

Status of Individuals under FLSA and ACA

| Empl Class | Description | Job Code | Name | Status Under FLSA | Reason for FLSA Status | Status Under ACA <small>See Note 1</small> |
|------------|----------------------------|-------------|--|--|---|---|
| SH | Student Hourly | SH001-SH003 | Student Help- Student Help Intermediate- Student Help Advanced | If the individual's duties are NOT part of an overall educational program, employee for the purposes of the FLSA. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act (FLSA) and DOL FOH 10b24(b) <small>See Note 2</small> | Employee |
| SH | Student Hourly | SH004 | Student Help Residence Hall | Non-employee for the purposes of the FLSA if the individual's duties are part of an overall educational program. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act (FLSA) <small>See Note 3</small> | Employee |
| SH | Student Hourly | SH005 | Student Help Special <small>See Note 4</small> | If the individual participates in extracurricular activities as part of his or her educational experience, non-employee for the purposes of the FLSA | DOL Field Operations Handbook (FOH) 10b03(e) and 10b24 <small>See Note 5</small> | Employee |
| ET4 | Employees -in- Training | PD001 | Graduate Intern / Trainee | If the primary beneficiary of the work performed is the individual, non-employee for the purposes of the FLSA. If the primary beneficiary of the work performed is the institution, the Graduate Intern / Trainee is an employee for the purposes of the FLSA – exempt if salary is over the minimum salary threshold; non-exempt if salary is under the threshold. | Fact Sheet #71: Internship Programs Under the Fair Labor Standards Act | Non-employee |
| ET3 | Employees -in- Training | PD002 | Intern (Non-Physician) | If the primary beneficiary of the work performed is the individual, non-employee for the purposes of the FLSA. If the primary beneficiary of the work performed is the institution, the Intern (Non-Physician) is an employee for the purposes of the FLSA – exempt if salary is over the minimum salary threshold; non-exempt if salary is under the threshold. | Fact Sheet #71: Internship Programs Under the Fair Labor Standards Act | Employee |

Status of Individuals under FLSA and ACA

| Empl Class | Description | Job Code | Name | Status Under FLSA | Reason for FLSA Status | Status Under ACA <small>See Note 1</small> |
|------------|-------------------------|-------------|-----------------------------|--|--|---|
| ET2 | Employees -in- Training | PD003 | Postdoctoral Fellow | Employee for the purposes of the FLSA – exempt if salary is over the minimum salary threshold; non-exempt if salary is under the threshold. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act (FLSA) <small>See Note 6</small> | Non-employee |
| ET2 | Employees -in- Training | PD004 | Postdoctoral Trainee | Employee for the purposes of the FLSA – exempt if salary is over the minimum salary threshold; non-exempt if salary is under the threshold. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act (FLSA) <small>See Note 6</small> | Non-employee |
| ET3 | Employees -in- Training | PD005-PD011 | Postgraduate Trainee 1-7 | Employee for the purposes of the FLSA – exempt if the employee qualifies for the physician (or veterinarian) exemption; otherwise exempt if salary is over the minimum salary threshold, non-exempt if salary is under the threshold. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act (FLSA) <small>See Note 6</small> | Employee |
| ET1 | Employees -in- Training | PD012 | Research Associate | Employee for the purposes of the FLSA – exempt if salary is over the minimum salary threshold; non-exempt if salary is under the threshold. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act (FLSA) <small>See Note 6</small> | Employee |
| ET3 | Employees -in- Training | PD013 | Research Intern | If the primary beneficiary of the work performed is the individual, non-employee for the purposes of the FLSA. If the primary beneficiary of the work performed is the institution, the Research Intern is an employee for the purposes of the FLSA – exempt if salary is over the minimum salary threshold; non-exempt if salary is under the threshold. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act (FLSA) | Employee |
| SA1 | Student Assistants | SA001 | Advanced Opportunity Fellow | Non-employee for the purposes of the FLSA. | A fellowship does not create an employment relationship. | Non-employee |

Status of Individuals under FLSA and ACA

| Empl Class | Description | Job Code | Name | Status Under FLSA | Reason for FLSA Status | Status Under ACA <small>See Note 1</small> |
|------------|--------------------|----------------------------------|----------------------------------|--|---|---|
| SA1 | Student Assistants | SA002 | Fellow | Non-employee for the purposes of the FLSA. | A fellowship does not create an employment relationship. | Non-employee |
| SA7 | Student Assistants | SA003 | Housefellow / Resident Assistant | Non-employee for the purposes of the FLSA. | A fellowship does not create an employment relationship. | Non-employee |
| SA3 | Student Assistants | SA004 | Lecturer | FLSA exempt employee under the special provisions for employees who have teaching as their primary duty. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act | Employee |
| SA5 | Student Assistants | SA005 SA007 SA019 SA020 | Program Assistant | Employee for the purposes of the FLSA – generally non-exempt, but may qualify for an exemption. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act <small>See Note 8</small> | Employee |
| SA5 | Student Assistants | SA006 SA008 SA021 SA022 | Project Assistant | Employee for the purposes of the FLSA – generally non-exempt, but may qualify for an exemption. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act <small>See Note 8</small> | Employee |
| SA2 | Student Assistants | SA009 | Research Assistant | If the primary beneficiary of the work performed is the individual, non-employee for the purposes of the FLSA. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act <small>See Note 7</small> | Employee |
| SA1 | Student Assistants | SA010 | Scholar | Non-employee for the purposes of the FLSA. | Receiving a scholarship does not create an employment relationship. | Non-employee |

