

Fair Labor Standards Act: Foreign Exemption Fact Sheet

MSO-99-2

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The foreign exemption is a provision of the Fair Labor Standards Act of 1938 (the Act or FLSA), as amended, under which 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. Our regulation on the foreign exemption is published in section 551.209 of title 5, Code of Federal Regulations (CFR). If the foreign exemption applies, the employee may be paid for overtime hours under title 5 of the United States Code (U.S.C.) or other applicable law, rather than under the FLSA. The foreign exemption chart will assist in determining whether the foreign exemption applies to an employee. (The foreign exemption chart is available only as an Adobe Acrobat file.)

Definitions

FLSA exempt means not covered by the minimum wage and overtime provisions of the Act.

FLSA nonexempt means covered by the minimum wage and overtime provisions of the Act.

Exempt area means any foreign country, or any territory under the jurisdiction of the United States *other than* the following locations: a State of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462), American Samoa, Guam, Midway Atoll, Wake Island, Johnston Island, and Palmyra.

Hours of work means all time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency. Hours of work are creditable for the purpose of determining FLSA overtime pay. However, whether time is credited as hours of work is determined by considering many factors, such as the rules in subparts D and E of part 551 of 5 CFR, provisions of law, Comptroller General decisions, OPM policy guidance, agency policy and regulations, negotiated agreements, the rules in part 550 of 5 CFR (for hours of work for travel), and the rules in part 410 of 5 CFR (for hours of work for training).

Nonexempt area means any of the following locations: a State of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462), American Samoa, Guam, Midway Atoll, Wake Island, Johnston Island, and Palmyra.

Workweek means a fixed and recurring period of 168 hours--seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of a day. For employees subject to part 610 of 5 CFR, the workweek shall be the same as the administrative workweek defined in section 610.102 of 5 CFR.

Workweek basis means the unit of time used as the basis for applying overtime standards under the FLSA and, for employees under flexible or compressed work schedules, under 5 U.S.C. 6121(6) or (7). The FLSA takes a single workweek as its standard and does not permit averaging of hours over two or more weeks, except for employees engaged in fire protection or law enforcement activities under section 7(k) of the FLSA.

Office of Personnel Management Authority

Section 3(e)(2) of the Fair Labor Standards Act of 1938, as amended (sections 201 *et seq.* of title 29, United States Code), authorizes the application of the provisions of the Act to any person employed by the Government of the United States within a “state,” as defined in section 3(c) of the Act (see section 776.7 of title 29, Code of Federal Regulations). Section 4(f) of the Act authorizes the Office of Personnel Management (OPM) to administer the provisions of the Act for all such employees, except for those who are employed by the Library of Congress, United States Postal Service, Postal Rate Commission, Tennessee Valley Authority, U.S. House of Representatives, U.S. Senate, Capitol Guide Service, Capitol Police, Congressional Budget Office, Office of the Architect of the Capitol, Office of the Attending Physician, Office of Compliance, or presidential offices. Employees of these entities should contact their human resources office regarding FLSA matters.

For More Information

Visit our web site. For general information about FLSA exemption issues and FLSA claims, go to <http://www.opm.gov/flsa>. For general information about Federal pay and leave policies and programs (including FLSA overtime pay), go to <http://www.opm.gov/Oc>.

Read our regulations. OPM’s FLSA regulations are published in part 551 of title 5, Code of Federal Regulations.

Talk with your supervisor. Your FLSA exemption status indicates whether you are nonexempt (covered by the FLSA) or exempt (not covered by the FLSA). If you think your FLSA exemption status or FLSA overtime pay is not correct or if you are concerned about the application of the child labor provisions of the FLSA, please review our FLSA coverage fact sheet, then speak with your supervisor.

Talk with your human resources office. If you have questions your supervisor cannot answer, please speak with someone in your human resources office. Each agency administers the pay and leave policies for its own employees, including developing internal policies and procedures as needed. The Office of Personnel Management **does not** maintain personnel records of employees in other agencies. You should first attempt to resolve individual FLSA, pay, and leave problems with your employing agency. Because of the detailed information required and the investigative work we must do in FLSA cases, *we cannot respond to specific questions about your individual FLSA situation.* *Specific questions* about your individual pay or leave

entitlement, including FLSA overtime pay matters, should be addressed to your agency's human resources office.

If you want to file an FLSA complaint or claim after talking with your supervisor and your human resources office, please review our FLSA claims fact sheet. An FLSA claim or complaint may not be filed electronically.

