

ANSWERS TO PRACTICAL EXERCISES

FLSA Coverage

For each scenario determine if the employee is covered by the provisions of the employee is covered by the provisions of the FLSA. Explain your answer.

1. David is employed in a nonsupervisory position as a WG employee in a warehouse at Fort Polk, Louisiana. Is David covered by the FLSA?

Explanation: *Yes, nonsupervisory WG employees are one of the groups found not to meet any of the FLSA exemption criteria (unless the employee is subject to 5 CFR §551.211 (performing different duties) or §551.212 (foreign exemption)).*

2. Due to an emergency, Aaron is temporarily stationed in Italy for three full weeks. Is Aaron covered by the FLSA for the three weeks in Italy during which he performs no work in the United States?

Explanation: *No, as long as he performs no work in a covered area the FLSA does not apply to Aaron. This is due to the effect of the foreign exemption.*

3. Stephen is employed in a nonsupervisory position as a GS-7 telecommunications equipment operator in the U.S. Consulate Office in Frankfurt, Germany. Is Stephen covered by the FLSA?

Explanation: *No, as long as he performs no work in a covered area the FLSA does not apply to Stephen. This is due to the effect of the foreign exemption.*

4. Carlos travels to Maryland for two days of training on a piece of new communication equipment. After the training, he finished the work week at his regular job in Germany. Is Carlos covered by the FLSA during the work week in which he attends training in Maryland?

Explanation: *Yes, he performed work in a covered area (i.e., training) for part of the workweek and, therefore, Carlos is covered by the FLSA provisions for that workweek.*

5. Mary is employed as a nonsupervisory GS-4 clerk at the United States Mint in Denver. Is Mary covered by the FLSA?

Explanation: *Yes, nonsupervisory clerical, protective and equipment operating occupations are one of the groups found not to meet any of the FLSA exemption criteria (unless the employee is subject to 5 CFR §551.211 (performing different duties) or 551.212 (foreign exemption)).*

6. Joaquin is employed as a practicing attorney at an annual salary of \$23,450. Is Joaquin covered by the FLSA?

Explanation: *No, employees who are engaged in the practice of law as prescribed in 5 CFR §551.208(c) is one of the exceptions to the rule that those whose annual rate of basic pay is less than \$23,600 are nonexempt.*

Executive Exemption Criteria

Coverage Exercise I

The purpose of this position is to oversee and direct the work of a group of assigned Customs & Border Protection Officers (CBPOs), to perform a wide range of complex advisory and coordinating duties, and to carry out other specialized assignments involving highly sensitive inspection and control issues.

Is the position exempt or nonexempt?

Explanation: *Nonexempt; the employee's primary duty is not managing a recognized organizational unit, and while the incumbent makes informal recommendations regarding promotions, reassignments, and performance recognition there is no indication that such recommendations are given particular weight. Similarly, there is no indication of any organizational management functions such as planning and controlling a budget. The work can be characterized as a nonsupervisory senior or lead Customs and Border Protection Officer (CBPO) and, therefore, does not meet all of the requirements for exemption from the FLSA as a bona fide executive.*

Coverage Exercise II

The purpose of this position is to directly supervise a team of senior, journeyman and trainee Customs & Border Protection Officers (CBPOs) assigned to the Inspection Section in the enforcement of customs and other federal laws regarding the importation and exportation of goods. The Section's work affects the efficiency and effectiveness with which the homeland is protected, revenue due the United States is collected and protected, contraband is intercepted, and the homeland is protected.

Is the position exempt or nonexempt?

Explanation: *Exempt; the employee's primary duty is managing the Inspection Section, a recognized organizational unit, with more than two assigned CBPO's. Recommends appointment, promotion or reassignment of assigned employees, and these recommendations are given particular weight because the employee supervises the assigned employees on a day to day basis and is, therefore, familiar with their strengths and potentials. The supervisor also performs work management functions, such as planning the work of the organization to be accomplished in the near and intermediate term and the like. Finally the supervisor performs organization management functions, such as recommending changes to operations to promote efficiency and economy. Thus, the employee meets the requirements for exemption from the FLSA as a bona fide executive.*

Coverage Exercise III

The purpose of this position is to oversee, direct and lead the preparation and service of meals in a federal correctional institution. Supervises the work of between five and thirty inmate food service workers in one of four areas of responsibility within the kitchen, i.e., baking, meal preparation, food service, and cleaning up kitchen and dining room. Rotates between the areas, on a daily basis, and superintends the work of the of the assigned food service workers. Is responsible to the Food Service Administrator for the quantity and quality of work done, and works within general instructions established by the Administrator.

