

Guidelines for Implementing the Fair Labor Standards Act (FLSA)

CHAPTER I OVERVIEW AND DEFINITIONS

The Fair Labor Standards Act (FLSA) is a Federal law establishing rules for payment of minimum wage, maximum hours, overtime pay, and child labor. The University is covered under the FLSA, and must comply with it. University administrators and supervisors at all levels must ensure that the requirements of the Federal law are followed. No one may enter into any arrangement or agreement that would limit or deny any University employee his or her rights under FLSA.

New York State law conforms to the Federal guidelines covered under FLSA. Further, The City University of New York recognizes that it has entered into collective bargaining agreements with its various unions on terms and conditions of employment. Some contracts provide for greater benefits than are required by the FLSA and/or clarify how the basic tenants of the FLSA will be implemented for its respective members. In the event of an inconsistency between contractual language and standards imposed by the Fair Labor Standards Act or applicable Federal or State law, the Federal or State law shall take precedence unless the Federal or State law authorizes such inconsistency.

A. Introduction to FLSA

The FLSA was originally passed in 1938. It was modified several times thereafter. Some very significant changes were put into effect on August 23, 2004. The U.S. Department of Labor (DOL) is responsible for the Wage and Hour portion of the Act and for insuring its compliance.

One of the most important issues for CUNY is the eligibility for overtime pay. Overall, the FLSA sets guidelines for who may be exempt from receiving overtime pay (exempt employees) and who must receive overtime pay (nonexempt employees). Significant fines, back pay awards, and detailed audits may be imposed by the DOL for non-compliance.

Certain executive and administrative salaried positions, and some other selected jobs, are exempt from the FLSA and, therefore, the University is not obligated to give overtime pay. They are discussed in Section A below and Appendix B.

Generally, all “blue collar” workers, hourly workers, and individuals earning an annual salary of less than \$455 per week (\$23,600/year) are automatically covered by the FLSA, i.e., “non-exempt.” The FLSA requirements apply to individual positions and not to job classifications (although all positions within some job classifications by the nature of their work will be covered by the FLSA, such as entry-level clerical employees.)

- For example: Some individuals in the Higher Education Assistant payroll title may be covered by FLSA overtime provisions, while other individuals in the Higher Education Assistant payroll title may not be covered, based on the nature

of the work and responsibilities. A review of each position is required to satisfy the requirements of the FLSA.

B. Definitions

- Non-exempt employee – An employee covered by the overtime provisions of the FLSA.
 - This may apply to any University employee regardless of whether he or she holds an instructional or non-instructional appointment, a classified staff (Civil Service) appointment, is appointed as a temporary, provisional, or substitute employee, or is part-time. Union status has no bearing on whether a position is considered exempt or non-exempt.
- Exempt employee – An employee whose position meets one or more exemption types specified by the DOL and is not covered by the overtime provisions of the Act.
 - At CUNY, an individual may be exempt from FLSA overtime regulations but still be covered by a union contract and subject to all of its contractual obligations, including a contractual right to overtime.

Appendix A outlines the various “tests” to determine whether a position is exempt or non-exempt from the provisions of the FLSA.

- Workweek – The time span of seven consecutive 24-hour periods within which the University calculates overtime hours and corresponding pay.
 - Unless otherwise specified by contract or University or College policy, CUNY’s workweek begins at 12:01AM on a Sunday and ends at midnight on the following Saturday. In situations where the contract or the college policy dictates another workweek, the workweek is still defined as seven consecutive 24-hour periods.
- Workday – The period of 24-hours which begins at 12:01 AM and ends at midnight.
- Work Time – Any and all time the University requires, suffers, or permits an employee, who is subject to the FLSA, to be on duty, whether on campus or other University premises, or at another place. Also referred to as “Hours Worked.”
- Overtime work – Time worked over 40 hours in a workweek by a nonexempt employee.
 - Unlike the FLSA, Article VIII (Overtime), Section 6 of the Blue and White Collar Agreement provides that time during which an employee is in full paid status, whether or not such time is actually worked (i.e., the individual is on paid vacation or sick time), shall be counted in computing the number of hours worked during the week.
 - For those not covered by the above, holiday, vacation, sick, and other leave time is not counted toward a 40-hour workweek.
- Compensatory time – time earned in excess of a regular workweek that an individual will be allowed to use at a later date.