Status of Individuals under FLSA and ACA

| Empl Class | Description | Job Code | Name | Status Under FLSA | Reason for FLSA Status | Status Under ACA <small>See Note 1</small> |
|------------|--------------------|-------------------------------------|-------------------------|---|--|---|
| SA3 | Student Assistants | SA011- SA012, SA016- SA018 | Teaching Assistant | FLSA exempt employee under the special provisions for employees who have teaching as their primary duty. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act | Employee |
| SA1 | Student Assistants | SA013 | Trainee | If the primary beneficiary of the work performed is the individual, non-employee for the purposes of the FLSA. | A traineeship does not create an employment relationship unless the employer is the primary beneficiary of the work performed. | Non-employee |
| SA4 | Student Assistants | SA014 | Undergraduate Assistant | FLSA exempt employee if primary duty is teaching, non-exempt employee if the individual does not qualify for an exemption. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act | Employee |
| SA6 | Student Assistants | SA015 | Undergraduate Intern | If the primary beneficiary of the work performed is the individual or if the internship involves activities generally recognized as extracurricular, non-employee for the purposes of the FLSA. | DOL Field Operations Handbook (FOH) 10b24(b) | Employee |
| SA5 | Student Assistants | SA023 | Graduate Assistant | FLSA exempt employee if primary duty is teaching, non-exempt employee if duties are not part of an overall education program. | Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act | Employee |
| | Volunteer | | | Non-employee for the purposes of the FLSA. | DOL website | Non-employee |

- Under ACA an individual is an employee under the common law standard when the employer has the right to control and direct the individual. Moreover, if the Universities of Wisconsin provides an IRS Form W-2 for the individual, the individual is a common law employee for IRS and ACA purposes.
- The [DOL Field Operations Handbook \(FOH\) 10b24\(b\)](#) provides:
 “[A]n employment relationship will generally exist with regard to students whose duties are not part of an overall educational program and who receive some compensation. Thus, students who work at food service counters or sell programs or usher at athletic events, or who wait on tables or wash dishes in dormitories in anticipation of some compensation (money, meals, etc.) are generally considered employees under the Act.”

Status of Individuals under FLSA and ACA

3. In its [Guidance for Higher Education Institutions document](#) DOL states:
“Students enrolled in bona fide educational programs who are residential assistants and receive reduced room or board charges or tuition credits are not generally considered employees under the FLSA. They therefore are not entitled to minimum wages and overtime under the FLSA.”
4. Following is a partial list of the positions with the Student Help Special title: student government representative, newspaper reporter, band member, mascot, and athletic team assistants.
5. The [DOL Field Operations Handbook \(FOH\) 10b03\(e\)](#) provides:
“As part of their overall educational program, public or private schools and institutions of higher learning may permit or require students to engage in activities in connection with dramatics, student publications, glee clubs, bands, choirs, debating teams, radio stations, intramural and interscholastic athletics and other similar endeavors. Activities of students in such programs, conducted primarily for the benefit of the participants as a part of the educational opportunities provided to the students by the school or institution, are not work of the kind contemplated by section 3(g) of the Act and do not result in an employer-employee relationship between the student and the school or institution. Also, the fact that a student may receive a minimal payment for participation in such activities would not necessarily create an employment relationship.”
6. In its [Guidance for Higher Education Institutions document](#) DOL states:
“Postdoctoral fellows [such as Universities of Wisconsin employees-in-training with titles as a Research Associate, Postdoctoral Trainee, Research Intern, Postgraduate Trainee, or Intern (Non-Physician)] are employees who conduct research at a higher education institution after the completion of their doctoral studies. Postdoctoral fellows are not considered students because they are not working towards a degree.”
7. In its [Guidance for Higher Education Institutions document](#) DOL states:
“Generally, the Department views graduate and undergraduate students who are engaged in research under a faculty member’s supervision in the course of obtaining a degree as being in an educational relationship with the school. As such, the Department would not assert an employment relationship with either the school or any grantor funding the research.”
8. Employees who work in administrative, professional and exempt jobs must meet the following three criteria to qualify for FLSA exemption:
 - a. **Salary-level test.** Effective July 1, 2024, employers must pay employees a salary of at least \$844 per week. Effective January 1, 2025, employers must pay \$1,128 per week.
 - b. **Salary-basis test.** With very limited exceptions, the employer must pay employees their full salary in any week they perform work, regardless of the quality or quantity of the work.
 - c. **Duties test.** The employee’s primary duties must meet certain [criteria](#).

Note: The determination of the status of individuals under the FLSA or the ACA requires a case-by-case analysis. A reliance on general guidelines is no substitute for that evaluation.