

FLSA Designation and Training

FLSA Rule Changes Effective August 2004:

On August 23, 2004 new rules governing overtime eligibility for workers under the Fair Labor Standards Act took effect. These new rules are the first significant changes to the FLSA in nearly a half century; most notably, they clarify who is exempt from overtime and who is not. In order to comply with the new rules Human Resources requested updated position descriptions (PDQ) from all employees. These PDQ's were then reviewed against the new regulations to determine exempt/non-exempt status. In some cases employees may now be non-exempt and therefore eligible for overtime, while others may now be exempt due to the nature of their jobs. However, most positions remained the same.

Some of the most obvious changes to the FLSA included an increase in Minimum Salary to \$455 per week or \$23,660 annually. In addition, changes were made to the types of exemptions allowed under the FLSA. These now include Executive Exemption; Administrative Exemption; Creative Professional Exemption; Learned Professional Exemption; and Highly Compensated Employee Exemption. The most common exemptions at Auraria include the Executive, Administrative and Learned Professional.

Executive Exemptions: Employee's primary duty consists of managing a recognized department or subdivision and supervises two full-time employees or the equivalent. The employee has authority to hire or fire other employees.

Administrative Exemptions: Employee's primary duty consists of the performance of office or non-manual work directly related to the management or general business operations of the employer or employer's customers. Duties include the exercise of discretion and independent judgment with respect to matters of significance.

Learned Professional: Employee's primary duty consists of the performance of work that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. The employee must consistently exercise discretion and judgment and the work must be predominately intellectual in character.

Exempt vs. Non-Exempt:

Exempt employees are not eligible for overtime payment when working more than 40 hours in a week. A full time employee with an exempt status is expected to work a minimum of 40 hours per week. Exempt employees only record leave taken on a Pink timesheet. They do not record actual hours worked.

Non-Exempt employees are eligible for overtime when they work more than 40 hours in a workweek.

Overtime: For those employees who are eligible for overtime under the Fair Labor Standards Act (FLSA), overtime pay is pay for time that is worked in excess of the standard work week. The overtime rate, time and a half, is set by the FLSA. The act requires that eligible employees must receive at least minimum wage and may not be employed for more than 40 hours in a week without receiving at least one and a half times their base rate of pay or time off (Comp Time) for the overtime hours.

Employees are required to have a supervisor's approval before they work any overtime hours.

Comp Time: Compensatory (comp) time, in lieu of monetary payment is a condition of employment at Auraria. This means that an eligible employee that works more than 40 hours in a work week will receive credit for time off at a rate of one and a half times the hours worked unless overtime payment for those hours is approved by their supervisor. It is the responsibility of the employee and supervisor to track any comp time accumulated and document its use on the employee's timesheet. Any comp time in excess of 60 hours and not taken within four months must be paid at the next regular pay period.

Breaks and Meal Periods: Break times, usually a short duration of 20 minutes or less, are common in industry and promote the efficiency of the employee. Break periods are granted at the discretion of the supervisor and must be counted as time worked. Bona fide meal periods are typically 30 minutes or more and are not generally 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/she is required to perform any duties, whether active or inactive, while eating. Break times or meal periods may not be added to the beginning or end of a shift.

Essential vs. Non-Essential:

An essential employee is a state employee who provides emergency or uninterrupted public service to their agency. These employees are specifically designated as essential by their department and are expected to carry out their assigned duties regardless of approved closures. State employees who are required to work during a closure will be paid at their regular pay rate and will not be granted a future day of administrative leave as outlined in the Governor's Executive Order on inclement weather. Essential, non-exempt, employees shall have paid leave (i.e., annual and sick leave) counted as work time year round.

Non-essential employees are granted administrative leave in the event of a campus closure, however, paid leave is not counted towards overtime for non-essential employees.

In any case, leave may be denied, delayed, or canceled in order to minimize overtime liability. Appointing authorities may require the use of accrued comp. time. Comp. time is not leave.

Leave Request Procedures:

All leave must be requested as far in advance as possible, using the "State of Colorado Leave/Absence Request and Authorization" form. Unauthorized use of any leave may result in the denial of paid leave and/or corrective or disciplinary action.

When requesting leave for the use of an employee or family member's illness or injury, the leave request form **MUST** always be sent to the Auraria Human Resource office for FMLA designation. Once designation has been made by the HR office the form is sent back to the employee in the same manner it was sent to the HR office (i.e., fax or mail).

As with all types of leave, the employee is expected to request sick leave in advance and in writing, except in emergencies or other unforeseeable circumstances. When unable to request the leave in advance (e.g., work is missed unexpectedly due to flu or common cold) the employee must complete a leave request form immediately upon return to work. The Human Resource office **MUST** be notified when an employee is absent from work, due to an illness or injury, for **three (3) or more consecutive days** so that designation can be made in a timely manner.

When requesting any other type of leave such as annual, holiday, jury, funeral, etc. an employee must submit their request to their supervisor as far in advance as possible. Approval must be received prior to the leave being taken.

Leave Without Pay:

Leave Without Pay is NOT a type of leave that employees are entitled to, nor is it a budget tool or leave “benefit”. LWOP is wholly discretionary on the part of the appointing authority (unless Family Medical Leave - FML or Short Term Disability - STD apply), and should be considered very carefully before being granted.

Auraria requires an employee to exhaust all annual and sick leave prior to requesting the approval of LWOP. It should not be the practice of an appointing authority to grant LWOP for purposes of vacation or personal time off, not related to an illness or injury. It is important that employees and supervisors recognize that, if neither FML nor STD apply, and sick and annual leave are exhausted, an employee may be administratively separated (per Personnel Rule 5-10).

In addition to the above information, LWOP brings about some additional issues:

- LWOP effects and employee’s leave accruals and causes administrative hardships when pro-rating leave and maintaining accurate records:
- The excessive absence of an employee places an undue and unreasonable burden on other employees within their work unit or office, and almost always results in performance issues for the employee.

Regular attendance is expected of employees, as is the accumulation of “adequate” leave balances to cover emergency situations or unexpected or unintended reasons to be absent from work. Human Resources will continue to monitor time sheets and leave requests and contact supervisors when their employees show extended leave or LWOP. In addition, supervisors are required to notify Human Resources when they are aware an employee is in LWOP or will be out for more than three consecutive days.