Is the position exempt or nonexempt?

Explanation: Nonexempt; the employee's primary duty is managing one of four areas of responsibility under the Food Service Administrator; each of these areas is a recognized organizational unit, with more than two assigned inmates. Recommends reassignment out of food service area and discipline for behavior or rule infractions, and these recommendations are given particular weight because the employee supervises the assigned workers on a day to day basis. The employee performs limited work management functions in that he is responsible for planning daily activities. In addition, there is no indication that organization management functions, such as recommending changes to operations to promote efficiency and economy, are part of the job. The major weakness in this job and the reason it does not meet the criteria for exemption from the FLSA as a bona fide executive is that the workers supervised are inmates in a federal correctional facility not federal employees. Thus, the work can best be characterized as a senior or lead food service worker and, therefore, does not meet all of the requirements for exemption from the FLSA as a bona fide executive.

Administrative Exemption Criteria

Coverage Exercise IV

Formulates, presents and executes the computer data processing portion of the department's annual operating budget. The assigned budget includes related personnel salaries and expenses, supplies, and computer hardware and software.

Is the position exempt or nonexempt?

Explanation: Exempt; the primary duty of this position is the development of plans, procedures and instructions for formulating and executing the information technology (IT) portion of the budget for a department in the Executive Branch of the Federal Government. This is office work directly related to the management of the department; without the formulation and execution of this portion of the budget the department could not provide computer support to those carrying out the line functions of the department. Discretion and independent judgment is used on a regular a frequent basis in establishing parameters for formulating and executing the IT portion of the budget, and in reviewing and analyzing specific requests to assure proposed expenditures meet the overall spending plan. Discretion and independent judgment also is exercised when working with departmental components to restructure plans and purchases when funding is not approved at requested levels. The department's IT budget is a significant part of its expenditures and has a major impact on the success of the line programs the department was established to pursue. Thus, the position meets the requirements for exemption under the administrative exemption criteria of the FLSA.

Coverage Exercise V

In a developmental capacity, performs routine and recurring budget administration duties which facilitate the conduct of more complex and detailed review and analysis functions conducted by the supervisor and higher graded co-workers. Work performed supports the installation's budget for personnel salaries and expenses in activities financed through direct annual appropriations.

Is the position exempt or nonexempt?

Explanation: Nonexempt; the primary duty of this position is assisting others in the development of portions of the budget for an agency in the Executive Branch of the Federal Government. In addition, the employee is learning about the budget formulation and execution cycle through performing limited tasks related both to formulation and execution. This is office work directly related to the management of the department; without the formulation and execution of a budget the agency could not carry out its line functions. Discretion and independent judgment is used only on an infrequent and irregular basis because the employee's assignments are very limited in scope, and the employee neither makes final decisions nor recommends appropriate courses of action to others. Most assignments are to assist the employee in learning about the budget formulation and execution process and to assist the supervisor or other higher graded budget analyst in carrying his or her responsibilities. Assignments have limited scope, such as cross checking the accuracy of budget and program data in related budgetary forms, schedules and reports. Changes or recommendations for changes are limited to adjusting inconsistent totals, subtotals and individual entries. Thus, the position does not meet the requirements for exemption under the administrative exemption criteria of the FLSA.

Coverage Exercise VI

The incumbent assists the Chief, Audit Division of a District Internal Revenue Service Office by relieving the Chief of clerical and administrative support work.

Is the position exempt or nonexempt?

Explanation: Nonexempt; the primary duty of this position is to provide clerical and administrative assistance to the Chief, Audit Division of a District Internal Revenue Service (IRS) Office. The incumbent provides a variety of clerical and administrative support such as reviewing incoming mail and outgoing correspondence, responding to telephone calls and visitors, and the like. This is office work, but there is little or no discretion or independent judgment required because established policies and procedures, either set by the supervisor or others, e.g., time and leave procedures, travel vouchers, and reporting and correspondence procedures, guide much of the work. Without the consistent exercise of discretion and independent judgment and with the bulk of the work being covered by specific instructions or prescribed procedures, the work does not meet the requirements for exemption under the administrative exemption criteria of the FLSA.

Coverage Exercise VII

The incumbent acts as an administrative assistant to the Director, an SES position, of a hospital which includes two divisions with a total of over 1,000 beds and is affiliated with two schools of medicine. Oversees the work of one office automation clerk.

