

The National Institutes of Health (NIH)

Fair Labor Standards Act: *Decision Matrix*

All NIH employees are **nonexempt** (i.e., subject to the overtime pay provisions of the Fair Labor Standards Act (part 551 of title 5, Code of Federal Regulations), **unless** they are actually performing work that meets **one of the following exemptions**:

Employees <i>EXEMPT</i>	Regular Duties		
	Executive work that meets	GS administrative work that meets	GS professional work that meets
>GS-6, >GS-9 fire and law enforcement employees, FWS @ situation 3 or 4	<ul style="list-style-type: none"> the primary duty test 	<ul style="list-style-type: none"> the primary duty test the non-manual work test, and the discretion and independent judgment test. 	<ul style="list-style-type: none"> the primary duty test the intellectual and varied work test, and the discretion and independent judgment test.
GS-7, 8, 9 fire and law enforcement employees FWS < situation 3	<p style="text-align: center;">and</p> <ul style="list-style-type: none"> the 80 percent test 	N/A	N/A
GS-5, 6		<p style="text-align: center;">and</p> <ul style="list-style-type: none"> the 80 percent test 	<p style="text-align: center;">and</p> <ul style="list-style-type: none"> the 80 percent test
All Employees	Foreign Exemption – 1) permanently assigned to a foreign area designated as “exempt;” or, 2) on temporary duty (TDY) and performs all hours in a workweek in a foreign area designated as “exempt.”		
	Emergency – 1) Assess the status of an exempt employee on a workweek basis. Designate nonexempt for any workweek in which the employee performs nonexempt work for more than 20 percent of the work time. 2) Nonexempt employees remain nonexempt .		
Receive Availability Pay <ul style="list-style-type: none"> criminal investigator Customs Service law enforcement officer pilot 	Special Exemptions/Exclusions (In addition, customs officers (i.e., supervisory or non-supervisory customs inspectors or canine enforcement officers), who receive overtime pay or premium pay under title 19, are statutorily exempt from FLSA coverage).		
Nonexempt	<GS-5, FWS non-supervisory		
Temporary Duties >30 Calendar Days </>30 Calendar Days	<ol style="list-style-type: none"> Exempt employees become nonexempt for the entire period of the nonexempt temporary duties. Recalculate pay. Nonexempt employees become exempt for the entire period of the exempt temporary duties. Recalculate pay. FWS supervisors below situation 3 and all GS-5,6 exempt employees become nonexempt for the given workweek, if the employee performs nonexempt duties for 20 percent or more of the work time in that workweek. 		
Documentation	Justify the exemption status in the classification evaluation statement. Record the exempt/non-exempt status in block 7 of the position description cover page (Optional Form 8). Code and enter the exempt/non-exempt status in the personnel/payroll transaction database.		