For further information, Appendix C lists contact information for applicable Federal and New York State agencies.

CHAPTER II RESPONSIBILITIES

A. Office of Faculty and Staff Relations

The Office of Faculty and Staff Relations (OFSR) is responsible for developing and monitoring policies and procedures that ensure the University's compliance with the FLSA law and regulations. OFSR will also determine the FLSA status for all positions within the University. In addition, OFSR will provide materials, guidance, and training as necessary to ensure compliance with all applicable FLSA rules and regulations.

- The Classification and Compensation Unit will review and determine FLSA status of all positions. This will normally occur when a position becomes vacant, reclassified, or otherwise changes, or as requested by the campus Director of Human Resources.
- The Classification and Compensation Unit will log and track the FLSA status of positions.
- The Unit will consult with and assist HR Departments with their questions regarding FLSA.

Appendix C lists contact information for applicable areas within the Office of Faculty and Staff Relations.

B. College Human Resource Departments

The Office of Human Resources at each campus is responsible for the overall administration of the FLSA on their respective campuses. The campus Director of Human Resources ensures that all managers and supervisors are aware of their responsibilities under FLSA and monitors compliance with FLSA regulations on their campus. In addition, he/she:

- Ensures that all individuals on the campus are aware of their FLSA designation in writing
- Provides necessary information to OFSR to determine the FLSA designation of each position, including a current, validated job description
- Advises OFSR when there is a change of duties in a particular position that might require a change in FLSA designation
- Provides for the accurate and prompt collection of time records and the payment of overtime or awarding of compensatory time, as appropriate (this may be done in cooperation with the Finance, Business, and/or Payroll units at a campus)
- Maintains required records for at least 6 years in accordance with the University's Records Retention Policy.

C. College Presidents, Executives, Department Heads, and Managers

Presidents, executives, all department heads and managers are responsible for ensuring that all provisions of the FLSA are followed on their campus or within their respective departments. This includes, but is not limited to:

- Ensuring that non-exempt employees are only allowed to work during normal business hours, except as authorized for overtime work
- Advising the campus Director of Human Resources when there is a change of assignment impacting the FLSA designation of a particular employee
- Ensuring accurate monitoring of hours and appropriate record keeping.

CHAPTER III

PROCEDURES FOR FLSA COMPLIANCE

A. Determining the FLSA Status of a Position

The Office of Faculty and Staff Relations' Classification and Compensation Unit will determine the FLSA status of all positions.

- Classification for FLSA status will occur whenever a position is classified: upon vacancy, reclassification, reorganization, or change in duties.
- Classification will be based on a Job Description (or in the case of vacancies, a Position Vacancy Notice).
- The Unit will periodically provide listings of exempt and non-exempt titles as an aid in planning.

Appendix B provides a listing of all titles within the University with a preliminary determination of FLSA status.

- When determining classification, relevant employment factors will be considered, including duties, time devoted to each job task, salary earned, and other considerations that reflect the overall job.
- It is to everyone's benefit to write clear, detailed job descriptions for each position.
- If there is a change in an exempt employee's assigned duties, the department head or manager should notify campus Human Resources. The Human Resources Director will request a review of the position's FLSA status by the Classification and Compensation Unit.

An individual or a college appointing authority may appeal an FLSA decision to the Vice Chancellor for Faculty and Staff Relations through their campus Director of Human Resources. The ruling of the Vice Chancellor is final and binding and not subject to any further appeals, other than the statutory rights and remedies available to the employee under Federal law.

B. Notification

When a vacant position is posted at CUNY, the FLSA status will appear on the Position Vacancy Notice.

Upon any other type of classification (such as substitute appointment or reclassification), Classification and Compensation will notify the campus Director of Human Resources, in writing, upon approval.

The campus Director of Human Resources is to provide notification of the FLSA status of the position to each employee holding that position, and should provide procedures for reporting time worked.

The FLSA status should also appear on each Job Description maintained at the campus.

C. Multiple Appointments of Non-Exempt Employees

It is possible for employees to hold multiple (part-time) non-exempt appointments, either at a single College or at more than one campus at a time.

Colleges must determine the current employment status of the employee as part of their standard application and hiring process.

