PI TOWN HALL MEETINGS:

EFFECT OF THE FAIR LABOR

STANDARDS ACT ON PROJECT

# PERSONNEL (SPONSORED

PROJECTS-FUNDED PERSONNEL)

Monday, October 24, 1:00 -2:30: **North Campus,** Student Union Pride and Tradition Assembly Hall, Room 330

Tuesday, October 25, 10:00 11:30: **Downtown Campus,** NYS Center of Excellence in Bioinformatics and Life Sciences, Bruce Holm Commons Area

Wednesday, October 26, 2:30 4:00: **South Campus**, 144 Farber Hall

University at Buffalo The State University of New York

Agenda

➢ Introduction and "framing the conversation" regarding the Fair Labor Standards Act (FLSA) changes

➢ Important aspects of the new regulations that need to be followed

➢ Creating the new section of employees at UB: **"professional positions eligible for overtime"**

➢ Expected work, time reporting, and potential impact for overtime incurred

➢ Potential impact to current sponsored awards and research activities

➢ Strategies to prepare future proposals for sponsored awards

➢ Key dates and next steps
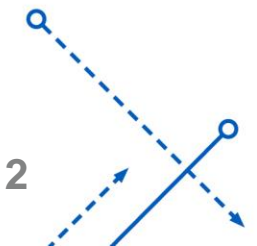
FLSA Basics:

FLSA is the **law** that contains overtime pay provisions for employees across the United States

FLSA identifies positions within an organization that are eligible for overtime:

➢ Two tests used to determine OT eligibility:

- Job duties test – the job description (remains the same and is unchanged)
- **Salary test – changes on 12/1/16 to a new threshold of $47,476 ($913/week)**
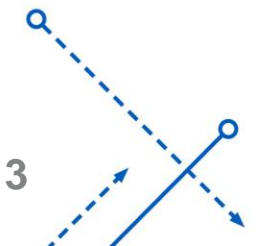
FLSA basics (continued…)

"Exempt" individuals (exempt from the FLSA) – are not eligible for OT and are salaried employees

"Non-exempt" individuals are eligible for OT after 40 hours worked (UB uses a 37.5 hour work week as "normal business week")

➢ OT eligible employees need to report/track their hours worked in a week

➢ All hours worked over 40 hours must be reported and compensated to comply with the law

➢ OT is approved by an individual's supervisor – however if OT is worked – it must be paid even if it was not approved
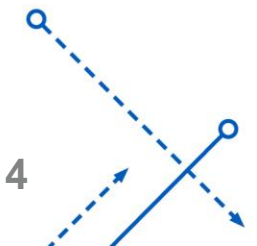
Creating new group: "professionals eligible for OT"

➢ RF employees that are impacted by this change will need to do some different things:

- Track their time weekly (still using RF e-Time Reporting tool)

- Accrual rates will not change – they remain the same

- They will be paid "straight time" (actual hourly rate) hours between 37.5-40 hours, and "time and a half" any hours over 40

- Any university travel will need to follow Department of Labor guidelines for OT eligible employees

- Use of electronic devices on off hours – with an expectation for action – are "on the clock" and need to be paid
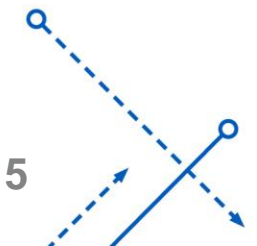
Creating new group: "professionals eligible for OT" (continued…)

➢ Supervisors are responsible to provide direction:

- Pre-approve any OT hours
- Understand workforce capabilities in a "normal" work week
- Know how to calculate any "acceptable rate of OT" for their work area
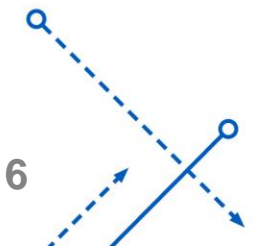
If you were to have the new group on your sponsored award ….

➢ This is a "case-by-case" analysis working with Human Resources:

- Always begin with the job description: we are confident our current RF positions appropriately connect to the duties test of the FLSA (1st test)
- Current salary levels for many RF professional positions are well below new threshold (2nd test) of $47,476 or $913/week
- Two exact positions in the same area – one could be OT eligible and one could be salaried
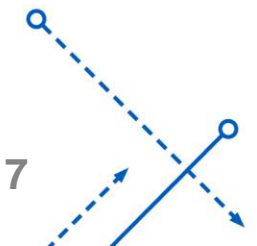
If you were to have the new group on your sponsored award (continued)….