Is the position exempt or nonexempt?

Explanation: Exempt; the primary duty of this position is to provide assistance and support to the director of a major hospital with a large staff and two affiliated schools of medicine. The

director has many commitments both within and outside the hospital and much of the operation of his or her office is delegated to the incumbent of this position. This is office work, and the incumbent uses discretion and independent judgment establishes and implements office procedures and practices to be used by secretaries and staff in subordinate offices. The incumbent also independently represents the supervisor in routine matters or ensures that others in the hospital provide required responses. Signs certain correspondence and documents in the name of the director when they conform to established requirements. Thus, the work meets the requirements to perform office work directly related to the management of the employer, these primary duties require the regular exercise of discretion and independent judgment on matters of significance established for exemption under the administrative exemption criteria of the FLSA.

Professional Exemption Criteria

Coverage Exercise VIII

The purpose of this position is to provide support for the organization's audiovisual production facility by performing studio and remote photography and videography. The incumbent uses a variety of types of still cameras and videographic cameras to record photographic images and videotapes for use in displays, training aids, promotional literature, and other places. After briefing by the supervisor or director, utilizes a substantial knowledge of the various kinds of camera equipment, lighting techniques, exposure requirements, and the like to capture the desired image, style and quality.

Is the position exempt or nonexempt?

Explanation: Nonexempt; the primary duty of this position is the operation of a variety of types of still and videographic cameras to record photographic images and videotapes for use in displays, training aids, etc. The incumbent follows directions provided by the supervisor or director with regard to the production's photographic and stylistic requirements, and the incumbent uses a substantial knowledge of cameras, lighting, film type, lenses and exposures to capture the required images. While the knowledge of cameras, lighting, etc., is developed over a substantial period of time, it is not in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. Similarly, the work does not require a high level of invention, imagination, or originality because the goals for the shoot are established by the supervisor or director. The work does require a substantial technical knowledge of the capabilities of various cameras, film types, lighting setups, exposures and the like to accomplish the style and value desired by the supervisor or director. Thus, this work does not meet the requirements for exemption as a creative professional established for exemption under the professional exemption criteria of the FLSA.

Coverage Exercise IX

The purpose of this position is to provide support for the organization's audiovisual production facility by performing assignments in unusual or unprecedented situations that require new, modified or adapted equipment and procedures to meet new photographic and videographic requirements. Works independently and as the knowledgeable person on a team to capture and create the finished photographic images and/or videotapes needed to satisfy clients' needs. The incumbent uses a comprehensive knowledge of a wide range of specialized photographic equipment, techniques and processes to develop and create photographic images and videotapes for use in displays, training aids, promotional literature, and other places.

Is the position exempt or nonexempt?

Explanation: Exempt; the primary duty of this position is performing unusual or unprecedented assignments that require new, modified or adapted equipment and procedures to meet new photographic and videographic requirements. The incumbent independently plans and produces photographic and videographic productions from a basic concept established by the client. Often the production requires the incumbent to present realistic photographic renderings of events or occurrences that, in fact, are not subject to successful "real life" photography. The knowledge required to perform the work is of an advanced type requiring both a prolonged course of study and extensive on the job experience. It also requires the incumbent to be inventive, and to use great imagination, originality and talent to envision methods and techniques that will present abstruse intellectual concepts that cannot be photographed or videotaped in reality, but must be represented by models, staged actions or other artistic or imaginative inventions in order to present the ideas lucidly to the intended audience. Thus, this work meets the basic requirements established in the professional exemption criteria and those additional characteristics expected of a creative professional and, therefore, is exempt from the provisions of the FLSA.

Coverage Exercise X

This position reports to the Branch Chief, and is responsible for developing changes in maintenance manuals, installation techniques, and design specifications for equipment in order to eliminate or minimize problems identified while reviewing all maintenance reports, both scheduled and emergency, performed on various kinds of electronic equipment used at airports around the nation.

Is the position exempt or nonexempt?

Explanation: Exempt; the primary duty of this position requires an advanced practical and technical knowledge of the design specifications, operation, maintenance, installation and repair of various kinds of electronic equipment used at airports around the nation. It does not require knowledge of an advanced type in the field of electronics engineering. Thus, the position does not require a bachelor's or higher level degree in electronics engineering or any other field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. Lacking such a positive education requirement prevents the position for meeting the criteria for exempting a position as bona fide professional.

