

# Handbook for Compensation Planning

Office of HUMAN  
RESOURCES



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# Handbook for Compensation Planning

Compensation planning and administration can be challenging. This handbook has been written to help make decision-making easier. Key concepts, frequently used terms and relevant laws are included. [Contact Compensation](#) regarding questions and comments about compensation and this handbook.

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## Contact Information

**Office of Human Resources, Consulting Services Consultants**  
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Find your consultant: <http://hr.osu.edu/dir/consultdirsearch.htm>

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## Resources

Compensation Web site <http://hr.osu.edu/comp/home.htm>  
Human Resources Policies and Procedures <http://hr.osu.edu/policy/policyhome.htm>  
Rules for the Classified Civil Service <http://hr.osu.edu/ccsrules/ccsrule1.htm>  
Guide to Reference Checking <http://hr.osu.edu/hrpubs/pubmenu.htm>  
Core Performance Management Process Handbook <http://hr.osu.edu/hrpubs/pubmenu.htm>  
Fair Labor Standards Act (FLSA) <http://www.dol.gov/esa/whd/flsa/>  
Equal Pay Act of 1963



# Introduction

Compensation planning and administration can be challenging. This handbook has been written to help make decision-making easier. Key concepts, frequently used terms and relevant laws are included. Please be aware, however, that this guide cannot answer all questions. It cannot serve as a substitute for policies and procedures. It is not a guide to legal opinion or a replacement for common sense judgment. To ensure that the best possible decisions are made, use this handbook and continue to work with your College/VP unit Human Resources Professional and your Human Resources Consultant.

To make the best possible pay related decisions, it is important to understand the characteristics of the pay structure under which the university is operating. The pay structure helps to determine how and why decisions are made. The university is currently operating under both traditional and broadbanded pay structures. The reasons are explained below.

In 1995, the Office of Human Resources reviewed the university's traditional pay structure to determine if it was in line with its goals, vision and mission. Characteristics of the traditional structure included:

- Pay for specific job duties.
- Narrow classification definitions.
- Narrow (pay) ranges.
- Minimal to no flexibility for increases outside of the annual salary budget process.
- Office of Human Resources (OHR) review and approval of most compensation and classification decisions.

After careful review by the Office of Human Resources, vice-presidents, deans and the university's president, a decision was made to change to a broadbanded structure. This decision was made because broadbanding includes positive characteristics that are in line with the university's goals, vision and mission. The university emphasizes and encourages technological and academic advances, continuous quality improvements, customer-service-oriented work environments and productivity. Broadbanding supports the university's goals, vision and mission by:

- Connecting the compensation process with the university's business values.
- Emphasizing multi-skilled and multi-competent workers.
- Supporting the changing organization.



- Providing freedom and flexibility to reward performance.

During the university's transition to broadbanding, the traditional and the broadbanded structures co-exist. This may increase the complexity of the decision-making process. Using this handbook, reviewing the university's policies and Rules for the Classified Civil Service will make the process easier.



# Pre-Hiring Pay Decisions

The Ohio State University is an Affirmative Action/Equal Opportunity institution. All pay decisions must be made without regard to race, color, creed, national origin, religion, sex, sexual orientation, age, disability or Vietnam-era veteran status. Equal access to employment opportunities is extended to all persons, and the university promotes equal opportunity through a positive and continuing affirmative action program.

Step 1 - Write or Review the Position Description

Step 2 - Determine the Working Title for the Position

Step 3 - Determine the Target Hiring Range

Step 4 - Review the Credentials of each Candidate

Step 5 - Review the Applicable Laws, Rules, Policies, and Statutes

Step 6 - Make the Pay Decision

## Step 1 - Write or Review the Position Description

Prior to posting a job for hire, review or write the position description. Position descriptions are an important part of Human Resource management. They are resources for recruitment and placement, analysis of market data, orientation of the new employee to the job, self-evaluation, performance management, career planning and dispute resolution. A well written position description is a valuable tool in making pay decisions, particularly in the pre-hiring process.

**For a newly created position:** Write the position description before the recruitment process begins. The information will be used to classify the job, develop a job posting, establish selection criteria and list the job duties and responsibilities.

**For existing jobs:** Review and make any necessary changes to the position description before posting the job.

Position descriptions may need to be rewritten more often if the job has been vacated and will be re-staffed, or if job duties, including essential functions, have significantly changed.

**When writing position descriptions, follow the guidelines outlined below.**

- List skills or experience that cannot be learned on the job.



- Do not require something that can be learned on the job (for example, ask for spreadsheet experience rather than Microsoft Excel experience).
- List additional requirements in the "Experience (required/desired)" free form box.
- Use the following wording unless a position requires a specific number of years of experience:
  - Experience, rather than 1-3 years experience;
  - Considerable experience, rather than 3-5 years experience;
  - Extensive experience, rather than 5 or more years experience.
- List the same minimum educational requirements for positions within the same classification. Desired requirements might vary.
- Include unusual working conditions such as work hours, exposure to elements (e.g., heat, dust, and heights) etc.
- Include on-going training and development needed to remain in classification after employment. This information includes any certifications, licenses or additional training an employee must have in order to fulfill the job responsibilities.
- Spell out abbreviated words and acronyms the first time they are used.

