basis" and a second called "FLSA Salary Basis for Part Time." The reports are located on the FLSA Dashboard in OBIEE.

What is OBIEE, and how do I gain access?

OBIEE is the data warehouse that contains HR data. To gain access, contact your agency's security administrator or complete a [Request for Access to SWIFT Statewide Systems](#). The role access required to the FLSA subject area is: M_EPM_HR_PRIVATE_DATA_BY_DEPT. If you or your security administrator have questions, contact the SWIFT help desk at 651-201-8100, option 2 or via e-mail at swifthelpdesk.mmb@state.mn.us.

I don't see any results when I look up my agency on the FLSA Salary Basis reports in OBIEE.

What does this mean?

It means that no one at your agency is affected by the rule change. Please continue to review the report periodically, to ensure that when new employees begin working or when the work conditions of your incumbent employees change (e.g., if a full time employee goes down to part time) they are coded correctly in SEMA4.

Do employees in the Managerial plan who become nonexempt as a result of this rule change need to obtain pre-approval from MMB before accruing overtime hours?

No. Nonexempt employees in the managerial plan (whether nonexempt by duties or because of salary) do not need MMB's approval before working overtime.

What should I do if my newly nonexempt employees don't want to record their overtime hours? How should I respond if a nonexempt employee works overtime that was not approved?

All overtime hours worked by nonexempt employees must be compensated at the appropriate overtime rate, whether the hours were preapproved or not. You may take appropriate disciplinary action against employees who refuse to report their hours or who work unapproved overtime, but all overtime hours worked by nonexempt employees must be compensated at the appropriate overtime rate.

For employees in a Work out of Class, do these reports pull from their WOOC compensation or the compensation they would receive in their original job?

The report pulls the employee's current compensation rate. If they are in a WOOC, the report uses their actual rate of pay for the WOOC position.

Why are part time employees on these OBIEE FLSA Salary Basis reports?

There is no pro-rating for part time exempt employees under the FLSA. If an employee earns less than the weekly salary basis, irrespective of how many hours a salary amount is intended to cover, the employee does not qualify as an 'exempt' employee. The law requires that employers keep a record of hours actually worked for all nonexempt employees, whether the basis of their nonexempt status is salary, duties, or a combination of both.

My 'intermittent' employees never work more than 40 hours per week. Do I need to go through the effort of changing their FLSA position status?

Intermittent employees are included on the FLSA Salary for Part Time report because there is inconsistent practice across the agencies in terms of designating who is an "intermittent" employee and who is a "part time" employee. Moreover, "intermittent" employees are subject to the FLSA and owed overtime when they work over 40 hours per week (or over the limits permitted by the 8:80 or 128 schedule, as applicable) just as any other employee would be. Best practice is to designate any intermittent or part time employees who are below the salary basis threshold as "Exempt-FST" in SEMA4-HR to ensure that we are able to accurately capture all hours worked and any overtime obligations due.

Why do I see nonexempt employees on the FLSA Salary Basis OBIEE reports?

The OBIEE reports pull data from SEMA4 HR to determine whether an exempt employee earns less than the salary basis limit of \$913 per week. If you see a nonexempt employee on this list, double-check that their FLSA Position status is set appropriately in SEMA4.

I thought lawyers were exempt from the salary basis provisions of the FLSA. Why are some of the lawyers in my office appearing on this report?

The salary basis limit does not apply to attorneys who hold a valid license permitting the practice of law, and who are actually engaged in the practice of law. The salary basis test *does* apply to attorneys who do not have active state licensure, and to attorneys who are not engaged in the active practice of law. If you see attorneys from your agency represented on the OBIEE reports, it may be because the job class they are assigned to does not necessarily require active state licensure or require the actual practice of law. These attorneys may still qualify for one of the white collar exemptions because of the work that they do, however, they are subject to the salary basis limit if they do not maintain active licensure and actively engage in the practice of law.

I thought teachers were exempt from the salary basis provisions of the FLSA. Why are some of the teaching / training people from my agency appearing on this list?

