**Work Time and Overtime**

June 9, 2022

**Background:** The Fair Labor Standards Act or FLSA defines overtime as any work hours exceeding forty hours in one work week. For work hours in excess of forty hours, an employee is legally entitled to receive at least 1.5 times their regular pay per hour. This is most commonly known as time and a half. It is important to note that some employees and occupations are not covered by the FLSA, such employees are considered to be overtime exempt employees.

For an employee to qualify for and receive overtime pay, they must be covered under the law. These employees are known as nonexempt or overtime eligible employees. Essentially, federal law considers all employees as overtime eligible unless they meet certain exemption requirements. Within our college environment, generally workers who are overtime exempt fall into one of three categories: executive[[1]](#endnote-1), administrative[[2]](#endnote-2), professional[[3]](#endnote-3) or teachers[[4]](#endnote-4). To determine if a position is overtime exempt, FLSA and state (Washington State Minimum Wage Act) rules apply three tests – all of which must be passed[[5]](#footnote-1):

1. **Salary-level test**: If an administrative, professional, executive or professional computer employee’s weekly salary meets the minimum requirement—which in Washington State is $1,014.30 per week in 2022—they are exempt from overtime pay.
2. **Salary-basis test**:The employee must be paid a fixed salary that cannot go up or down based on the quantity—or quality—of their work.
3. **Duties test**: The employee’s work duties must be considered executive, administrative, or professional duties in nature.

In Washington State, changes to the salary-level test were initiated through a phased implementation that began in 2020 and continues through 2028. For 2022, the salary threshold for overtime exemption in Washington State is $53,743.60/year. In 2023, that amount is projected to increase to $61,828. In 2028, the salary threshold is projected to be $85,020/year.

Raising the salary amount applied in the Salary-Level Test causes more employees to be eligible for overtime pay. As more employees become eligible for overtime pay for work over 40 hours per week, questions have come up around what hours are included in “work time***.” In general, if an employer places constraints on employees’ use of time, it is likely considered work time.***