## Step 2 - Determine the Working Title for the Position

Prior to posting a job, determine the working title for the position. The employing unit determines working titles. Titles define a person's roles and responsibilities, appear on business cards, resumes, job applications and in the Faculty and Staff Directory. They can send a powerful message, impact interactions with others and provide an identity. Before developing working titles, consider what message you want to send. Do you want the titles to create or eliminate levels; be general or more descriptive; create or minimize individual status?

### When establishing Working Titles, remember the following:

- Keep titles short (usually one to three words). The university's Human Resources (HR) System can contain no more than 30 characters per title. Abbreviations may be necessary. Characters include spaces. Semicolons should not be used.
- Avoid use of numbered rankings (e.g., 1, 2, 3).
- Avoid titles so specific that they must be changed each time job duties change.
- Avoid working titles that are identical to existing classification titles.
- Use common titles, whenever possible. Such titles may include manager, supervisor, consultant, receptionist, clerk or secretary.



- The titles should be meaningful to the workgroup and to the individual.

### **Step 3 - Determine the Target Hiring Range**

Prior to posting a job, determine the target hiring range for the job. A target hiring range is the range of pay that the employing unit is willing to pay for a particular job. Decisions regarding the target hiring range are part of the pre-employment planning process. A target hiring range narrows the applicant pool to those most likely to accept the offered salary. It tells candidates what the unit is willing to pay for the job and eases salary negotiations. It also helps in determining whether the job is an upward, lateral or downward move for applicants.

When establishing a target hiring range, consider past practice, balancing funding and budget restrictions with recruiting needs, issues of internal equity relating to current staff and determine how to track results to assist with future decisions. The decision-making process you use to decide the target hiring range should include gathering and evaluating comparative data and determining local value.

**Gather comparative data**- The most relevant comparative data are internal salary data for employees in comparable positions within the university unit as well as external salary data for comparable positions. Based upon the information collected in this step, a range of potential salary should be identified. If, instead of a salary range, a specific dollar amount can be determined, chances are something has been overlooked. No matter how similar, it is rare that any two jobs, internal or external, are exactly the same.

**Determine local value** - Next, determine local value. All of the following factors could lower or raise the level of recommended salary range for a position as determined when collecting comparative data. A narrowed range of potential salary should result. This process will help filter the data. It will also provide information regarding the competitiveness needed to hire or retain staff.

***The unit's ability to fund the pay action*** - Regardless of the data collected, the unit's ability and willingness to fund the pay action is a primary factor in the decision-making process. If funds are limited, data may be needed to increase funding, based on the following factors.

**Degree of competition in the labor market** - If the supply is scarce or the market is competitive, then paying at or above the market may be needed to attract a qualified candidate.

**Degree of impact on the unit mission and goal** - The importance of the



position in attaining goals of the unit, providing services and products of the unit and impact of decisions and independent actions are all considered in the degree of impact. Low impact would warrant a lesser amount of pay. High impact would warrant a larger amount of pay.

Check with your College/VP unit administrative area for policies related to establishing target hiring ranges and hiring outside of the ranges. For more information regarding target-hiring ranges, please reference university HR policy 3.10 - Compensation Administration.

#### **Step 4 - Review the Credentials of Each Candidate**

Once the job has been posted for a pre-determined period of time, you will probably have more than one candidate to consider for hire. When hiring somebody new to the unit or to the university, a thorough reference check and/or performance information from the previous employer should be obtained before making the salary offer. Even with new hires, estimation can be made of the anticipated level of performance. For more information regarding reference checking, please refer to the *OHR Guide to Reference Checking*.

Consider each candidate's degree of relevant education and experience applicable to the job. If the role is significant and the duties are complex, it may also be true that some degree of knowledge and familiarity with the operations of the unit is also important to success. Based on the information collected while reviewing credentials, it must be determined if the employee or job candidate has less than, more than or approximately the same knowledge and experience necessary for the job.

#### **Step 5 - Review Applicable Laws, Rules, Policies and Statutes**

Once you have gathered the information and made decisions as outlined in the first four steps, be sure that you review all applicable laws and university policies. Pay decisions can have far-reaching consequences for the university, the unit and the individuals involved. Applicable laws are covered in Legal Compliance section of this handbook. Some policies and rules most commonly associated with pay decisions are:

- university HR Policy 1.10 - Affirmative Action
- university HR Policy 2.30 - Relocation Expenses
- university HR Policy 3.10 - Compensation Administration
- university HR Policy 4.45 - Equal Employment for Individuals with Disabilities
- Collective Bargaining agreements



- Rules for Classified Civil Service

### **Step 6 - Make the Pay Decision**

The process listed above should ensure that you make the best possible pay decision for the person you hire. As a reminder:

- Write Or Review The Position Description
- Determine the Working Title for the Position
- Determine the Target Hiring Range
- Review The Credentials Of Each Candidate
- Review Applicable Laws, Rules, Policies And Statutes
- Make the Pay Decision



# On-Going Employment Pay Decisions

The Ohio State University is an Affirmative Action/Equal Opportunity institution. All pay decisions must be made without regard to race, color, creed, national origin, religion, sex, sexual orientation, age, disability or Vietnam-era veteran status. Equal access to employment opportunities is extended to all persons, and the university promotes equal opportunity through a positive and continuing affirmative action program.

