

## Fair Labor Standards Act Claims Fact Sheet

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### OPM Authority

Section 3(e)(2) of the Fair Labor Standards Act of 1938 (the Act or FLSA) authorizes the application of the provisions of the Act to any person employed by the Government of the United States, as specified in that section. Section 4(f) of the Act authorizes the Office of Personnel Management (OPM) to administer the provisions of the Act for all such employees, except for those who are employed by the Library of Congress, United States Postal Service, Postal Rate Commission, Tennessee Valley Authority, U.S. House of Representatives, U.S. Senate, Capitol Guide Service, Capitol Police, Congressional Budget Office, Office of the Architect of the Capitol, Office of the Attending Physician, or Office of Compliance. Employees of these entities should contact their human resources office regarding FLSA matters.

### Definitions

*FLSA* or *Act* (the Fair Labor Standards Act of 1938, as amended, sections 201 *et seq.* of title 29, United States Code) is a law which sets minimum standards for both wages and overtime entitlement. Included in the Act are provisions related to child labor, equal pay, and portal-to-portal activities.

*Claim* means a written allegation from a current or former employee concerning his or her FLSA exemption status or entitlement to minimum wage or overtime pay for work performed under the Act. The term “claim” includes complaints under the child labor provisions of the Act.

*Claim period* means the time during which the cause or basis of the claim occurred.

*Exemption status* means an employee’s designation by the employing agency as either FLSA exempt or FLSA nonexempt from the minimum wage and overtime provisions of the Act.

*Exempt* means **not covered** by the minimum wage and overtime provisions of the Act.

*Nonexempt* means **covered** by the minimum wage and overtime provisions of the Act.

*Preserve the claim period* means to establish the period of possible entitlement to back pay by filing a written claim with either the agency employing the claimant during the claim period or with OPM. The date the agency or OPM receives the claim, whichever is earlier, is the date that determines the period of possible entitlement to back pay.

*Willful violation* means a violation in circumstances where the agency knew that its conduct was prohibited by the Act or showed reckless disregard of the requirements of the Act.

### General Coverage Information

Our FLSA regulations are published in part 551 of title 5, Code of Federal Regulations (CFR). Each employee is presumed to be FLSA nonexempt unless the employing agency correctly determines that the employee clearly meets one or more of the exemption criteria in 5 CFR part 551.

### *Exemption of General Schedule (GS) employees*

*GS-4 and below:* An employee in a position properly classified at or below GS-4 (or the equivalent level in other comparable white-collar pay systems) is nonexempt, unless the employee is subject to 5 CFR 551.209 (the foreign exemption).

*GS-5 and above:* An employee in a position properly classified at or above GS-5 (or the equivalent level in other comparable white-collar pay systems) is exempt only if the employee meets the executive, administrative, or professional criteria, or a combination of those criteria, as defined in 5 CFR 551.205-207, unless the employee is subject to 5 CFR 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or 5 CFR 551.209 (the foreign exemption).

### *Exemption of Federal Wage System (FWS) employees*

*Nonsupervisory:* A nonsupervisory employee in the Federal Wage System or in other comparable wage systems is nonexempt, unless the employee is subject to 5 CFR 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or 5 CFR 551.209 (the foreign exemption).

*Supervisory:* A supervisory employee in the Federal Wage System or in other comparable wage systems is exempt only if the employee is an executive employee as defined in 5 CFR 551.205, unless the employee is subject to 5 CFR 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or 5 CFR 551.209 (the foreign exemption).

## **Before You File a Claim**

If you think your FLSA exemption status or overtime pay is not correct or if you are concerned about the application of the child labor provisions of the Act, you may wish to review our fact sheet on FLSA coverage, then speak with your supervisor. If you have questions your supervisor cannot answer, you may want to speak with someone in your human resources office.

You may ask to be paid for overtime that you have worked. You may request that your FLSA exemption status be changed from exempt (not covered by FLSA) to nonexempt (covered by FLSA), or you may ask that your FLSA exemption status be changed from nonexempt to exempt. You may question the application of the child labor provisions of the Act.

## **Filing a Claim**

You may at any time file a complaint under the child labor provisions of the Act or a claim challenging the correctness of your FLSA exemption status. You may also file a claim concerning your entitlement to minimum wage or overtime pay for work performed under the Act; however, time limits apply to FLSA pay claims. By law, all FLSA pay claims are subject to a 2-year statute of limitations (3 years for willful violations).

