



2016 Fair Labor Standards Act (FLSA) Changes

TOOLKIT FOR MANAGERS AND SUPERVISORS

October 21, 2016

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ABOUT THIS TOOLKIT

More university faculty and staff will be eligible for overtime pay under changes to the Fair Labor Standards Act that take effect on December 1, 2016. This toolkit is designed to help managers and supervisors to:

- Determine which employees are impacted by the changes
- Develop a strategy to comply with the new regulations that aligns with unit business needs
- Communicate effectively with impacted faculty and staff in a timely manner

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A Brief Guide to the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) determines whether a position is eligible for overtime pay. Any “exempt” position is not eligible for overtime pay. A “non-exempt” position is eligible and must receive overtime pay at time-and-one-half for any hours worked above 40 hours in one workweek.

Three Tests: Salary Basis, Duties and Salary Level

A position may be considered exempt under the FLSA if it meets three tests:

1. Employee must be paid on a salary basis, not on an hourly basis
2. Duties must meet criteria for executive, professional, or administrative job duties
3. Compensation rate (pro-rated full-time rate if part-time) must be at least \$47,476 annually (effective December 1, 2016)

If any one of the three tests is not met, the employee must be classified as non-exempt and eligible for overtime pay. Please note that exempt classification is an option, not a requirement under the law. A position that meets all three tests may still be classified as non-exempt.

FLSA Status at UCR

At UCR, FLSA status affects three areas of employment:

1. Eligibility for overtime pay for hours worked above 40 in one workweek
2. How time is reported
3. Biweekly or monthly pay frequency

Most other benefits are the same for non-exempt and exempt employees.

What Counts Towards Overtime?

Only time worked is counted toward the 40 hours per week required for overtime pay for non-exempt employees. Exception time such as vacation, sick, holiday, military reserve duty, bereavement, extended sick, and time for jury duty does not count toward the 40 hours per week of time worked that is required for overtime pay.

New Overtime Eligibility Rules: Supervisor Overview

This overview is intended to help supervisors prepare to discuss the impact of upcoming FLSA changes with impacted individuals.

Background: What has Changed?

The federal government announced new rules in May that increase the salary at which an employee may be considered “exempt” from earning overtime pay. As a result, more employees are eligible for overtime pay (“non-exempt”). Eligibility for overtime pay is determined by several tests of job duties and pay under the Fair Labor Standards Act (FLSA). As of December 1, 2016, the new salary threshold to be considered exempt under the FLSA is \$47,476 annually, an increase from the previous threshold of \$23,660. The Department of Labor will review the threshold for future adjustments every three years going forward.

University Approach

The university has adopted an approach that will provide flexibility to units in how to comply with the revised salary threshold while managing the impact to their budgets and administration. Units may decide to raise salaries to maintain exempt status or use new job codes that allow the same job to be designated as exempt or non-exempt under the FLSA based on salary. The option of using new job codes provides the opportunity for unit choice in how to comply with the regulations, offers a solution for current and future staff who fall below the threshold, as well as future increases to the salary threshold by the Department of Labor, and minimizes the impact on staff.

Who Will Be Impacted?

Full-Time Employees

Some full-time employees may be reclassified to non-exempt as of November 20, 2016 because of a unit decision to reclassify staff within a given job title or because their duties no longer meet the exemption test.

Part-Time Employees

Part-time employees with a compensation rate (pro-rated full-time rate) below \$47,476 who are currently considered exempt under the FLSA will be reclassified to non-exempt as of November 20, 2016.

Post-doctoral Fellows

Compensation for full-time post-doctoral fellows will be adjusted to meet the minimum threshold of \$47,476 no later than December 1, 2016 to maintain exempt status.

What Employees Who Become Eligible for Overtime Can Expect

1. They will begin reporting all time worked in addition to exception time (overtime and time off) as of November 20, 2016
2. They will be paid biweekly rather than monthly
3. They will earn overtime pay at time-and-one-half for all hours worked above 40 in one workweek starting November 20, 2016

Considerations for Employees Who Will Become Eligible for Overtime

Impacted individuals may need to make personal financial adjustments to prepare for a biweekly pay schedule with 26 pay dates per year rather than a monthly pay schedule with 12 pay dates per year.

