

Fair Labor Standards Act

Overview

The Fair Labor Standards Act (FLSA) status of the employee is often the key to deciding whether an employee is entitled to overtime. The determination of whether the employee is exempt or nonexempt from FLSA coverage is made by a position classifier in the Human Resource office. The decision is based on position descriptions supplied by agency managers and the employee's actual duties.

The FLSA is found at 29 USC Chapter 8 (Sections 201-219). In 1974, Congress extended application of the FLSA to federal employees, Pub. L. No. 93-259, codified at 29 USC 203 (e)(2). Nonexempt federal employees in the executive branch are covered under Office of Personnel Management regulations at 5 CFR part 551.

The determination of whether the employee is exempt or nonexempt from FLSA coverage is made by a position classifier in the Human Resource office. The decision is based on position descriptions supplied by agency managers. Employee's may appeal this determination through the NTEU grievance process.

Each employee is presumed to be FLSA nonexempt or covered by the FLSA unless the employing agency correctly determines that the employee clearly meets the requirements of one or more of the exemptions. 5 CFR 551.202. Exemption criteria must be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption. While established position descriptions and titles may assist in making initial FLSA exemption determinations, the designation of an employee as FLSA exempt or nonexempt must ultimately rest on the duties actually performed by the employee. Although separate criteria are provided for the exemption of executive, administrative, and professional employees, those categories are not mutually exclusive. NRC Bargaining unit employees grade 12 and above are frequently classified as FLSA exempt under the administrative and professional criteria.

Administrative FLSA Exemption

The exempt administrative employee is an employee whose primary duty is the performance of office or non-manual work directly related to the agency's management or general business operations, and whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. The exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term "matters of significance" refers to the level of importance or consequence of the work performed. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include whether the employee:

- Has authority to formulate, affect, interpret, or implement management policies or operating practices;
- Carries out major assignments in conducting the operations of the organization;
- Performs work that affects the organization's operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the organization;
- Has authority to commit the employer in matters that have significant financial impact;
- Has authority to waive or deviate from established policies and procedures without prior approval;
- Has authority to negotiate and bind the organization on significant matters;
- Provides consultation or expert advice to management;
- Is involved in planning long- or short-term organizational objectives;
- Investigates and resolves matters of significance on behalf of management; and
- Represents the organization in handling complaints, arbitrating disputes, or resolving grievances.

Professional FLSA Exemption

To qualify for a professional exemption, an employee's primary duty must be the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

To qualify for the learned professional exemption, an employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction 5 CFR 551 208 (a) The work must include the following three elements:

- The employee must perform work requiring advanced knowledge (predominantly intellectual in character and including work requiring the consistent exercise of discretion and judgment). Advanced knowledge cannot be attained at the high school level;
- The advanced knowledge must be in a field of science or learning which includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy, and other similar occupations that have a recognized professional status.
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction in a field where specialized academic training is a standard prerequisite for entrance into the profession

To qualify for the creative professional exemption, an employee's primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor. The work performed must be "in a recognized field of artistic or creative endeavor," including such fields as music, writing, acting, and the graphic arts 5 CFR 551.209. Federal employees engaged in the work of newspapers, magazines, television, or other media are not exempt creative professionals if they only collect, organize, and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product.

Computer systems analysts, computer programmers, software engineers, and other similarly skilled workers in the computer field are eligible for exemption as professionals. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the exemption's applicability. 5 CFR 551.210.

The exemption applies to computer employees whose primary duties consist of:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- The design, documentation, testing, creation or modification of computer programs related to machine operating systems

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