



POLICY RESOURCES

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| Applies to: | Marshall University Research Corporation (MURC) |
| Title: | FLSA Exempt/Non-Exempt Status and Determination |
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The Marshall University Research Corporation (MURC) complies with the provisions of the federal Fair Labor Standards Act (FLSA).

Description of Fair Labor Standards Act Exempt and Non-Exempt Status:

Under the provisions of the U.S. Fair Labor Standards Act (FLSA), each MURC employment position is characterized as either non-exempt or exempt from the overtime provisions of the FLSA and possible certain provisions of other federal and/or state wage and hour laws. Non-exempt employees are entitled to overtime pay for any hours worked in excess of 40 hours per week. A non-exempt employee and a supervisor may agree in writing in advance that the employee will receive compensatory time off in lieu of overtime wages for any hours worked in excess of 40 hours per week. Compensatory time off cannot be provided to a non-exempt employee unless a written agreement regarding same is completed in advance of the hours worked that represent overtime.

Overtime pay or alternatively compensatory time off is only granted on the basis of hours worked. A work week which is comprised of both hours actually worked and hours using accrued leave may not qualify for overtime or compensatory time off unless the total hours actually worked in the week exceed 40.

Overtime pay is provided at one and one-half times the base effective hourly rate of the non-exempt employee. The base effective hourly rate is calculated by dividing total normal weekly wages by the number of hours in the standard work week (prior to any overtime being performed) adjusted for the employee's appointed percentage time. Compensatory time off is provided at the rate of one and one-half hours compensatory time for each hour worked over 40 in a week. Overtime pay is processed in the next available pay cycle that can be affected by a personnel action in support of the overtime payment. Compensatory time off is credited to the employee's account as soon as it is earned and properly reported by the employee or the supervisor.

For non-exempt employees whose assigned work week is less than 40 hours, pay at the straight time rate (base effective hourly rate above) is provided for any week in which hours worked exceed that employee's assigned work week up to 40 hours per week. The 40th hour in the week is a straight-time hour. Overtime pay or compensatory time off is provided for any hours worked in the week in excess of 40.

FLSA exempt employees are exempt from the overtime provisions of the FLSA and possible from certain provisions of other federal and/or state wage and hour laws. An exempt employee may be expected to work more than 40 hours in a week in order to accomplish the mission of the assigned unit. Exempt employees are not eligible to earn overtime or compensatory time off.

Exempt/Non-Exempt Determination:

A status of FLSA exempt or non-exempt is assigned to each MURC employment position. A new employment position that is not exactly like another already-existing employment position ordinarily defaults to non-exempt status unless it has been evaluated and determined to qualify for exempt status. If a new employment position is exactly like another already-existing employment position, then it is set the same with regard to exempt or non-exempt status. FLSA exempt or non-exempt status is determined by the management of MURC or of the human resource services provider acting in behalf of MURC management. Changes in FLSA exempt or non-exempt status are communicated to the incumbent of the position and his/her supervisor and do not take effect until such written communication has been received by them.

The FLSA provides a mechanism for determining whether an employment position is FLSA exempt or non-exempt. The determination of whether or not a position should be set to FLSA exempt is based upon an analysis of the position performed by the human resource services provider. The FLSA provides four occupational situations which warrant a determination of exempt status:

Executive: Requires a salary of at least \$455 per week. Work not directly and closely related to the employee's exempt executive duties cannot exceed 20 percent of own hours worked in workweek. All of the following conditions must be met for the executive exemption: (1) primary duty must be managing the enterprise, or a recognized department or subdivision of the enterprise; and (2) must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and (3) the employee must have the authority to hire or fire other employees (or the employee's suggestions as to the hiring, firing, promotion, or other change of status of other employees must be given particular weight).

Administrative: Requires a salary of at least \$455 per week. Work not directly and closely related to employee's exempt administrative duties cannot exceed 20 percent of own hours worked in workweek. All of the following conditions must be met for the administrative exemption: (1) primary duty must be the performance of office or non-manual work directly relating to the management or general business operations of the employer or the employer's customers; and (2) primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional: Requires a salary of at least \$455 per week. Work not essential part of and necessarily incident to employee's exempt professional duties cannot exceed 20 percent of own hours worked in workweek. For the learned professional, all of the following conditions must be met for the professional exemption: (1) 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; and (2) the advanced knowledge must be in a field of science or learning; and (3) the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction. For the creative professional, all of the following conditions must be met for the professional exemption: (1) primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

Computer Professional: Must be paid a salary of at least \$455 per week or must be paid at an hourly rate of not less than \$27.63 per hour. Must be employed as a systems analyst, programmer, software engineer, or other similarly skilled worker in the computer field; and primary duty must consist of: (1) the application of systems analysis techniques and procedures including consulting with users to determine hardware, software, or system functional specifications; or (2) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs including prototypes based on and related to user or system design specifications; or (3) the design, documentation, testing, creation, or

modification of computer programs related to machine operating systems; or (4) a combination of the aforementioned duties, the performance of which requires the same level of skills.

There are two other criteria for FLSA exemption provided in the federal regulations (those for outside salespersons and highly-compensated employees) that are not discussed herein.

A MURC employee or his/her supervisor or any level of manager above the supervisor may request that the exempt/non-exempt status of the employee's position be evaluated with regard to FLSA exempt/non-exempt status. Upon receipt of such request in writing, the human resource services provider will evaluate the position and provide a recommendation to MURC's management for possible adoption of exempt or non-exempt status. If approved by MURC's management, the results will be communicated in writing to the incumbent of the employment position and his/her supervisor.

The human resource services provider may independently review the FLSA exempt/non-exempt status of employment positions at MURC and may independently provide direction with regard to potential changes in FLSA exempt or non-exempt status.

Any questions about exempt and non-exempt status with regard to the Fair Labor Standards Act may be directed to the Human Resource Services Team at the address shown at the top of this policy and procedure.

HUMAN RESOURCE SERVICES POLICIES AND PROCEDURES PROVIDED FOR MARSHALL UNIVERSITY RESEARCH CORPORATION (MURC) APPEAR ON THE MURC WEB SITE. TO NAVIGATE TO THE HUMAN RESOURCES POLICIES AND PROCEDURES, PLEASE CLICK **HUMAN RESOURCES** ON THE MURC HOME PAGE AT <http://www.marshall.edu/murc/>. MARSHALL UNIVERSITY HUMAN RESOURCE SERVICES PROVIDES HUMAN RESOURCES SUPPORT TO MURC. THIS POLICY IS COPYRIGHTED BY MARSHALL UNIVERSITY. FOR ANY QUESTIONS ON THIS POLICY, PLEASE CONTACT HUMAN RESOURCE SERVICES AT THE ADDRESS AT THE TOP OF THIS POLICY.

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