

Employees may be designated as exempt from Fair Labor Standards Act (FLSA) overtime provisions if certain requirements are met. Exemptions should be granted only when an employee clearly qualifies for the exemption. Although the FLSA generally requires employers to pay overtime to employees working over 40 hours per week, employees holding executive, administrative, professional, or certain computer-related positions are exempt from the overtime requirements. To qualify as exempt under any exemption, an employee must satisfy the following three tests:

- Have a salary above a certain dollar threshold,
- Be paid on a “salary basis,” and
- Perform duties that qualify for an exemption.

A summary and explanation of wage and hour laws and of the requirements of the FLSA exemptions may be found on the [Department of Labor \(DOL\) website](#). Particularly useful is [DOL’s elaws Advisor](#), an interactive tool that asks questions and provides answers based on the responses given.

This process is to be followed as a first step in the recruitment process and required before a job title is determined.

#### **A. Reviewing an Employee’s FLSA Designation**

1. HR representatives must inform the Employment Relations Specialist who conducts FLSA status reviews (hereinafter the “reviewer”) when there has been an approval to fill a vacant position. The reviewer should be provided with the position description and the proposed minimum salary.
2. The reviewer, in consultation with the HR representative, should determine whether the position description provides a sufficient basis for an FLSA status determination. If it is determined that the position description is inadequate to determine FLSA status, the HR representative and the reviewer should meet with the supervisor (who will supervise the employee who fills the position) to obtain additional information about the job duties and responsibilities.
3. The reviewer will use DOL’s [elaws – FLSA Overtime Security Advisor](http://webapps.dol.gov/elaws/flsa/overtime/menu.htm) (link: <http://webapps.dol.gov/elaws/flsa/overtime/menu.htm>) to determine whether the position should be posted as an FLSA exempt or nonexempt position.
4. A copy of the completed DOL elaws summary worksheet will state that, based on the information submitted, the employee either appears to meet the duties test to be considered an exempt employee, or the employee does not appear to meet the duties test for exemption. The reviewer must add his or her conclusion as to whether the vacant position should be filled with an exempt or nonexempt employee.

5. The summary worksheet described in Step 4 above must become part of the recruitment file, and eventually part of the employee's personnel file.
6. The reviewer will file a copy of the completed DOL elaws summary worksheet in the G>PERS>-PERS New>FLSA>FLSA Status of Vacant Jobs sub-folder.

**B. Objections to the FLSA Designation**

1. If a supervisor objects to the reviewer's FLSA status designation, the supervisor, the reviewer, the HR representative, and the UWSA HR Director should meet to discuss whether the employee should be designated as exempt or nonexempt.
2. If there is no consensus, the HR Director, after consulting with UW System Office of General Counsel, will determine the FLSA status of the employee.