

**POSITION CLASSIFICATION, JOB GRADING,
AND POSITION MANAGEMENT**

- 1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) procedures regarding position classification, job grading, and position management.
- 2. SUMMARY OF CONTENT/MAJOR CHANGES:** This handbook contains mandatory procedures on position classification. The pages in this handbook replace the corresponding page numbers in VA Handbook 5003. These changes will be incorporated into the electronic version of VA Handbook 5003 that is maintained on the [Office of Human Resources Management Web site](#). Significant changes include:
 - a. Adds guidance for making Fair Labor Standards Act (FLSA) coverage determinations.
 - b. Establishes procedures for appealing the FLSA coverage determination of a position.
- 3. RESPONSIBLE OFFICE:** The Compensation and Classification Service (055), Office of the Deputy Assistant Secretary for Human Resources Management.
- 4. RELATED DIRECTIVE:** VA Directive 5003, Position Classification, Job Grading, and Position Management.
- 5. RESCISSIONS:** None.

CERTIFIED BY:

/s/
Stephen W. Warren
Executive in Charge and Chief Information Officer
Office of Information and Technology

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

/s/
Gina S. Farrisee
Assistant Secretary for
Human Resources and Administration

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POSITION CLASSIFICATION, JOB GRADING, AND POSITION MANAGEMENT

PART I. POSITION CLASSIFICATION AND JOB GRADING

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(b) Other types of restorations or placements are necessary because of appeals of involuntary separations, adverse actions, or complaints of discrimination.

16. IDENTICAL-ADDITIONAL POSITIONS. Additional positions may be established against base positions that are determined to be susceptible to duplication. The procedure for establishing such positions may be used only in cases where the position is:

- a. Identical in duties and responsibilities to a base position,
- b. In the same organization element, and
- c. Under the same kind and degree of supervision.

The identical-additional status of a position should be indicated on the description.

17. FAIR LABOR STANDARDS ACT (FLSA) COVERAGE DETERMINATIONS[. The Fair Labor Standards Act (FLSA) of 1938 sets minimum standards for wage and overtime entitlements and administrative procedures for which covered worktime must be compensated. Employees are nonexempt from the FLSA unless it is determined that they meet the requirements of one or more of the exemption criteria in [5 CFR, part 551](#) and any supplemental OPM guidance.]

a. An exempt or nonexempt determination shall be made for each employee assigned to a position based on a comparison of the employee's [actual duties performed with the exemption criteria outlined in OPM and Department of Labor guidelines. For unencumbered positions, an initial determination must be made based on a comparison of the projected] duties and responsibilities [] assigned in the official position description with the exemption criteria []. In general, executive, administrative and professional employees[, as well as employees performing a combination of exempt duties,] are exempt from FLSA regulations. However, this must be narrowly construed and applied only to employees who are clearly within the terms and spirit of the exemption criteria. The burden of proof as to the exempt or nonexempt status of an employee rests with the Department, rather than the employee. If the determination is not self-evident, the basis for the decision should be retained with the position description either as part of the evaluation report or as a separate document. Specific exemption criteria are set forth in 5 CFR, part 551.

b. The local human resources [(HR)] management office is responsible for determining whether or not an employee is covered by the FLSA. The exempt or nonexempt status of the position will be identified on the employee's position description. (See appendix B of this part.) If the exempt or nonexempt determination of an employee[']s position] is inconsistent with the duties and responsibilities assigned in the official position description, it [is] necessary to either revise the position description or ensure that the employee performs the duties and responsibilities as assigned.

c. The [FLSA] exempt or nonexempt status of a position should be reviewed when it is established, redescribed and classified based on significant changes in assigned duties, or in connection with a classification review.

[d. FLSA determination criteria is contained in appendix D of this part. HR specialists:

(1) Must not use other criteria (e.g., arbitrators' decisions, Department of Labor decisions on private sector employees, [OPM FLSA decisions](#), etc.) to make FLSA determinations.

(2) Must not make a nonexempt or exempt determination based on position grade. Not all positions graded at GS-9 and below are nonexempt.

(3) Must not rely solely on a check list to determine exemption status. Instead, HR specialists must analyze the duties and responsibilities for each determination.

(4) Must make all exemption determinations based on the employee's primary duty. As a general rule, the primary duty is that which constitutes the major part (over 50 percent) of the employee's work. However, a duty which constitutes less than 50 percent of the employee's work can be credited as the primary duty for exemption purposes provided that duty:

(a) Constitutes a substantial, regular part of a position;

(b) Governs the classification and qualification requirements of the position; and,

(c) Is clearly exempt work in terms of the basic nature of the work, the frequency with which the employee must exercise discretion and independent judgment, and the significance of the decisions made.

(5) Must make all exemption determinations based on the duties actually performed by the employee and not on the position description alone.