Step 1 - Determine Why the Pay Action is Being Taken

Step 2 - Review Applicable Laws, Rules, Policies, Statutes

Step 3 - Review Performance

Step 4 - Determine Increase Amount

## Step 1 - Determine Why the Pay Action is Being Taken

Consider "why" the pay action will be taken for the individual or group. A compensation philosophy statement often helps determine why pay actions need to be taken. Each time a pay action is taken, it identifies valued behaviors, actions and abilities. As a result of a pay action, desired behaviors can be reinforced, success can be rewarded or recognized and staff can be successfully motivated. Pay affects workers' attitudes, performance and commitment level.

The work culture and climate are additional factors to consider when determining why a pay action should be taken. A *work culture* can be defined as the way work is done. It includes how people are selected, developed, managed and rewarded. A *work climate* can be defined as the atmosphere of the work group. It includes morale, attitude and relationships of the workers to each other.

Internal equity is another factor to consider when determining why a pay action should be taken. Internal equity refers to the pay relationships among jobs or skill levels within an organization. It focuses on acceptance of those relationships, involves the establishment of equal pay for jobs of equal worth and acceptable pay differences for jobs of unequal worth. Remember that the pay decisions need to be explainable and reasonable.

Reminder: Salary data is available to the public. As a result, equity could become an issue at the university more so than in the private sector.

Pay decisions during on-going employment are typically event driven. By having a documented, communicated plan of action and/or funds allocated in advance, managers



and employees can be proactive regarding compensation issues. Some compensation actions that may be taken include the following:

**Annual Salary Increases** - The annual salary increase cycle is the primary vehicle for recognizing and rewarding staff performance. Salary increase pools are established by central administration and exist separately for classified staff, unclassified staff and faculty. They are a set percentage of current salaries making up the "pool" of available funds. It is critical that managers review the performance of their staff. Please reference the *OHR Core Performance Management Process Handbook* for detailed information.

Allocations of larger amounts should be made to those whose performance levels separate them positively from the norm. This may mean smaller increases for satisfactory or less than satisfactory performers or those with salaries that are substantially above the internal/external market. In particular, any practice that sends a signal that the annual salary increase is an "entitlement" should be avoided. In addition, annual increase practices should be reviewed to ensure compliance with applicable laws (See the Legal Compliance section).

Additional examples of situations that may warrant a pay increase, no adjustment or a decrease are described in the next few paragraphs. Please refer to university HR Policy 3.10 - Compensation Administration, for additional guidelines.

**Adjustments to Base Pay** - The amount of pay increase or decrease an employee may receive for a job change is determined by evaluating the direction and change in knowledge, skills and abilities associated with the move. In most cases, salary actions should be planned and placed into the annual salary increase process. However, in cases where the "shift" in duties and scope of responsibility has been dramatic, an off-cycle increase may be considered.

**Promotions** - Promotions are defined as a move where an employee is appointed to a position in a higher pay range or pay band. As such a move indicates that the employee will be taking on duties at a higher level than in his/her previous assignment, an increase in pay normally accompanies a promotion. Generally speaking, the promotional increase is 5%-20% of the pre-promotion salary. Increases larger or smaller may be appropriate in rare cases, but will require approval at the College/VP unit level and/or the Office of Human Resources.

**Demotions** - A demotion occurs when an employee is placed in a position in a lower pay range or band. Demotions may be voluntary, with mutual agreement between the manager and employee. They can also be involuntary, generally due to inadequate job performance. Upon demotion, a decrease in the employee's pre-



demotion pay of 5-10% is generally made. Larger or smaller decreases in pay require approval of the College/VP unit and/or the Office of Human Resources.

**Failed Probation** - The following must complete a "probationary period" of 180 days, according to The Ohio State University Rules for the Classified Civil Service.

- CCS employees who are newly hired to the university;
- CCS employees who laterally transfer to a different classification;
- CCS employees who transfer to a higher CCS pay range or pay band.

University Law Enforcement Officers and Security Officers serve a one year probationary period. During the second half of the probationary period, employees whose performance is determined and documented to be unsatisfactory may be removed from their positions. An employee who was promoted or accepted a lateral transfer to a different classification will be returned to a position in the previously held classification, and will return to the pre-hire/pre-promotion rate of pay. A newly hired employee will be terminated. A classified employee, coming from an unclassified position, will also be terminated if the probationary period is failed. Whenever considering this action, it is advisable to discuss the situation with the Human Resources Consultant assigned to your College/VP unit.

**Lateral: Position Change** - A lateral position change is a job change that requires no change in skills or knowledge on the part of the individual. The individual remains in the same pay range or band. Increases up to 4% can be approved at the College/VP level. Increases greater than 4% require approval by the Office of Human Resources.

