



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

May 28, 2021

PERSONNEL BULLETIN NO. 21-06 (551)

SUBJECT: Fair Labor Standards Act Overtime Pay Entitlement

1. Purpose. This Personnel Bulletin (PB) establishes updated Department of the Interior (DOI) Fair Labor Standards Act (FLSA) overtime pay entitlement policy and mandates the use of a standardized FLSA worksheet (attached). This PB supersedes Personnel Management Letter No. 92-5 (550) and complements policy prescribed in PB 07-11 Time Limits for Using Earned Compensatory Time Off.

2. Authority. The Fair Labor Standards Act law, 29 U.S.C. Chapter 8, sections 201-219, 5 C.F.R. Part 551. The Act sets minimum standards for wage and overtime entitlements and administrative procedures for which covered worktime must be compensated. All employees are covered by the Act, except for those listed under [5 C.F.R. § 551.103](#).

3. Scope. This policy applies to each Bureau and Departmental office (Bureau/Office). This issuance is effective immediately and must be carried out in accordance with applicable laws, regulations, and bargaining agreements.

4. Responsibilities. Management and supervisors must be aware of whether their employees are covered under the Fair Labor Standards Act (FLSA) and what FLSA coverage means. In collaboration with the servicing personnel office, management and supervisors are responsible for ensuring accurate FLSA designations for each employee. The burden of proof rests with the employing bureau/office, not the employee. The FLSA status of a position will be analyzed when it is established, redescribed, amended, or in connection with a classification review. Each servicing personnel office will ensure that each *exempt* position contains the standardized FLSA worksheet (attached), and that each employee's FLSA status is shown on the position description (PD) cover sheet and accurately displayed in the automated payroll/personnel system.

5. Definitions. The FLSA provides for minimum standards for both wages and overtime entitlements and specifies administrative procedures by which covered work-time must be compensated. FLSA designations identify EXEMPT or NONEXEMPT status. These term definitions are:

- **NONEXEMPT** - Covered by the minimum wage and overtime provisions of the Act.

- **EXEMPT** - Not Covered by the minimum wage and overtime provisions of the Act.

6. Fair Labor Standards Act Determinations. It is vital to pay employees the correct amount each pay period. An accurate FLSA determination is a critical part of this process. Law and regulation presume that an employee is entitled to be paid time and a half compensation for all overtime hours worked unless an employer can convincingly demonstrate that a legitimate FLSA exemption applies.

Employees are presumed to be FLSA “nonexempt” unless a determination is made that the employee clearly meets one or more of the exemptions. To be FLSA exempt, the duties performed by the employee must meet the executive, administrative, learned/creative professional or computer employee exemption criteria. These categories are not mutually exclusive; failure to meet the criteria for exemption under one category does not preclude exemption under another category. All *exempt* positions must contain the standardized FLSA analysis worksheet (attached).

The designation of an employee as FLSA exempt or nonexempt ultimately rests on the duties actually performed by the employee. Many incorrect determinations are the result of an overreliance on inaccurate PDs. Consequently, the supervisor and the servicing personnel office must ensure that PDs are accurate and contain enough information on which to base the FLSA coverage determination.

7. Employee FLSA coverage and Compensatory Time.

See PB 07-11.

8. Payment or Forfeiture of Unused Compensatory Time Off.

See PB 07-11.

9. Separation or leave without pay status due to service in the uniform service or on-the-job injury.

An FLSA-exempt or nonexempt employee must be paid for compensatory time off not used by the end of the 26th pay period after the pay period during which it was earned at the overtime rate in effect when earned if the employee is unable to use the compensatory time off because of separation or placement in a leave without pay status (1) to perform service in the uniformed services or (2) because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81.

10. FLSA claims.

Note: Employees covered by a collective bargaining agreement (CBA) should review the applicable CBA for specifically negotiated items or processes related to this matter.

