

## EDUCATION ABROAD

### FLSA Fee Setting Process Frequently Asked Questions

#### Introduction

The Fair Labor Standards Act (FLSA) has a substantial financial impact on faculty-led education abroad program budgets. It is critical for all program leaders (resident directors), non-exempt employees' supervisors, department chairs and education abroad liaisons to understand FLSA and how to comply with this law when planning and running a faculty-led education abroad program.

FLSA establishes minimum wage, overtime pay, record keeping and youth employment standards affecting employees in the private sector and in federal, state and local governments. Covered nonexempt employees must receive overtime pay for hours worked over 40 per work week at a minimum rate of 1.5 times the regular rate of pay.

The following FAQs provide a summary of federal and university regulations around FLSA and how the regulations are applied to the education abroad program fee setting process at Ohio State.

#### Why does compliance matter?

Violating FLSA regulations by not rendering appropriate pay or overtime may result in Ohio State bearing significant financial penalties through litigation and Department of Labor audits. In addition, there may be unfavorable media attention and negative perceptions among our employees.

#### Who is affected by FLSA in the context of education abroad?

Any nonexempt staff who leads a group of students.

#### How is compensable time calculated?

At Ohio State, a work week starts on a Sunday and ends on a Saturday. The first 40 hours worked are compensable at regular pay. Any hours worked in addition to the 40 hours, are compensable at 1.5 times the regular rate of pay.

During travel with one or a group of students, non-exempt employees hired to fulfill the resident director role are considered to be leading/chaperoning students. Accordingly, all time is compensable.

While in country/during non-travel time, resident directors are typically engaged with students for 8-10 hours during the day. However, they are considered to be 'on-call' to help with student needs or to respond to emergencies at any hour of the day. Accordingly, all non-exempt employees hired as resident directors are eligible to receive compensation for at least 16 hours during the 24-hour day; 8 hours is considered as rest time per day. In the case that an the employee is on-call tending to student needs/emergencies, all hours worked are compensable.

## **How does the Office of International Affairs plan for FLSA?**

At this time, if the resident director is nonexempt, the education abroad program fee setting process requires that the anticipated cost of the resident director's compensable time and effort be represented in the program fee budget.

## **Who pays for the cost of the resident director's overtime pay?**

Multiple sources such as the college, department/s or a grant may pay for the costs associated with the non-exempt resident director's overtime pay. If none of these are an option, students participating in the program bear the cost of the time and effort through the established program fee.

## **What happens if the resident director is not known when the budget is created to finalize the program fee?**

If the resident director has not been identified during the program fee setting process, OIA will calculate several time and effort cost scenarios, including the anticipated overtime pay.

## **What are the different scenarios?**

Scenario 1: Resident director is hired in a graduate appointment (GTA/GRA/GAA)

Cost of tuition + non-resident fee (when applicable) + estimated stipend and benefits

*Note:* A graduate appointment is considered exempt under FLSA. However, if the graduate student (at the time of fee setting process) does not plan on being enrolled in classes during the semester the program travels but has a graduate appointment for the following semester, s/he may be hired as a student associate in a bridge appointment. In this case, the student associate position is deemed as nonexempt from overtime, and accordingly, eligible to receive overtime pay.

Scenario 2: Resident director is an hourly paid employee, not exempt from overtime

When not travelling, and assuming no emergencies on the program that may require resident directors to work around the clock, the maximum compensable time in a week is 7 days x 16 hours (8 hours considered as rest time) = 112 hours. The first 40 hours of these 112 hours are calculated at regular rate of pay; the remainder of the 72 hours are calculated at 1.5 times regular rate of pay.

Example:

7-day program to London that starts on a Sunday, ends on the following Saturday.

- Sunday (travel day) = assumes it takes 20 hours to travel from Columbus to London = 20 hours
- Monday through Friday = 5 days x 16 hours = 80 hours
- Saturday (travel day) = assumes it takes 20 hours to travel from London to Columbus = 20 hours

Total compensable time = 20+80+20 = 120 hours. Of these 120 hours, 40 hours will be paid at the regular hourly rate and the remaining 80 hours at 1.5 times the regular rate.

Scenario 3: Resident director is hired as a lecturer assuming two thirds of time is spent on instruction and no more than one third on program administration.

Since stipends for lecturers vary by department, in this case, the stipend would be determined by OIA after consultation with the respective college/department.

If a determination on the type of scenario that will apply is not made at the time of fee setting process, the program fee will be calculated using a simplified assumption; accordingly, the most expensive cost scenario will be utilized for budget purposes. The actual cost may vary depending on the resident director's appointment type.

### **Does OIA hire resident directors for summer programs?**

No. The resident directors remain employees of their home unit. The home unit will process the resident director's appointment and associated payroll. Depending on how the appointment was agreed to be funded, any cost of time and effort borne by the students may be settled with OIA when closing the books of accounts on the specific program iteration.

### **Can a resident director take compensatory time (comp time) in lieu of overtime pay?**

Yes. The resident director may elect to take compensatory time in lieu of compensation. The compensatory time must be approved by the home unit and be taken at a mutually agreed upon time within 180 calendar days from the time of earning. The cost of such time will also be quantified in dollar value and represented in the budget. For budgeting purposes, the 'overtime pay' logic will be utilized where applicable.

### **Is more than one resident director required? Should only one exempt employee be considered for this role?**

For a myriad of risk management reasons, more than one resident director is required. Potential qualified resident directors that may add value to the program and to the overall student experience should always be considered, regardless of their FLSA status.

### **Sources:**

<https://www.dol.gov/whd/flsa/>

<https://hr.osu.edu/services/compensation/flsa/>