If an employee holds multiple non-exempt appointments at the same College, the College should determine how responsibility for overtime payments will be made should the employee work more than 40 hours a week in the combined non-exempt jobs.

Colleges about to hire an employee for a non-exempt position where the individual is already in a non-exempt appointment at another CUNY campus must obtain the written approval of the University Director of Human Resources Management Services.

- For example: An employee is a College Assistant at “College A” working 20 hours per week. The individual is now being considered as an Accounting Assistant for 25 hours per week at “College B”. The individual may be eligible for overtime (1 1/2 x 5 hours) for all hours worked in a similar capacity over 40 hours in a week.

The particulars of both appointments must be reviewed by the Central Office prior to the offer of employment being made by the second College.

Individuals who are working as exempt employees at one college who are being considered for work that is exempt at another college, e.g., Adjunct Faculty, do not require this review. These appointments continue to be bound by the University’s Policy on Multiple Positions.

D. Establishing the Workweek

The standard workweek for full-time employees is generally determined by the respective contract, generally but not always with a normal schedule of 5 workdays served consecutively.

- An exception is when authorization has been given for “Summer Hours” (a four-day workweek for some employees); each employee is still required to work the minimum number of hours required to satisfy the standard workweek.

The workday generally consists of a seven or eight-hour day (depending on the number of hours in an employee’s workweek) plus a meal period. A meal period is not included in the calculation of the workday. Rest breaks of less than 20 minutes in the morning and afternoon, if given (they are not required under FLSA regulations), are counted towards the number of hours worked in a workweek.

- Gittlesons, by Article XX, Section 2 of the White Collar Agreement, are allowed one rest period of 15 minutes per day (coffee break) when the work of the office permits the break. No overtime or compensatory time considerations are given for not taking the allowed rest periods.

Other schedules apply to part-time employees, some shift employees, and employees occupying positions which require a workweek other than five days due to work requirements. Department Heads determine the workweek, subject to contractual provisions, with the approval of their campus Human Resources Director or Labor Designee.

Individuals may have work schedules adjusted to meet a specific college’s operational needs, e.g., registration period, and may be required to work a longer than regular workday. FLSA allows for non-exempt individuals to be assigned work

in excess of a “normal” workday, provided the individual is paid an overtime rate for more than 40 hours worked in a workweek.

- For example: During registration, a Gittelson employee (non-exempt-White Collar contract) with a 35-hour workweek is asked to work from 7:00AM to 7:00 PM, with a one-hour lunch break, Monday through Thursday. She would, therefore, have worked 44 hours in that workweek. By contractual provisions, she would be entitled to 5 hours of straight time for the hours worked from 35 to 40, and an overtime rate (1 1/2 times the hourly rate) for the time from 40-44 hours worked. She may also be entitled to additional compensation, e.g., meal allowances, based on the specifics of her contract.

Note that certain contracts, such as the Blue and White Collar Contracts differentiate between adjusting workweeks to meet college needs and rescheduling a tour of duty to avoid overtime. The campus Director of Human Resources or Labor Designee must be consulted prior to adjusting schedules beyond a normal workday to ensure all provisions of the labor contracts are met.

E. Determining Compensable (Working) Time

1. Normal Work Time

Work time includes all time an employee is required to be on duty, on the University’s premises or at a prescribed workplace. FLSA defines work as all efforts that are “suffered or permitted”, or required by an employer, that is controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer.

- Work that is not requested but allowed is still work time. This applies to work performed by an employee away from the work site or at home (for example, an employee who voluntarily continues to work at the end of the day or shift).
- The employee may wish to finish an assigned task, complete a report, or correct errors. The reason is immaterial. If the supervisor knows, or has reason to believe that work is continuing or there is evidence thereof, then the time is compensable. The mere existence or announcement of a rule against such work is not enough to deny compensation. If a supervisor observes an employee working before or beyond the normal shift without prior authorization, supervisors should deliver a verbal warning to the employee to cease working.
- Conversely, the supervisor may arrange with the individual to continue the work on that day that the employee wishes to complete or that the supervisor wishes the employee to complete; however, the supervisor must arrange for the employee to be given time off within the same workweek.
- If adjusting the hours worked by the end of the workweek is not feasible, then the individual must be compensated for that work in either compensatory time or overtime depending on his or her title as outlined in this section and applicable contractual agreements.

