OVERVIEW
Who is going to pay for your risk taking? You? UAB? Each time you fail to properly document a nonexempt employee’s time, it places you and UAB at risk. Know the policies and procedures. Avoid the inspections, audits, and possible fines. Do the right thing.

Managing Nonexempt Employees
According to the Fair Labor Standards Act (FLSA)
Welcome to the course – Managing Nonexempt Employees According to the Fair Labor Standards Act (FLSA).

The FLSA is a federal law enforced by the U.S. Department of Labor (DOL). While the law covers both exempt and nonexempt employees, it exists primarily for the protection of nonexempt employees.

The self-assessment “Check Your Knowledge” scenarios are located in the Appendix. These are self-tests and are not a part of the assessment. You can skip them, but you may miss vital information that will be in the assessment.

The FLSA covers:

- the Federally mandated minimum wage
- overtime eligibility
- overtime pay
- recordkeeping
- child labor standards
- nursing mother breaks and facilities

The FLSA does not cover:

- vacation time
- sick time
- personal leave time
- holidays
- severance pay
- meal times
- rest periods or breaks
- premium pay for weekends or holidays
- pay raises or fringe benefits
- terminations
- pay stubs and W-2s
Government interest in FLSA matters. The Obama administration has made enforcing wage laws a priority. The Department of Labor’s (DOL’s) goal has been to increase visibility and accessibility through their “We Can Help – Workers Owed Wages (or WOW) campaign. In the last few years, the DOL’s investigations of violations have been at an all-time high especially concerning recordkeeping and overtime procedures regarding nonexempt employees.

Workers are more educated about their rights today. The DOL has developed public service announcements advising on how to report an issue. There is even an app created by the DOL’s Wage and Hour Division (or WHD) for employees to track their time to ensure their paychecks are correct. The app also allows the employee to report an issue via the app.

The Bridge to Justice Initiative refers complainants to plaintiffs’ lawyers through the American Bar Association referral service since DOL Wage and Hour Division (WHD) has limited capacity.

Reasonable estimates indicate that companies collectively have paid out over $1 billion annually to resolve these claims.

At UAB, we differentiate nonexempt and exempt status based on employees’ defined pay and pay schedule. However, hourly and salaried are NOT classifications. These are methods of payment.

The FLSA distinguishes work as either nonexempt or exempt. It is the responsibility of the Compensation Department to determine whether a job is exempt or nonexempt.

It is vital that you, as a supervisor, keep accurate and concise records and follow all guidelines to avoid violations of the law and audits from the DOL.

Nonexempt employees are paid by the hour, receive at least the Federally mandated minimum wage, receive bi-weekly pay, and entitled to overtime pay (that is, one and one-half times their hourly pay rate) when they work more than 40 hours in a workweek.
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Examples of jobs that are nonexempt are:

- customer service
- skilled trades
- service maintenance
- technical positions
- clerical positions

EXEMPT EMPLOYEES

Exempt employees are paid a salary, receive *monthly pay*, and are **not** entitled to overtime pay.

Examples of jobs that are considered exempt are:

- financial analysts
- executives
- some positions that require advanced degrees

As a supervisor, you should know the status of all your employees.

NONEXEMPT PAY WHEN WORK-RELATED

Nonexempt employees must be paid for the following when and/or if it is work-related.

- Waiting times **IF** the employee has to wait before the work actually begins or is shutting down for the day (for example, waiting for a computer or machine to come on before beginning work)
- On-call time **IF** the employee must restrict their activities and/or the distance to and from work
- Commuting **IF** the employee picks up supplies on the way to or from work
- Work day travel to and from work sites
- Meal periods **IF** the employee’s breaks are cut short **OR** employees work through or during the lunch period
- Training and meetings **IF** their attendance is mandatory or directly related to the employee’s job
- Uniforms or clothing changes **IF** necessary for the job (for example, putting on or taking off Personal Protective Equipment or PPE)
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- Travel IF it is during regularly scheduled work hours
- Pre- and post-work activities (for example, closing down for the day – machines, procedures, etc.)

Always contact your HR Consultant or the Compensation Department if you have questions about nonexempt employees and their paid time.

**Breaks and Meals**

UAB has a policy, [HR Policy 621](#), regarding work breaks. It states that, “If the workload permits, breaks and rest periods are allowed. Employees should be aware that taking a break or a short rest period depends upon the department involved and whether normal work can be continued while employees take breaks. Where rest periods are allowed, they are limited to two 15-minute breaks per shift. Breaks typically may not be accumulated to allow employees to leave work early or to extend or replace a lunch period.”