Direct Deposit Amounts or Fixed-Dollar Payroll Deductions

If employees currently make any fixed-dollar direct deposits or payroll deductions that come out of every paycheck (such as deposits to a savings account or contributions to a 403(b) Supplemental Retirement Account), the flat dollar amount will be split in half, and one-half will be withheld per biweekly payday.

Considerations for Supervisors with New Non-Exempt Employees

Managing Overtime

Managers and supervisors may need to set new expectations and change department schedules or behaviors in order to manage overtime according to their budgets. Overtime may occasionally be necessary and should be pre-approved by the supervisor; however, whether pre-approved or not, it must always be paid.

Considering Dual Job Codes for FLSA Compliance

Background

Together with unit advisors from all campuses, the university has developed an approach that will provide flexibility to units in how to comply with the revised FLSA salary threshold, including the option to use new “dual” job codes that allow the same job to be designated as exempt or non-exempt under the FLSA based on salary. This approach provides a solution to address both part-time and full-time staff whose comp-rate is below the FLSA salary threshold, as well as a sustainable model for future adjustments.

Assumptions

- Compliance with FLSA
- Duties meet FLSA exempt job test
 - Request an exempt duties test if uncertain
 - Move to non-exempt classification where duties test is not met
- Supervisors will track and approve all hours worked and exception time for non-exempt staff
 - Authorize and approve all overtime
- Supervisors will track and approve exception time for exempt staff
 - No additional pay for hours over 40 in a workweek

Approach to Dual Job Codes

Staff with a comp-rate equal to or greater than the minimum FLSA threshold are assigned the exempt job code; those below are assigned the non-exempt job code.

- Ensure comp-rate of all full-time staff in a job code is at or above the minimum threshold
- Reclassify all staff in a job code as non-exempt, including staff above the minimum threshold

FLSA Exempt Comp-Rate for Part-Time Appointments Based on Full-Time Salary and Effort

Notes:

- Effective December 1, 2016, FLSA exempt status requires a comp-rate that is equal to or greater than \$47,476. Comp-rate = full-time salary * effort
- The FLSA exempt salary threshold will be revised by the federal government every three years going forward, beginning in 2020

FULL-TIME SALARY

	\$50,000	\$52,000	\$54,000	\$56,000	\$58,000	\$60,000	\$62,000	\$64,000	\$66,000	\$68,000	\$70,000	\$72,000	\$74,000	\$76,000	\$78,000	\$80,000
EFFORT 0.4																
0.5																
0.6																\$48,000
0.7										\$47,600	\$49,000	\$50,400	\$51,800	\$53,200	\$54,600	\$56,000
0.8						\$48,000	\$49,600	\$51,200	\$52,800	\$54,400	\$56,000	\$57,600	\$59,200	\$60,800	\$62,400	\$64,000
0.9			\$48,600	\$50,400	\$52,200	\$54,000	\$55,800	\$57,600	\$59,400	\$61,200	\$63,000	\$64,800	\$66,600	\$68,400	\$70,200	\$72,000

FULL-TIME SALARY

	\$82,000	\$84,000	\$86,000	\$88,000	\$90,000	\$92,000	\$94,000	\$96,000	\$98,000	\$100,000	\$102,000	\$104,000	\$106,000	\$108,000	\$110,000	\$115,000
EFFORT 0.4																
0.5								\$48,000	\$49,000	\$50,000	\$51,000	\$52,000	\$53,000	\$54,000	\$55,000	\$57,500
0.6	\$49,200	\$50,400	\$51,600	\$52,800	\$54,000	\$55,200	\$56,400	\$57,600	\$58,800	\$60,000	\$61,200	\$62,400	\$63,600	\$64,800	\$66,000	\$69,000
0.7	\$57,400	\$58,800	\$60,200	\$61,600	\$63,000	\$64,400	\$65,800	\$67,200	\$68,600	\$70,000	\$71,400	\$72,800	\$74,200	\$75,600	\$77,000	\$80,500
0.8	\$65,600	\$67,200	\$68,800	\$70,400	\$72,000	\$73,600	\$75,200	\$76,800	\$78,400	\$80,000	\$81,600	\$83,200	\$84,800	\$86,400	\$88,000	\$92,000
0.9	\$73,800	\$75,600	\$77,400	\$79,200	\$81,000	\$82,800	\$84,600	\$86,400	\$88,200	\$90,000	\$91,800	\$93,600	\$95,400	\$97,200	\$99,000	\$103,500

