

In Brief

Updates from the Office of Legal Affairs



Volume 2, Issue 1

September 2016

Changes to Federal Fair Labor Standards Act Coming in December

Think about this scenario: Suzy makes \$35,000 in an administrative position. Her work requires her to occasionally work additional hours over 37.5 in a week, especially during the busy academic year. Suzy performs her work, including the extra hours worked, as an exempt administrative professional and is not required under the law to be paid overtime for more than 40 hours worked in a work week. However, on December 1 of this year, Suzy's exempt status could change.

In May of this year, the Department of Labor revised the federal regulations governing the federal Fair Labor Standards Act (FLSA). These changes in the law will affect which employees are entitled to pay for all hours worked and to overtime pay under the law. These changes will go into effect on December 1, 2016. With the change in the law to raise the salary threshold, it is estimated that more than 4.2 million salaried, exempt employees in the United States will become "non-exempt" or hourly employees eligible for overtime pay.

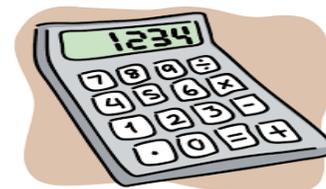
Affected Employees

Under the new regulations, for an employee to be considered an exempt (salaried) employee, the employee must meet a salary threshold of \$913 per week (or \$47,476 a year for a 12-month employee), nearly double the existing salary threshold of \$455 per week (or \$23,660 a year for a 12-month employee). If the employee's salary is below the threshold, the employee becomes a "non-exempt" or hourly employee entitled to be paid for all hours worked and entitled to overtime of one and one-half times the hourly rate of pay for hours worked over 40 in a work week. The University is also required to have non-exempt employees track all hours worked on a weekly basis.

If an employee's salary is above the threshold and otherwise serves in an administrative, professional or executive position, the employee will remain exempt from hourly wage and overtime requirements under the law.

Exempt Employees

For others, the new regulations will not change their status. For example, teachers, doctors, and lawyers will not be affected by the new salary level and will remain exempt. In particular, faculty members, part-time faculty and other faculty or staff whose primary job duties involve teaching, tutoring, instructing, or lecturing will remain in a professional exemption, not subject to overtime requirements. The same goes for coaches if their primary duties include teaching or instructing student athletes on how to perform their sport. Similarly, graduate and undergraduate students engaged in a graduate assistant or research position in pursuit of their degree, or students who serve as resident advisors (RAs) in residence halls, are viewed primarily as students and are not subject to the federal regulations related to overtime pay.



Facilitating Regulatory Change

The Human Resources Department is working with each division to determine which employees will be affected by this change in the law, and how to best address this change in relation to work duties. Human Resources is evaluating how the FLSA change will impact affected employees' work time and job duties. Human Resources also is conducting information sessions and consulting with division and department heads to consider options available to manage the implementation of this new rule. For employees that become non-exempt because of the change in the law, options may include distributing workloads and adjusting schedules in a way that minimizes overtime or paying overtime on top of the employee's regular salary for hours worked over 40 in a work week.

For more information, please contact Human Resources at ext. 1905. For questions about the change in this federal law, feel free to contact the Office of Legal Affairs at ext. 1590.

Upcoming Training Sessions

October 4, 2016

9:00 a.m.-11:00 a.m.

"Wage & Hour Issues in the Workplace: Understanding the FLSA"
LSC Conference Room

Presented by Human Resources and Office of Legal Affairs

November 1, 2016

9:00 a.m.-11:00 a.m.

"A Supervisor's Guide to Understanding FMLA and ADA"
LSC Conference Room

Presented by Human Resources and Office of Legal Affairs

November 15, 2016

9:00 a.m.-10:30 a.m.

"Responding to Sexual Harassment"
Jardine Room

Presented by Title IX Coordinator and Office of Legal Affairs

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Animals on Campus: Serving Individuals with Disabilities

"The Americans with Disabilities Act (ADA) mandates that any disabled person be permitted to bring their service animal with them to all areas on campus. "



While animals on campus are a rather uncommon occurrence, they may elicit both attention and scrutiny. However, when it comes to service animals, federal regulations mandate how the University may respond to these animals.

The Americans with Disabilities Act (ADA) mandates that any disabled person be permitted to bring their service animal with them to all areas on campus. The law also regulates the ways in which the University community may interact with a service animal utilized by an individual with a disability. This includes service animals accompanying students, staff, faculty or visitors.

Here is some information about the ADA's requirements related to service animals.

What is a Service Animal?

A service animal is a dog, or in rare cases a miniature horse, that is individually trained to do work or perform tasks for a person with a disability. The task the animal is trained to perform must be related to the individual's disability. Species other than dogs and miniature horses do not qualify as service animals, regardless of their training.

Permissible Inquiries

The ADA regulates the questions University faculty or staff may ask someone who brings a service animal to campus. If it is readily apparent that the animal is a service animal performing a task for a disabled individual, such as leading a person with a visual impairment, the individual may not be asked about the animal. If it is not readily apparent that the animal is a service animal performing a task for a disabled person, then there are two permissible inquiries the University may make of an individual concerning their service animal. The individual may be asked:

1. Whether the animal is required due to a disability, and
2. What task the animal is trained to perform.

The individual *may not* be asked about their disability, or asked to present paperwork certifying

that their animal is a service animal. In addition, the individual may not be required to command the animal to perform the task for which it has been trained. There also are additional expectations for students or staff who wish to reside with their service animals in Residence Halls. Please contact Residence Life (ext. 4408 or Lombardo Center Room 1) about those issues.

