

POSITION CLASSIFICATION AND POSITION MANAGEMENT

1. **REASON FOR ISSUE:** To revise the Department of Veterans Affairs (VA) policy regarding position classification, position management, and the Fair Labor Standards Act (FLSA).
2. **SUMMARY OF CONTENT/MAJOR CHANGES:** This revision covers changes to paragraph 16, Fair Labor Standards Act. The pages in this handbook replace the corresponding paragraph 16 in VA Handbook 5003. Revised text is contained in [brackets]. The changes will be incorporated into the electronic version of VA Handbook 5003 that is maintained on the [Office of the Chief Human Capital Officer \(OCHCO\) website](#) and the [VA Publications Website](#). Significant changes are:
 - a. Adds requirement for the servicing Human Resources Office (HRO) to notify employees prior to implementing a FLSA code change;
 - b. Adds annual FLSA Notice to employee requirements;
 - c. Hyperlinks salary-based nonexemption criteria to the Code of Federal Regulations published salary threshold;
 - d. Adds a sample FLSA notification memorandum to Appendix D.
3. **RESPONSIBLE OFFICE:** Office of Human Resources and Administration/ Operations, Security, and Preparedness (HRA/OSP) (006), Office of the Chief Human Capital Office (OCHCO) (05), Compensation and Classification Service (055).
4. **RELATED DIRECTIVE:** VA Directive 5003, Position Classification and Position Management.
5. **RESCISSIONS:** Not applicable.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

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**POSITION CLASSIFICATION
AND POSITION MANAGEMENT**

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**POSITION CLASSIFICATION AND POSITION MANAGEMENT
PART I. POSITION CLASSIFICATION PROGRAM**

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16. FAIR LABOR STANDARDS ACT (FLSA) COVERAGE DETERMINATIONS.

- (1) Must make all exemption determinations based on the duties actually performed by the employee and not on the position description alone.
 - (a) [The Servicing HRO must provide employees advance written notice at least 2 pay periods before the effective date of an FLSA code change. The written notice must explain the impact the change in FLSA coverage will have on employees' overtime rates of pay. An example of written notification is in Appendix D., FLSA Determination Criteria and Sample Notification Memorandum. Employee notices may be delivered electronically.
 - (b) OCHCO Compensation and Classification Service will ensure employees receive annual notifications explaining FLSA coverage and how FLSA designations impact overtime policies (such as, overtime rates of pay, entitlement to suffer and permit overtime pay).]

APPENDIX D. FLSA DETERMINATION CRITERIA [AND SAMPLE NOTIFICATION MEMORANDUM]

1. NONEXEMPTION CRITERIA.

Type	Apply to	C.F.R. Citation
Salary-based	<p>Employees, including supervisors, whose annual rate of basic pay is less [than amount published in 5 C.F.R. § 551.203.]</p> <p>Exceptions:</p> <ul style="list-style-type: none"> • Employees performing different work or duties for a temporary period of time that are not consistent with the employee’s primary duties. • Employees who meet foreign exemption criteria. • Professionals engaged in the practice of law or medicine as the regulations prescribe. 	<p>5 C.F.R. § 551.203</p> <p>5 C.F.R. § 551.211</p> <p>5 C.F.R. § 551.212</p> <p>5 C.F.R. § 551.208</p>

[SAMPLE FLSA NOTIFICATION MEMORANDUM

NOTE: Memo applies to employees in positions subject to 5 C.F.R. §§ 550 and 551 (including hybrid title 38 and nonexempt wage grade positions). See [VA Handbook 5007 Part V Chapter 2](#) for VA policy governing overtime rules and rates for title 38, hybrid title 38 receiving premium pay same as nurses, and exempt Federal wage system positions.

Date: Month Day, YYYY

From: Full Title of Author (Servicing Human Resources Office)

Subj: Change in Fair Labor Standards Act Determination

To: Full Title of Recipient (Numerical Mail Code)

1. A review of your current duties has determined that your position is Fair Labor Standards Act (FLSA) {select one: **nonexempt (i.e., covered by the FLSA)** or **FLSA-exempt (i.e., not covered by the FLSA)**}. This could have an effect on how future worked overtime pay is computed.

2. The FLSA outlines rules and administrative procedures for how wages and overtime entitlements for covered work time must be compensated. Term definitions are:

a. Nonexempt – Employees who are covered by the minimum wage and overtime provisions of the FLSA. Nonexempt employees are entitled to overtime pay at 1.5 times their regular pay for all hours of work over 8 in a day or 40 hours in a workweek. Nonexempt employees under FLSA must receive overtime pay unless they request compensatory time off in lieu of payment.

b. Exempt – Employees who are not covered by the minimum wage and overtime provisions of the FLSA but instead are covered by applicable rules under Chapter 55 Subchapter V of title 5, United States Code.

- For FLSA exempt employees with rates of basic pay equal to or less than GS-10, step 1, overtime pay is 1.5 times their hourly rate of basic pay.
- For FLSA exempt employees whose pay is above the GS-10, Step 1, overtime pay is capped at the greater of 1.5 times the hourly rate for GS-10, Step 1, or the employee's hourly rate of basic pay.
- FLSA exempt employees whose rate of pay is equal to GS-10, step 10 and below can receive overtime compensation or compensatory time off by choice.
- FLSA exempt employees paid at a rate above GS-10, step 10 may receive overtime compensation or compensatory time off; however, management makes the determination. Managers are authorized to require employees

whose rate of basic pay exceeds GS-10, step 10 to take compensatory time off in lieu of overtime pay.

Note: In determining whether the above GS-10 thresholds are met, locality-based comparability payments and special rates are included. For law enforcement officers, see exceptions in 5 U.S.C. § 5542.

3. This action is the result of *{select one: a routine record review or a new designation based on (provide reason)}* and does not require any action on your part. Please contact *{enter Servicing Human Resources point of contact name, title, organization, and contact information}*, if you have any questions or concerns about this action.

Signature Block of the Author

Date

Signature Block of the Recipient

Date]