

FLSA EXEMPTION DETERMINATION CHECKLIST

Temporarily Performing Different Duties Exemption Checklist

		YES	NO
1.	<p>APPLICABILITY: This checklist applies only when an employee must perform work or duties that are not consistent with the employee's primary duties for an extended period, that is, for more than 30 consecutive calendar days - the "30-day test." See 5 CFR 551.211.</p> <p>Agencies must reassess their employees' exemption status when they temporarily perform duties that are inconsistent with their primary duties for more than 30 consecutive calendar days. However, agencies do not have to make a reassessment for employees who temporarily work in other identical or similar positions that have the same basic duties and exemption status as their regular positions. See 5 CFR 551.211. Employees with a pay rate of any amount may be classified as exempt if they meet the requirements for an appropriate exemption when temporarily performing different duties. See 5 CFR 551.203.</p> <p><i>(Are there procedures set up for supervisors to notify HR whenever their employees temporarily perform different duties? Have you set up a process so that you can reassess these employees' exemption status? In your reassessment, did you analyze whether the duties temporarily performed were consistent with the employee's normal primary duties? (Attach documentary evidence to support your answer.)</i></p> <p>The employee has performed work or duties that are not consistent with his/her primary duties for more than 30 consecutive calendar days.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>If the answer to Question 1 is YES, then move to Question 3. If you answered NO to Question 1, STOP. This checklist is used only when temporary work exceeds 30 consecutive calendar days.</p>	If YES, go to # 3	If NO, STOP
3.	<p>Were the primary duties different enough to change the employee's classification <i>(either from or to non-exempt or exempt)?</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
4.	<p>If the answer to Question 3 is YES, then move to Question 5. If you answered NO to Question 3, move to # 14 and mark "No Change".</p>	If YES, go to # 5	If NO, go to # 14
5.	<p>Did you make sure that the supervisor was not trying to avoid reassessment by breaking up the employee's work schedule so that temporary work or duties are interspersed with regular work or duties?</p> <p>An agency may not assign exempt employees to perform non-exempt work or duties for 29 consecutive calendar days, return them to their exempt duties for two or three days, then assign them again to perform non-exempt work for another 29 days.</p>	<input type="checkbox"/>	<input type="checkbox"/>

		YES	NO
6.	<p>RECALCULATING PAY: If the classification changed, did you:</p> <p>Change the classification accordingly for the entire period of temporary work or duties?</p> <p style="text-align: center;">AND</p> <p>Recalculate the total pay retroactive to the beginning of that period so that, where applicable, temporarily non-exempt employees receive FLSA overtime pay and temporarily equivalent overtime pay?</p> <p>Go to # 14 and document dates of change and the exemption that applies.</p>	<input type="checkbox"/>	<input type="checkbox"/>

FOR EMERGENCY SITUATIONS COMPLETE QUESTIONS 7 - 13

7.	<p>Emergency situations. Agencies may determine that an emergency situation exists that directly threatens human life or safety, serious damage to property, or serious disruption to the operations of an activity, and there is no recourse other than to assign qualified employees to temporarily perform work in connection with the emergency.</p> <p>Has the agency determined an emergency situation exists? Or is the temporary work being performed in connection with an emergency?</p>	<input type="checkbox"/>	<input type="checkbox"/>
8.	<p>If the answer to Question 7 is YES, then move to Question 9. If you answered NO, STOP. This section does not apply.</p>	If YES, go to # 9	If NO, STOP
9.	<p>A non-exempt employee remains non-exempt whether the employee performs non-exempt or exempt work during the emergency. Are the employee's normal primary duties non-exempt?</p>	<input type="checkbox"/>	<input type="checkbox"/>
10.	<p>If the answer to Question 9 is YES, move to # 14 and mark "No Change". If you answered NO to Question 9, then move to Question 11.</p>	If YES, go to # 14	If NO, go to # 11
11.	<p>An exempt employee becomes non-exempt for any workweek in which the employee's primary duties for the period of emergency work are non-exempt. Is the exempt employee temporarily performing non-exempt work during the emergency period?</p>	<input type="checkbox"/>	<input type="checkbox"/>
12.	<p>If the answer to Question 11 is YES, then move to Question 13. If you answered NO to Question 11, move to #14 and mark "No Change".</p>	If YES, go to # 13	If NO, go to # 11
13.	<p>RECALCULATING PAY: If the classification changed, did you:</p> <p>Change the classification accordingly for the entire period of temporary work or duties?</p> <p style="text-align: center;">AND</p> <p>Recalculate the total pay retroactive to the beginning of that period so that, where applicable, temporarily non-exempt employees receive FLSA overtime pay and temporarily equivalent overtime pay?</p> <p>Go to # 14 and document dates of change and the exemption that applies.</p>	<input type="checkbox"/>	<input type="checkbox"/>

Exemption Status

14. NO CHANGE. The employee does not meet the definition for the temporary exemption.

TEMPORARY CHANGE. Check the appropriate box and record the end date for the temporary duties:

Temporarily exempt from _____
until _____
under the _____ exemption.

Temporarily non-exempt from _____
until _____,
when the employee's status changes back to exempt
under _____.