*Negotiated grievance procedure (NGP) as exclusive administrative remedy:* If at any time during the claim period, you were a member of a bargaining unit covered by a collective bargaining agreement which did not specifically exclude matters under the Act from the scope of the negotiated grievance procedure, **you must use that negotiated grievance procedure as the exclusive administrative remedy for all claims under the Act.** There is no right to further administrative review by the agency or by us.

*Non-NGP administrative review by agency or OPM:* If during the entire claim period, you were (a) not a member of a bargaining unit, or (b) a member of a bargaining unit not covered by a collective bargaining agreement, or (c) a member of a bargaining unit covered by a collective bargaining agreement which specifically excluded matters under the Act from the scope of the negotiated grievance procedure, you may file a claim regarding matters arising under the Act with the agency employing you during the claim period or with us, but not both simultaneously.

## **Representation**

You may designate a representative to assist in preparing or presenting your claim. You must designate your representative in writing. A representative may not participate in our interviews unless specifically requested to do so by us. An agency may disallow a representative who is a Federal employee if the individual's activities as a representative would cause a conflict of interest or position, or the individual cannot be released from his or her official duties because of the priority needs of the Government, or the release of the individual would give rise to unreasonable costs to the Government.

## **How to File a Claim with an Agency**

An FLSA claim filed with an agency should be made according to agency procedures. At your request, the agency may forward your claim to us on your behalf.

## **How to File Claim with OPM**

An FLSA claim filed with us must be made in writing, and you or your representative must sign your claim. You may submit relevant information to us at any time following the initial submission of your claim to us and prior to our decision on your claim. Your claim must include the following:

- (1) Your full name (see 5 CFR 551.706(a)(2) about requesting confidentiality); the agency employing you during the claim period; the position (job title, pay plan, series, and grade) you occupied during the claim period; your current mailing address, commercial telephone number, and facsimile machine number, if available; and if you have designated one, your representative's name, mailing address, commercial telephone number, and facsimile machine number, if available;
- (2) A description of the nature of your claim and the specific issues or incidents giving rise to your claim, including the time period covered by your claim;
- (3) A description of actions you took to resolve your claim within the agency and the results of any actions taken;
- (4) A copy of any relevant decision or written response by the agency;
- (5) Evidence available to you or your representative which supports your claim, including the identity, commercial telephone number, and location of other individuals who may be able to provide information relating to your claim;
- (6) The remedy you seek;
- (7) Evidence, if available, that the claim period was preserved in accordance with 5 CFR 551.702. The date the agency or we received your claim, whichever is earlier, becomes the date the claim period is preserved;

- (8) A statement that you were or were not a member of a collective bargaining unit at any time during the claim period;
- (9) If you were a member of a bargaining unit, a statement that you were or were not covered by a negotiated grievance procedure at any time during the claim period, and if covered, whether that procedure specifically excluded your claim from the scope of the negotiated grievance procedure;
- (10) A statement that you have or have not filed an action in an appropriate United States court; and
- (11) Any other information you believe we should consider.

## **Time Limits**

### *Statute of limitations*

An FLSA pay claim is subject to the statute of limitations contained in the Portal-to-Portal Act of 1947, as amended (section 255(a) of title 29, United States Code), which imposes a 2-year statute of limitations, except in cases of a willful violation where the statute of limitations is 3 years. In deciding a claim, we will determine whether the cause or basis of the claim was the result of a willful violation on the part of the agency.

### *Preserving the claim period*

You or your designated representative may preserve the claim period by submitting a written claim either to the agency employing you during the claim period or to us. The date the agency or we receive your claim, whichever is earlier, is the date that determines the period of possible entitlement to back pay. You are responsible for proving when your claim was received by the agency or us. You should retain documentation to establish when your claim was received by the agency or us, such as by filing your claim using certified, return receipt mail, or by requesting that the agency or we provide written acknowledgment of receipt of your claim. If a claim for back pay is established, you will be entitled to pay for a period of up to 2 years (3 years for a willful violation) back *from the date your claim was received*.

### *Judicial review*

Nothing in our regulations limits your right to bring action in an appropriate U.S. court either directly or after having received an administrative decision on your claim through the negotiated grievance procedure, from your agency, or from us. The statute of limitations is 2 years, 3 years for willful violations. Filing a claim with an agency or with us does not stop the statute of limitations governing FLSA claims filed in court from running. We will not decide an FLSA claim that is in litigation.