**Considerations**

1. **Hours worked.** Work not requested but permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assignment. The reason is immaterial. The hours are work time and compensable.
2. **Waiting time.** Whether waiting time is hours worked under the Act depends upon the particular circumstances. Generally, an employee may be engaged to wait (which is work time) OR an employee may be waiting to be engaged (which is not work time). For example:
   1. A secretary who reads a book while waiting for dictation or a firefighter who plays checkers while waiting for an alarm is working during such periods of inactivity. These employees have been “engaged to wait.”
   2. An employee who travels across town for a meeting that ends at 10:00 a.m. and remains across town for another meeting that starts at 2:00 p.m. would be off duty for the time in between the two meetings if they were not required to perform any job duties and were free to do as they please during that time.
3. **On-call work.** Employees required to remain on call on the employer’s premises, on location like a hotel or so close that the they cannot effectively use the time for their own purposes are working. Employees who are required to remain on call at home, or allowed to leave a message where they can be reached, are not working (in most cases) while on call. Additional constraints on the employee’s freedom could require this time to be compensated.
   1. **Example:** An overtime eligible employee is traveling away from home chaperoning students. The employee is required to stay in the hotel and be immediately available if needed to attend to a student. The employee is on work time.
   2. **Example:** An overtime eligible employee is traveling away from home chaperoning students. After the day’s activities are complete, the employee may leave the hotel, visit friends, go to a movie, etc. If called, the employee is expected to respond within a reasonable period of time.
4. **Rest periods.** Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid for as working time. These short periods must be counted as hours worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer’s rules.
5. **Meal periods.** Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/se is required to perform any duties, whether active or inactive, while eating.
6. **Sleeping time.** When it comes to sleeping time, FLSA divides employees into two groups – those that work less than 24 hours and those that work 24 or more hours.
   1. An employee who is required to be on duty **for less than 24 hours** is working even though he/she is permitted to sleep or engage in other personal activities when not busy. This usually occurs when the employer requires the employee to be present on its premises during a shift or at a hotel but the employee is not expected to perform job duties during the entire shift. The classic example of this situation is a firefighter.
      1. A firefighter, when on duty, is typically required to be present at the fire station unless they are responding to an emergency call or performing some other community service. When firefighters are not involved in these and other work duties, they may be allowed to participate in other activities, including sleep. The employer would be required to pay the firefighters for their sleep time, because they have forfeited control of their activities to the benefit of the employer who may call on the them at any time while the employees remain on duty and they must immediately respond.
   2. An employee required to be on duty for **24 hours or more** may enter into an agreement with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods no more than 8 hours, ***provided*** adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night’s sleep*. No reduction in work hours is permitted unless at least 5 hours of sleep is taken*.
      1. An agreement regarding the exclusion of sleep time means either a written or verbal agreement that the employee will not be paid for sleep time – written is preferred. If the employee objects to the exclusion of sleep time from their hours worked, no such agreement exists and all hours spent on duty, including time spent sleeping, must be counted as work time.
7. **Lectures, meetings and training programs.** Attendance at lectures, meetings, training programs and similar activities need not be counted as work time only if four criteria are met, namely: it is outside normal work hours, it is voluntary, not job related and no other work is concurrently performed.
8. **Work-to-home travel.** An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.
9. **Special assignment in another city.** An employee who regularly works at a fixed location in one city is given a special one-day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count the time the employee would normally spend commuting to the regular work site. If the employee’s everyday commute is 20 minutes and the special assignment to another site requires 40 minutes travel time, then the employer may deduct 20 minutes from the 40-minute travel time, resulting in an additional 20 minutes (each way) added to the employees work time.
10. **Travel all in the day’s work.** Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.
11. **Travel away from home.** Travel that keeps an employee away from home overnight is *travel away from home*. Travel away from home is clearly work time when it occurs during the employee’s normal workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days (e.g., driving on Saturday). Time spent in travel away from home outside of regular working hours as a passenger is not considered work time.
12. **Complete relief from duty.** Problems arise when employers fail to recognize and count certain hours worked as compensable hours. For example, an employee who remains at his/her desk while eating lunch and regularly answers the telephone and refers callers is working. This time must be counted and paid as compensable hours worked because the employee has not been completely relieved from duty.
13. **Scheduling.** An employer, or the employee with prior supervisor approval, may rearrange the employee’s work schedule within the workweek to avoid additional compensation hours.
14. **Workweek.** Centralia College’s workweek is defined as starting on 12:00 a.m. Sunday through 11:59 Saturday. This definition is a global setting and is the same for all Washington State community and technical colleges.
15. **Compensatory Time.** FLSA provides for public agencies, including state colleges, to compensate their overtime eligible employees with compensatory time or “comp time” in lieu of overtime pay. This time off must be credited at the rate of at least 1.5 hours of time off for each hour of overtime worked. An employer may not require a worker to take comp or exchange time — it is at the worker’s request.  FLSA limits accrual to no more than 240 hours of comp time. The use of compensatory time in lieu of cash payment for overtime must be pursuant to some form of agreement or understanding between the employer and the employee (or the representative of the employee) reached prior to the performance of the work. The employee’s decision to accept compensatory time off in lieu of cash overtime payments must be made freely and without coercion or pressure. Accrued comp-time must be paid in cash if an overtime eligible employee separates employment with a comp-time balance.

**Is Travel Time Considered Working Time? Examples.**

Under the FLSA and the Washington Minimum Wage Act (MWA), employers are required to pay employees for all “hours worked.” Unfortunately, determining if activities count as hours worked is not a simple exercise. The following examples are offered for illustration purposes only – the particulars of any situation may drive different conclusions.

**Example 1: Overnight trip with students.** An employee taking students on an overnight field trip is on duty for the entire 24-hour period. No more than 8 hours can be deducted as sleeping time (if employee actually gets 8 consecutive hours of sleep time without performing any duties). No time may be deducted if the employee does not have at least 5 consecutive hours of uninterrupted sleep time or adequate sleeping facilities are not furnished.

**Example 2: Three-day trip with students.** Three overtime eligible employees regularly work 8 a.m. to 5 p.m. from Monday through Friday. They are assigned to work out-of-town for three days (two nights), taking high schoolers to a college visitation at Central Washington University, starting Wednesday morning at 8 a.m. Although the college fair runs from 10 a.m. through 4 p.m. each day, these participants arrive on Wednesday at noon and leave for Centralia at noon on Friday. One employee drives the college van to and from the event, the other two are passengers but are interacting with the students.