**Lateral: Career Progression** - There are three types of lateral moves which are career progressions. These are explained below. In all Career Progression moves, an increase of 5-10% can be approved at the College/VP level. Increases less than 5% or greater than 20% require approval by the Office of Human Resources.

*New Skills or Knowledge* - The first type of career progression occurs when an individual gets a new position that requires the use of a significantly new set of content knowledge or skills, while remaining in the same pay range or band. An example might be moving from a Resource Planning Analyst to a Human Resources Consultant.



*Individual Contributor to Manager and Vice Versa* - The second type of career progression occurs when an individual gets a position that moves them from being an individual contributor/specialist to managing people, projects or programs, or vice versa. Such a move would also involve the employee remaining in the same pay range or band. An example might be to move from a Systems Developer Engineer to a Systems Manager.

*Increase in Depth or Level of Complexity* - The final type of career progression occurs when the new position requires an increase in the depth or level of complexity in a particular area of expertise, while remaining in the same pay range or band. An example might be to move from an Office Associate to an Office Administrative Associate.

**Counter-Offers** - In this situation, an employee indicates that he/she has received a documented offer of employment from another employer (internal or external), usually accompanied by a pay increase. The employee asks if the manager will "match" the offer made by the other employer. These situations are among the most challenging that a manager might face. The range of possible decisions might include: declining to match the salary offer the employee has received, increasing salary by less than the requested amount, matching the salary requested or granting an increase greater than requested. These situations often create internal equity issues involving other individuals in the department/unit. The decision is rarely as simple as matching a single offer. As a result, consideration of counter offers should include an assessment of the impact of granting the requested increase on other people in the same or similar classifications. The College/VP unit can approve an increase of up to 20%. Increases greater than 20% require approval of the Office of Human Resources.

**Off-Cycle Increases** - These are any non-annual salary increases, other than those previously mentioned. They may include increases for reasons of internal/external equity, recognition of shifts in the "market" for a given set of skills, performance cycles and/or funding cycles that require increases to be given as funds become available. Increases of up to 20% may be given with approval of the College/VP unit. The [Human Resources Consultant](#) assigned to your College/VP unit is available for strategizing and consulting with you as off-cycle increase plans are being developed. Both the College/VP unit and the Office of Human Resources must approve increases more than 20%.



## Step 2 - Review Applicable Laws, Rules, Policies and Statutes

Once the decision-makers have determined why a pay action needs to be taken, the potential impact of a pay decision should be considered. Decisions can have far-reaching consequences for the university, the unit and the individuals involved. Applicable laws are covered in the Legal Compliance section of this handbook. Some policies and rules most commonly associated with pay decisions are:

- university HR Policy 2.30 - Relocation Expenses
- university HR Policy 3.10 - Compensation Administration
- university HR Policy 3.30 - Work Outside the University
- university HR Policy 3.35 - Supplemental Compensation Involving Work Within the University
- university HR Policy 4.45 - Equal Employment for Individuals with Disabilities
- university HR Policy 5.10 – Probationary Period
- university HR Policy 6.10 - Scheduling Work and Overtime
- university HR Policy 6.27 - Paid Leave Programs
- university HR Policy 6.45 - Unpaid leave
- Rules for Classified Civil Service

## Step 3 - Review Performance

When considering a pay action for staff, it is important to review documented and demonstrated performance information prior to making the pay decision. The level of past performance will likely determine how quickly you want to take action regarding an individual's pay level. If performance has been below expectations, the increase may be postponed. If performance has been solid but not exceptional, it may make sense to adjust the individual's pay in smaller increments over a period of time. If performance has been exceptional, it may warrant an aggressive pay action both as a reward and a strategy for retention.

## Step 4 - Determine the Increase Amount

The above factors are cyclical and must be weighed against the others on a case by case basis. It is likely that different situations will warrant different weighting within and across steps. If all of the factors have been considered, the resulting pay action should be fair and equitable. These guidelines do not represent a guaranteed pay adjustment and are intended only to provide general direction for determining pay changes. Each individual



situation should be reviewed based on its unique circumstances. In addition, these guidelines should be considered in conjunction university HR Policy 3.10 - Compensation Administration. As a reminder, when making on-going employment pay decisions:

- Determine Why the Pay Action is Being Taken
- Review Applicable Laws, Rules, Policies and Statutes
- Review Performance

The chart below outlines some of the key issues to consider in making adjustments to base pay. Other factors may arise that are unique to the individual situation.

<b>Tips for Determining Increase Amounts Within the Above Recommended Guideline Ranges</b>	
<b>Larger Pay Adjustment</b>	<b>Smaller Pay Adjustment</b>
New position requires a new set of knowledge, skills and abilities.	New position requires essentially the same set of knowledge, skills and abilities.
Performance is above or well above expectations.	Performance meets expectations (salary increases for those performing below expectations are not recommended).
Relevant credentials are greater than desired qualifications for the job.	Relevant credentials are less than the desired qualifications for the job.
New job has high local value.	New job has average or low local value.
Current salary is below external market.	Current salary is at or above external market.
Current salary is below internal market (as compared to the salary level of others in similar jobs that have similar knowledge, skills, abilities, performance & seniority).	Current salary is at or above internal market (as compared to the salary level of others in similar jobs that have similar knowledge, skills, abilities, performance & seniority).