The advanced knowledge required by the primary duty of this position, however, is predominantly office work directly related to the management of the employer's organization or the employer's clients. The incumbent is responsible for formulating, overseeing the implementation of, and modifying and improving the employer's operating practices and those of the employer's clients, i.e., the airports. The operating practices are represented by the maintenance manuals, procedures and programs, installation techniques or locations, and design specifications developed by the incumbent. All work is focused on eliminating or minimizing identified operating problems with the various kinds of electronic equipment used at U.S. airports. The incumbent uses discretion and independent judgment to analyze and evaluate various data and information, to consider alternative approaches through testing and developing new or improved techniques, and to recommend changes in the employer's operating practices. The proper and uninterrupted operation of this equipment contribute to the safe operation of the nation's airlines and airports, matters of significance. Thus, this work meets the basic requirements established in the administrative exemption criteria and, therefore, is exempt from the provisions of the FLSA.

Hours of Work Exercises

Exercise 1

The Sector Chief requires all Border Patrol Agents to report to work 20 minutes before the start of each shift in order to brief them on the latest alerts for possible smugglers and terrorist activities, and to be updated on the latest conditions and activities at the assigned posts. The Chief also requires all Agents to complete reports after the end of their regular shifts and to finish processing any aliens detained during the shift.

Is this time creditable as hours of work under the FLSA?

Explanation: Creditable; the supervisor requires the employees to perform these tasks and they are closely related to the employee's regular work tasks and are indispensable to their performance. The pre-shift activities are closely related because they prepare the employees for the situations they will face when performing the regular work tasks patrolling the border. The post-shift activities are closely related because they are a continuation and completion of tasks initiated during the regular work hours. Thus, the time spent performing these pre- and post-shift activities are considered hours of work and, therefore, compensable under the FLSA.

Exercise 2

Employees voluntarily report to work 10 minutes early to change into their government issued uniforms even though the port director authorizes them to wear their uniform to and from work. After the end of each shift employees again congregate in the locker room to change out of their uniforms and to discuss the events of the day.

Is this time creditable as hours of work under the FLSA?

Explanation: Not Creditable; the supervisor does not require the employees to perform these tasks at the work site. The donning and doffing of uniforms could be performed at home. In addition, there may be a benefit to the employer and the employees to wearing their uniforms on their way to and from work because this may act as a deterrent to illegal acts. Thus, the time spent performing these pre- and post-shift activities are not considered hours of work and, therefore, are not compensable under the FLSA.

Exercise 3

Two employees were directed to travel to Harrisburg, Pennsylvania, for temporary duty. The employees' normal workweeks were Monday through Friday from 7:45 a.m. to 4:15 p.m. On Sunday, the first employee left home at 12:45 p.m. and drove to the second employee's home arriving at 1:30 p.m. The second employee took over driving and they left at 2 p.m. for Harrisburg arriving at 7:30 p.m. that night.

Is the time spent traveling creditable as hours of work under the FLSA?

Explanation: Each employee is credited with the following hours: Employee 1- credited with 45 minutes for work performed while traveling (driving the vehicle) from 12:45 p.m. to 1:30 p.m., and 2 hours 15 minutes for travel performed during hours that correspond to hours employee normally would have been at work on a regular workday. Employee 2 – credited with 5 ½ hours for work performed while traveling (driving the vehicle) from 2 p.m. to 7:30 p.m.

Exercise 4

A nonexempt employee is given a temporary assignment in Paris for a period of four weeks. The employee's normal work schedule is 8 a.m. to 5 p.m. Monday through Friday with one hour for lunch. The employee leaves on Sunday of the first week of the assignment at noon. The non-stop

flight arrives in Paris eight and one-half hours later. Is the travel time creditable as hours of work under the FLSA? If so, how much of the time is considered hours of work? Are there any other issues the supervisor must be aware of while preparing time and attendance records for this employee during the detail?

Is this time creditable as hours of work under the FLSA?

Explanation: Creditable; the employee's flight leaves an airport in the United States on a non-workday during hours that correspond to hours the employee have been at work if it had been a work day. Thus, the first five hours of the flight time, from noon until 5 p.m., is compensable as FLSA travel time. Because the employee performed work (i.e., travel) in a covered area on Sunday, the supervisor also must be aware that any overtime performed during the first week of the temporary Paris assignment will be covered by the FLSA. The foreign exemption does not apply.