Restrictions on Service Animals

The University may require an individual to remove their service animal from campus in limited circumstances. They are:

1. When the animal is out of control and the owner takes no action to control it;
2. When the animal is not housebroken; or
3. When the animal poses a direct threat to the health or safety of others.

In addition, the service animal must be physically controlled by way of a leash or harness, unless the leash or harness would interfere with the animal's ability to perform the task for which it has been trained.

University offices are available to assist staff and faculty with handling questions that may arise related to service animals. For questions regarding service animals for students, please contact Services for Students with Disabilities (SSD) at ext. 4967. For questions regarding service animals for faculty and staff or visitors, please contact Human Resources at ext. 1576 or Risk Management at ext. 1982.

Emotional Support Animals in Housing

Under the Fair Housing Act, students residing in residence halls may request to have an emotional support animal reside with them in their residence hall. Emotional support animals are not permitted in other buildings on campus. An emotional support animal assists a student with a mental disability by providing coping assistance. Residence Life and Services for Students with Disabilities have developed a protocol to address such requests. Questions should be directed to Residence Life or SSD.

Military Leave and USERRA: Protecting the Rights of Veterans to Employment Reinstatement

While most employees don't go out on non-medical leave from work for extended periods, those who serve in the military are entitled under federal law to leave of up to five (5) years. This law also grants military service members the right to reinstatement to their same or a similar position.

The Uniformed Services Employment and Reemployment Act (USERRA) protects the rights of all employees who temporarily leave their position in order to serve in the military, whether voluntarily or by necessity. USERRA grants these individuals the

right to be reemployed after a period of up to five (5) years of cumulative military service, at the job level they would have achieved had they not gone into the service. The law also allows for them to continue health coverage through their employers, and protects them from employment discrimination because of their military status.

In order to qualify for military leave protection under USERRA and become reinstated in their job, the uniformed service member must:

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1. Notify JCU of their intent to serve in the military, either verbally or in writing;
2. Be away for military service for no more than five (5) cumulative years while employed at JCU, although there are a number of exceptions to this rule if the service member is unable to return within five (5) years due to issues such as a national emergency, critical mission, etc.;
3. Return to work or promptly apply for reemployment at JCU after the conclusion of their service; and
4. Not have had a disqualifying discharge or have been otherwise separated from service under other than honorable conditions.

JCU's policy provides that an employee who left on military leave will be reinstated promptly to a position that is of same or

similar pay to the position the employee would have attained if they had not left. However, the University may be excused from this obligation to reemploy a service member if reemployment of the employee is impossible or unreasonable; the reemployment would impose undue hardship on JCU; or the employee's position with JCU was for a brief, nonrecurring period and there is no reasonable expectation that the employment would continue.

For assistance with questions involving military leave at JCU, contact Human Resources at ext. 1576 or consult the University's "General Leaves" Policy. For questions on the legal requirements for military leave, feel free to contact the Office of Legal Affairs.



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Providing Lactation Spaces for Nursing Mothers: The Affordable Care Act's Requirements

New mothers often return to the workplace when their children are less than a year old, and are still nursing. Prior to 2010, there were no requirements on employers related to breaks that nursing mothers may need to take. In 2010, the Affordable Care Act (ACA) addressed this issue by amending the Fair Labor Standards Act and requiring employers to provide employees who are nursing mothers with a time and place to express milk in the workplace. Under the ACA, employers must allow nursing mothers to take unpaid breaks to express milk, and provide them with a location in which to do so, for one year after the birth of their child.

Time

The ACA requires employers to allow nursing mothers to take reasonable breaks to express milk. The breaks must be as long as necessary under the circumstances. Factors in the determination of what a reasonable break is include: the time it takes to walk to and from the lactation space; the time it takes to retrieve necessary equipment; whether there is a sink near the lactation space to expedite clean-up; and whether there is a space to store milk near the lactation space. In addition, the frequency with which the nursing mother needs to take breaks to express milk will vary depending on the age of the child. Although the employer must provide the nursing mother a reasonable break, the ACA does not require the employer to pay the employee during these breaks if breaks are ordinarily unpaid.

Place

The employer must provide its employees who are nursing mothers a place in which to express milk that is shielded from view and free from the intrusion of co-workers and the public. It must include a place for the mother to sit and a flat surface, other than the floor, on which the mother can place the pump.

Employers may meet this requirement by creating a permanently designated lactation room or a temporary area that meets the privacy requirements and is available for the nursing mother to use whenever necessary. The ACA indicates that a bathroom is not an acceptable space to provide nursing mothers for the purpose of expressing milk due to health and safety concerns. An employer that does not currently employ any nursing mothers need not provide this space.

Resources

If you receive a request for lactation breaks and/or a lactation space, or have any questions about this requirement, please contact Human Resources (ext. 1576 or 1st Floor Rodman Hall) for assistance coordinating the request.

More information is available at:

Wage and Hour Division's FAQs on Break Time for Nursing Mothers at <https://www.dol.gov/whd/nursingmothers/faqBTNM.htm>