Supervisor/Manager Fact Sheet

Compliance with Department of Labor Increase in Minimum Salary Threshold: Salary Scale Increases and Reclassification to Nonexempt Academic Appointees

Salary Scales Will Increase so that certain Full-Time Academic Appointees Will Remain Exempt

Beginning on November 20, 2016, the bottom steps of the salary scales for Assistant Specialists and Coordinators of Public Programs will be raised to above \$3,956.34 per month (or \$47,476 per year) so they can remain exempt. If the academic appointee is paid by your grants and you cannot afford the salary increase, you may need to end their appointment early (layoff) or implement a reduction in time that might require the academic appointee to move from overtime exempt to non-exempt and overtime-eligible. You should consult with your grant manager to do budget projections.

Postdoctoral scholars' salaries will also be raised to above \$3,956.34 per month (or \$47,476 per year) effective December 1, 2016.

Please note that the salary for academic year academic coordinators will not be raised because the current salary level when adjusted for 12-months is greater than \$47,476.

Reclassification to Non-Exempt: Junior Specialists and Part-Time Academic Appointees Below the DOL Salary Threshold

Beginning on November 20, 2016, certain non-teaching and non-medical academic appointees who are currently exempt from earning overtime will be reclassified as non-exempt because their earnings fall below the new Department of Labor overtime threshold of \$913 per week (monthly exempt salaried employees must be paid at least \$3,956.34 per month to remain exempt).

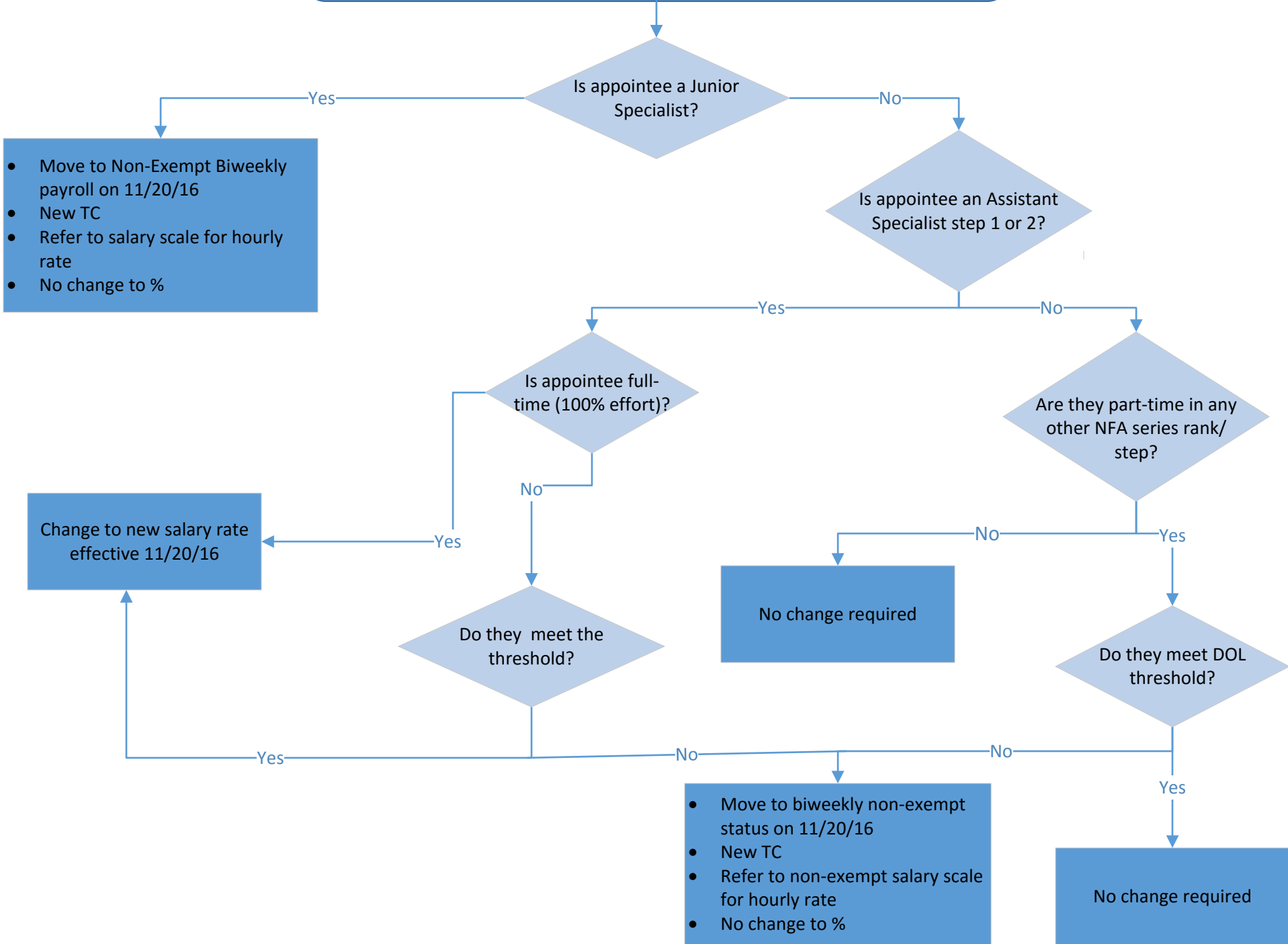
This Factsheet is intended to help you administer payroll and recordkeeping for the non-exempt appointees you supervise. If you have further questions, please contact apomail@ucr.edu.