## **OPM Fact Finding and Claim Decision**

Our decision on your FLSA claim is based on information supplied by you and your agency. We must base our decision on the work you perform. If additional information is needed, it may be obtained through correspondence, telephone call, or on-site visit.

We will send our decision on your FLSA claim to you or your representative and to the agency.

## **Effect of OPM Claim Decision**

An FLSA claim decision made by us is final. There is no further right of administrative appeal. At our discretion, we may reconsider a decision upon a showing that material information was not considered or there was a material error of law, regulation, or fact in the original decision. A decision by us under the Act is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which we administer the Act. Upon receipt of a decision, the agency employing you during the claim period must take all necessary steps to comply with the decision, including adherence with compliance instructions provided with the decision. All compliance actions must be completed within the time specified in the decision, unless an extension of time is requested by the agency and granted by us. The agency should identify all similarly situated current and, to the extent possible, former employees, ensure that they are treated in a manner consistent with the decision, and inform them in writing of their right to file an FLSA claim with the agency or with us.

## **Withdrawal or Cancellation of a Claim**

### *Withdrawal*

You or your representative may withdraw your claim at any time prior to the issuance of a claim decision by providing written notice to the OPM office where you filed your claim.

### *Cancellation*

We may, at our discretion, cancel your FLSA claim if you or your representative fail to provide requested information within 15 workdays after the date of the request, unless you or your representative requests additional time and we grant a longer period of time in which to provide the requested information. We may, at our discretion, reconsider a cancelled claim on a showing that circumstances beyond your control prevented you from pursuing your claim.

## **For More Information**

If you have specific questions or need more information on making an FLSA claim, contact your human resources office or the OPM Oversight Division having jurisdiction over your geographical area, or send an email to us at [federal\\_flsa@opm.gov](mailto:federal_flsa@opm.gov). Our FLSA regulations are published in part 551 of title 5, Code of Federal Regulations (CFR). Your human resources office or agency library should have 5 CFR, or be able to locate it for you.

## **Where to File a Claim with OPM**

An FLSA claim must be filed with the OPM Oversight Division having jurisdiction over the geographical area in which the cause or basis of the claim occurred. Addresses and telephone numbers are shown on the next page:

<b>Address and Jurisdiction</b>	<b>Telephone</b>
<p><b>OPM Atlanta Oversight Division</b>  75 Spring Street, SW., Suite 972  Atlanta, GA 30303-3109</p> <p>Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia  (except as noted under the Washington, DC Oversight Division)</p>	<p>(404) 331-3451</p>
<p><b>OPM Chicago Oversight Division</b>  230 S. Dearborn Street, DPN 30-6  Chicago, IL 60604-1687</p> <p>Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North  Dakota, Ohio, South Dakota, West Virginia, Wisconsin</p>	<p>(312) 353-0387</p>
<p><b>OPM Dallas Oversight Division</b>  1100 Commerce Street, Room 4C22  Dallas, TX 75242-9968</p> <p>Arizona, Arkansas, Colorado, Louisiana, Montana, New Mexico, Oklahoma, Texas, Utah,  Wyoming</p>	<p>(214) 767-0561</p>
<p><b>OPM Philadelphia Oversight Division</b>  600 Arch Street, Room 3400  Philadelphia, PA 19106-1596</p> <p>Connecticut, Delaware, Maine, Maryland (except as noted below under the Washington, DC  Oversight Division), Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania,  Rhode Island, Vermont, Puerto Rico, Virgin Islands</p>	<p>(215) 861-3102</p>
<p><b>OPM San Francisco Oversight Division</b>  120 Howard Street, Room 760  San Francisco, CA 94105-0001</p> <p>Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington, Pacific Ocean Area</p>	<p>(415) 281-7050</p>
<p><b>OPM Washington, DC Oversight Division</b>  1900 E Street, NW., Room 7675  Washington, DC 20415-6000</p> <p><b>The District of Columbia</b></p> <p>In <b>Maryland</b>: the counties of Charles, Montgomery, and Prince George's.</p> <p>In <b>Virginia</b>: the counties of Arlington, Fairfax, King George, Loudoun, Prince William, and  Stafford; the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and  any overseas area not included above.</p>	<p>(202) 606-2990</p>