➤ This is a "case-by-case" analysis working with Human Resources:

- If you choose not to raise the salary for an individual, no transaction is required on your part (e.g., PTF or ePTF)
  - But tracking of time, and the possibility of OT being earned/paid/charged will be required
  - HR will reach out to PIs to confirm plans for your project personnel
- If you wish to raise the salary, needs to be planned before Thanksgiving holiday to go into effect 12/1/16
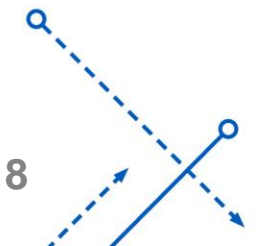
# Analyzing the impact of OT on a sponsored award

➢ Think about the life cycle of a grant including key milestones that impact labor (start up, deliverables, etc.) and the UB Academic Calendar

➢ Build an "acceptable rate of OT" plan:

- Identify key labor premise/assumptions up front:
  - 37.5 hour work week
  - 1800 person hours annually
  - 20 business/production days each month (normal schedule)
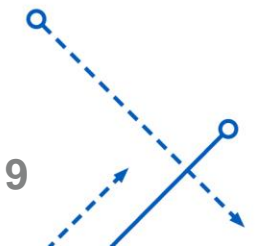
Analyzing the impact of OT on a sponsored award (continued…)

➢ Know what "100%" capacity looks like:

- Individual person-day
- Grant/contract work week with all working

➢ Build an acceptable rate of OT to enhance "work capacity" beyond 100%:

- Start with 10 hours of OT/week (2.5 hours @ straight time, then 7.5 hours @ time & ½)
- Build a budget with these assumptions for the life of the sponsored award

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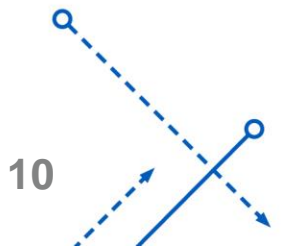
An OT example

➢ Utilizing the UB Postdoc current policy for minimum annual salary of $30,000 ($576.93/week salary - $15.39/hour) – note that this policy is currently being updated to reflect/acknowledge new FLSA rules

➢ Sponsored award has (4) post-doc roles @ $30K salary each for $120,000 for salary on the award (FY 2017 fringe rate is 45.5%)

An OT example (continued…)

➢ Build an OT budget for the post-docs to work up to **20 hours extra a week**:

- 2.5 hours OT straight time $15.39 = $38.48 extra/week/post doc
- 17.5 hours OT at time and ½ rate ($23.09/hr) = $404.08 extra/week/postdoc
- Total = $576.93 + $38.48 + $404.08 = $1,019.49 weekly salary/postdoc – annual salary of $53,013.48
- (4) postdocs total salary would be $212,053.92
- If you raise all (4) up to threshold of $47,476 – total salary cost would be $189,904
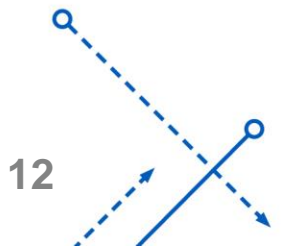
Context for UB – Project Personnel

➢ There are currently 206 project personnel at UB who will fall below the new salary threshold

➢ RF titles with the largest number affected:
- Postdoctoral Associates (82)
- Project Staff Assistant (19)
- Project Staff Associates (11)
- Research Scientists (35)
- Senior Research Support Specialist (27)
- Other titles are affected (list is not all-encompassing)

➢ Graduate students are <u>not</u> affected by FLSA

Moving forward

➢ Work with HR to identify which individuals move and which stay at the same salary by 11/15/16 (or no later than Thanksgiving holiday)

➢ HR will develop letters for those impacted; will send letters and invite them to town hall meetings to go through changes and answer questions

➢ All changes take effect 12/1/16

➢ Adjustments can happen any time after that – one way or the other

Moving forward (continued…)

➢ For postdoc and key research positions, recommend you start with a budget of $50K

➢ FLSA threshold is expected to increase to ~$51.5K in three years; and may increase every 3 years thereafter

➢ Salary "compression" issues may occur – PIs should look to address these over the next 3 years, and NOT all at once

Francis S. Collins, NIH Director, and Thomas E. Perez, US Secretary of Labor

"Under the new FLSA overtime threshold, universities, teaching hospitals, and other institutions that employ postdocs have a **choice**: they can **carefully track their fellows' hours and pay overtime**, or they can **raise their salaries to levels above the threshold** and thereby qualify them for exemption. Biomedical **science**, by its very nature, is **not work that neatly falls into hourly units or shifts**. So, from our vantage point, it seems that the only option consistent with the **professional nature of scientific work** is to increase salaries above the threshold."

– OpEd piece in The Huffington Post, May 18, 2016

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QUESTIONS?