

FLSA Overtime Pay Rule revision and Postdoc salaries

Universities and other academic institutes in the US are on the verge of taking decisions that will most likely affect postdoc salaries. Here we want to inform you on the reasons and its consequences:

1. Quick facts: Regulations and what will happen

- Postdocs with salaries below \$47,476 per year (\$913 per week) will become eligible for overtime pay (i.e. 1.5x salary for every working hour exceeding 40 hours per week)! This is because Department of Labor (DoL) changed the salary threshold above which certain professional workers (including postdocs) may NOT be eligible for overtime pay under the Fair Labor Standards Act (FLSA) from \$23,660 to \$47,476.
- This applies to all postdocs regardless of their job title, their salary/funding source¹, or their citizenship (including foreign postdocs on J-1 or H-1B visas), with only one exception².
- Revised FLSA regulation will be effective December 1, 2016.
- The salary threshold will be revised and adjusted every three years.
- Institutions have now two options:
 - (1) Track working hours for each postdoc (the burden of proof on tracking hours lies on the institution, not on the postdoc) and pay overtime (i.e. 1.5x salary for every working hour exceeding 40 hours per week)
 - (2) Raise postdoc salaries to at least \$47,476 and keep them not eligible for (exempt from) overtime pay
- Your institute will have to choose one of those options, or already has. We expect that most institutes will choose option 2, raising annual postdoc salary to the minimum of \$47,476 or higher, and keep them ineligible for (exempt from) overtime pay.
- In case of option 1: Postdocs who should receive overtime pay (i.e. salary below \$47,476 and not primarily teaching) but do not receive it (or are asked to report 40 working hours while working over 40 hours per week) should immediately report this illegal violation of federal law to the U.S. Department of Labor!
<https://www.dol.gov/wecanhelp/howtofilecomplaint.htm>
- NIH is planning to increase the NRSA stipends to a level above this threshold with a minimum of \$47,484 for PGY0 level postdocs (see projected NRSA FY2017 levels: <http://grants.nih.gov/grants/guide/notice-files/NOT-OD-16-131.html>). Hence, postdoc salaries at institutes that require NRSA stipend levels as minimum salary will be above the threshold of \$47,476 (at least on the date they adopt the NRSA FY2017 levels, which is typically on July 1, 2017).

Much is still unclear about the effects of this ruling, e.g.: who will be paying for the salary raise (PI's or institutes/ departments), how much will the raise be, and how salary scale based on experience years will be affected. We will keep you updated on general developments (www.bostonpostdocs.org). If you have further questions or concerns turn to your own institute's Postdoc Association (PDA) or Postdoc Office. We would be grateful if you can update the BPDA (PanPDA.Boston@gmail.com) or your institute's PDA about any decisions your institute has made.

¹ For foreign postdocs receiving a salary from a funding agency directly (and not through payroll of the US institution), this also applies (since the institution at which the work is being done is relevant, not the agency that pays for this work; hence, FLSA rules also apply) and institutions will need to find ways to track their salary and are responsible to ensure their compensation according to FLSA rules.

² Exception: Postdocs whose primary duty is teaching are exempt from the FLSA rule ("teaching exemption") and are not entitled to overtime pay (no matter what salary they receive).

2. Resources with more detailed information

2.1. Official Government Documents

- “Overtime Final Rule and Higher Education”, U.S. Department of Labor.
<https://www.dol.gov/sites/default/files/overtime-highereducation.pdf>
- “Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act”, Wage and Hour Division, U.S. Department of Labor, May 18, 2016.
<https://www.dol.gov/whd/overtime/final2016/highered-guidance.pdf>
- “How to File a Complaint”, Wage and Hour Division, U.S. Department of Labor.
<https://www.dol.gov/wecanhelp/howtofilecomplaint.htm>
- “Email from President Obama: An Update on Overtime” (includes a short video).
https://www.whitehouse.gov/blog/2016/05/17/email-president-obama-ive-got-news-you-overtime?utm_medium=email&utm_content=email600-text1&utm_campaign=overtime
- “Fact Sheet: Growing Middle Class Paychecks and Helping Working Families Get Ahead By Expanding Overtime Pay”, White House Office of the Press Secretary.
<https://www.whitehouse.gov/the-press-office/2016/05/17/fact-sheet-growing-middle-class-paychecks-and-helping-working-families-0>
- Department of Labor website with additional information.
<https://www.dol.gov/featured/overtime>
- Revised FLSA Overtime Pay Rule (original document, just as a reference, not recommended for reading):
“Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees”, Wage and Hour Division, U.S. Department of Labor, 29 CFR Part 541.
<https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-11754.pdf>

