

**FISH AND WILDLIFE SERVICE  
PERSONNEL**

**Personnel**

**Part 225 Classification, Pay, and Allowances**

**Chapter 6 Fair Labor Standards Act Position Designation**

**225 FW 6**

**6.1 What is the purpose of this chapter?** This chapter:

- A.** Describes the policies and procedures the U.S. Fish and Wildlife Service (Service) uses to document Fair Labor Standards Act (FLSA) determinations, and
- B.** Provides supplemental guidance to Human Resources (HR) Specialists to help them determine and document FLSA decisions.

**6.2 What is the scope of this chapter?** This chapter applies to all positions in the Service.

**6.3 What are the authorities for this chapter?**

- A.** The Fair Labor Standards Act of 1938 (29 U.S.C. 201-219).
- B.** Pay Administration under the Fair Labor Standards Act (5 CFR, Part 551).

**6.4 What is the FLSA, and what does it mean for employees?** The FLSA:

- A.** Provides the minimum standards for both wages and overtime entitlements,
- B.** Describes the administrative procedures we must use to compensate employees for work time,
- C.** Exempts specified employees or groups of employees from the application of certain provisions, and
- D.** Requires that covered employees in the United States be paid at least the Federal minimum wage for each hour they work and overtime pay at one and one-half the employee's regular rate of pay for all hours worked over 40 in a workweek.

**6.5 What terms do you need to know to understand this chapter?** In addition to the terms below, you can find definitions related to FLSA at 5 CFR 551.104.

**A. Exempt:** An exempt employee is not covered by the minimum wage and overtime provisions of the FLSA. This means that the work they perform meets one or more exemption criteria, so the position is exempt from the provisions of FLSA for payment purposes (overtime entitlements are in 5 CFR, Part 550).

**B. Nonexempt:** A nonexempt employee is covered by the provisions of the FLSA. This means that the work they perform does not meet any exemption criteria, so the position is not exempt from the provisions of FLSA for payment purposes (wages and overtime are in 5 CFR, Parts 550 and 551).

**C. FLSA Claim:** An employee may file an FLSA claim with either the Department of the Interior (Department) or the Office of Personnel Management (OPM). Although the claimant may use either avenue, he/she may not use both at the same time. If an employee files a claim with the Department and is denied, he/she may then file with OPM. He/she may also file directly with OPM. An OPM decision on a claim is final and is not subject to further administrative review. See 5 CFR, Part 551, Subpart G for more information on FLSA claims and compensation.

**6.6 What is the Service's policy on FLSA exemptions?**

**A.** HR Specialists must:

**(1)** Make FLSA determinations based on the criteria in 5 CFR, Part 551 and supplemental OPM guidance,

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**(2)** Narrowly construe the criteria to apply only to those employees who are clearly within the terms and spirit of an exemption,

**(3)** Refrain from using other criteria (e.g., arbitrators' decisions, Department of Labor decisions on private sector employees, etc.) to make FLSA determinations, and

**(4)** Refrain from presuming a nonexempt or exempt status based on a grade. Not all positions graded at GS-9 and below are nonexempt. HR Specialists must not use a check list to determine exemption status. Instead, they must analyze the duties for each determination.

**B.** The designation of a position as FLSA exempt or nonexempt depends on the duties employees actually perform and the amount of time they spend accomplishing them. Supervisors must make sure that employees' Position Descriptions (PD) are accurate and contain sufficient information to make the FLSA coverage determination.

**C.** The FLSA covers all employees not specifically excluded by another statute. Employees are nonexempt from FLSA unless we determine that they meet the requirements of one or more of the exemption criteria in 5 CFR, Part 551 and any supplemental OPM guidance (see section 6.7).

**6.7 What are the criteria the Service uses to determine if an employee is nonexempt or exempt under FLSA?**

**A. Nonexempt determinations:** Table 6-1 describes the types of nonexempt status determinations.

<b>Table 6-1: Nonexempt Determinations Criteria</b>		
<b>Type</b>	<b>Apply to ...</b>	<b>CFR Citations</b>
<b>Salary-based nonexemptions</b>	<ul style="list-style-type: none"> <li>Employees, including supervisors, whose annual rate of basic pay is less than \$23,600 unless the employee is:                             <ul style="list-style-type: none"> <li>- Performing different work or duties for a temporary period of time on FLSA status,</li> <li>- Designated for the foreign exemption criteria, or</li> <li>- A professional engaged in the practice of law or medicine as the regulations prescribe.</li> </ul> </li> </ul>	5 CFR 551.203  5 CFR 551.211 5 CFR 551.212 5 CFR 551.208
<b>Position-based nonexemptions</b>	<ul style="list-style-type: none"> <li>Certain non-supervisory, white collar employees (e.g., employees in equipment operating or protective occupations and most clerical occupations) or non-supervisory employees in the Federal Wage System or in other comparable wage systems (with the same exceptions as we list above for salary-based nonexemptions).</li> </ul>	5 CFR 551.204

**B. Exempt determinations:** To be FLSA exempt, the duties the employee performs must meet the executive, administrative, professional, foreign, or special exemptions/exclusions criteria in Table 6-2. The categories are not mutually exclusive. Failure to meet the criteria for exemption under one category does not preclude exemption under another category.