18. FLSA CLAIMS

a. Employees who are dissatisfied with the FLSA coverage determination of their positions have the right to appeal the decision.

b. Bargaining Unit employees are required to use the negotiated grievance procedure and may not file an administrative FLSA claim with either VA or OPM unless FLSA claims are expressly excluded under the applicable bargaining agreement.

c. Non-Bargaining Unit employees may file an FLSA claim either with VA or with OPM; however, the same claim may not be pursued with both VA and OPM at the same time. Employees who elect to submit a claim first to VA may subsequently submit a claim to OPM if they are dissatisfied with the Department's decision. However, employees may not file a FLSA claim with VA if they have previously submitted the same claim to OPM.

d. All employees have the right to bring an action in an appropriate United States court. Filing a claim with VA or with OPM does not stop the statute of limitations from running. OPM will not decide a claim that is in litigation.

e. In accordance with [5 CFR 551.702](#), all FLSA pay claims filed after June 30, 1994, are subject to a two-year statute of limitations (three years for willful violations). An employee must submit a written claim to either the Department or to OPM in order to preserve the claim period. The date the Department or OPM receives the claim is the date that determines the period of possible back pay entitlement.

f. Under [5 CFR 551.104](#), “willful violation” means a violation in circumstances where the Department knew that its conduct was prohibited by the Act or showed reckless disregard of the requirements of the Act. All of the facts and circumstances surrounding the violation are taken into account in determining whether a violation was willful.

g. An FLSA claim filed with VA or OPM must be in writing and submitted through the local servicing HR management office. The HR office should forward the complete appeal package within 15 days of receipt. Failure to submit an appeal through the appropriate channels may result in a delay in the decision.

(1) The following information shall be submitted by an employee for a FLSA claim:

(a) A signed statement that the employee wishes to appeal the FLSA determination of his/her position;

(b) Name of local facility;

(c) Organization to which assigned;

(d) Current position title, series, and grade;

(e) The requested FLSA determination;

(f) A description of the nature of the claim and the specific duties, issues or incidents giving rise to the claim, including the time period covered by the claim;

(g) Evidence available which supports the claim, including the identity, commercial telephone number, and location of other individuals who may be able to provide information relating to the claim;

(h) A written designation of third party representation, if applicable. The designation must include the name, address, and phone number of the representative.

(i) Evidence, if available, that the claim period was preserved in accordance with the time limits in [5 CFR 551.702](#). The date VA or OPM received the claim, whichever is earlier, becomes the date the claim period is preserved;

(j) A statement as to whether the employee was or was not a member of a collective bargaining unit at any time during the claim period;

(k) If the employee encumbers a bargaining unit position, a statement that he/she was or was not covered by the negotiated grievance procedure at any time during the claim period, or if covered, whether that procedure specifically excluded the claim from the scope of the negotiated grievance procedure; and,

(l) A statement that the employee has not filed an action in an appropriate United States court.

(2) The following information shall be submitted by the servicing HR management office along with the material supplied by the appellant:

(a) A current, accurate position description (agreed to by all levels of management) which meets standards of adequacy and which is consistent with the position evaluation report, FLSA evaluation report, and the supervisor's comments.

(b) A position evaluation report which includes an in-depth comparison of the duties and responsibilities with published FLSA criteria. If the report was prepared prior to the appeal, it should be updated to cover salient points raised by the appellant that may not have been previously evaluated.

(c) Organizational and functional charts.

(d) Comments from the immediate supervisor and/or the service or division chief (or higher level official) relative to the accuracy of the position description and the merits of the FLSA appeal. Discrepancies or disagreements should be resolved before submitting the appeal for decision.

(e) Copies of official time and leave/pay records for the time period claimed.

h. VA Appeals will be forwarded to OHRM, Compensation and Classification Service (055), Attn: FLSA Claim, VA Central Office, 810 Vermont Ave. NW, Washington, DC 20420 and/or by email to VACOclassif@va.gov.

i. OPM claims will be forwarded to Classification and Pay Claims Program Manager, Center for Merit System Accountability, Office of Personnel Management, 1900 E Street, NW., Room 6484, Washington, DC 20415.

19.] OPM AUDITS AND VA HUMAN RESOURCES MANAGEMENT EVALUATIONS

a. OPM and the Office of Human Resources Management [(OHRM)] (055) in Central Office will conduct periodic classification audits and evaluations. Normally, these reviews will be part of a comprehensive evaluation of the human resources management program. All officials shall

cooperate fully with OPM or Department representatives in the conduct of these audits and evaluations.

b. [Under Secretaries], Assistant Secretaries, Deputy Assistant Secretaries, and Other Key Officials shall be kept fully informed of classification audit activities of OPM at VA field facilities. Normally, an advance notice of OPM's plans to visit facilities is provided to the [OHRM] (055), who advises the appropriate [Under Secretaries], Assistant Secretaries, Deputy Assistant Secretaries, and Other Key Officials. In those instances when OPM schedules a position audit activity without a formal notice, the field facility shall inform the appropriate VA Central Office line elements concerned. It is not necessary to inform VA Central Office of individual desk audits conducted by OPM as part of the classification appeal process.

c. Classification reviews and evaluations conducted by [OHRM] (055) will be coordinated through the appropriate VA Central Office line elements.

d. To the extent practicable, disagreements with OPM audit report findings pertaining to a specific non-centralized position or group of positions will be negotiated directly with the OPM regional office conducting the audit. Resolution of disagreements on [OHRM] findings will be pursued through normal channels. If the OPM audit involves centralized positions, [OHRM] is responsible for determining the action to be taken.

e. Except as specifically advised by [OHRM], a field facility will take necessary final corrective action on any position within its delegated classification authority that is certified by OPM.

f. The unions will be notified before any action is taken to change the classification of a bargaining unit employee's position as a result of an OPM audit or VA human resources management evaluation.