2.2. Resources explaining (revised) FLSA rule and implications

- “Fair Labor Standards Act and Postdocs: What You Need to Know. National Postdoctoral Association. The POSTDOCKET, Vol. 14, Iss. 3, Summer 2016.
<http://www.nationalpostdoc.org/?page=postdocket>
- Summary of FLSA rule, its impact and answers to FAQs. American Council on Education (ACE).
<http://www.acenet.edu/news-room/Documents/Issue-Brief-DOL-Overtime-Rule-052516.pdf>
- “Frequently Asked Questions (FAQs) on the National Science Foundation’s Implementation of the Department of Labor’s Fair Labor Standards Act (FLSA) Final Overtime Rule”. National Science Foundation. July 26, 2016.
http://www.nsf.gov/bfa/dias/policy/faqs/flsa_faqs.pdf
- “So You Think You Know About the FLSA? Ten Common Assumptions About the FLSA That Can Land You in Hot Water”, Pamela A. Reynolds, Brown Rudnick LLP, Bloomberg Law Reports, 2010.
http://www.brownrudnick.com/uploads/117/doc/Brown_Rudnick_Bloomberg_Law_Report_FLSA.pdf
- “FLSA Overtime Final Rule: What You Need to Know and Do Now”, CUPA-HR Webinar, May 25, 2016.
<http://www.cupahr.org/events/webinar-20160525.aspx>

2.3. Commentaries on the revised FLSA rules

- “Fair Pay for Postdocs: Why We Support New Federal Overtime Rules”, Francis Collins (NIH Director) and Thomas Perez (U.S. Secretary of Labor), Huffington Post Blog, May 17, 2016.
http://www.huffingtonpost.com/francis-s-collins-md-phd/fair-pay-for-postdocs-why_b_10011066.html
- „How New US Overtime Provisions Will Affect Postdoctoral Researchers”, Mike Lauer (NIH's Deputy Director for Extramural Research), Open Mike, NIH, May 18, 2016.
<https://nexus.od.nih.gov/all/2016/05/18/nih-flsa-2016/>
- “Examining how increasing postdoc pay affects the postdoc population”, Chris Pickett, Rescuing BioMedical Research, April 5, 2016.
<http://rescuingbiomedicalresearch.org/blog/examining-increasing-postdoc-pay-affects-postdoc-population/>
- “Statement from the NPA on the Fair Labor Standards Act”, National Postdoctoral Association, May 19, 2016.
<https://npamembers.site-ym.com/news/290212/Statement-from-the-NPA-on-the-Fair-Labor-Standards-Act.htm>
- “Statement from FoR on the Department of Labor Overtime Rule”, Gary McDowell, Future of Research, May 20, 2016.
<http://futureofresearch.org/2016/05/20/statement-from-for-on-the-department-of-labor-overtime-rule/>
- “US law could increase post-doc pay -- and shake up research system”, Heidi Ledford, Nature News, May 19, 2016.
<http://www.nature.com/news/us-law-could-increase-post-doc-pay-and-shake-up-research-system-1.19949>
- “Crunch time: Overtime pay for postdoctoral scientists is welcome - but could mean fewer positions.”, Nature, May 24, 2016.
http://www.nature.com/news/crunch-time-1.19963?WT.mc_id=TWT_NatureNews
- “New US overtime rules will bump up postdoc pay, but could hurt research budgets”, Jocelyn Kaiser, Science, May 19, 2016.
<http://www.sciencemag.org/news/2016/05/new-us-overtime-rules-will-bump-postdoc-pay-could-hurt-research-budgets>
- “Postdoc mysteries”, Beryl Lief Benderly, Science, June 1, 2016.
<http://www.sciencemag.org/careers/2016/06/postdoc-mysteries>
- “UC Postdocs Weigh in on DOL Overtime Rule in Advance of Imminent Release”, Union for Postdocs, UAW 5810, May 12, 2016.
<http://uaw5810.org/uc-postdocs-weigh-in-on-dol-overtime-rule-in-advance-of-imminent-release/>
- “Overtime for Some”, Inside Higher Ed, Scott Jaschik, May 18, 2016.
<https://www.insidehighered.com/news/2016/05/18/obama-administration-releases-final-rules-overtime-pay-including-some-exemptions>
- “Overtime rule out today”, Brian Mahoney and Marianne Levine, Politico.com, May 18, 2016.
<http://www.politico.com/tipsheets/morning-shift/2016/05/overtime-rule-out-today-perez-wades-deeper-into-verizon-dispute-persuader-hearing-today-214366>
- “How might overtime changes affect middle class? Look at colleges.” Schuyler Velasco, Christian Science Monitor, May 18, 2016.
<http://www.csmonitor.com/Business/2016/0518/How-might-overtime-change-affect-middle-class-Look-at-colleges>