# Legal Compliance

There are several legal issues related to compensation. The following legislation will be discussed in this section:

- Americans with Disabilities Act (ADA)
- Equal Pay Act
- Fair Labor Standards Act (FLSA)
- Title VII of the Civil Rights Act of 1991
- Veterans Rights and Military Service, 1948

## Americans With Disabilities Act (ADA)

### Relevance to Pay Decisions

The Americans with Disabilities Act (ADA) extends a broad non-discrimination mandate on the basis of disability to all employers covered by the act. Although the ADA is not considered an affirmative action statute, it does charge the employer with the obligation of providing reasonable accommodation to qualified individuals in appropriate circumstances. Employers cannot make pay decisions, positively or negatively, because employees have disabilities.

If the disabled employee is able to perform the essential functions of the job held or job sought, but needs a reasonable accommodation to perform those duties, the employer is required to take steps to reasonably accommodate the individual. The employer becomes exempt from this requirement if doing so would impose an undue hardship on the employer. This law is intended to set the groundwork for a disabled person and the employer to work together, rather than create an adversarial climate.

Disability status is, and can be, a matter of legal dispute. The ADA defines disability as a physical or mental impairment that substantially limits one or more of a person's major life activities; a record of having such an impairment, or being regarded as having such an impairment.

Whether or not impairment "substantially limits a major life activity" and thus qualifies as a disability is not always clear. Numerous factors may impact the determination of



how severely a condition limits a major life activity. In many cases, medical documentation of the disabling condition will be needed to fashion a reasonable accommodation. The Office of Human Resources, Consulting Services should be consulted when questions arise regarding reasonable accommodations.

To the extent that an individual with a recognizable disability requests a reasonable accommodation, the employer is obligated to provide an effective accommodation.

**Essential Functions** refer to those duties that are considered fundamental or are the reason the job exists; duties that must be performed in that job because only a limited number of employees available among whom the job duty could be reassigned; and highly specialized duties for which an employee is being hired.

#### **Examples**

- If the employee spends the majority of time typing documents, typing is an essential function.
- If the employee is hired to unload trucks in a warehouse, the ability to operate a forklift is an essential function.

**Reasonable Accommodation** - Includes changing the work environment or providing equipment that would allow the disabled person to perform an essential function of the job. An accommodation is not considered reasonable if there is a direct threat to the safety of others or if it causes financial hardship on the employer.

#### **Examples**

- Raising the desk above the arms of a wheelchair.
- Allowing a person to work a modified schedule so that they may receive medical treatment.

#### **Expectations**

- Position descriptions should be updated annually as part of the performance management process.
- Essential Functions should include the physical and mental capabilities that are needed to perform the job.

#### **Examples**



- May occasionally climb stairs, ramps and ladders to transport equipment.
- Must be able to:
  - Communicate effectively in writing and over the telephone.
  - Operate a keyboard or data entry equipment.
  - Interpret a variety of instructions.



# Equal Pay Act

## Relevance to Pay Decisions

This law prohibits an employer from discriminating between employees on the basis of sex by paying employees of one sex less than employees of the opposite sex for substantially equal work performed under similar working conditions on jobs that require equal skill, effort or responsibilities. Men and women are both equally protected.

The law permits a wage differential to exist between men and women if one of four justifications is shown: a bona fide seniority system; a merit system; a system that measures in terms of quantity or quality of production; any factor other than sex.

The law prohibits an employer from complying with the provision by reducing the wage rate of the employee that is being paid more.

## Substantially Equal

Refers to jobs requiring equal skill, effort and responsibility performed under similar working conditions, defined by both surroundings and hazards. When comparing jobs, if one requires additional duties, that is not sufficient to find that the jobs are not substantially equal. The additional duties will make a difference only if they require a substantial portion of an employee's time and the employee expends extra skill, effort and responsibility in performing the additional duties. Refers to three criteria that must be satisfied in order for the equal pay requirement to apply:

**Equal skill** - measured in terms of job performance requirements and taking into consideration experience, training, education and ability. The focus is on the position, not the person performing the job.

**Equal effort** - deals with the amount of physical or mental exertion used in performing a job. It is the degree of effort, not the type of effort (mental, physical) that is measured.

**Equal responsibility** - focuses on the degree of accountability involved in the performance of the job, with emphasis being placed on the importance if the job requires the same obligations.

- Refers to an assessment, based on actual job content. Job content is defined as what an individual actually does and not just those duties



documented by job descriptions or job titles.

- Does not consider shift differential when determining if two employees work under similar working conditions.

### **Case Example**

In *Horner vs. Mary Institute*, a court found that two physical education teaching positions, although superficially the same, differed as to the skill and responsibility required in each job. The position held by the male teacher required development of a physical education curriculum for children in grades K-4. In contrast, the female teacher's position only had to teach specific courses selected by a third party. The court determined that the male's position required more experience, training and ability. The male teacher reported to the head of the school and the parents. The female teacher reported to the head of the physical education department. The court concluded that the male's position required more responsibility.