1. Beginning November 20, non-exempt appointees will be reclassified from being paid on a monthly salaried basis to a biweekly hourly basis.
 - a. These appointees will receive their last monthly salaried basis partial paycheck on December 1 for work between November 1 through November 19.
 - b. They will receive their first biweekly paycheck on December 14, for hours worked between November 20 and December 3.
 - c. Their second biweekly paycheck will be on December 28, covering the period from December 4 to December 17.
 - d. Thereafter, they will be paid every 2 weeks on Wednesday, according to UC's Biweekly Payroll Calendar.
2. New title codes have been issued for non-exempt academic appointees.
 - a. Appointees determined to be non-exempt must be appointed in the appropriate non-exempt version of their title effective November 20, 2016.

- b. Their current monthly salaried appointments must be ended effective November 19, 2016.
 - c. New non-exempt salary scales will be issued with an hourly rate.
 3. Future appointees who will be non-exempt include all Junior Specialists, as well as part-time appointees in specific titles whose earnings fall below the weekly threshold.
 4. As hourly-paid employees, non-exempt appointees must record their time on a daily basis and submit timesheets to report their hours for each biweekly pay period, and the supervisor will be required to review and approve the hours reported every other week.
 - a. Please consult with apomail@ucr.edu regarding the retention of the timekeeping records, whether in electronic or paper format.
 5. Non-exempt appointees will be paid for all hours worked.
 6. The work week is defined as Sunday through Saturday.
 7. Time worked as well as vacation leave and sick leave hours taken must be recorded in increments of $\frac{1}{4}$ hour (15 minutes).
 8. Overtime and time worked beyond appointment percentage.
 - a. Part-time appointees who work more than their stated appointment percentage, but less than 40 hours in a week, will receive pay for the extra hours (or partial hours) worked at their regular hourly rate.
 - b. A non-exempt appointee will receive pay at 1.5 times their regular hourly rate for any time worked in excess of 40 hours in a week, regardless of their appointment percentage.
 - c. Overtime will be compensated in pay unless your [department](#) allows for compensatory time arrangements (comp time).
 - d. All overtime/additional time worked in excess of appointment percentage must be approved in advance by the supervisor.
 - i. If an appointee submits a timesheet that reports non-approved time, they still must be paid for that time.
 - ii. However, working unapproved overtime/additional time can be cause for disciplinary action. Also, if an appointee is regularly working overtime/additional time, please contact apomail@ucr.edu to discuss whether the appointee's appointment percentage should be adjusted.
 9. Other compensable time for non-exempt appointees includes:
 - a. *Donning and Doffing*. Time spent changing into or out of protective clothing or engaging in special washing or cleaning procedures is considered time worked.
 - b. *Travel Time*. If the appointee does not have regular working hours, the supervisor will assign regular work hours for any workweek during which travel will occur for the purpose of identifying and tracking compensable travel time. The travel during the appointee's regular working hours is considered time worked. Travel time outside of the assigned regular work hours is not time worked, unless actual work is performed during that time. *See PPSM 30 for more information*

- c. *Rest Breaks.* The University makes accommodation for breaks during the work day. Meal breaks are not considered compensable time (i.e., a lunch break should not be recorded as time worked).