2. Waiting Time

If an employee is unable to use time effectively for personal purposes while waiting for work, instructions, or preparation of the work site, then that time is also considered working time. These instances are usually of short duration.

- For example: An CUNY Office Assistant is asked to set up for registration 15 minutes before registration opens. The 15 minutes prior to the start of registration would be compensable.

3. Preparation or Completion of Work

Preparatory and concluding activities that are an integral part of the employee's work are compensable.

- Examples include: turning on machinery or equipment and conducting safety checks; filing away documents at the end of the day; reporting to a duty site to receive an update on events on the previous shift; and changing into a uniform required for the job, e.g., custodial employees or campus peace officers, etc.)

4. On-Call and Stand-By Compensation

An employee who is required to remain on call on the University's premises, or so close thereto that the employee cannot use the time effectively for personal pursuits, is considered to be working while "on-call." This time is counted as regular work time.

An employee who is not required to remain on the University's premises but is merely required to leave word at his or her home or with the employer where he or she can be reached, or is given a beeper or cell phone is not working while "on-call."

The White and Blue Collar contracts contain further provisions for dealing with "on-call" and voluntary "stand-by" time.

5. Travel Time

The principles that apply in determining whether or not time spent in travel is working time depend upon the kind of travel involved.

Time spent "walking, riding, or traveling to and from the actual place of performance of the principal activity [work]" is not work time and, therefore, is not compensable.

Generally, employee travel time during the workday, such as travel to and from repair sites, or to and from a meeting, must be counted as hours worked. If an employee is attending a meeting and traveling directly from home, his or her workday, for purposes of work time counted, begins at the time he or she is expected at the meeting site minus his or her normal commuting time.

- For example: A meeting is scheduled to begin in Bronx Community College at 9:00AM. The employee needs to leave home at 8:00AM to be there on time. Her normal commuting time is 30 minutes to her home college. Her start time for calculating hours worked would be 8:30AM.

If a non-exempt employee travels out of town for less than one day, he or she must be paid for all travel time, excluding commuting time and bona fide meal times.

Non-exempt employees who travel overnight on business must be paid for time spent traveling (except for meal periods) during their normal working hours on their regular working days as well as during the normal working hours on their non-working days, such as Saturdays and Sundays, and holidays. Travel time, as a passenger on an airplane, train, boat, bus, or automobile outside of regular working hours is not considered work time.

- If an employee's working time is regularly 9AM-5PM Monday through Friday, but travels on a Saturday, his or her travel time between 9AM- 5PM on Saturday is compensable.

6. Training Programs and Meetings

Time spent in training programs, lectures, and meetings is not considered working time if all of the following are true:

1. Attendance is outside of the employee's normal working hours;
2. Attendance is voluntary;
3. The course, lecture, or meeting is not directly related to the employee's job; and
4. The employee does not perform any productive work during such attendance.

If these conditions are not met, then the individual is considered to be working and all time spent would be compensable.

F. Calculating Overtime Payments

Work over 40 hours (overtime) for non-exempt employees is calculated at time and one-half of the hourly rate of pay. Individuals in a 40-hour workweek will have their hourly rate determined by the current salary divided by 2088. Individuals who are in a 35-hour workweek will have their hourly rate calculated by dividing the annual salary by 1827.

Annual regular salary shall include assignment and longevity differentials, service increments and longevity increments, as appropriate to the individual employee. Special holiday rates or Saturday and Sunday rates are not used as factors to determine the total salary for calculation of hourly or overtime rates.

For example: A member of the White Collar bargaining unit earns a base salary of \$39,000 per year. This year, he receives a longevity differential of \$800 lump sum. When computing his hourly rate for purposes of overtime, his total base salary plus longevity payment are added together ($\$39,000 + \$800 = \$39,800$ divided by 1827 hours [35-hour workweek] for an hourly rate of \$21.78; \$32.67 at time and a half.)

G. Providing Compensatory Time

To award compensatory time in lieu of cash payment, an agreement must be in place in advance with the respective union. If no compensatory time agreement is in place, overtime must be paid in cash. Compensatory time provisions exist in the White and Blue Collar contracts. Each campus has the authority to decide whether it will offer a compensatory time program or if it wishes to pay cash for overtime earned. Individuals covered by the White and Blue Collar contracts must agree to compensatory time in lieu of cash, except in certain circumstances spelled out in the contract. Compensatory time accrues in the same way as paid overtime

(1.5 hours for each hour of overtime worked).