[APPENDIX D. FLSA DETERMINATION CRITERIA

1. NON-EXEMPTION CRITERIA

Type	Apply to	CFR Citation
Salary-based	<p>Employees, including supervisors, whose annual rate of basic pay is less than \$23,660</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 CFR 551.203</p> <p>5 CFR 551.211</p> <p>5 CFR 551.212</p> <p>5 CFR 551.208</p>
Position-based	<ul style="list-style-type: none"> • Certain non-supervisory, white collar employees (e.g., equipment operating or protective occupations and most clerical occupations) • Non-supervisory employees in the Federal Wage System (with the same exceptions as listed above for salary-based nonexemptions) who do not meet any of the exemption categories. • Employees at any grade in occupations requiring highly specialized, technical skills and knowledge that can be acquired only through prolonged job training and experience. • Employees performing technician work in positions classified below GS-9 and many, but not all, of those positions properly classified at GS-9 or above. 	<p>5 CFR 551.204</p>

2. EXEMPTION CRITERIA

Type	Apply to	CFR Citation
Executive	<p>Employees whose primary duties are management of a Federal agency or any subdivision (including the lowest recognized organizational unit with a continuing function) and who:</p> <ul style="list-style-type: none"> • Customarily and regularly direct the work of two or more other employees, and • Have the authority to hire or fire other employees (or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight). 	<p>5 CFR 551.205</p> <p>5 CFR 551.104</p>

PART I

APPENDIX D

Type	Apply to	CFR Citation
Administrative	Employees whose primary duties: <ul style="list-style-type: none"> • Are performing office or non-manual work directly related to the management or general business operations (as distinguished from production functions) of VA or VA's customers, and • Include exercising discretion and independent judgment on significant matters. 	5 CFR 551.206
Professional	Employees whose primary duties are performing work that requires: <ul style="list-style-type: none"> • Advanced knowledge in a field or science; and, • Learning customarily acquired by a prolonged course of specialized intellectual instruction (typically a 4 year degree); or • Invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor. NOTE: <i>There are three basic types of professionals: learned, creative, and computer</i>	5 CFR 551.207
	Learned professionals	
	Employees whose primary duties are performing work that requires advanced knowledge (predominately intellectual in nature and including work requiring the consistent exercise of discretion and judgment). The knowledge must be: <ul style="list-style-type: none"> • In a field of science or learning which includes the traditional professions of law; medicine; theology; accounting; actuarial computation; engineering; architecture; teaching; various types of physical, chemical, and biological sciences; pharmacy; and other similar occupations. • Acquired by a prolonged course of intellectual instruction in a field where specialized academic training is a standard prerequisite for entering the profession (typically Bachelors level preparation). 	5 CFR 551.208
	Creative professionals	
Employees whose primary duties are performing work that requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor (as opposed to routine mental, manual, mechanical, or physical work). Such fields include music, writing, acting, and the graphic arts.	5 CFR 551.209	

Type	Apply to	CFR Citation
	<p>Computer professionals</p> <p>Computer systems analysts, computer programmers, software engineers, or other similarly skilled workers in the computer field who are eligible under sections 13(a)(1) and (17) of FLSA. NOTE: <i>Because job titles vary widely and change quickly in the computer industry, job titles alone may not be used to determine the applicability of this exemption.</i></p>	<p>5 CFR 551.210</p>
<p>Title 38 Employees</p>	<p>Employees covered by 38 U.S.C. 7421 are excluded by statute. This includes physicians, dentists, podiatrists, optometrists, registered nurses, physician assistants, expanded function dental auxiliaries, and chiropractors.</p>	
<p>Certain Hybrid Title 38 employees</p>	<p>Hybrid employees who are authorized to receive premium pay on the same basis as registered nurses are exempt from the FLSA overtime pay provision.</p>	
<p>Availability pay</p>	<p>Criminal investigators who receive availability pay under 5 CFR 550.181(a).</p>	<p>5 CFR 551.213</p>
<p>Exemptions because of temporary duties or performing different work assignments from primary work</p>	<ul style="list-style-type: none"> • Employees performing work or duties that are not consistent with the employee’s primary duties and are for an extended period of more than 30 consecutive calendar days; or • Employees performing work or duties under designated emergency situations that directly threaten human life or safety, serious damage to property, or serious disruption to operations. In this case, nonexempt employees’ designations remain nonexempt. Exempt employees’ designations will depend on the primary duties the employees perform within a work week (see 5 CFR 551.211 (f)(2)). 	<p>5 CFR 551.211</p>

NOTE: *The above categories are not mutually exclusive. Failure to meet the criteria for exemption under one category does not preclude exemption under another category.]*