DOL – Academic Flowchart



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1. What does it mean to be exempt or non-exempt under the Fair Labor Standards Act (FLSA)?

The federal Fair Labor Standards Act (FLSA) regulates whether an employee is overtime-eligible (“non-exempt”) or overtime-exempt (“exempt”). Most employees covered by the FLSA must be paid at least the minimum wage and premium pay for any hours they work beyond 40 in a workweek. The minimum wage for California is currently \$10 per hour. Some localities have adopted higher minimum wages. The FLSA does, however, exempt certain kinds of covered employees from the minimum wage and overtime requirements, including bona fide executive, administrative, and professional employees. To qualify for one of the executive, administrative or professional exemptions, an employee must be paid a predetermined salary that is above a certain amount and meet the applicable duties test.

2. Are any positions exempt from the salary basis test?

Professors, lecturers, tutors and others teachers, doctors, medical residents, veterinarians and attorneys are not subject to either the salary basis or salary level tests. This means that these professionals are considered exempt regardless of the amount they earn for performing services.

3. Why is UC changing my FLSA status from exempt to non-exempt and overtime eligible?

Currently, most employees who are classified as overtime-exempt must earn at least \$455 per week, according to the FLSA. Beginning December 1, 2016, to qualify for the executive, administrative or professional exemption, the FLSA requires that an employee earn no less than \$913 per week, or \$47,476 per year. To comply with this new overtime rule, the University of California has reviewed your position and salary and reclassified you as overtime-eligible.

4. As a non-exempt employee, when am I entitled to overtime?

Non-exempt, overtime-eligible employees must be paid no less than the minimum wage and a premium rate for any hours worked beyond 40 in a workweek. Hospitals are permitted to base FLSA overtime eligibility on either 40 hours in a workweek or 80 hours in a 14-consecutive day work period (the 8/80 option). If the University requires or permits an employee to work overtime, then it is generally required to pay the employee premium pay for such overtime work.

5. Now that I am a non-exempt, overtime-eligible employee, why am I required to record the number of hours I work each day?

The FLSA requires the University to keep certain records for each non-exempt, overtime-eligible employee, including records of the number of hours worked each day and the amount of wages earned. Talk to your manager or supervisor about local time reporting requirements.

6. I am currently paid monthly. Will I convert to the biweekly pay schedule?

If you are re-classified as a non-exempt employee and eligible for overtime, your pay period will change from monthly to biweekly.

7. When will the change from a monthly pay schedule to a biweekly pay schedule take effect?

The new non-exempt, overtime-eligible employees will transition to the biweekly pay schedule on November 20, 2016.

Here are the specific pay dates during that period:

December 1: Final monthly paycheck for work performed between November 1 through November 19, full benefits deduction for December 2016

December 14: Full paycheck for biweekly period of November 20 through December 3, first ½ of January 2017 benefits deductions

December 28: Full paycheck for full biweekly period of December 4 through December 17, second ½ of January 2017 benefits deductions

8. Where can I find the biweekly pay schedule?

Your local payroll office can provide you with the [2016](#) and [2017](#) biweekly payroll schedule calendars.

9. How many biweekly pay periods are there in a calendar year?

You will receive a minimum of 26 and a maximum of 27 paychecks in a year. Because biweekly periods do not always line up exactly to the calendar year, there is often a biweekly pay period that crosses over from December to January. As a result, the gross pay reported on an annual W-2 tax form may not exactly match your annualized pay rate, and occasionally there will be 27 periods in one year.

10. How will my vacation and sick leave accruals be calculated during the transition?

For staff and academic employees, your accruals are based on your hours on pay status. If the time you work on pay status varies, then so will your accruals. Therefore, a full-time employee should expect to see the same accruals over the course of the year, while a part-time employee's accruals may vary.

Accruals for biweekly employees are credited at the end of every two pay periods (every four weeks) based on hours on pay status during those two pay periods. Biweekly employees accrue 13 times in a calendar year, compared to 12 times for monthly employees. The accruals for each pay period are therefore smaller, but your annual vacation and sick accrual rate is the same.

During the transition, you will be credited at the end of the monthly November pay period based on the hours worked November 1 through November 19, and credited again in December for the hours worked November 20 through December 17 (the end of the first biweekly accrual period).