When a compensatory time program is in place, individuals may earn up to 240 hours of compensatory time under FLSA guidelines. All time above 240 hours must be paid in cash.

Exempt employees do not earn overtime or compensatory time, except as provided by contract.

Employees who have requested the use of compensatory time will be permitted to use such time within a reasonable period, considering the customary work practices of a college, the normal schedule of work, anticipated peak workloads based on past experience, emergency requirements, and availability of qualified substitute staff.

FLSA dictates that supervisors cannot deny compensatory time merely because it would be inconvenient to the employee's department.

An employee with accrued compensatory time may be required to use the time, however, within a reasonable period after receiving notice to do so. The notice must include the length of time in which a specified number of hours of compensatory time are to be used.

Where a compensatory time program exists, a college may opt to pay out all or any portion of compensatory time due an employee. However, no employee may accrue more than 240 hours of compensatory time by FLSA regulations.

Individual contracts or individual college policies may reduce this amount of allowable banked compensatory time.

If an employee separates, promotes, demotes, or transfers, unused compensatory time must be paid out. Additionally, if a non-exempt employee's status changes to exempt, compensatory time must be used or paid out prior to the effective date of the new appointment.

H. Keeping Time Records

All non-exempt employees must report time worked. There are two options and colleges may opt for the method(s) of time capture most appropriate to the work performed.

- Employees may complete a time sheet (electronic or paper) that shows actual hours worked, i.e., reporting time, lunch break, and departure time.
- Those who are deemed to be **non-exempt who work a regular work schedule**, e.g., 9-5 Monday-Friday, 8-4 Tuesday-Saturday, etc., may complete a time sheet that notes only the exceptions to a normal work schedule, i.e., +2 hours (5:00-7:00PM), - 1 1/2 hours (3:30-5:00), etc. and do not have to complete a time sheet with the actual "in", "out", "lunch break" times.

In either case, a supervisor must verify the time worked, including exceptions. Supervisors are responsible for verifying the time sheet of each non-exempt employee.

Exempt employees may continue to use time reporting methods that simply report when leave time, i.e., annual leave, sick leave, etc., has been used.

Colleges remain responsible for input of time worked to their respective payroll systems and assuring that overtime is correctly paid. In addition, Colleges with compensatory time programs must track the time in each employee's overtime bank.

Colleges must retain time records for 3 years under the FLSA guidelines and for 6 years under the University's Records Retention Schedule.

APPENDIX A

Fact Sheet on FLSA Exemptions

This fact sheet includes information on how exemptions to the FLSA overtime requirements are determined. It includes:

- DOL Fact Sheet #17A: material from this Federal publication will explain exemptions from the FLSA overtime requirements for Executive, Administrative, Professional, Computer & Outside Sales Employees
- CUNY Discussion: we have included additional comments about how the guidelines apply to CUNY.

INFORMATION ON EXEMPTION TESTS

From DOL Fact Sheet #17A	CUNY Discussion
<p>Executive Exemption</p> <p>To qualify for the executive employee exemption, all of the following tests must be met:</p> <p>The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;</p> <p>The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;</p> <p>The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and</p> <p>The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.</p>	<p>For the most part, ECP employees are included in this exemption, as well as some titles in the Classified Managerial Staff.</p>
<p>Administrative Exemption</p> <p>To qualify for the administrative employee exemption, all of the following tests must be met:</p> <p>The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;</p> <p>The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and</p> <p>The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.</p>	<p>"Matters of Significance":</p> <p>Teaching activities (CUNY tracks teaching as a separate exemption category)</p> <p>Academic Management (Educational Establishments), including Academic Counseling or Program Management such as oversight of field work (CUNY tracks Academic Management as a separate exemption category), applies to employees "whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof". This would apply to Academic Counselors and other academic program management positions.</p> <p>Other tests of matters of significance as outlined by the DOL:</p> <ul style="list-style-type: none"> • Authority to set, interpret, or implement management policy and practice • Carry out major assignments in conducting operation • Perform work affecting operations to a substantial degree • Authority to commit CUNY in matters of significant financial impact • Authority to waive or deviate from