While the FLSA nor the State of Alabama does not require UAB to allow breaks for meals, nonexempt employees may be allowed a 30-minute or more break for meals. However, a nonexempt employee must be relieved from all work duties during that time. It is best if the employee can leave the work area to avoid being asked to work or working. Any work performed during the employee’s designated mealtime must be counted toward hours worked for that week. This includes answering the phone or waiting to answer it.

**Nonexempt Overtime Pay**

The FLSA applies to **ALL** nonexempt, hourly employees. Overtime must be paid at one and one-half the employee’s regular hourly rate for **ANY** hours/minutes worked over 40 in a workweek. Managing nonexempt employees requires tracking their time both accurately and consistently. Not paying nonexempt employees overtime for anything over 40 hours is most often the source for DOL audits.
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OFF-THE-CLOCK WORK

Nonexempt employees are NOT allowed to work “off-the-clock” hours. This includes working during or through lunch breaks, coming in early, staying late, or taking job-related calls, or e-mails outside normal work hours without pay. (Please see UAB Smartphone Use for Nonexempt Employees.)

COMPENSATORY (COMP) TIME

Compensatory time, or “comp time,” is allowing a nonexempt employee to work hours overtime and then take that same amount of time off later. This is NOT allowed at UAB. A nonexempt employee must be paid for ALL hours worked plus overtime if he or she exceeds 40 hours during a workweek.

RECORDKEEPING

Both accurate and consistent time tracking and recordkeeping are critical when managing nonexempt employees. However, neither the FLSA nor the Department of Labor identifies a specific method of time tracking or recordkeeping. The only requirement is that it be accurate and consistent.

UAB’s Time, Effort, and Labor (TEL) documents, used by nonexempt employees, are NOT a time tracking or recordkeeping system. It is a method used to pay nonexempt employees for all hours worked. In the future, UAB will be implementing a new system, Kronos, which is a true time tracking and recordkeeping system. There will be training available. More information will follow later.

Until such time, please continue to use time punch cards, sign-in sheets, etc. to ensure accurate and consistent records.

For more information on Time Cards and Time Sheets, see UAB Policy 208.

NURSING MOTHERS, THE FLSA, AND UAB

UAB is required to provide reasonable break times for a mother to express breast milk for her nursing child up to one year after the child is born. The mother is allowed to take an unpaid break each time she needs to express milk (or a paid break if it is her usual paid break time).
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Also, UAB is required to provide an area to express milk, other than a bathroom, that is:

- Shielded from view
- Free of interruptions from coworkers or the public
- Readily available to the employee

Click to view the website listing all of the lactation centers located on UAB’s campus.

THE FLSA, YOU, AND YOUR NONEXEMPT EMPLOYEES

- Take time to talk with your nonexempt employees about the Fair Labor Standards Act and the impact it has on your job and theirs.
- Be prepared to answer any questions they may have.
- Help them to understand that the FLSA requires certain positions to record time differently.
- Remember these laws are designed to protect nonexempt employees from abuse and to ensure fairness.

It is important that your employees understand and adhere to the FLSA regulations.

KEY TOPICS

In closing, we’d like to remind you of the key topics covered in this course:

- The Fair Labor Standards Act (or FLSA) covers time, status, and pay matters especially in regards to nonexempt employees.
- The United States Department of Labor (or DOL) enforces the FLSA. In recent years, the number of DOL audits has increased greatly.
- UAB Policies and Procedures regarding both exempt and nonexempt employees are posted online. If you need assistance, there is a contact list on the Compensation Department’s website.
- Exempt and nonexempt employees are managed differently especially concerning time tracking, recordkeeping, and overtime.
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- Nonexempt employees must be paid for ALL hours worked whether approved or not.
- Overtime pay for nonexempt employees is one and one-half times their regular hourly pay.
- Nonexempt employees are not permitted to have comp time in lieu of overtime pay, nor are they allowed to work “off-the-clock.”
- Accurate and consistent time tracking and recordkeeping is critical for all nonexempt employees at UAB.
- More information on managing nonexempt employees under the FLSA is available on the Compensation website.

CONCLUSION

This concludes the course Managing Nonexempt Employees According to the Fair Labor Standards Act (FLSA).

The Compensation Department is compiling a list of your questions to add to their FAQ list located on their website. You may email your questions to FLSA@uab.edu.

The next section includes an appendix of the scenarios that are located in the interactive slides. Please take the time to read them. Similar questions will be in the assessment.

After reviewing the scenarios, return to the FLSA course located in the Learning System and take the assessment. The assessment has ten randomizing questions and answers. The passing score is 80% or higher. You have three attempts to pass before failing the course.
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Appendix A

**SCENARIO 1**

Sonia, a nonexempt employee, works 43 hours this week coming in early and staying late to finish her job. She asks if she can take the 3 hours off in lieu of overtime next Wednesday so that she can go to a doctor’s appointment. She doesn’t want to use her vacation, sick leave, or personal leave unless necessary.