To be exempt from the salary basis provision of the FLSA, an employee claiming the “teacher” exemption must be teaching in an ‘educational establishment.’ Employees who have ‘teaching’ as a primary duty but who do not work in an educational establishment may qualify for the Professional or Executive exemption because of the work that they do, however, they will be subject to the salary basis test if they teach in a place other than an ‘educational establishment.’

Why aren’t employees with the “Outside Sales” FLSA position status on this report? Some of them look as if they might be below the salary basis threshold?

Employees with an FLSA position status of “Exempt – Outside Sales” are not subject to the salary basis provisions of the FLSA. We have a few Job Classes in the state with this FLSA designation, including Lottery Sales Representatives, Lottery Corporate Accts Representatives, Corrections Industries Sales Executives, and Customized Training Reps. No employees in these job classes will be affected by the changes to the salary basis.

Some of the employees I see on the OBIEE reports will receive a performance based increase on January 1, 2017, that will place them above the new salary basis. Do I really need to change their FLSA status and make them start recording their hours, just for one month?

Yes. The FLSA requires an employer to track hours of work for nonexempt employees. Accurate tracking of hours for nonexempt employees ensures that nonexempt employees are being accurately compensated for all hours actually worked. Moreover, if an employer does not have any or inaccurate timekeeping records, the law provides that an employee’s “best estimate” will suffice if the matter is ever litigated.

For employees with multiple appointments, is the salary basis limit based upon each job individually or all jobs added together?

Under the FLSA, the State of Minnesota is a single employer. All amounts earned across all *exempt* appointments can be added together when determining whether the employee meets the salary basis threshold. Nonexempt appointments are paid per hour and are not based upon a salary, so any amounts earned through a nonexempt appointment cannot be added to amounts earned in an exempt appointment in order to raise the employee above the salary basis threshold for an exempt appointment.

Who pays the overtime when employees have multiple part-time appointments across multiple agencies and the employee is nonexempt?

If an employee's cumulative appointments offer a salary of less than \$913 per week, the more recently hiring agency is responsible for the payment of any overtime obligations that would occur, per state policy, unless the agencies have agreed otherwise.

One of the employees listed on my agency's report has two active exempt appointments whose salary amounts collectively add up to more than the salary basis limit. Do I need to change anything about the FLSA position status?

No. If the cumulative value of all exempt appointments is greater than \$913 per week, no changes to the FLSA position status are required unless or until another change to employment (dropping from multiple appointments to one, for example) would require a change.

How am I supposed to keep track of when my Exempt-FST employees become exempt again due to a step increase or performance based incentive?

OBIEE will contain the information that you will need in order to keep track of these changes. Employees who are exempt by job duties but nonexempt by virtue of the salary basis limit will be coded as "Exempt – FST" in SEMA4 on the FLSA position status. You may pull periodic reports out of OBIEE for employees with the "FST" FLSA position status code, and make adjustments once a work status change provides a justification to do so (pay increase, moving from part time to full time, etc., which results in a salary at or above \$913 per week).

My employees perceive these changes as a demotion. How can I help them respond to these changes?

You should reiterate to employees that there is nothing changing with their job, other than the fact that they will receive time-and-a-half regular rate overtime compensation for time worked over 40 hours in a workweek. The change to the salary basis limit does not require a change to duties or responsibilities.

I have a group of employees in the same job, and only some will transition to nonexempt. How should I handle this?

As a manager or supervisor, you should explain to your employees that this change is necessary to comply with the FLSA regulations. Inform your nonexempt employees of any overtime pre-

approval process that may be required. Remember that nonexempt employees must be compensated for overtime worked regardless of whether it is pre-approved.

The affected employees at my agency are in a “mixed” class, and we have determined that based upon their duties, they all qualify as exempt. Due to the salary basis change, most – but not all – of this group will be ‘nonexempt.’ Can I just re-designate all of my employees in this group as ‘nonexempt’ instead of keeping track of who does or does not need to have the Exempt – FST designation?

Yes, provided your agency has the delegated classification authority to make changes to employees’ FLSA exemption status designation.