From DOL Fact Sheet #17A	CUNY Discussion
	<p>established policy without approval</p> <ul style="list-style-type: none"> • Authority to negotiate or bind CUNY on significant matters • Provide consultant or expert advice to management • Plans long- and short-term organizational objectives • Investigate and resolve matters of significance on behalf of management • Represent CUNY in handling complaints, arbitrating disputes or resolving grievances
<p>Professional Exemption</p> <p>To qualify for the learned professional employee exemption, all of the following tests must be met:</p> <p>The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;</p> <p>The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;</p> <p>The advanced knowledge must be in a field of science or learning; and</p> <p>The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.</p>	<p>In general, also applies to professions for which an accrediting/certifying body has developed specialized curriculums and certification programs that are widely recognized; i.e., Registered Nurse, Certified Athletic Trainer.</p> <p>Also note that while not specifically assigned an Exemption category, individuals whose jobs involve the practice of law or medicine are also Exempt.</p>
<p>To qualify for the creative professional employee exemption, all of the following tests must be met:</p> <p>The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;</p> <p>The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.</p>	<p>Does NOT include CUNY's theatre titles (these are technical, not primarily creative, in nature).</p>
<p>Computer Employee Exemption</p> <p>To qualify for the computer employee exemption, the following tests must be met:</p> <p>The employee must be compensated either on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;</p>	<p>Note that this exemption does not apply to work involving computer hardware, repairs and technical support, and computer operations. Individuals performing these tasks must meet other tests to become exempt.</p>

From DOL Fact Sheet #17A	CUNY Discussion
<p>The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;</p> <p>The employee's primary duty must consist of:</p> <ul style="list-style-type: none"> • The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; • The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; • The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or • A combination of the aforementioned duties, the performance of which requires the same level of skills. 	
<p>Outside Sales Exemption</p> <p>To qualify for the outside sales employee exemption, all of the following tests must be met:</p> <p>The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and</p> <p>The employee must be customarily and regularly engaged away from the employer's place or places of business.</p>	<p>We are not aware of any titles that would qualify for this exemption at CUNY.</p>
<p>Highly Compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.</p>	<p>This includes most, but not all, ECP titles. Those ECP titles that pay less than \$100,000 per year qualify under the Executive or Administrative Exemption. Potentially other non-teaching instructional staff may also fall into this category.</p>

From DOL Fact Sheet #17A	CUNY Discussion
<p>Blue Collar Workers</p> <p>The exemptions provided by FLSA Section 13(a)(1) apply only to “white collar” employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.</p>	<p>Certain employees performing production work who are not “blue collar” are considered Non-Exempt as “non management production staff”.</p> <p>These include:</p> <ul style="list-style-type: none"> • Personnel Clerks • Accounting Clerks • Paralegals
<p>Police, Fire Fighters, Paramedics & Other First Responders</p> <p>The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.</p>	

APPENDIX B
Review of CUNY Titles

TITLE NAME	DEFAULT FLSA STATUS E = Exempt N = Non-Exempt P = Position Specific Review Required*	IF EXEMPT, BASIS FOR EXEMPTION
Executive Titles (ECP)		
All Titles	E	Executive or Administrative
Higher Education Officer Titles (HEO)		
Assistant to Higher Education Officer (includes related grandfathered titles)	P	VARIES
Higher Education Assistant	P	VARIES
Higher Education Associate	E	
Higher Education Officer	E	
Non-Teaching Adjuncts	P	VARIES
Teaching Titles		
Assistant Teacher	N	
College Physician/Dentist	E	Law/Medicine
Principal/Assistant/Superintendent	E	Admin/Academic
Teacher/Counselor	E	Academic/Teaching
Registrar, Assistant/Assoc/Senior	E	Administrative
Lecturer/Instructor/Assist/Assoc/Prof	E	Academic/Teaching
Research Titles		
Research Assistant	N	
Research Associate	E	Learned
Laboratory Assistant Titles		
CLT	N	
Senior College Laboratory Technician	P	VARIES
Chief College Laboratory Technician	E	Learned or Administrative
Information Systems Titles		
Computer Operations Manager	E	Administrative
Computer Systems Manager	E	Administrative
IS Aide	N	
IS Trainee	N	
IS Assistant	P	VARIES