Can you allow her to take comp time next week in lieu of overtime pay?

☐ No, you cannot allow her to take comp time next week.

☐ Sure, everyone does this to help nonexempt employees save their time off.

(Answers are located in Appendix B.)

**SCENARIO 2**

Paul is a great nonexempt employee. He volunteers to help out whenever and wherever he is needed in the department.

However, Paul frequently works during lunch and sometimes a few minutes before and after work in order to get things done - without your permission.

He repeatedly tells you not to worry about paying him for that work - "It's just a few minutes..." 

What should you do? (There are multiple answers.)

☐ Tell him to report all his work time accurately and consistently.

☐ Explain that if he continues the practice without your permission, you will take disciplinary action.

☐ Give him comp time and start paying him overtime in the future.

☐ Advise Paul that this is against the FLSA and UAB’s policies and tell him that it must stop.
SCENARIO 3

Tameka, a nonexempt Office Associate II, left at her normal time today. It’s Friday, and Tameka has worked her 40 hours for the week.

However, you forgot to tell her about an important meeting Monday morning, and to pick up the snacks for the meeting.

You call her on her cell phone intending to leave a message, but she answers. You talk for about 15 minutes. Are you required to pay Tameka overtime for the phone call?

☐ No, you are not.
☐ Yes, you are.

SCENARIO 4

Bae Jin, a nonexempt Office Associate I, comes in early Friday morning to prepare for a big meeting.

Do you have to pay Bae Jin overtime? (Choose the BEST answer.)

☐ Yes, you do.
☐ No, you do not.
☐ It depends.
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Appendix B

**Scenario 1**

**Scenario 1 Sonia, Correct Answer**

If you chose “No, you cannot allow her to take comp time next week,” you are correct! You cannot allow Sonia to take time off in lieu of overtime, not this week or next week, according to the FLSA regulations and UAB policies and procedures.

As a nonexempt employee **Sonia must be paid time and a half for ALL hours exceeding the 40 hour workweek – approved or not.**

**Scenario 1 Sonia, Incorrect Answer**

If you chose “Sure, everyone does this to help nonexempt employees save their time off,” you are incorrect! While allowing nonexempt employees to take comp time in lieu of overtime may have been a common practice in your department before, it must stop immediately.

As a nonexempt employee, **Sonia must be paid time and a half for ALL hours exceeding the 40-hour workweek.**

**Scenario 2**

**Scenario 2 Paul, Correct Answers**

Paul is working overtime without your permission. You should:

- Advise Paul that this is against the FLSA and UAB’s policies and tell him that it must stop.
- Tell him report all his work time accurately and consistently.
- Explain that he if continues the practice without your permission, you will take disciplinary action.

**Scenario 2 Paul, Incorrect Answers**

Nonexempt employees are **NOT** entitled to comp time. They **MUST** be paid overtime for **ALL** hours worked over 40 for the workweek.
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So you should **NEVER**:

- Pay Paul overtime for part of the time and give him comp time for a day or two.
- Give him comp time and start paying him overtime in the future.

**SCENARIO 3**

**Scenario 3 Tameka, Correct Answer**

That’s right. You **MUST** pay her for the time as time worked, and it will count as overtime because she already had 40 hours in for the workweek.

**Scenario 3 Tameka, Incorrect Answer**

You **ARE** required to pay her because it is:

- after her normal working hours
- considered time worked
- over 40 hours for her workweek

**SCENARIO 4**

**Scenario 4 Bae Jin, Correct Answer**

The correct answer is **“It depends.”** It is counted as time worked.

**If** he goes over his 40 hours during the workweek, it will be counted as overtime.

**If** you allow him to leave work early that day so that he won't go over his 40 hours for that workweek, it is not considered overtime. He will have put in his 40 hours for that workweek.

**Scenario 4 Bae Jin, Incorrect Answers**

“Yes, you do” and “No, you do not” are correct in their own way, but not the **best** answer for this question.

“Yes, you do” is the correct answer **if** he goes over his 40 hours during the workweek, it will be counted as overtime.

“No, you do not” is the correct answer **if** you allow him to leave work early that day so that he won't go over his 40 hours for that workweek.

You can call, e-mail, or text nonexempt employees during non-working hours, **BUT** if the employee answers or responds, you **MUST** pay them for the time.

It is strongly recommended that you have this discussion with your nonexempt employees about the guidelines on Smartphone Use.