- “White House Increases Overtime Eligibility by Millions”, Noam Scheiber, New York Times, May 17, 2016.
http://www.nytimes.com/2016/05/18/business/white-house-increases-overtime-eligibility-by-millions.html?ref=oembed&_r=0
- “Collins announces NRSA salaries will meet Obama's overtime rule.”, DrugMonkey, May 18, 2016.
<http://drugmonkey.scientopia.org/2016/05/18/collins-announces-nrsa-salaries-will-meet-obamas-overtime-rule/>
- “Postdocs getting a pay raise, but many say it's not nearly enough”, Melissa Bailey, STAT News, May 23, 2016.
<https://www.statnews.com/2016/05/23/postdoc-pay/>
- “New overtime rules are good for postdocs — and the missions of their universities”, Adria Fernandez, MinnPost, June 2, 2016.
<https://www.minnpost.com/community-voices/2016/06/new-overtime-rules-are-good-postdocs-and-missions-their-universities>

3. Revised FLSA implementation

3.1. Implementation by Boston area institutes

- Boston University (BU): PIs should raise postdoc salaries to a **minimum of \$47,500** by December 1, 2016.
<http://www.bu.edu/research/information-for/professional-development-postdoctoral-affairs/postdoc-policy-implementation-plan/>
- Dana-Farber Cancer Institute (DFCI): Institute raises postdoc salary scale to a **starting minimum of \$50,000** as of July 1, 2016, with institutional support over a 5-year transition period (independently from FLSA as a result of PDA Advocacy efforts over the last 3 years).
http://d31hzlhk6di2h5.cloudfront.net/20160707/7a/d9/ba/35/644f71452db04529deb69a38/Salary_increase_announcement.Rollins.Effective_7.1.16.pdf
- MIT BCS (Department of Brain and Cognitive Sciences): Department raises postdoc salary to a **starting minimum of \$51,120** (NRSA PGY4 FY2016) as of July 1, 2016, with departmental support over a 2-year transition period (independently from FLSA as a result of PDA Advocacy efforts)

3.2. Implementation by institutes outside the Boston area

- University of Nebraska: University changes postdocs to hourly pay status and PIs have to provide **overtime payments** based on timesheets by December 1, 2016.
<http://research.unl.edu/researchnews/may2016/new-overtime-rules-and-impact-on-postdoc-salaries/>
- University of Florida: University provides salary increases for postdocs to a **minimum of \$47,476** by December 1, 2016, and increases minimum salary requirement for newly hired postdocs to \$47,476 as of July 1, 2016.
<http://news.hr.ufl.edu/2016/07/department-of-labor-announces-final-rule-updating-federal-fair-labor-standards-act-flsa/>