

§ 551.103 Coverage.

(a) *Covered.* Any employee of an agency who is not specifically excluded by another statute is covered by the Act. This includes any person who is—

(1) Defined as an employee in section 2105 of title 5, United States Code;

(2) A civilian employee appointed under other appropriate authority; or

(3) Suffered or permitted to work by an agency whether or not formally appointed.

(b) *Not covered.* The following persons are not covered under the Act:

(1) A person appointed under appropriate authority without compensation;

(2) A trainee;

(3) A volunteer; or

(4) A member of the Uniformed Services.

§ 551.104 Definitions.

In this part—

Act or *FLSA* means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 *et seq.*).

Administrative employee means an employee who meets the criteria in § 551.206.

Agency, for purposes of OPM's administration of the Act, means any instrumentality of the United States Government, or any constituent element thereof acting directly or indirectly as an employer, as this term is defined in section 3(d) of the Act and in this section, but does not include the entities of the United States Government listed in § 551.102(c) for which the Department of Labor administers the Act or § 551.102(d)(1) through (8), whose employees are covered by the Congressional Accountability Act of 1995, as amended, which makes applicable the rights and protections of the FLSA and assigns certain administrative responsibilities to the Office of Compliance.

Claim means a written allegation from a current or former employee concerning his or her FLSA exemption status determination or entitlement to minimum wage or overtime pay for work performed under the Act. The term "claim" is used generically in subpart G of this part to include complaints under the child labor provisions of the Act.

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

Claimant means a current or former employee who files an FLSA claim.

Customarily and regularly means a frequency which must be greater than occasional but which may be less than constant. For example, the requirement in § 551.205(a)(2) will be met by an employee who normally and recurrently exercises discretion and independent judgment in the day-to-day performance of duties.

Discretion and independent judgment means work that involves comparing and evaluating possible courses of conduct, interpreting results or implications, and independently taking action or making a decision after considering the various possibilities. However, firm commitments or final decisions are not necessary to support exemption. The "decisions" made as a result of the exercise of independent judgment may consist of *recommendations for action* rather than the actual taking of action. The fact that an employee's decisions are subject to review, and that on occasion the decisions are revised or reversed after review, does not mean that the employee is not exercising discretion and independent judgment of the level required for exemption. Work reflective of discretion and independent judgment must meet the three following criteria:

(1) The work must be sufficiently complex and varied so as to customarily and regularly require discretion and independent judgment in determining the approaches and techniques to be used, and in evaluating results. This precludes exempting an employee who performs work primarily requiring skill in applying standardized techniques or knowledge of established procedures, precedents, or other guidelines which specifically govern the employee's action.

(2) The employee must have the authority to make such determinations during the course of assignments. This precludes exempting trainees who are in a line of work which requires discretion but who have not been given authority to decide discretionary matters independently.