TITLE NAME	DEFAULT FLSA STATUS E = Exempt N = Non-Exempt P = Position Specific Review Required*	IF EXEMPT, BASIS FOR EXEMPTION
IS Associate	P	VARIABLES
IS Specialist	E	Administrative
Buildings and Grounds Titles		
Administrative Superintendent Buildings & Grounds	E	Executive or Administrative
Assist Chief Architect	E	Learned
Assist Chief Engineer	E	Learned
Chief Administrative Superintendent Buildings & Grounds	E	Executive
College Interior Designer	P	VARIABLES
Construction Manager	E	Administrative
Project Manager	E	Administrative
Super of Construction	E	Administrative
University Architect	E	Learned
University Architect Intern	N	
University Assistant Architect	E	Learned
University Assistant Engineer	E	Learned
University Associate Chief Engineer	E	Learned
University Chief Architect	E	Learned
University Engineer	E	Learned
University Engineering Intern	N	
University Engineering Technician	N	
Maintenance Titles		
Assist Principal Custodial Sup	E	Administrative
Custodial Assistant	N	
Custodial Supervisor	N	
Elevator Operator	N	
Elevator Starter	N	
Exterminator	N	
Gardener	N	
Laborer	N	
Maintenance Worker	N	
Principal Custodial Supervisor	E	Administrative
Principal Park Supervisor	E	Administrative
Senior Custodial Supervisor	N	
Supervisor	N	
Skilled Trades Titles		
Auto Mechanic	N	
Carpenter	N	
Cement Mason	N	
Electrician	N	

TITLE NAME	DEFAULT FLSA STATUS E = Exempt N = Non-Exempt P = Position Specific Review Required*	IF EXEMPT, BASIS FOR EXEMPTION
Electrician's Helper	N	
Elevator Mechanic	N	
High-Pressure Plant Tender	N	
Locksmith	N	
Machinist	N	
Oiler	N	
Painter	N	
Plasterer	N	
Plumber	N	
Plumber's Helper	N	
Roofer	N	
Senior Stationary Engineer	N	
Stationary Engineer	N	
Steamfitter	N	
Steamfitter Helper	N	
Supervisor Carpenter	N	
Supervisor Electrician	N	
Supervisor of Mechanics	N	
Supervisor Painter	N	
Supervisor Plumber	N	
Supervisor Thermostat Repairer	N	
Thermostat Repairer	N	
Accounting Titles		
Assist Purchasing Agent	N	
College Accountant	P	VARIES
College Accounting Assistant	N	
Purchasing Agent	P	VARIES
Office (Gittleson) Titles		
Clerical Associate	N	
College Assistant	N	
CUNY Administrative Assistant	N	
CUNY Office Assistant	N	
Graphic / Printing Titles		
College Print Shop Coordinator	N	
Coll Print Shop Assistant	N	
Coll Print Shop Associate	N	
Multi-Color Press/Camera Operator	N	
Computer/Photo Typesetter	N	
College Graphics Designer	N	
Theatre Titles		

TITLE NAME	DEFAULT FLSA STATUS E = Exempt N = Non-Exempt P = Position Specific Review Required*	IF EXEMPT, BASIS FOR EXEMPTION
Lead Theatre Technician	N	
Media Services Technician	N	
Theatre Technician	N	
Theatre Technician Specialist	N	
Security Titles		
Assistant College Security Director	E	Administrative
Campus Peace Officer	N	
Campus Public Safety Sergeant	N	
Campus Security Assistant	N	
Campus Security Officer	N	
College Security Director	E	Executive
College Security Specialist	E	Administrative
Deputy University Security Director	E	Executive
University Security Director	E	Executive
Other Service Provider Titles		
Disability Accommodations Specialist	N	
Mail/Messenger Services Worker	N	
Motor Vehicle Operator	N	
Nurse Practitioner	E	Learned
Radio and TV Operator	N	
Secretary to the Commission	E	Administrative
Sign Language Interpreter	E	Academic/Learned
Staff Nurse	E	Learned
Stock Worker	N	
Supervisor of Stock Workers	N	

*Note: A review of the responsibilities of each individual position in this title is required to determine FLSA status.