After contacting your human resources office, general inquiries about Federal pay and leave policies and programs (including FLSA overtime pay) may be sent to payleave@opm.gov. *General inquiries* about how the child labor provisions or exemption criteria of the FLSA apply to current and former employees of the Federal Government and about how to file a claim under the Fair Labor Standards Act may be sent to us at [Federal_FLSA @opm.gov](mailto:Federal_FLSA@opm.gov). You may also contact the OPM Oversight Division serving your geographical area.

Address and Jurisdiction	Telephone
<p>OPM Atlanta Oversight Division 75 Spring Street, SW., Suite 972 Atlanta, GA 30303-3109</p> <p>Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia (except as noted under the Washington, DC Oversight Division)</p>	(404) 331-3451
<p>OPM Chicago Oversight Division 230 S. Dearborn Street, DPN 30-6 Chicago, IL 60604-1687</p> <p>Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, West Virginia, Wisconsin</p>	(312) 353-0387
<p>OPM Dallas Oversight Division 1100 Commerce Street, Room 4C22 Dallas, TX 75242-9968</p> <p>Arizona, Arkansas, Colorado, Louisiana, Montana, New Mexico, Oklahoma, Texas, Utah, Wyoming</p>	(214) 767-0561
<p>OPM Philadelphia Oversight Division 600 Arch Street, Room 3400 Philadelphia, PA 19106-1596</p> <p>Connecticut, Delaware, Maine, Maryland (except as noted under the Washington, DC Oversight Division), Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Puerto Rico, Virgin Islands</p>	(215) 861-3102
<p>OPM San Francisco Oversight Division 120 Howard Street, Room 760 San Francisco, CA 94105-0001</p> <p>Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington, Pacific Ocean Area</p>	(415) 281-7050
<p>OPM Washington, DC Oversight Division 1900 E Street, NW., Room 7675 Washington, DC 20415-6000</p>	(202) 606-2990
<p>The District of Columbia In Maryland: the counties of Charles, Montgomery, and Prince George's. In Virginia: the counties of Arlington, Fairfax, King George, Loudoun, Prince William, and Stafford; the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and any overseas area not included above.</p>	

Frequently Asked Questions

1. Does the foreign exemption apply when--

- a. A nonexempt employee travels from a nonexempt area to an exempt area, works three workdays, and then returns to a nonexempt area?

No, the foreign exemption does not apply because the nonexempt employee did not perform all hours of work in the workweek in an exempt area.

- b. A nonexempt employee travels from a nonexempt area to an exempt area and works 5 workdays from the middle of one workweek to the middle of the next workweek, and then returns to a nonexempt area?

No, the foreign exemption does not apply because the nonexempt employee did not perform all hours of work in a workweek in an exempt area.

- c. A nonexempt employee in an exempt area who is already subject to the foreign exemption boards a carrier (such as a plane or ship) and performs work?

Yes, the foreign exemption continues to apply until the nonexempt employee performs work in a nonexempt area.

- d. A nonexempt employee in an exempt area who is already subject to the foreign exemption performs work in the United States or any other nonexempt area?

No, the foreign exemption does not apply for that workweek because the nonexempt employee did not perform all hours of work in the workweek in an exempt area.

