

# FLSA OVERVIEW

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# What is FLSA?

FLSA refers to the Fair Labor Standards Act (FLSA). This Act requires that most workers receive overtime pay at 1.5 times the employee's regular pay rate for all hours worked over 40 hours in a seven day workweek, and that employees be paid at least the federal minimum wage.

FLSA covered positions are also referred to as positions that are covered by regulations "overtime-eligible".

# Why do I need to know about FLSA?

The Service, as an *Employer of Choice*, wants to ensure that all employees are fully compensated for the time spent conducting the business of the Service. Awareness of FLSA and its direct impact on your employees' pay and entitlements to overtime and/or compensatory time will help you to manage your overall salary budget.

# Is FLSA something new?

No – FLSA (also known as the Wages and Hours Bill) was signed into law in 1938. The initial Act established:

- a national minimum wage;
- guaranteed “time-and-a-half” for overtime in certain jobs; and
- established child labor laws.

The Act has been amended many times since to:

- change the minimum wage (most recently under the Fair Minimum Wage Act of 2007);
- make it illegal for employers to pay lower wages on the basis of gender (the result of the passage of the Equal Pay Act of 1963);
- extend coverage to local/state and federal employees; and
- allow for employees to earn compensatory time in lieu of overtime.

# Who makes the call on FLSA?

**Supervisors and Human Resources Specialists**, together, make FLSA exempt or non-exempt determinations. All employees are considered non-exempt until proven exempt. The determinations are regularly made based on the information in the Position Description (PD). Because of this, supervisors must be careful about assigning work outside of an employee's PD as that could change the employee's FLSA designation. The assignment of work is a management responsibility and supervisors should be equally careful about allowing employees to volunteer for assignments, as that may impact their FLSA designation.

# **Top Five Employer Mistakes Under the FLSA**

- 1. Believing salaried employees are automatically exempt from overtime**
- 2. Misclassifying assistant managers**
- 3. Automatic deductions for meal breaks**
- 4. Not paying for overtime that has not been approved in advance**
- 5. Allowing employees to "waive" their right to overtime**

**SO....**

**POSITIONS ARE EITHER**

**Exempt from coverage**

**Or**

**Non-Exempt from coverage**

# What does Exempt and Non-Exempt mean?

**“Non-exempt” refers to those employees who fall under the protection and application of FLSA requirements. Examples of the types of Service positions that may be non-exempt from FLSA include:**

- technicians,
- trainees,
- clerical and administrative employees,
- Wage Grade employees, and
- entry-level positions (e.g., biological sciences technician, fishery technician, clerk, secretary, laborer, mechanic, etc).

Exempt employees are those who are “exempt” from the rules and requirements of FLSA, and therefore not covered by the provisions of FLSA. **It is important to understand that exemption status is no longer determined solely by an employee’s GS level or job title, but rather by the employee’s actual job duties.**

Examples of the types of Service positions that may be Exempt from FLSA include: supervisory positions or senior non-supervisory subject matter experts who develop and set policy. To be exempt from FLSA, the employee must:

- exercise full, independent judgment and discretion;
- perform his/her duties with very limited guidelines;
- work without prescribed methods for handling situations; and
- require very little supervision.

To be FLSA exempt, the duties performed by the employee must meet the executive, administrative, professional, foreign and/or special exemptions/exclusions criteria (see below). The categories are not mutually exclusive; failure to meet the criteria for exemption under one category does not preclude exemption under another category.

# How many categories are there For a position to qualify as Exempt?

- (1) Executive exemptions**
- (2) Administrative exemptions**
- (3) Professional exemptions**
  - **Learned professional exemptions**
  - **Creative professional exemptions**
- (4) Computer employee exemptions**
- (5) Foreign exemptions**
- (6) Availability pay exemptions**
- (7) Statutory Exclusions:**
  - (a) Fire protection activities**
  - (b) Law enforcement activities**

# **AN IMPORTANT NOTE:**

**Employees assigned temporary duties or who perform different work assignments may also affect an employee's FLSA exemption status**

# YOU CAN GET ADDITIONAL INFORMATION ON FLSA FROM:

1. Your servicing HR Office
2. Inside FWS Intranet - <https://inside.fws.gov/>
3. OPM FLSA Website – <http://www.opm.gov/flsa/>
4. Department of Labor FLSA Website-  
<http://www.dol.gov/whd/flsa/>



Thanks for taking a few  
moments  
to watch and learn.

Keep a look-out  
more installments  
on FLSA on the Supervisory  
Corner