



FLSA Fact Sheet #6: Applying the FLSA Changes to Postdoctoral Fellows in the UNC System

Introduction

Postdoctoral fellows (Post Docs) are employees who either teach or conduct research at a higher education institution after the completion of their doctoral studies. The U.S. Department of Labor (DOL) does not consider Post Docs students because they are not working towards a degree. Post Docs have traditionally had lower salary rates than other professionals, and they may therefore be eligible for overtime pay in light of the new and higher FLSA salary requirements taking effect on January 1, 2020.

This Fact Sheet is designed to provide guidance on the options for assuring compliance with the FLSA changes in the context of Post Docs in the UNC system.

Teaching Post Docs

The FLSA's salary and salary basis requirements do not apply to bona fide teachers.¹ For this reason, a Post Doc whose primary duty is teaching can be classified as FLSA exempt from overtime under the teacher exemption and the UNC constituent institution would not be required to raise the Post Doc's salary if this exemption applies.

Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment.² Educational establishments include institutions of higher education. Exempt teachers in higher education may include college and university professors or adjunct instructors.³

The DOL defines an employee's primary duty as the "principal, main, major or most important duty that the employee performs."⁴ There is no defined percentage or numerical threshold that must be met for a task to qualify as an employee's primary duty, but the DOL has advised that employees who spend more than 50 percent of their time performing exempt work will generally satisfy the primary duty requirement.⁵ With this federal guidance in mind, each UNC constituent institution has the flexibility to determine for itself how best to articulate and calculate a Post Doc's primary duty (or duties). In making the determination, each constituent institution should document its review and analysis of the following factors:

- the relative importance of the exempt duties as compared with other types of duties;
- the amount of time spent performing exempt work;
- the employee's relative freedom from direct supervision; and
- the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

¹ 29 C.F.R. §§ 541.303(d), 541.600(e).

² *Id.* § 541.303.

³ *Id.* § 541.204(b).

⁴ *Id.* 541.700(a).

⁵ *Id.* 541.700(b).

Non-teaching Post Docs

Non-teaching or research-focused Post Docs often meet the duties test for the “learned professional” exemption but must also satisfy the salary basis and salary level tests to qualify for this exemption.⁶

To qualify for the learned professional employee exemption, a Post Doc has to meet all of the following requirements:

- The Post Doc must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week;
- The Post Doc primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The Post Doc’s advanced knowledge must be in a field of science or learning; and
- The Post Doc’s advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Non-teaching Post Docs who currently earn less than the new annual salary level of \$35,568 will be entitled to receive overtime compensation for any hours actually worked over 40 in a work week. Most Post Docs have traditionally worked more than 40 hours a week due to the nature of their work and exempt status. Each constituent institution now should conduct a cost benefit analysis to determine if it would be more cost effective to maintain the Post Doc’s current salary and either manage his/her work schedule to minimize overtime payments, to budget to pay overtime for expected overtime work⁷, or to move the Post Doc to the new FLSA salary minimum to maintain his/her FLSA Exempt status as a Learned Professional.

Summary

A constituent institution that makes the determination that a Post Doc has a primary duty of teaching should document that determination and periodically review the Post Doc’s duties to assure that it remains correct. A teaching Post Doc does not need to meet the new FLSA salary threshold.

A constituent institution that makes the determination to move some Non-teaching Post Docs who are currently paid below the new minimum to the new FLSA salary threshold should work with University counsel to assure that such determinations are made in a legitimate, non-discriminatory way.

A constituent institution that makes the determination to move their Non-teaching Post Docs who are currently paid below the new minimum to FLSA Non-Exempt status should ensure that the affected Post Docs and their management teams are included in all communication and training regarding the change and appropriately tracking hours worked.

⁶ *Id.* § 541.301.

⁷ 29 U.S.C. 207(o)(3)(A).