<b>Table 6-2: Exempt Determinations Criteria</b>		
<b>Type</b>	<b>Apply to...</b>	<b>CFR Citations</b>
<b>Executive exemptions</b>	<ul style="list-style-type: none"> <li>Employees whose primary duties are management of a Federal agency or any subdivision of the agency (including</li> </ul>	5 CFR 551.205 5 CFR 551.104

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Type	Apply to...	CFR Citations
	<p>the lowest recognized organizational unit with a continuing function) and who:</p> <ul style="list-style-type: none"> <li>- Customarily and regularly direct the work of two or more other employees, and</li> <li>- Have the authority to hire or fire other employees (or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight).</li> </ul>	
<b>Administrative exemptions</b>	<ul style="list-style-type: none"> <li>• To qualify for the administrative employee exemption, all of the following tests must be met: <ul style="list-style-type: none"> <li>- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;</li> <li>- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and</li> <li>- The employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.</li> </ul> </li> </ul>	5 CFR 551.206
<b>Professional exemptions</b>	<ul style="list-style-type: none"> <li>• Employees whose primary duties are performing work that requires: <ul style="list-style-type: none"> <li>- Advanced knowledge in a field or science;</li> <li>- Learning customarily acquired by a prolonged course of specialized intellectual instruction; or</li> <li>- Invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.</li> </ul> </li> <li>• There are three basic types of professionals: learned, creative, and computer professionals (each discussed below).</li> </ul>	5 CFR 551.207
	<b>Learned professionals</b>	
	<ul style="list-style-type: none"> <li>• Employees whose primary duties are performing work that requires advanced knowledge (predominately intellectual in nature and including work requiring the consistent exercise of discretion and judgment).</li> <li>• The knowledge must be: <ul style="list-style-type: none"> <li>-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.</li> <li>-Acquired by a prolonged course of intellectual instruction in a field where specialized academic training is a standard prerequisite for entering the</li> </ul> </li> </ul>	5 CFR 551.208

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Type	Apply to...	CFR Citations
	profession.	
	<b>Creative professionals</b>	
	<ul style="list-style-type: none"> <li>• Employees whose primary duties are performing work that requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor, as opposed to routine mental, manual, mechanical, or physical work.</li> <li>• Employees in such fields as music, writing, acting, and the graphic arts.</li> </ul>	5 CFR 551.209
	<b>Computer professionals</b>	
	<ul style="list-style-type: none"> <li>• Computer systems analysts, computer programmers, software engineers, or other similarly skilled workers in the computer field who are paid \$27.63 per hour or more.</li> <li>• Because job titles vary widely and change quickly in the computer industry, we must not use job titles alone to determine the applicability of this exemption.</li> </ul>	5 CFR 551.210
<b>Foreign exemptions</b>	<ul style="list-style-type: none"> <li>• Employees who live in or spend all of their work week in an exempt area. Exempt areas include any foreign country or U.S. territory <b>except for</b>:               <ul style="list-style-type: none"> <li>- A state of the United States;</li> <li>- The District of Columbia; and</li> <li>- American Samoa, Guam, Johnston Island, Commonwealth of the Northern Mariana Islands, Midway Atoll, Outer Continental Shelf Lands (as defined in the Outer Continental Shelf Lands Act, 67 Stat. 462), Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.</li> </ul> </li> </ul>	5 CFR 551.212
<b>Availability pay exemptions</b>	<ul style="list-style-type: none"> <li>• Criminal investigators who receive availability pay under 5 CFR 550.181(a) are exempt.</li> </ul>	5 CFR 551.213
<b>Temporary duties</b>	<ul style="list-style-type: none"> <li>• Non-exempt employees performing work or duties that are not consistent with the employee's primary duties must remain non-exempt unless:               <ul style="list-style-type: none"> <li>- Primary duties during the period of temporary work are exempt, and</li> <li>- The period of temporary work exceeds 30 consecutive calendar days.</li> </ul> </li> <li>• If a non-exempt employee becomes exempt, he/she must be considered exempt for the entire period of temporary work. Any overtime pay received during the first 30 calendar days of the temporary work must be recalculated retroactive to the beginning of that period.</li> </ul>	5 CFR 551.211
<b>Emergency work assignments</b>	<ul style="list-style-type: none"> <li>• Employees performing emergency work assignments under designated emergency situations that directly threaten human life or safety, serious damage to property, or serious disruption to operations. In this case, nonexempt employees' designations remain nonexempt. Exempt employees' designations will depend on the primary duties the employees perform within a work week (see 5 CFR 551.211(f)(2)). Also see 225 FW 7, Premium Pay, for</li> </ul>	5 CFR 551.211

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<b>Table 6-2: Exempt Determinations Criteria</b>		
<b>Type</b>	<b>Apply to...</b>	<b>CFR Citations</b>
	additional details.	
<b>Statutory exclusions</b>	<ul style="list-style-type: none"><li>• FLSA section 7(k) excludes the performance of certain law enforcement activities from nonexempt status because of other premium pay requirements.</li></ul>	5 CFR 551.216.

**6.8 How does the Service document FLSA determinations and changes to determinations?** HR Specialists must use FWS Form 3-2407, FLSA Determination Worksheet, to document the basis for all exempt FLSA determinations and any changes to determinations based on classification review. The determination must also appear on the PD Coversheet (OF-8) or equivalent.

/sgd/ James W. Kurth  
DEPUTY DIRECTOR

Date: May 6, 2015