Overview of New FLSA Overtime Rule

The final rule revises the existing “White Collar Exemptions” of the Department of Labor’s overtime pay regulations.

- White Collar Exemptions are determined by a salary and duties test:
  - Individuals must be paid on a salary basis;
  - Salary must meet a minimum salary level;
  - Employee’s primary job duties must involve the kind of work associated with exempt executive, administrative, and professional employees.

Overview of New FLSA Overtime Rule

- Dec. 1, 2016, employers - including postsecondary institutions - must pay their employees overtime when working more than 40 hrs. in a work week unless employees:
  - Earn above $47,476, or $913 /wk.; and
  - Work primarily in a bona fide executive, administrative, or professional capacity.

- Three-year automatic updates to the minimum salary exemption
  - The threshold increase will be based on the salary level for the 40th percentile for full-time salaried works in the lowest wage Census region in the United States as calculated by the United States Bureau of Labor Statistics.
  - Employers will receive 150 days of prior notice before the new threshold takes effect.
Special Provisions for Teachers

- Employees in higher education institutions who are bona fide teachers will still not be affected by the new rule (U.S. Dpt. Of Labor, 2016)

- 29 CFR 541.20(b), 303, articulates that bona fide teachers are exempt from overtime pay, regardless of salary, as long as 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 teaching in an educational establishment.”
Special Provisions for Academic Administrators

- Under current law and regulation, “academic administrators” are given special regulatory provisions. Academic administrators are employees whose primary duty is to perform administrative functions directly related to academic instruction or training in an educational establishment.

- Academic Administrators may qualify for an exemption from the new salary threshold of $47,476 if they are paid on a salary basis at least equal to the entrance salary for teachers in the same educational establishment (See 29 CFR 541.204).

- In higher education, examples of academic administrators generally eligible for this exemption may include academic coaches, academic advisors, and academic intervention specialists.
Special Provisions for Athletic Coaches

- Athletic coaches employed by higher education institutions may qualify for the teacher exemption (U.S. Department of Labor, 2016).
  - Teaching includes instructing student athletes about how to perform their sport.
  - Does not apply to coaches whose primary duties are the recruitment of student athletes.
In a moment, we’ll ask you to break into groups of 5 or 6 persons.
In your groups please take a moment to identify one or two note takers.
On the next slide we have a list of questions which we’ll ask different groups to tackle questions at a different starting point... please feel free to dive deep into your questions!

- Group 1 - Start with Q1
- Group 2 - Start with Q3
- Group 3 - Start with Q5
- Group 4 - Start with Q7
- Group 5 - Start with Q9
- Group 6 - Start with Q2
- Group 7 - Start with Q4
- Group 8 - Start with Q6
Small Group Questions

1. What are some key considerations that those who are managing FLSA Overtime Rule should keep at the top of their minds as they prepare for the new Rule to take effect?

2. What would you advise are some important first steps to prepare for the new FLSA Overtime Rule as they relate to your institution?

3. How has your campus measured the financial implications of the new overtime rules?

4. Has your institution considered increases in salary, reclassifications, or some hybrid of the two? What are the trade-offs for any of these approaches?

5. Now that the new Overtime Rule sets the salary exemption at $47,476, are there new types of employment arrangements that are subject to overtime pay?

6. What does this change mean in terms of tracking hours and determining what constitutes work for employees that have not previously qualified for overtime pay?

7. How does your institution treat professional development for exempt and non-exempt employees in relation to counting these hours as work time?

8. Considering the exemptions, has your campus given thought to how these exemptions might apply within Student Affairs? If so, what advice do you have in this area?

9. For live-in staff, one commonly discussed option for complying with the new minimum salary is to raise their salaries to the new threshold level and then charge rent for their on-campus residence. What suggestions might you have for colleagues considering this approach? Are there liabilities or legal conflicts of which institutions should be aware?
Large Group Report Outs

1. What are the strategies your group is employing?
2. Did any unique or innovative approaches emerge?
3. What are the burning questions still lingering for your group?
Additional questions for entire group...

BASED UPON FLSA GUIDANCE TO HIGHER EDUCATION INSTITUTIONS
Considering Section 3(m) of FLSA

Under section 3(m) of FLSA, an employer may claim credit for lodging toward employee wages if five criteria are met:

- The lodging is regularly provided by the employer or similar employers;
- The employee voluntarily accepts the lodging;
- The lodging is furnished in compliance with applicable federal, state, or local law;
- The lodging is provided primarily for the benefit of the employee rather than the employer; and,
- The employer maintains accurate record of the costs incurred in furnishing the lodgings.

Are any of your institutions planning to utilize this claim? If so, what are the advantages and limitations of this approach?

Detailed guidance on how each of the five requirements are met: U.S. Department of Labor. (2015). Credit toward wages under Section (3) of FLSA. Retrieved from https://www.dol.gov/whd/FieldBulletins/fab2015_1.htm
Compensatory Leave?

In the Guidance for Higher Education Institutions that issued with the new Rule, the US Department of Labor note that public institutions can use compensatory leave for overtime hours in lieu of cash payouts.

- Has your institutions considered using compensatory time instead of cash payouts?
- What are the advantages and limitations to this approach?

Concluding Thoughts...

Thank you for your time and participation!

Special thanks to Andrew Morse and NASPA’s Policy Analysis Team for provided resources and materials included in this presentation.

For copies of this presentation please email Dr. Travis T. York, Director of Student Success, Research & Policy at tyork@aplu.org
Additional Resources

- **Department of Labor**
  - Overview and Summary of Final Law
  - Summary of Higher Education Guidance
  - Full Guidance for Higher Education

- **CUPA-HR**
  - Resources for Higher Education from CUPA-HR
  - CUPA-HR recorded webinar

- **NASPA**
  - NASPA recorded webinar on FLSA Change within Student Affairs