## Fair Labor Standards Act (FLSA)

### Relevance to Pay Decisions

The scope of the Fair Labor Standards Act (FLSA) established a national minimum wage, governs how and when overtime will be paid, prohibits oppressive child labor and requires employers to keep certain payroll records. In addition, the FLSA provides exemptions from overtime for people employed in a bona fide executive, administrative or professional capacity.

FLSA status is determined and approved by OHR Consulting Services in conjunction with information provided by all relevant parties. Following is a brief overview of the FLSA as a point of reference for anticipating a position's status determination.

The Fair Labor Standards Act of 1938 (FLSA) is the principle federal law relating to overall employee compensation, including the following areas:

- Minimum wage
- Overtime pay requirements
- Exemption status
- Child labor

The FLSA is more commonly known as the Wage and Hour Law and covers practically all workers in the United States.

### Key Points of the Legislation

- ALL positions are governed to be non-exempt (meaning eligible for overtime) under FLSA unless they meet one of the exemptions described in this material.
- In Ohio, non-exempt positions are eligible for overtime pay for all hours in active pay status that exceed forty hours per workweek (e.g., hours taken as sick leave or vacation would count toward the total of 40 hours per week).
- For public employers, the employee can choose overtime or compensatory time calculated at time and one-half (up to a maximum accrual of 240 hours of compensatory time).
- Exemptions from overtime are based on actual duties as opposed to title, classification or position description. Therefore, FLSA status must be determined position by position.



- If the Department of Labor conducts an investigation, they will evaluate written job documentation and they may interview the employee.

The following are only basic compilations of exemption information. FLSA regulations provide for a short and a long test to determine exemptions. If you believe an exemption is warranted, but the position does not meet the listed qualifications, contact the Office of Human Resources for an in-depth analysis.

### **Sources of Information to Determine if Position is Exempt**

- Position description
- Person(s) currently working in position
- Supervisor of person(s) currently working in position

### **Categories of Exemptions**

**1. Executive** - The executive exemption is for persons whose primary duty is management of the business.

#### **Must meet all considerations to be exempt**

- Person is paid not less than \$250 per week.
- Must customarily and regularly exercise discretionary powers and supervise 2 (FTE) or more people.
- Must be relatively free from supervision.
- Cannot spend more than 20% of time performing non-exempt work to qualify as exempt.

#### **Examples**

- A foreman on a construction crew supervises the work of 8 people, but also spends the majority of time working side by side with them. This person is not exempt because more than 20% of working time is spent doing non-exempt work and the primary duty is not the management of the crew.
- The manager of a food establishment has the primary duty to manage the establishment. He/she may have to serve customers, occasionally. Because the "primary duty" is management, and the majority of his/her time is spent on duties related to management of the business; the person can be classified as exempt.



**2. Administrative** - Administrative employees are "white collar" employees who perform work of substantial importance to the management or operation of the enterprise. The exemption is for employees who perform work related to the administrative operations, as opposed to production or sales operations.

**Must meet all considerations to be exempt**

- Person is paid not less than \$155 per week.
- Duties are non-manual and directly related to the management policies or general business operations.
- Person customarily and regularly exercises discretion and independent judgment on matters of significance.
- Cannot spend more than 20% of their time doing non-exempt work to qualify as exempt.

**Examples**

- Determining the process to route a document for approval within a given timeframe and ensuring everyone gets copies is not considered significant.
- Other examples that are not exempt include approving expenses within established guidelines or budgets, and screening applications based on established criteria.

**3. Professional** - Exempt professional employees include persons in professions of a recognized status which require the use of professional knowledge acquired through long study (the "learned profession category"), and persons in artistic professions. Persons employed as teachers or program coordinators are also exempt.

**Must meet all considerations to be exempt**

- Person is paid not less than \$250 per week.
- Duties consist of work requiring advanced learning (usually beyond a bachelor's degree).
- Duties require the consistent exercise of discretion and judgment or consist of work requiring invention, imagination, or talent in a recognized field of artistic endeavor.
- Cannot spend more than 20% of time on activities not essential or necessarily incident to the work to qualify as exempt.



### Examples

- If someone can learn a job through on-the-job training, the job probably does not meet the professional exemption. For example, you may be able to enter the marketing profession by learning on the job, but you could not become a doctor through on-the-job training.
- Certification and/or licensure does not necessarily qualify here in all cases (must be a recognized profession).
- Job duties must be such that they could not be performed without application of advanced knowledge.

**4. Computer Related Professionals** - Employees are exempt as computer professionals if their work involves independent responsibility for any one of the following (assisting with or supporting this work would likely not qualify).