- A. Employees who are dissatisfied with the FLSA coverage determination of their positions have the right to appeal the decision. It is recommended that the employee first talk to their supervisor and/or servicing human resources office to discuss their concerns about their FLSA determination.
- B. Bargaining unit employees covered by a CBA must file a negotiated grievance regarding FLSA coverage if such matters are not otherwise excluded from the applicable negotiated grievance procedures. If such matters are expressly excluded, or as otherwise agreed to by the parties to the CBA, employees may file an administrative FLSA claim with either their Bureau/Office, the Department or OPM, as described in Section 10C.
- C. Non-bargaining unit covered employees may file an FLSA claim with their Bureau/Office, the Department or with the Office of Personnel Management (OPM); however, the claim may not be pursued simultaneously. Employees who elect to submit a claim first to their Bureau/Office or the Department may subsequently submit a claim to OPM if they are dissatisfied with the Bureau/Office's or Department's decision. However, employees may not file with their Bureau/Office or the Department if they have previously submitted the same claim to OPM. An OPM decision on a claim is final and is not subject to further administrative review.
- D. All employees have the right to bring an action in an appropriate United States court. Filing a claim within DOI or with OPM does not stop the statute of limitations from running. OPM will not decide a claim that is in litigation.
- E. In accordance with [5 C.F.R. § 551.702](#), all FLSA pay claims filed after June 30, 1994, are subject to a two-year statute of limitations (three years for willful violations). An employee must submit a written claim to either the Bureau/Office, Department or to OPM in order to preserve the claim period. The date the Bureau/Office, Department or OPM receives the claim is the date that determines the period of possible back pay entitlement.
- F. Under [5 C.F.R. § 551.104](#), "willful violation" means a violation in circumstances where the Bureau/Office knew that its conduct was prohibited by the Act or showed reckless disregard of the requirements of the Act. All of the facts and circumstances surrounding the violation are taken into account in determining whether a violation was willful.

11. Filing a FLSA claim. A FLSA claim filed with the Department must be in writing and submitted by the employee to his/her servicing personnel office and Bureau/Office Human Resources Headquarters office to: DOI/Office of Human Capital, 1849 C Street NW, RM 4309, Washington DC 20240. Information on how to file a claim with OPM can be found at OPM.gov.

The following information shall be submitted by the *employee* to their servicing personnel office:

1. A signed statement that the employee wishes to appeal the FLSA determination of their position;
2. Name of local facility;
3. Organization to which assigned;
4. Current position title, series, and grade;
5. The requested FLSA determination;
6. A description of the nature of the claim and the specific issues or incidents giving rise to the claim, including the time period covered by the claim;
7. Evidence available which supports the claim, including the identity, business telephone number, and location of other individuals who may be able to provide information relating to the claim;
8. A written designation of third-party representation, if applicable. The designation must include the name, address and phone number of the representative.
9. Evidence, if available, that the claim period was preserved in accordance with the time limits in [5 C.F.R. § 551.702](#). The date DOI or OPM received the claim, whichever is earlier, becomes the date the claim period is preserved;
10. A statement as to whether the employee was or was not a member of a collective bargaining unit at any time during the claim period;
11. If the employee was a member of a bargaining unit, a statement that the employee was or was not covered by a negotiated grievance procedure at any time during the claim period, and if covered, whether that procedure specifically excluded the claim from the scope of the negotiated grievance procedure; and
12. A statement that the employee has not filed an action in an appropriate United States court.

The following information shall be submitted to the Department by the employee's Bureau/Office Human Resources Headquarters office along with the material supplied by the employee:

1. A Bureau-level FLSA evaluation report which includes an in-depth comparison of the duties and responsibilities with published FLSA criteria, and covers all points raised by the employee.

2. Organizational/functional charts.
3. Comments from the employee's immediate supervisor and/or higher level official relative to the accuracy of the PD and the merits of the FLSA appeal. Discrepancies or disagreements must be resolved before submitting the claim to the Department for a decision.
4. Copies of official time and leave/pay records for the time period claimed.

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