11. How is my hourly rate determined?

There are two methods you can use to calculate your hourly rate (based on a 40-hour workweek):

- **Method 1:** Take your monthly salary rate and divide by 174 (the average number of working hours in a month). For example, if your monthly salary is \$3250 per month: $\$3250 \div 174 = \18.68 per hour.

- **Method 2:** Take your annual salary and divide it by 2088 (the number of working hours in a year). For example, if your annual salary rate is \$39,000 per year: $\$39,000 \div 2088 = \18.68 per hour.

12. What should I do to prepare for the change?

It is important that you review your personal budget situation and determine your income needs based on the new biweekly pay schedule. In preparation for the conversion, we suggest that you take the following steps:

- Review your current tax withholding elections and make any necessary changes; pay particular attention to additional tax withholding amounts
- Review your current voluntary contributions to your 403(b) and 457(b) plans; see FAQ #18
- If appropriate, request that third-parties adjust your automatic withdrawal or bill pay dates to align with your new pay schedule

13. What if I have reviewed my situation and find that I will be unable to meet my financial obligations during the transition?

The University will be offering a Transition Assistance Vacation Cash Out program that allows you to cash out up to 80 hours of your accrued and unused vacation balance to assist you in meeting financial obligations during the transition period.

The University has an arrangement with two credit unions for emergency loans at negotiated rates. Please see this policy link for more information: <http://policy.ucop.edu/doc/3410225/AM-E526-48>.

14. Will I need to make any changes to my direct deposit?

No.

15. What is a Deduction Holiday? How will my deductions be calculated?

A deduction holiday occurs when there are three biweekly pay periods in a month. During a deduction holiday, no flat-dollar deductions are taken from pay; only percent-based deductions are taken. Typically, deduction holidays occur twice a year, based on pay period end date. Pay dates with deduction holidays can be found on the biweekly pay schedule calendars.

16. I have a garnishment deduction. How will the transition to biweekly pay affect the amount deducted for my garnishment?

If the garnishment deduction is calculated as a percentage of your earnings, a deduction will occur each pay period, up to the maximum deduction allowed based on federal and state regulations. For example, if your garnishment deduction is 25% of your pay, that amount will be deducted each payday.

If the garnishment deduction is a fixed amount, the amount will be recalculated to a biweekly amount. That calculation is then divided into two payments. For example, a monthly \$250 garnishment payment will become \$125, deducted during each biweekly paycheck.

17. When is my retirement deduction taken?

The UC mandatory retirement contributions, University of California Retirement Plan and the Defined Contribution Plan, are taken each biweekly payday.

18. I contribute to my 403(b) and 457(b) plans. When will my contributions be taken?

Percentage deduction: If you set up your contributions as a percentage deduction, the percentage amount will be taken each paycheck (26 times a year). For example, if your current 403(b) contribution is 5% per month, a 5% contribution will be made each biweekly payday.

Flat Dollar deduction: If you set up your contributions as a fixed flat dollar amount, the flat dollar amount will be split in half, and one-half will be withheld per biweekly payday. For example, if your current 403(b) contribution is \$100 per month, it will be divided into a \$50 contribution each biweekly payday. For months with three paychecks, one paycheck will have no fixed flat dollar deductions taken.

19. What if I pay some of my bills through automatic bill pay?

If you have automatic bill pay set up for any regular expenses, such as mortgage payments, student loan payments or car payments, we encourage you to work directly with your financial institution(s) to change payment dates as needed. As a biweekly employee, your pay dates vary since you are paid every other Wednesday.

20. Will I need to make any changes to my tax withholding?

If you have an additional tax amount deducted from your paycheck, that monthly amount will be split in half, and one-half will be withheld from each biweekly check. If you would like to adjust your additional withholding amount, please go to the [At Your Service website](#) and review and/or update your W-4/DE-4 Form. For other tax questions, please consult IRS and State Franchise Tax Board websites or contact a tax professional for help. For other tax questions, please consult IRS (<https://www.irs.gov/>) and State Franchise Tax Board (for California: <https://www.ftb.ca.gov/>) websites or contact a tax professional for help.

21. Who should I contact if I have questions regarding my FLSA classification or the biweekly pay cycle conversion?

If you have questions for which you need immediate assistance, please contact your supervisor or local staff human resources or academic personnel office (apomail@ucr.edu).