- The demonstrated application of systems analysis techniques and procedures, including consultations with users to determine hardware, software or system-functional specifications.
- The design, development, documentation, analysis, creation, testing or modification of computer systems or progress, including prototypes, based on or related to user or system design specifications.
- The design, documentation, testing, creation or modification of computer programs related to machine operating systems



<b>Impact of Position Being Non-Exempt</b>	
<b>For the Employee</b>	<b>For the Manager</b>
Eligible for overtime	Need to budget for overtime
May substitute overtime pay with compensatory time if employee agrees; paid at time and one-half and can accrue up to 240 hours	No funds, then no overtime unless compensatory time is agreed to by the employee
Overtime must be authorized by manager	Employee cannot be made to suffer or be permitted to work overtime without being compensated for it
Paychecks – received bi-weekly	Deductions can be made from a non-exempt person's pay for absences occasioned by the employer (i.e., lack of work)
Paid hour for hour may be more or less than 40 hours per week	Must meet specific requirements for: <ul style="list-style-type: none"> <li>• travel time</li> <li>• changing clothes and wash up</li> <li>• waiting time</li> <li>• on-call time</li> </ul>
Some view being non-exempt as lacking prestige or status	



### Impact of Position Being Exempt

For the Employee	For the Manager
No overtime pay	Deductions cannot be made from exempt persons pay for absences occasioned by the employer (i.e. lack of work)
Paychecks - received monthly	Because public employer, docking of pay, leave hours, etc. hour-for-hour is OK if the absence is occasioned by the employee (i.e. sick, vacation)
Paid salary regardless of hours worked	Must manage employee's performance and productivity versus time in the office or hours worked
Flexibility to determine hours required to perform job	
Some view being exempt as prestigious or having status	

### **Penalties If Position Wrongly Named Exempt**

- Fines up to \$1000 per violation.
- Criminal penalties including up to \$10,000 fine and 6 months in jail, if willful.
- Employee remedies including back pay, liquidated damages, attorney's fees.
- Statute of limitations is two years unless found to be a willful violation, then three years.



# Title VII of the Civil Rights Act of 1991

## Relevance to Pay Decisions

"Title VII prohibits discrimination on the basis of sex, race, color, religion or national origin in any employment condition, including, hiring, firing, promotion, transfer, compensation and admissions to training programs. The pregnancy amendment of 1978 made it illegal to discriminate base on pregnancy, childbirth or related conditions."<sup>1</sup>

## Key Points of the Legislation

- The legislation permits individuals claiming unlawful, intentional discrimination to bring suit for both compensatory and punitive damages.
- Individuals claiming discrimination may request that a jury try their cases.
- An employee prevailing in such a discrimination claim may be entitled to back pay reinstatement to the former job, as well as attorney's fees.
- There are at least two types of discriminatory behavior under Title VII: (1) disparate treatment and (2) disparate impact.<sup>2</sup> Disparate treatment can be defined as unequal treatment or applying different standards to different employees. Disparate impact can be defined as practices that have a differential (negative) effect on members of protected groups.

<b><u>Discriminatory Behavior</u></b> <sup>3</sup>	
<b>Disparate Treatment</b>	<b>Disparate Impact</b>
Different standards for various individuals or groups.	Same standards having differing consequences.
Intent to discriminate may be inferred by behaviors.	Discrimination shown by general statistical impact; discriminatory intent need not be present.
Employer can justify actions by absence of discriminatory intent and exercise of reasonable business judgment.	Employer can justify pay differences through business necessity.

<sup>1</sup> Compensation, sixth edition; Milkovich and Newman; page 553; ©1999

<sup>2</sup> Compensation, sixth edition; Milkovich and Newman; page 553; ©1999

<sup>3</sup> Compensation, sixth edition; Milkovich and Newman; page 554; ©1999



## Veterans Rights and Military Service, 1948

### Relevance to Pay Decisions

The Selective Service Act of 1948 and subsequent legislation, such as the Vietnam Era Veteran's Readjustment Assistance Act and the Uniformed Serviceman's Reemployment Act, require companies to reemploy workers who are called to or volunteer for military service, whether active or reserve duty. The simplest guideline to follow in complying with this law would be that the employer must, within certain guidelines, return military service veterans to the job they would have had if it had not been for their military service. Employers must also grant workers leave time for reserve duty, summer camp and other training, and they may not require employees to use vacation time for these periods of service.

Although such military leaves may be unpaid, many companies offer to make up the difference between the employee's regular rate of pay, and whatever earnings the employee received from military duty.

The United States Department of Veterans Affairs offers various manuals and other literature detailing all rights and privileges of returning veterans. HR Professionals will find these manuals to be useful, understandable references concerning veterans' reemployment. The Ohio State University provides veterans with information concerning this topic through the university's Office of Veteran's Affairs.



# Glossary

## C

### **Compensation Philosophy**

A set of guiding principles that are based on values that drive compensation decision-making.

### **Customarily and Regularly (FLSA)**

Signifies a greater frequency than occasional, but less than constant.

## E

### **Equal Effort**

Deals with the amount of physical or mental exertion used in performing a job. It is the degree of effort, not the type of effort that is measured.

### **Equal Pay for Equal Work**

A principle established in the [Equal Pay Act](#) of 1963 that states that men and women may not be paid less than each other for jobs that are substantially equal in terms of skill, effort, responsibility and working conditions based solely on gender.

