Q1. What is the Fair Labor Standards Act?

A1. The Fair Labor Standards Act (FLSA) is a federal law that determines if a position is eligible for overtime pay for hours worked in excess of 40 in a workweek. According to the FLSA:

- An exempt position is not eligible for overtime, regardless of how many hours per week the employee works. These positions are paid a fixed salary.
- A non-exempt position is a position in which overtime must be paid if the employee works more than 40 hours in one workweek (WVU workweek is Sunday at 12:01 a.m. through Saturday at midnight).
- Determination of the exemption status is based on two things: the duties and the salary. Before a position can be considered “exempt” from the FLSA, and therefore not subject to overtime pay, a position must be paid at a certain salary level. The Department of Labor changed the salary requirement to $47,476 ($913 per week), but a federal judge has halted this change, so the salary test remains at $455 per week or $23,660. If the position meets the salary test, then the position must meet a duties test as outlined in the law.
- Certain positions are always considered exempt from the law regardless of salary. For example, all teaching positions are exempt even if their salary is below the salary threshold in the law.

Q2. What changes have occurred with the FLSA this past year?

A2.

- May, 2016 - Employers were notified of changes to the salary test from $23,660 to $47,476 and required to implement no later than December 1, 2016.
- Fall, 2016 – Twenty one states and private organizations filed lawsuits challenging the legality of the December 1 rules.
- November 22, 2016 – A federal judge in Texas issued a nationwide injunction that blocks the Department of Labor rule. The injunction stops the enforcement of the December 1 rule.

Q3. What has WVU done in response to the changes in Q2?

A3.

- To comply with the changes in the law, WVU began working with leaders throughout the summer of 2016 to identify positions that were impacted by the change in the salary test.
- As a result of the review, some positions were moved to the higher salary to maintain exempt salaried status and some were moved to non-exempt (hourly) pay status. Employees were notified by their supervisors of the changes to their pay status in September and October, 2016.
- Training sessions were held for leaders and employee information sessions were conducted in October.
- WVU implemented all changes on November 16, ahead of the December 1 deadline required by law.
- In response to the news of the injunction WVU, campus received notice in late November via letters to supervisors and ENEWS that implementation will occur as planned. WVU chose to
wait to obtain more information and clarity regarding the situation because the injunction appeared to be temporary.

Q4. Why is WVU making changes to what was implemented in November?

A4. At this point in time, we have learned that the Trump administration has clearly stated that one of its priorities will be to ease regulatory requirements on employers. It is highly likely that the FLSA will be a focus of the new administration and they may roll back the salary requirement for exemption. Other options include the injunction being lifted and the law implemented as originally planned, a total repeal of the December 1 changes, or an amendment that produces a different salary threshold and other changes.

While we do not know the specific details of the planned changes, we do know that a change will come. The new rule’s future remains uncertain with the inauguration of a new administration in 2017, and subsequent appointment of a new DOL secretary. Re-evaluating the situation at this time has led us to determine that the best option for WVU is to revert back to compliance with the pre-December 1 exemption status salary test (i.e., $23,660, or $455 weekly).

Q5. My job was moved to non-exempt status in November to comply with the law. Why is it moving back to salaried status?

A5. Your position was moved to non-exempt because it did not meet the proposed Dec 1 salary threshold of $47,476 ($913 weekly if less than 1.00 FTE). The December 1 changes to the FLSA have been delayed indefinitely, so the FLSA salary test threshold of $23,660 is the law. The new rule’s future remains uncertain with the inauguration of a new administration in 2017, and subsequent appointment of a new DOL secretary. Until we receive further clarification regarding this law and the salary threshold, reverting back to the pre-December 1 pay status is the best option.

Q6. I received a salary increase to maintain my exempt salaried pay status. Will my pay be changing again?

A6. No, the increase you received to meet the December 1 salary threshold will not change. However, future merit and market base salary increases may be affected. These issues will be reviewed on a case-by-case basis and several factors will be considered, i.e., amount of increase received, position in salary range, and performance.

Q7. When will this change to my pay status back to exempt occur?

A7. Effective February 16, 2017 you will no longer need to use the MyTime timekeeping system to record your hours as your rate of pay will return to a salaried basis. The first paycheck that reflects the salaried pay status will be March 16, 2017.

Q8. Is there a chance my pay status may change again?

A8. Yes, depending on the salary threshold that is established your position may be moved back to non-exempt status. It is highly likely that the FLSA will be a focus of the new administration and they may roll back the salary requirement for exemption. Other options include the injunction being lifted
and the law implemented as originally planned, a total repeal of the December 1 changes, or an amendment that produces a different salary threshold and other changes.

**Q9. When I was non-exempt I had a Compensatory Time Off agreement. What will happen with the CTO now that I am going back to salaried, exempt status?**

**A9.** Compensatory Time Off (CTO) is only available to non-exempt, hourly, employees. Because your pay status will move to exempt, the existing CTO agreement will end on February 15, 2016. You will need to discuss with your supervisors using any accrued CTO time between now and that date. If the accrued time is not used you will receive payment for the accrued time on the March 16, 2017 paycheck.

**Q10. When my position changed to non-exempt, hourly pay status, my supervisor and I agreed to a flexible work arrangement. Does that go away now that I am moving back to salaried pay status?**

**A10.** No, it will not automatically end due to a change in your pay status. Flexible Work Arrangement are applicable to both exempt and non-exempt employees.

**Q11. I’m still concerned and have questions about this change. Who should I contact?**

**A11.** Please talk with your supervisor first. If that is not feasible, please contact the Employee Relations unit in the Division of Human Resources at 3-8168, or your location’s HR Partner.

*For More Information:*

For more information about the Fair Labor Standards Act, Compensatory Time Off and Flexible Work Arrangements and other policies, consult the WVU Division of Human Resources website at [www.hr.wvu.edu](http://www.hr.wvu.edu)