Exercise 5

Anselm, a nonexempt employee, has a backlog of work due to the sudden increase in workload caused by the end of year requirement to renew permits. Anselm decides, without discussing it with his supervisor, to stay two extra hours each day at the end of the shift to eliminate the backlog. While the supervisor normally leaves before the end of Anselm's shift, supervisors of nearby units who work late as well as Anselm's colleagues tell the supervisor that Anselm is working late each day. In addition, the supervisor realizes that Anselm is turning in more work than can normally be produced in a 40 hour workweek.

Is this time creditable as hours of work under the FLSA?

Explanation: Creditable; the employee is performing suffered or permitted overtime work, a concept unique to the FLSA. The work, permit renewals, is being performed for the benefit of the employer, the supervisor knows or has reason to believe that the work is being performed because other supervisors and Anselm's colleagues tell the supervisor he is staying late and more work than can be performed in 40 hours is being produced, and the supervisor does not prevent Anselm from performing the work by directing him to stop working and go home at the end of his shift. Thus, the criteria for suffered or permitted overtime are met and the additional time Anselm is working each day at the end of his shift is creditable as hours of work

COMPUTATION EXERCISE 1

A WG employee earns \$16.48/hour and has a tour of duty is Monday through Friday, 4 p.m. to midnight, a night shift for which a differential of 7 1/2% is paid. Employee is exposed to a hazard for which an environmental differential (ED) of 25% is payable for 4 hours each regular shift on Wednesday and Thursday. Employee works irregular overtime after the regular shift on Tuesday and Wednesday, and works from 4 p.m. to midnight on Saturday.

<u>Hours Worked</u>	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>H</u>	<u>F</u>	<u>S</u>	<u>Total</u>	
Reg'l. Hours		8	8	8	8	8		40	
Overtime			4	4			8	<u>16</u>	
Total Hours Worked								56	
ED* (25% WG-10/2)				4	4			8	
ND+ (7 1/2%)		8	12	12	8	8	8	56	
	+	Night Differential Rate						1.24	
	*	Environmental Differential Rate						4.03	
		[25% x \$16.12 (WG-10/2)]							

a. Determine FLSA overtime hours.

Total hours worked	56
7(a) overtime provision	<u>-40</u>
FLSA overtime hours	16

b. Compute total remuneration.

Basic pay	40 x \$16.48 =	\$659.20
Night differential	56 x \$1.24 =	69.44
ED	8 x \$4.03 =	32.24
Straight rate for OT hours	16 x \$16.48 =	<u>263.68</u>
Total remuneration		\$1,024.56

c. Determine "hourly regular rate of pay."

$$\$1,024.56 / 56 = \$18.30$$

d. Multiply overtime hours by one-half "hourly regular rate."

$$1/2 \times \$18.30 \times 16 \text{ Hrs/OT} = \$146.40$$

e. Find total FLSA pay.

Basic pay	\$659.20	
Night differential		69.44
ED	32.24	
Straight rate for 16 OT hours	263.68	
Additional 1/2 times		
hourly regular rate	<u>146.40</u>	
Total FLSA pay		\$1,170.96

COMPUTATION EXERCISE 2

A GS employee earns \$12.71/hour and has a tour of duty of 8 hours a day, Monday through Friday, 8 a.m. to 4:30 p.m. with one half hour for lunch. Employee works 2 hours beyond the regular 8-hour day on Monday, and works 10 hours on Saturday. Employee is on LWOP Wednesday through Friday.

<u>Hours Worked</u>	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>H</u>	<u>F</u>	<u>S</u>	<u>Total</u>
Sched. Hours		8	8					16
LWOP				8	8	8		24
Add'l. Hours		2					10	12

- a. Determine FLSA overtime hours.

28	Total hours worked	
<u>-40</u>	7(a) overtime provision	
0	Overtime hours that exceed 40 hours in a workweek	
4	Overtime hours that exceed 8 hours in a workday (2 hours Monday, 2 hours Saturday)	

- b. Compute total remuneration.

Basic pay	24 x \$12.71 =	\$305.04
Straight time for 4 hours OT	4 x \$12.71 =	<u>\$ 50.84</u>
Total remuneration		\$355.88

- c. Determine "hourly regular rate of pay."
 $\$355.88 / 28 \text{ Hrs} = \12.71

- d. Multiply overtime hours by one-half the "hourly regular rate."
 $1/2 \times \$12.71 \times 4 \text{ Hrs OT} = \25.42

- e. Find total FLSA pay.

Basic pay	\$305.04
Straight time rate for OT	\$ 50.84
Additional 1/2 times "hourly regular rate"	<u>\$ 25.42</u>
Total FLSA pay	\$381.30