

FLSA EXEMPTION DETERMINATION CHECKLIST

Foreign Exemption Checklist

		YES	NO
1.	<p>APPLICATION: To qualify for the foreign exemption, employees must spend all hours of work in a given workweek in one or more exempt areas, regardless of where they are permanently stationed.</p> <p>The employee has first worked all hours in a workweek in an exempt area. EXEMPT AREAS are defined as any foreign country or territory under U.S. jurisdiction, other than Puerto Rico, the U.S. Virgin Islands, Outer Continental Shelf Lands, American Samoa, Guam, Commonwealth of Northern Mariana Islands, Midway Atoll, Wake Island, Johnston Island, and Palmyra. <i>(The minimum wage, overtime, and child labor provisions do not apply to any employee who spends all hours of work in a given workweek in an exempt area.)</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>If the answer to Question 1 is YES, then move to Question 4. If you answered NO to Question 1, the foreign exemption does not apply. This checklist is used only if the employee first spends all hours of work in a given workweek in one or more exempt areas.</p>	If YES, go to # 4	If NO, STOP
3.	<p>Employees permanently stationed in an exempt area, but spends any hours of work in any non-exempt area. Employees who at first qualifies for the foreign exemption, then lose their exempt status once they work any hours in a non-exempt area during a workweek. This means that, for any given workweek, the foreign exemption does not apply to an employee permanently stationed in an exempt area who spends any hours of work in any non-exempt area. Employees must re-qualify for the foreign exemption once they return to an exempt area after performing any work in a non-exempt area.</p> <p>NON-EXEMPT AREAS are defined as U.S. state commonwealth, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Outer Continental Shelf Lands, American Samoa, Guam, Commonwealth of Northern Mariana Islands, Midway Atoll, Wake Island, Johnston Island, and Palmyra.</p> <p>- Have you set up procedures so that supervisors will notify HR whenever these employees are scheduled to or have performed work in nonexempt areas?</p> <p>- Have you set up a process so that you can reassess these employees exemption status?</p> <p>- In your reassessment, did you analyze whether the primary duties performed in the non-exempt area for that workweek were consistent with the employee's normal primary duties in the exempt area? <i>(Attach documentary evidence to support your answer.)</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

YES NO

SAME OR DIFFERENT DUTIES. Employees remain exempt if the answer is YES to either a or b of the following:

a. **SAME DUTIES.** If the duties performed during that workweek are consistent with the primary duties of the employee's official position, would the employee qualify for another exemption if you treated the employee as he/she was permanently stationed in a non-exempt area? *(Attach documentary evidence to support your answer, including the relevant exemption status checklist.)*

OR:

b. **DIFFERENT DUTIES.** Part I: If the duties performed during that workweek are NOT consistent with the primary duties of the employee's official position, would the employee qualify for another exemption if you first treated the employee as if he/she was permanently stationed in a non-exempt area? *(Attach documentary evidence to support your answer, including the relevant exemption status checklist.)*

AND:

Part II: Would the employee qualify for another exemption when you applied the rules for temporarily performing different work under 5 CFR 551.211 *(Attach the completed Temporarily Performing Duties Checklist.)*

Foreign Exemption

4. The employee meets the definition for the foreign exemption and should be marked as exempt only if you answered YES to Question 1 **OR** 3a **OR** b Parts I & II.

EXEMPT

If you answered NO to Question 3a **AND** b, then the employee does not meet the definition for the foreign exemption, and you must mark the employee as non-exempt.

NON-EXEMPT