

Federal Overtime Pay: Who Gets it and How

Since 1974, federal government employees have been eligible to receive overtime pay under the Fair Labor Standards Act (FLSA). The Office of Personnel Management (OPM) administers the FLSA in the federal government. Generally, the FLSA requires that employers pay one and one-half times the regular hourly rate of pay to employees for any worked performed in excess of 40 hours in a given workweek. However, the FLSA does not apply to everyone. The statute identifies several categories of employees exempted from the overtime provisions of the Act. The group of exempt personnel includes those “employed in a bona fide executive, administrative, or professional capacity.”

FLSA exemptions are to be “narrowly construed,” and limited to those employees plainly and unmistakably within their terms and spirit. The FLSA, in effect, presumes non-exempt (covered) status. The employing federal agency clearly has the burden of establishing an exemption. This means that the agency must prove each element of a claimed executive, administrative, or professional exemption. Otherwise, the agency is required to pay time and one-half overtime pay.

OPM has issued regulations that supplement the FLSA. See 5 C.F.R. Part 551. Those regulations state that if an employee is properly classified at the GS-4 level or below (or the equivalent level in other white collar pay systems), they are automatically considered nonexempt, which means they must be paid overtime pay at time and one-half their regular hourly rate. Employees properly classified at the GS-5 through GS-10 levels, or their equivalent, may be exempt only if they are an executive, administrative or professional employee.

Executive employees are managers and supervisors who have the authority to select, promote, advance in pay, or remove employees while exercising discretion and independent judgment. If you are a GS-5 or 6, or a law enforcement employee at the GS7-9 levels, you must spend 80% or more of your work time on supervisory duties.

Administrative employees are those who are considered advisors, assistants, or representatives of management, such as management consultants, systems analysts, and human resources specialists, employees who perform work that is intellectual and varied in nature or of a specialized or technical nature that requires considerable special training, experience, and knowledge, and frequently exercise discretion and independent judgment under only general supervision. To be exempt as an administrative employee, someone graded at the GS-5 or 6 level must spend 80% or more of his/her worktime performing essentially administrative functions.

Professional federal employees, teachers, and school administrators are also exempt under the FLSA. Professionals are those employees who require knowledge in a field of science or learning usually acquired through education or training at the bachelor’s degree or higher level or in a recognized field or artistic endeavor that is original or creative in nature.

Federal employees exempt under the FLSA receive overtime pay under Title 5 of the United

States Code. Under Title 5, overtime pay is computed at the rate of one and one-half times the GS-10, step 1 rate of basic pay (including locality pay) or the hourly rate of basic pay of the employee, whichever is greater.

Employees who want to challenge their status under the FLSA can file a grievance under their union's collective bargaining agreement with their federal employer or in an overtime pay claim with their employing federal agency or OPM. OPM encourages non-union federal employees to first obtain a decision on the claim from their employing agencies before filing an OPM overtime claim, although employees are not required to do so. Going to the employing federal agency first may give the employee "two bites at the apple," but OPM will generally side with the agency anyway, so it may not be worth going to the employing agency first.

Federal employees not covered by union contracts may file overtime claims under the FLSA with the United States Court of Federal Claims or the appropriate U.S. district court. However, the district courts can only hear claims that are less than \$10,000. If the claim is for more than that, it must be filed in the Court of Federal Claims. Moreover, filing an administrative claim with an agency or OPM does not stop the running of the two-year statute of limitations (three years if the violation was willful or intentional) governing claims filed in court from when the claim arose. The date on which the employing agency or OPM receives the claim is the date used to determine whether the claim is timely.

If an FLSA claim is successful, the prevailing employee will be entitled to double pay (called "liquidated damages") for a period of up to two or three years back from the date on which the claim is received, plus an award of attorneys fees. However, under certain circumstances, federal agencies may grant compensatory time off instead of overtime pay for an equal amount of time off. The key is to secure the advice of a qualified attorney to assess the merits and value of your overtime pay claim before you file it.