### **Essential Functions**

Essential Functions refer to those duties that are considered fundamental or are the reason the job exists; duties that must be performed in that job because only a limited number of employees available among whom the job duty could be reassigned; and, highly specialized duties for which an employee is being hired.

### **Exempt Position**

A position in the organization that is not subject to the minimum wage and overtime provisions of the [Fair Labor Standards Act](#).



## F

### **Fair Labor Standards Act (FLSA)**

An act passed by Congress in 1938 that mandates a national minimum wage and requires overtime to be paid to hourly workers who work more than 40 hours in a workweek.

### **Full time equivalency (FTE)**

Expressed in a percentage, the number of regularly scheduled hours of work for one week divided by 40. Used primarily for determining benefit eligibility.

## G

### **General Business Operations or Management Policies (FLSA)**

1. Administering the business, rather than directing production or sales or carrying out the mission of the company. Usually refers to positions in departments that are considered overhead, such as human resources, data processing, accounting and marketing.
2. Person must have and exercise power to make important business decisions.

## I

### **Internal Equity**

Refers to the pay relationships among jobs or skill levels within a single organization and focuses attention on employee and management acceptance of these relationships. It involves establishing equal pay for jobs of equal worth and acceptable pay differentials for jobs of unequal worth.



# L

## **Labor Market**

The area from where an organization recruits its workers. Examples are: Geographical. Educational. Occupational.

## **Local Value**

Refers to the relative worth of a particular job to a department/unit. Local value should be thought of as filtering process for broadly applied industry salary data that includes and examination of:

- Availability of funds.
- Impact of the position on the unit's ability to accomplish its mission.
- Intentions to lag, meet or lead the market.

Generally speaking:

- The greater and more direct the impact a job has on the organization, the greater the local value.
- The greater or more complex the skill set required, the greater the local value, assuming that performance is at or above an acceptable level.

This process typically will result in a narrowed range of dollars versus a single dollar point.

# M

## **Management (FLSA)**

Refers to interviewing, selecting, directing and evaluating employees, handling grievances, planning and assigning work and determining how the work will be completed.



### **Management Policies or General Business Operations (FLSA)**

1. Administering the business, rather than directing production or sales or carrying out the mission of the company. Usually refers to positions in departments that are considered overhead, such as human resources, data processing, accounting and marketing.
2. Person must have and exercise power to make important business decisions.

### **Market Value**

The process of identifying the relevant worth of a specific position compared to a broadly applied industry standard. Typically involves comparing an individual job to similar jobs in the university, in higher education and with other local and national employers. The comparison process will typically result in a range of dollars rather than a single dollar point.

## **N**

### **Non-Exempt Position**

A position that is subject to the minimum wage and overtime pay provisions of the Fair Labor Standards Act. Examples include clerks, maintenance workers and security workers.

### **Non-Manual (FLSA)**

Refers to office or administrative work. Work that requires the use of tools, equipment or measuring devices is not considered administrative work. This means that highly skilled technical employees, such as computer repair workers or electronic technicians, cannot be exempt as administrative employees.

## **O**

### **Overtime**

Time, in excess of 40 hours in the workweek, worked by an employee who is non-exempt by definition of FLSA guidelines.



# P

## **Pay**

Money received for work performed.

## **Performance Management**

A cycle designed to align individual performance with the organization's mission and goals. The cycle includes:

- Performance Planning On-Going Coaching.
- Gathering of information regarding performance from multiple sources.
- Performance Review.

## **Perquisites**

Non-Cash compensation or special benefits beyond regular salary. Examples include club memberships, automobiles, housing.

## **Position**

A job performed by one specific employee. If an organization has 20 employees performing jobs as secretaries, it has 20 secretarial positions.

## **Procedure**

A particular way of accomplishing something. It is a step in a process or a series of steps followed in a definite order. It is an established way of doing things.

## **Promotional Increase**

An increase in compensation due to a promotion to a higher level position.



## R

### **Relevant Market**

The competitive geographical, educational and/ or occupational area within which there is competition for qualified employees.

## S

### **Salary**

Regular payment for services on a weekly monthly or annual basis. Usually refers to positions that are exempt from the provisions of the Fair Labor Standards Act.

### **Salary Survey**

A collection of data on pay levels for similar jobs in similar organizations. The data is typically used for external comparison of salary.

### **Supplemental Compensation**

Compensation that an individual who is already employed by the university receives in addition to his/her base rate of pay. Supplemental compensation is typically given for rendering services to other units of the university and/or performing duties that are substantially outside the scope of the individual's position on a short-term basis. This form of compensation applies primarily to exempt salaried staff. Non-exempt staff receive overtime or compensatory time off.

## T

### **Target Salary Range**

The range that an employing unit has defined based on an examination of market and local value for the purposes of either hiring into or for on-going performance within a specific position within a broadbanded classification.



### **Total Compensation**

An individual's complete pay package that includes cash, benefits, services and other perquisites.

## **V**

### **Values**

Principles or qualities that are intrinsically desirable.

## **W**

### **Wage Rate**

An individual's hourly rate of pay.

### **Working Title**

The descriptive title defined by the employing unit and staff member used for identifying a specific job. It can be unique to individual positions.

