

Good day.

My name is Cecilia King, and I am the chief of the classification and pay section in the division of Human Capital Region 9.

I'm here to give you a brief overview of the FLSA.

What is FLSA I can hear you say?

Well FLSA refers to the Fair Labor Standard Act.

The gist of the act is that employees receive compensation for hours they work outside of their regular duty hours.

Normally they get paid at one and a half times their base rate of pay, for overtime worked over 40 hours and that they receive at least the federal minimum wage rate.

FLSA positions that are covered are also referred to as being overtime eligible.

Now why do you need to know this information about FLSA?

The service as an employer of choice wants to make sure that all employees are fully compensated for the all the work they do to help meet its mission.

It's a way for managers to keep track of their overall salary budget.

Overtime impacts the employee's rate of pay and any entitlements they might receive.

Is FLSA something new?

It's not.

FLSA started way back in 1938 and it was referred to then as the wages and hours bill.

That bill initially established a national minimum

wage which there wasn't one before.

It guaranteed time and a half for overtime in certain jobs and it established the child labor laws.

This act has been amended several times since then.

It's been amended to change the minimum wage, which currently is under the fair minimum wage act of 2007 which kind of pulls everybody in line with a fair market rate.

Then it makes it illegal for individuals to pay lower wages to an individual based on their gender, male versus female.

It extended coverage to federal, local and state employees whereas before it was just to the private sector and it also allows for employees to earn compensation in lieu of overtime.

So who make the call on FLSA?

FLSA is determined by the duties and responsibilities of the position.

The individuals responsible for that are the supervisor for assigning the duties and the classifier for classifying the position which is the human resource specialist.

It's at the time the position is being classified that the overall FLSA determination will be made.

There are five major mistakes that employers make under FLSA.

The first one is believing that employees that are salaried are automatically exempt from overtime. That is not necessarily true and we will see that a little later on.

They are misclassifying their assistant manager positions, their deputy positions.

They are automatically deducting times for meal breaks, employees are doing that.

They are not paying for overtime that has not been approved in advance.

And, they are allowing employees to waive their right to overtime.

All five of those are not acceptable under the new FLSA rules and regulations.

When you allow an employee to work their lunch hour or work hours beyond their regular day, you allow them to do what's called suffer and permit.

You cannot suffer and permit an employee that is entitled to overtime.

It's important to understand the rules and regulations of FLSA so you can apply them appropriately to your employees.

So positions are either exempt or non-exempt. There's nothing in between. Exempt or non-exempt.

What does exempt or non-exempt mean?

Non-exempt means employees are protected by FLSA requirements.

These individuals have to be paid, they have to be compensated for all overtime.

This is normally the technicians, trainees, clerical and administrative staff, wage grade employees, and entry level positions like 5 and 7 grade level leading into a 9 or 11.

Exempt employees who are exempt from the rules and requirements of FLSA are not covered. That's the exempt.

And it's important to understand that exemption is not tied solely to a GS grade level or job title.

There have been practices in the past that have done that, we are no longer doing that.

So we actually review every position, duties and responsibilities before we make a determination whether that position is exempt.

The examples of positions within the Service that are exempt are all supervisors, all deputies, individuals that are involved with the hiring, interviewing, firing of employees that would be your human resource specialist, your labor management, and employee relations and anybody involved in auditing and investigation work.

Individuals to be exempt must exercise full and independent judgment and discretion.

They have to be able to perform their duties with very little supervision.

They often do their work with few to no guidelines that are actually telling them how to do something.

And they are allowed to modify the manner in which they do their work.

They're not following, they're not just effecting processes and procedures, they are affecting by modifying and changing the way things are done.

There are currently five primary ways that an employee will be determined to be exempt.

First of all, an executive exemption which are mainly our supervisors, our managers, people that are responsible for affecting program and policy change.

Then you have the administrative exemption, that's where your human resource specialist, your budget analyst, your program analyst, management analyst, positions that are helping senior leaders who affect the programs and the policies.

They are helping to do the leg work to provide them the information to make their decisions.

The third is a professional exemption.

This has changed over time.

It used to be just learned professionals, individuals that have gone out and gotten an education.

Now we understand that there are varying degrees of professional.

You have the learned professional exemption, which are still those positions that require college degree such as biologist, social scientist positions, ecologist, education specialist, training specialist, anybody that requires a positive education.

There's also the creative exemption.

Creative exemptions are for writers, actors, anybody that has a type of position where they are creating something from nothing.

That's a creative exemption.

We move into our computer exemption, individuals that are responsible for creating software or developing hardware for systems, and they have access to just about everything for the organization.

Those individuals would be exempt under the computer exemption.

If you work in a foreign country, you're exempt.

If you are receiving availability pay which is often what our law enforcement and some of our firefighters are receiving, they are exempt from overtime and they are also statutory exemptions such as the firefighter and law enforcement individuals.

An important note here is that when you assign a person, an employee to some temporary duties you are

detailing them or giving them duties to cover while another staff is on leave, you have to understand if they are performing duties under the exempt category they need to be made exempt if they're in a non-exempt position and vice versa. If they are in an exempt position and they are performing non-exempt duties they need to be made non-exempt so they are properly compensated under the FLSA rules.

So, this is a lot of information.

It's kind of hard to give you a complete overview of everything that's going on in FLSA but we want to get information out there and we are going to continue to get that information out there.

Right here are some websites that you can go to or resources that you can access for additional information on FLSA.

First and foremost, you can go to your servicing HR office.

Typically it will be those individuals classifying your position who will have the most information on FLSA because they will help you make the determination.

The next is the inside FWS intranet. It is where Region 9, all of the information and the information that I provide you here, and additional work sheets and even the policy when the FLSA policy comes out will be posted.

You have the OPM-FLSA website.

That's more broad than the information I have given you but it's an access site.

Then also the Department of Labor who is the governing body for all FLSA decisions, cases, trial cases being determined.

But it's also very, very broad.

So thanks for taking a few moments and watching and learning with me.

And I want you all to be aware that we're going to be putting out more information on FLSA.

Thanks a lot.

Take care.

Bye bye.