* As they are traveling during normal work hours, all three receive compensation for time spent traveling. Additionally, the passenger employees are working while traveling as they are interacting with the high school students.
* Although the college fair begins at 10 and ends at 4 p.m., all three are on duty beginning at 8 a.m. through dinner, interacting with the high school students through 7 p.m. At 7 p.m.., two of the employees are free to spend the evening for their own purposes.
  + On Wednesday all 3 of the employees work time begins at 8 a.m. and goes through 7 p.m. As they are interacting/supervising students throughout the day, including meal times, they are compensated for 11 hours of work time.
    - One employee maintains responsibility for monitoring/supervising the students, must stay at the hotel throughout the evening and night and be available immediately should there be a need. As the employee would be “on duty,” through the night and for more than 24 hours
      * The employer could exclude up to 8 hours of sleep time if the employee agrees upfront to exclude sleep time and the employee gets 8 hours of uninterrupted sleep. To exclude *any* sleep time from being considered work time, the employee has to have at least 5 hours of uninterrupted sleep time.
      * If the employee does not agree or the employee does not get 5 hours of uninterrupted sleep time, all 24 hours would be considered work time.
  + On Thursday, the above pattern repeats itself, with two employees earning 11 hours of work time and the third earning between 16 and 24 (contingent upon getting 5 – 8 hours of uninterrupted sleep time).
  + On Friday, the work day for two of the employees begins at 8 a.m. and ends with their return to Centralia at 5 p.m. Because they spent lunch time interacting/supervising students or driving the college van, they earned 9 work hours. The third employee, who was responsible through the previous night, would also earn 9 hours of worktime.

**Example 3: Overnight travel for conference.** An overtime-eligible employee who is regularly scheduled to work Monday through Friday from 8 a.m. to 5 p.m., flies to San Francisco on Tuesday on an 8 a.m. flight, for a two-day conference.

* Day One: The employee is entitled to compensation for time spent traveling to the conference after 8 a.m. and all time at the conference or elsewhere until 5 p.m. Meal times at the conference need not be counted as hours worked unless the employee is required to attend the meal, in which case that time is counted as hours worked.
* Day Two: The employee should be compensated for all conference-related activities between 8 a.m. and 5 p.m., but not for the time spent flying home after 5 p.m. If the conference does not end until 6 p.m., the employee is on work time until 6 p.m. but not for the time flying home in the evening.

**Example 4: Travel with commute time.** An overtime-eligible employee (who has a 7:30 a.m.-4:00 p.m., Monday-Friday regular work schedule) lives in Centralia, Washington and drives to the Morton extension site every day for work. The drive to work usually takes about 60 minutes, and the drive home takes about the same, depending on traffic. This time is not work time, but rather normal commute time. Below are some other normal travel time situations this employee encounters and how they would be compensated, including an overnight stay.

1. This employee attends a meeting in Seattle, which is about a two-hour drive. The employee leaves her home at 7:00 a.m. The employee would be considered to be working as of 7:30 a.m. that day, her regular starting time. The remaining drive time of approximately, 90 minutes (2 hours less typical 30 minute of her normal commute) would be considered work time.

2. The employee travels to Seattle for a two-day conference, including overnight travel, and will be covered by the “Travel Involving an Overnight Stay” FLSA provisions. Travel will be considered work time when it cuts across the employee’s workday. Therefore, if the employee leaves her home at 7:00 a.m., arrives in Seattle to begin the conference at 9:00 a.m. and participates in sessions lasting until 5:00 p.m. (excluding a 1-hour break for lunch that was not a working lunch), the employee should be recorded as working 8 hours (9 hours minus the 60-minute commute time) of compensable time. The next day, the employee’s conference begins at 8 a.m. and ends at 12:30 p.m. The employee takes a 30-minute lunch and then returns to Centralia and for meetings and works until 5 p.m. that day; therefore, she would be credited for 8.5 hours of work time. If, however, the supervisor has indicated that the employee need not return to the office and the employee arrives home at 3:30 p.m. The employee will be credited with working 7 hours for the second day and will need to request 1 hour of vacation leave.

