

THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
401 Golden Shore
Long Beach, CA 90802-4210
(562) 951-4411

Date: September 25, 2003

Code: TECHNICAL LETTER
HR/Salary 2003-08

To: Human Resources Directors
Associate Vice Presidents/Deans of Faculty Affairs
Payroll Managers

Reference: HR 2003-09
HR/Salary2003-03

From: Cathy Robinson
Assistant Vice Chancellor
Human Resources



Subject: Public Contract Code Restrictions Impact: Considerations for Proctors, Readers and Graders

HR Letter 2003-09 outlined Public Contract Code (PCC) conflict of interest provisions applicable to the California State University (CSU) effective July 1, 2003, as a result of Senate Bill (SB) 1467. This technical letter addresses the impact of SB 1467 as it relates to proctors, readers and graders working with outside testing agencies who receive funding from a state agency contract, including the CSU (e.g., Educational Testing Services). Clarification on the following topics is provided in this technical letter:

- ✓ CSU's business relationship with outside testing organizations and SB 1467 impact
- ✓ Employment arrangements between CSU and testing organizations funded by a State agency contract
- ✓ FLSA exemption status for proctors, readers and graders
- ✓ Clarification on overtime requirements
- ✓ Additional employment considerations
- ✓ Staffing considerations

Pending Legislation Changes – SB 41

SB 41 is now on the Governor's desk. If signed, effective January 1, 2004, CSU employees would be able to contract with state agencies; however, employees, with the exception of employees with teaching or research responsibilities, still could not contract with the CSU unless the activity was within the course and scope of the employee's regular CSU employment. If signed, this bill would provide flexibility for faculty to work on CSU contracts as readers and graders. It is not anticipated that this bill would provide much relief for the "ETS proctor situation." If signed, systemwide Human Resources and General Counsel will update HR 2003-09, "New Public Contract Code Restrictions for CSU Employees," to reflect changes.

Distribution:

CSU Presidents
Chancellor's Office Executives
Vice Presidents, Student Affairs
Vice Presidents, Academic Affairs

Vice Presidents, Administration
Directors, Testing
Business Officers

- **CSU's Business Relationship with Outside Testing Organizations and SB 1467 Impact:**

The CSU has an established practice of contracting with outside testing organizations such as Educational Testing Services (ETS) to provide proctor, reader and grader services. These outside organizations would hire CSU employees to perform these services and pay them. This arrangement did not require CSU payroll involvement. Some of these testing organizations are funded by a state agency contract (e.g., CSU). SB 1467, effective July 1, 2003, prohibits CSU employees from contracting with or being employed by an entity that receives its funding from a state contract, unless required by his/her employment. To accommodate these new restrictions, CSU employees serving as proctors, readers and graders for these outside testing organizations funded by state contracts were hired by the campus and paid via CSU payroll (issued by the State Controller's Office). This new employment arrangement has resulted in various administrative questions and has required campuses to revisit their testing and related employment procedures.

- **Employment Arrangements between CSU and Testing Organizations Funded by a State Agency Contract:**

Typically, proctor, reader and grader work is performed for a specific campus. Occasionally, some reader and grader assignments may be for the CSU but not coordinated directly with the employee's home campus (e.g., reading/grader assignments at a central location such as Concord, CA). In these instances, campus human resources, payroll and testing departments will need to coordinate to ensure employees are paid for work performed. As required, reimbursement for payroll costs will need to be coordinated between systemwide Academic Affairs, the testing organization, and the campus' testing and business affairs/accounting offices.

- **FLSA Exemption Status For Proctors, Readers and Graders:**

- ✓ Proctor work does not pass Fair Labor Standards Act (FLSA) exemption tests and is considered "non-exempt" work.
- ✓ Work performed by readers and graders working for a testing organization do pass FLSA exemption tests and is considered "exempt" work. Note that the non-exempt Excluded "Reader" classification (code 7172) is not appropriate for readers and graders addressed in this technical letter.

- **Clarification on Overtime Requirements:**

Campuses must evaluate overtime requirements for proctors, readers and graders on an employee-by-employee basis. Different rules apply depending on the following factors:

- ✓ Is the employee's primary position represented or unrepresented?
- ✓ What is the FLSA status for the worked performed in each position?
- ✓ Is the work performed as a proctor, reader or grader considered occasional or sporadic and is it substantially different from the employee's primary position?

To assist campuses, two attachments are provided. Attachment A provides a summary matrix to help determine overtime requirements for a specific employee as well as a detailed explanation of the varying overtime rules for represented and unrepresented non-exempt employees. Attachment B provides examples of how overtime is calculated for employees in multiple positions.

- **Additional Employment Considerations:**

When CSU employees were hired as proctors, readers or graders by an outside testing organization, their outside employment did not count toward CSU's Additional Employment policy limitations. However, since these employees are now providing these testing services as CSU employees, their time spent providing these services is considered when monitoring Additional Employment limits.

Important Note: The CSU's Additional Employment policy states, "if an employee holds a non-exempt position and an exempt position, the employee must be considered non-exempt for pay purposes." However, this statement does not apply if an exempt employee performs non-exempt work on an occasional or sporadic basis that is substantially different from the employee's primary position.

