



Stephen F. Austin STATE UNIVERSITY

FLSA Exemption Differences

THE DIFFERENCE BETWEEN EXEMPT AND NON-EXEMPT STAFF UNDER THE FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act (FLSA) plays an important role in guiding Human Resources decisions and practices. The FLSA mandates a variety of things and is one of the largest employment regulations under which employers must operate. It regulates minimum wage, overtime, hours worked, youth employment, and recordkeeping requirements.

Background of the Fair Labor Standards Act (FLSA)

The FLSA is a federal law that was passed in 1938 and has been amended multiple times. To help put the law in perspective, think back to what was occurring in the United States during the late 1930s. The country was in the heart of the Great Depression, and many companies were severely taking advantage of their workers. In an effort to protect the working population and encourage companies to hire more employees, the FLSA was passed.

The law created a minimum wage (\$0.30/hour at the time) and required employers to pay overtime pay at one and one-half times the regular rate of pay after 40 hours of work in a workweek. Because SFA is a state agency, compensatory time (comp time) can be substituted for overtime payment. The law also limited the use of child labor.

You may find it interesting to know that the FLSA is one of the few laws that cannot be waived. If an employee is required to receive compensation under the FLSA, the employer **MUST** compensate the employee regardless of whether the employee wishes to volunteer his or her time.

Being 'Exempt' From the FLSA

The FLSA applies to all employees except those expressly identified as 'exempt' within the law. The terms 'exempt' and 'non-exempt' originate from this concept. When the law was created, the goal was to have as few exempt employees as possible.

The FLSA specifically describes the different types of positions that are considered exempt. The most common to the university include:

- (1) Executives;
- (2) Learned professionals (attorneys, doctors, engineers, researchers);
- (3) Creative professionals (musicians, artists, writers);
- (4) Academic instructors/faculty;
- (5) Computer programmers and analysts; and
- (6) Administrative professionals

The administrative professional exemption is one of the most difficult exemptions to determine. Because more and more employers are being sued for misclassifying employees as exempt when they should be non-exempt, the university's philosophy is to classify positions as non-exempt unless they clearly fall within one of the exemption categories.

Note: Exemption status is solely based on the position; it does not consider the individual person in the position.

Exempt vs. Non-Exempt at SFA

Below are some general distinctions between being exempt and non-exempt here at SFA.

	Non-Exempt	Exempt
Do I earn comp time?	Yes; 1.5 hours for every hour physically worked over 40 in a workweek. 1 hour for any time paid over 40 but not physically worked in a workweek (commonly when holiday, vacation, or sick leave is paid during the workweek).	Yes; 1 hour for every hour paid over 40 in a workweek (if regularly tracked). With department head approval, exempt employees can chose to waive this benefit and not track time.
Does my comp time expire?	No; any unused comp time is paid when the employee leaves employment or transfers to an exempt position.	Yes; unused comp time expires 12 months after it is earned.
Is there a cap on the comp time I can earn or take?	Yes; the maximum comp time balance is 240 hours (480 for commissioned police officers). Employees must be paid for any time earned over the maximum.	Yes; while there is no maximum for comp time earned for exempt employees, usage is limited to 80 hours each fiscal year (Sept 1 – Aug 31).
Do I get paid for unused comp time?	Yes; any unused comp time is paid when the employee leaves employment or transfers to an exempt position.	No; because comp time is not mandated by the FLSA for exempt employees, unused time is not paid.
Am I required to record the hours I work?	Yes; all time worked must be documented and approved via the university's timekeeping system.	If you are regularly tracking comp time, any time used or earned must be reported to Payroll monthly. If comp time is not tracked, the employee waives this benefit.
	Note: Misrepresenting time worked (as an employee or the employee's supervisor) is considered "falsifying university records" and subject to disciplinary action.	

Related policy: Fair Labor Standards (11.14), Overtime and Compensatory Time (12.14), Staff Compensation and Classification (12.2)