**Example 5: Driving/Passenger-ing.** An overtime eligible employee drives to the airport to attend a seminar and has two co–workers as passengers with him.

* If the trip is made before or after normal work hours, only the driver receives compensation, as only the driver is working.
* If the trip is made before or after normal work hours and the two passengers are working during the drive, all three employees are working.
* If the trip is made during normal work hours, all three employees are compensated because travel during normal work time is compensable.

Time spent at a hotel,

* With freedom to use time for the employee’s own purposes, is not compensable.
* Working or with requirement to quickly/immediately respond, is work time.

**Example 6: Traveling on the Weekend.**  An overtime eligible employee normally works 8 a.m. – 5 p.m., Monday through Friday. However, one week he begins work at 8 a.m. on Saturday morning, takes an hour meal break, and returns home on Saturday at 2 p.m. Since the employee worked and traveled for 5 hours on Saturday (a non-working day) during hours that would be considered normal work hours, the employee would be eligible for 5 hours of overtime pay or 7.5 hours of compensatory time on Saturday.

**Example 7: Traveling on/off work time.** An employee who regularly works from 8 a.m. to 5 p.m. from Monday through Friday is assigned work out of town. On Friday, the employee works at his regular job location until 4 p.m. and then travels by bus to an out-of-town work location, arriving at 6 p.m. The employee should be compensated for 8 hours on Friday, since with overnight travel only the travel time that overlaps the employee’s regular working hours must be paid. On Saturday, the employee works from 8 a.m. to 4 p.m. with an hour meal break. The employee then leaves to travel home by bus, arriving at 6 p.m. Since only the travel time that overlaps the employee’s regular working hours on a non-working day must be paid, the employee is eligible for 12 hours of compensatory time. (8 hours x 1.5) Regular meal period time is not considered compensable time.

**Example 8: Traveling to temporary duty station.** On a workday, an employee is required to travel from home to a temporary duty station for an afternoon meeting. The employee's regular working hours are 8:00 a.m. to 4:30 p.m. In total, the employee spends 13 hours (6:00 a.m. to 12:30 p.m. and 4:30 p.m. to 11:00 p.m.) traveling to and from the worksite. However, the time between 8:00 a.m. and 12:30 p.m. is compensable as part of the employee's regular working hours. Also, an employee's time spent traveling outside of regular working hours to or from a transportation terminal (e.g., an airport or train station) within the limits of his or her official duty station is considered to be equivalent to commuting time and is not creditable travel time. In this case, the employee spends 2 hours traveling to and from an airport within the limits of his official duty station.

In this example, the employee's compensatory time off for travel entitlement is as follows:

Total travel time: 13 hours

*minus*

Travel time within regular working hours: 4.5 hours

Travel to/from airport within limits of official duty station: 2 hours

**Compensatory time off for travel: 6.5 hours**

1. **Endnotes**

   Executive employees are overtime-exempt if their primary duty is management, must customarily and regularly direct the work of two or more full-time employees, and must have the authority to hire or fire other employees or make recommendations on hiring/firing (e.g., deans, dept. heads, directors). [↑](#endnote-ref-1)
2. Primary duty for Administrative Employees must be the direct performance of office or non-manual work directly related to management or operations and primary duty must include the exercise of discretion and independent judgement with respect to significant matters (admission counselors, financial aid officers) Notably, there are specific regulatory provisions for certain educational administrative employees—known as “academic administrative employees”—whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment (e.g., student counseling). To be overtime exempt as an academic administrative professional a position must meet the salary basis and level test OR be paid an amount at least equal to an entry level teacher. [↑](#endnote-ref-2)
3. Primary duty for Professional employees must be the performance of work requiring advanced knowledge, advanced knowledge must be in a field of science or learning, and the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction (e.g., CPAs, librarians, researchers). [↑](#endnote-ref-3)
4. Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and if they are employed as a teacher in an educational establishment. The salary and salary basis requitements do not apply to teachers. [↑](#endnote-ref-4)
5. Teachers and certain academic administrators are exempt from the Salary-Level test. See End-Notes addressing Teachers and Administrative employees for additional information. [↑](#footnote-ref-1)