

**FLSA :**

is not an acronym for

**Fairly Long Standing Agony**

The FAIR LABOR STANDARDS ACT

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# Objectives

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## ■ Three Sessions

- Session I
  - Overview of FLSA
  - Hours Worked
- **Session II**
  - **Overtime Pay**
  - **Compensatory Time**
  - **Exempt vs. Non-Exempt**
  - **Exemptions not used at UMKC**
- Session III
  - Professional Exemption
  - Administrative Exemption
  - Executive Exemption

# Session II - FLSA

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## Objectives for Session II

1. Overtime Pay
2. Compensatory Time
3. Exempt vs. Non-Exempt
4. Exemptions not used at UMKC

# Overtime Pay

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## ■ The Law:

Covered, non-exempt employees must receive one and one-half times the regular rate of pay for all hours worked over 40 in a work week.

## ■ UM Policy HR-211:

Hours worked in a workweek will include all time off with pay, excluding compensatory time taken, paid out accrued vacation, and paid out compensatory time.

# Compensation Includes:

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## The Law:

- Wages (salary, hourly, piece rate)
- Commissions
- Certain bonuses
- Tips received by eligible tipped employees
- Reasonable cost of room, board and other 'facilities' provided by the employer for the employee's benefit

# Overtime Issues

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Each work week stands alone.



Regular rate is one method allowed under the FLSA to be used to calculate the rate of overtime pay, and UMKC restricts certain types of payments in part because of the implications for overtime liability. (Will explain on another slide.)



The basic rate can also be computed on the basis of the earnings for each particular type of work (concurrent appointments).

# Calculation of Overtime Pay

Regular Rate (“averaging” employee earnings)



Regular rate is determined by dividing the total earnings in the work week by the total number of hours worked in the work week.

*Lump sum payments not tied to hours would require the lump sum total be calculated into the weekly earnings to determine the regular rate for the purpose of overtime payment.*

# Calculation of Overtime Pay

## Example (remember, not allowed at UMKC)

Cashier in HR:            Total Hours: 48.0  
                                         Hourly Rate: \$9.00  
                                         Extra Compensation: \$100.00

48 hours x \$9.00:        \$432.00

Extra Comp:                \$100.00

\$532.00

\$532.00 / 48 hours: \$11.08 (Regular Rate)

11.08 X .5 = \$5.54

\$5.54 X 8 hours = \$44.32 (Overtime Pay Due)

# Calculation of Overtime Pay

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- Permissible exclusions from the regular rate
  - Reimbursement for expenses
  - Profit sharing plans
  - Retirement and insurance plans
  - Overtime payments (pyramiding)

# Calculation of Overtime Pay

- Basic rate for overtime is determined by the work performed (concurrent appts.) at the time the work is performed.

## Example:

- Primary appointment: Library Assistant I (75%) \$13.25/hr.
- 2<sup>nd</sup> appointment (12.5%): Cashier Ticket/Sales \$ 9.50/hr.

LA I – worked Mon, Tues, Wed, Thurs = 32 hours

Cashier – worked Fri, Sat = 14 hours

*Overtime calculated at  $1.5 \times \$9.50 = \$14.25/\text{hour}$*

## If the hours worked vary:

LA I on Mon, Tues, Fri, Sat = 32 hours

Cashier on Wed and Thurs = 16 hours

Overtime is now due *in the primary appointment* for 8 hours @  
\$19.88/hr.

# Work Week Review

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- A work week is 7 consecutive 24-hour periods (168 hours, Sunday through Saturday)
- Compliance is determined by the work week and each work week stands alone



***Averaging workweeks over a pay period is not allowed.***

# Compensatory Time

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- Overtime can be paid as compensatory time off at a rate of time and one-half the hours worked over 40 in a workweek.
- Compensatory time can be arranged if authorized according to UM Policy HR-215.

# Compensatory Time

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- Human Resources will begin having new employees sign an agreement to accept compensatory time in lieu of overtime pay when they fill out their new hire paperwork.
  - This does not require any unit to utilize compensatory time.
  - A majority of units at UMKC utilize compensatory time off for overtime hours worked to some degree, and is our predominant practice. FLSA requires this to be voluntary on the part of the employee.
  - This agreement is a condition of employment that formally demonstrates common practice, which will allow us more flexibility.
  - Payment of overtime will not negate our predominate practice.

# Compensatory Time



## **AGREEMENT TO ACCEPT COMPENSATORY TIME OFF IN LIEU OF OVERTIME PAY**

In accordance with the provisions of the Fair Labor Standards Act (FLSA) and University of Missouri Policy HR-215, non-exempt employees are allowed, with the approval of their department heads, to accrue compensatory time off in lieu of overtime pay for overtime hours worked.

In the event that I work overtime hours, I voluntarily agree to accept compensatory time off at time and one-half for each hour of overtime worked instead of overtime pay. I understand that I will accrue compensatory time at the rate of one and one-half hours for each overtime hour worked during a work week. I also understand that compensatory time off will not be counted as time worked for purposes of computing overtime hours.

I further understand that compensatory time may be accrued up to a maximum of 240 hours (160 hours of actual overtime worked), and that divisions and/or departments may establish a lower maximum of compensatory hours accrued. I also understand that compensatory time may be limited, preserved, used or cashed out consistent with the provisions of University policy and FLSA. The receipt of overtime pay for overtime hours worked does not negate this agreement to accept compensatory time in lieu of overtime pay.

I understand that it is the sole responsibility of a department to monitor and maintain records of my accrued and used compensatory time. I understand that if I would resign or be terminated from my position, transfer from a department or be promoted into an exempt position, the department in which the overtime was incurred is responsible for arranging for me to use or be paid the balance of my accrued compensatory time at my final hourly rate of pay prior to termination or a change in position.

I understand that this agreement, as stated in the first paragraph, is in effect for the duration of my employment at the University.

### **Employee Agreement**

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_

Date \_\_\_\_\_

# Exempt vs. Non-Exempt

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**“To be, or not to be. That is the question.”**

*From “Hamlet” by Wm. Shakespeare*

**To be non-exempt simply means that an employee is required to be paid overtime at 1-1/2 times for hours worked in excess of 40 in a work week.**

- It does not confer or remove any degree of responsibility to a person’s current job at UMKC.
- It allows protection to the employee regarding working conditions.
- It does discourage use of overtime and encourage adding FTEs to an employer’s payroll.

# Exempt vs. Non-Exempt

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**To be exempt only means that you are not required to be paid overtime for hours worked in excess of 40 in a work week.**

- It does not confer or remove any degree of responsibility to a person's job at UMKC.
- It requires that you be paid at a minimum level of pay per week over time (regardless of actual hours worked) in order to be exempt from overtime.

# Exemptions or Exceptions

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- There are several exemptions and exceptions from the minimum wage and/or overtime standards of the FLSA.
  - “White Collar” Exemptions (or “541” Exemptions) apply to:
    - Executive Employees
    - Administrative Employees\*
    - Professional Employees
    - **Outside Sales Employees**
    - **Computer Employees**
    - Highly Paid Employees

*\*This is the category of exemptions that cause the most trouble for employers.*

# Minimum Wage Change

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## ■ Minimum Wage

- Missouri's will change to \$7.05 per hour
- Effective January 1, 2009
- Higher than Federal minimum wage
  
- Federal minimum wage will also change
- \$7.25 per hour, effective July 24, 2009
  
- UMKC effective dates will be the beginning of a biweekly payroll

# Questions

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