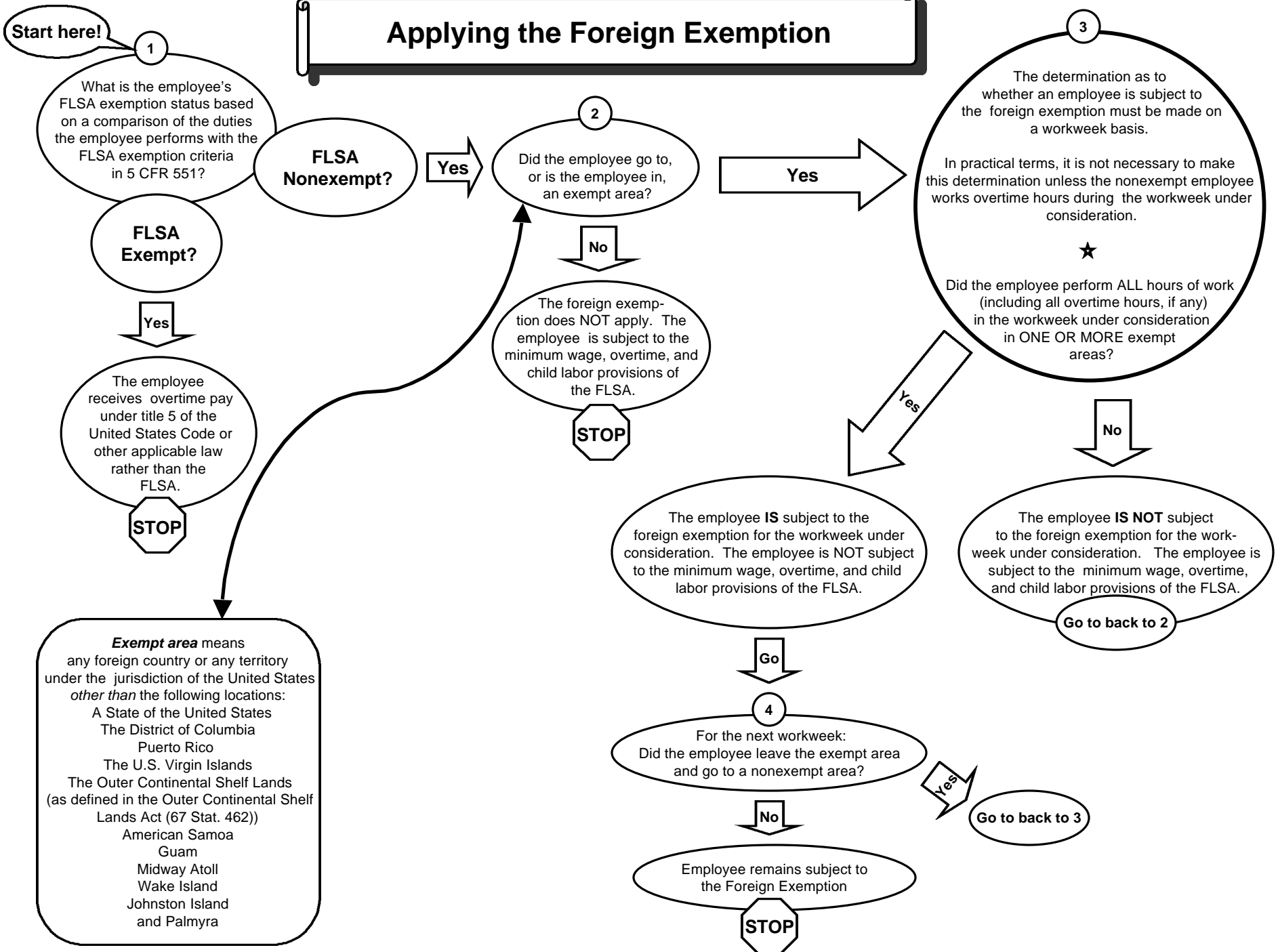
2. Does it make any difference what kind of carrier (that is, a U.S. carrier versus a foreign carrier) the nonexempt employee uses to travel?

No, it makes no difference whether the nonexempt employee uses a U.S. carrier or a foreign carrier to travel between areas, whether the areas are exempt or nonexempt.

3. How can I keep track of whether the foreign exemption applies to a nonexempt employee?

Think of the foreign exemption as a jacket. As long as the nonexempt employee is in a nonexempt area, the employee is not wearing the foreign exemption jacket. When the nonexempt employee travels from a nonexempt area to an exempt area, the foreign exemption does not apply until the nonexempt employee performs all hours of work in a workweek in the exempt area. Once the nonexempt employee performs all hours of work in a workweek in an exempt area, the employee puts on the foreign exemption jacket and the foreign exemption applies for that workweek. The nonexempt employee keeps the foreign exemption jacket on, even when traveling, until the employee goes to a nonexempt area and performs any hours of work. The minute the nonexempt employee begins to perform any hours of work in a nonexempt area, the employee takes off the foreign exemption jacket and the foreign exemption no longer applies. If the nonexempt employee later goes to an exempt area, the employee must re-qualify for the foreign exemption to apply.

Applying the Foreign Exemption



Exempt area means any foreign country or any territory under the jurisdiction of the United States *other than* the following locations:

- A State of the United States
- The District of Columbia
- Puerto Rico
- The U.S. Virgin Islands
- The Outer Continental Shelf Lands (as defined in the Outer Continental Shelf Lands Act (67 Stat. 462))
- American Samoa
- Guam
- Midway Atoll
- Wake Island
- Johnston Island and Palmyra