APPENDIX C

Contacts and Resources

Office of the Vice Chancellor for Faculty and Staff Relations
(212) 794-5353

Office of the Director of Human Resources Management
Services (212) 794-5345

- Approvals for hiring non-exempt individuals on multiple campuses
- Applications for appeals of FLSA Classification Decisions (to be reviewed with the Vice Chancellor)

Classification and Compensation Unit
(212) 794-5543

prsbh@mail.cuny.edu (Classification Unit Mailbox: preferred contact method)

- FLSA Classification Information and Consulting
- Tracking and Reporting

For all CUNY Resources:

Mailing Address: 535 East 80th St

New York, NY 10021

Fax: (212) 794-5389

For information on the Fair Labor Standards Act, including the text of the Act, the Department of Labor resources are found at <http://www.dol.gov> or <http://www.wagehour.dol.gov>. There is a toll-free help line, (866) 487-9243, available from 8:00 am to 5:00 pm daily.

Information on New York State minimum wage and employment regulations can be found at:
<http://www.labor.state.ny.us>

MEMORANDUM

TO: Exempt Employees in the Higher Education Officer series

FROM: Human Resources

RE: Exempt status under the Fair Labor Standards Act (FLSA)

CUNY is providing notice to you of the status of your position under the Federal Fair Labor Standards Act (FLSA).

The Act defines conditions under which employees are eligible for consideration for overtime when their workweek exceeds 40 hours.

Your position has been classified as “Exempt”. This means that the overtime provisions of the Fair Labor Standards Act do not apply to your position, and you are not eligible for overtime consideration under the Act.

The review of your position was conducted by University specialists and was based on a combination of the classification of your position and your specific job

responsibilities as documented in your job description. Your Department management provided your job description to Human Resources. Because FLSA status is based on a review of the specific job responsibilities of your position, two individuals with the same classification and/or functional title may have a different status.

You may appeal the determination of your FLSA status by writing to your College Human Resources Director, who will forward this request to the Office of Faculty and Staff Relations. You must include information regarding your work duties, including a current job description if possible.

You will find basic information about the Fair Labor Standards Act on the Internet at www.dol.gov (US Department of Labor).

If you have further questions, contact your College Human Resources Director.

MEMORANDUM

TO: Non-Exempt Employees in the Higher Education Officer series

FROM: Human Resources

RE: Non-Exempt status under the Fair Labor Standards Act (FLSA)

CUNY is providing notice to you of the status of your position under the Federal Fair Labor Standards Act (FLSA).

The Act defines conditions under which employees are eligible for consideration for overtime when their workweek exceeds 40 hours.

Your position has been classified as “Non-Exempt”. This means that the overtime provisions of the Fair Labor Standards Act apply to your position and you may be eligible for overtime consideration as follows:

- As defined in the FLSA, you will be paid at a rate of 1.5 times your average hourly rate of pay for each hour over 40 that you work in a single workweek in any Non-Exempt position(s).
- Your hourly rate of pay for annual appointments is your salary divided by 1827 (e.g., an employee making \$40,000 per year has an hourly rate of \$21.89).
- If you have multiple Non-Exempt appointments, your average hourly rate of pay is a weighted average of all hourly rates of pay earned in Non-Exempt appointments in a given workweek.
- Your workweek is a seven-day period defined by College policy and scheduling, and will be communicated to you by your supervisor. Holiday, Vacation, Sick, and other leave hours are not counted toward the 40-hour workweek.

The review of your position was conducted by University specialists and was based on a combination of the classification of your position and your specific job responsibilities as documented in your job description. Your Department management provided your job description to Human Resources. Because FLSA status is based on a review of the specific job responsibilities of your position, two individuals with the same classification and/or functional title may have a different status.

As a Non-Exempt employee, you must report the hours you work each week, using the method required by your College. In all cases, a supervisor must verify hours worked. It is University policy that all employees eligible for overtime payment must receive the approval of their supervisor or unit head prior to working any overtime hours.

You may appeal the determination of your FLSA status by writing to your College Human Resources Director, who will forward this request to the Office of Faculty and Staff Relations. You must include detailed information regarding your work duties, including a current job description if possible.

You will find basic information about the Fair Labor Standards Act on the Internet at www.dol.gov (US Department of Labor).

If you have further questions, contact your College Human Resources Director.