



## FLSA Fact Sheet #3: Calculating Athletics Employees' Salaries

### Introduction

Effective January 1, 2020, the U.S. Department of Labor's (DOL) amended regulations to the federal Fair Labor Standards Act (FLSA) will raise the salary level from overtime exemption from its previous amount of \$455 per week (the equivalent of \$23,660 a year) to \$684 per week (the equivalent of \$35,568 per year). UNC and its constituent institutions have the potential to adjust existing compensation arrangements to maintain overtime exemptions for employees who perform exempt duties but may otherwise fall below the new FLSA salary threshold. Specifically, as amended, the FLSA permits certain bonus payments to be incorporated into the salary calculation.

This Fact Sheet provides additional information related to calculating salaries of athletics employees in the context of the FLSA's salary requirements.

### Non-Salary Compensation

The UNC Board of Governors has adopted a policy on Non-Salary and Deferred Compensation.<sup>1</sup> Each UNC constituent institution is required to have a conforming institutional policy. As permitted by institutional policy, constituent institutions may provide non-salary compensation to individual employees or groups of employees. These forms of compensation, such as car allowances or club memberships, are not permitted to be included in an employee's salary calculation for FLSA purposes.

Athletics coaches and other athletics employees may receive non-salary compensation. To the extent that constituent institutions have currently exempt athletics employees who receive non-salary compensation, but whose salaries will not meet the new FLSA threshold, the constituent institutions may want to consider replacing the non-salary compensation with increases in those employees' salaries to meet the FLSA salary thresholds (e.g., adding the equivalent of the car allowance to the employee's salary rather than providing the car).

### Nondiscretionary Bonuses and Incentive Payments

A new provision introduced in the FLSA Final Rule will allow nondiscretionary bonuses and incentive payments to satisfy up to ten percent of an employee's standard salary test requirement. Because most athletics employees who are eligible for incentive payments are also compensated above the FLSA's impending \$35,568 salary threshold, this provision may have limited applicability for constituent institutions.

Importantly, any bonus and incentive payments must be **nondiscretionary** in order to count toward an employee's salary calculation, which means they must be paid in accordance with preannounced standards and the bonuses' payment and amount may not be within the employer's sole discretion. Most incentive payments to athletics employees meet this requirement, as they are typically linked to pre-determined, objectively measured athletic or academic outcomes.

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<sup>1</sup> UNC Policy Manual, Section 300.2.14.

Additionally, only bonuses that are actually paid can count toward an employee's salary. Also, the bonuses must be on at least a quarterly basis. This requirement may be complicated in the athletics context where performance is typically measured annually or by athletic season. Because bonuses must be paid out to count toward FLSA salary, constituent institutions should be cautious about relying on incentive payments to meet the FLSA salary threshold. In situations where a nonexempt employee's salary falls below the FLSA threshold due to the employee's failure to earn a nondiscretionary incentive bonus, the Department of Labor will permit employers to "catch-up" payments on a quarterly basis to bring the employee up to the salary threshold and avoid overtime payments.

### **Summary**

Constituent institutions may therefore want to review their policies to determine (1) both the criteria for awarding any bonus or incentive payment; and (2) the schedule for payment, and analyze whether it may be helpful to amend one or both to assist with any FLSA exemption considerations.