- **Staffing Considerations:**

Outside testing organizations can hire lower-division or graduate students, non-CSU employees, retired CSU employees or volunteers to perform proctor, reader or grader work. SB 1467 restrictions do apply to Student Assistants and Graduate Assistants since they are student employees of the CSU.

Under SB 1467, campuses cannot use campus foundations to hire CSU employees to perform reader, proctor or grader work if that work is funded by the CSU or another State agency contract.

Questions regarding employment-related aspects of this technical letter should be directed to systemwide Human Resources at (562) 951-4411. Questions regarding testing or ETS arrangements should be directed to Leon Washington in systemwide Academic Affairs at (562) 951-4726. This document is available on Human Resources Administration's Web site at: <http://www.calstate.edu/HRAdm/memos.shtml>.

CR/gc

Overtime Guidelines for Proctors

Employee's Primary Position/Classification	Additional Position for Proctoring Work (assumes work is substantially different than primary job)	Is Proctoring Work Occasional or Sporadic?	Pay Basis for Proctoring Work	Overtime Required for Hours Worked in Excess of 40?	Include Primary Position's Pay in Regular Rate of Pay Calculation for Proctoring Work?
Exempt – Represented Staff (e.g., Analyst/Prog- Career level, Student Service Professional II)	Non-Exempt (e.g., Casual Worker)	Yes	Per Hour	No	No
		No	Per Hour	Yes	Yes
Exempt –Represented Faculty	Non-Exempt (e.g., Casual Worker)	Yes	Per Hour	No	No
		No	Per Hour	No	No
Exempt –Unrepresented (e.g., , Confidential Admin Support – Level 2, MPP, Excluded classes)	Non-Exempt (e.g., Casual Worker)	Yes	Per Hour	No	No
		No	Per Hour	No	No
Non-Exempt – Represented Staff (e.g. Admin Support Asst, Analyst/Programmer – Foundation)	Non-Exempt (e.g., Casual Worker)	Yes	Per Hour	Yes	Yes
		No	Per Hour	Yes	Yes
Non-Exempt - Unrepresented (e.g. Confidential or Excluded classification)	Non-Exempt (e.g., Casual Worker)	Yes	Per Hour	No	No
		No	Per Hour	Yes	Yes

Overtime Requirements for Readers/Graders

Employee's Primary Position/Classification	Additional Position for Reader/Grader ¹ (assumes work is substantially different than primary job)	Is Reader/Grader Work Occasional or Sporadic?	Pay Basis for Reader/Grader Work ²	Overtime Required for Hours Worked in Excess of 40?	Include Primary Position Pay in Regular Rate of Pay Calculation for Proctoring Work?
Exempt – Represented Staff (e.g., Analyst/Prog- Career level, Student Service Professional II)	Exempt (e.g., Special Consultant)	Yes	Per Day	No	No
		No	Per Day	No	No
Exempt –Represented Faculty	Exempt (e.g., Special Consultant)	Yes	Per Day	No	No
		No	Per Day	No	No
Exempt –Unrepresented (e.g., Confidential Admin Support – Level 2, MPP, Excluded classes)	Exempt (e.g., Special Consultant)	Yes	Per Day	No	No
		No	Per Day	No	No
Non-Exempt – Represented Staff (e.g. Admin Support Asst, Analyst/Programmer – Foundation)	Exempt (e.g., Special Consultant)	Yes	Per Day	Yes	Yes
		No	Per Day	Yes	Yes
Non-Exempt - Unrepresented (e.g. Confidential or Excluded classification)	Exempt (e.g., Special Consultant)	Yes	Per Day	No	No
		No	Per Day	Yes	Yes

¹ Note that the Excluded Reader class (code 7172) is not appropriate for ETS readers.

² Exempt employees cannot be paid on an hourly or piece-rate basis.

Brief Summary on Overtime Requirements under FLSA and the Collective Bargaining Agreements³

Non-Exempt Unrepresented Employees

Under FLSA, non-exempt employees are to receive overtime for hours worked in excess of 40 in a workweek. The overtime rate is one and one-half of the employee's "regular rate of pay." In accordance with FLSA, overtime is not required to be paid for hours worked in excess of 40 in a workweek if the non-exempt employee receives an additional employment assignment that meets two criteria: 1) additional assignment is on an occasional or sporadic basis, and 2) additional assignment is substantially different from the current assignment.

Non-Exempt Represented Employees

Collective bargaining agreements (CBAs) provide overtime requirements in addition to FLSA. Specifically, staff CBAs require that the CSU pays non-exempt employees for hours worked in excess of 40 regardless if the work is occasional or sporadic or substantially different from the current assignment.

Exempt Unrepresented and Represented Employees

If an exempt employee performs non-exempt work (e.g., proctor) on an occasional or sporadic basis in an assignment that is substantially different from the current assignment, overtime is not required. It is anticipated that proctor, reader and grader work is performed on an occasional or sporadic basis in an additional assignment that is substantially different from the current assignment. Thus, there is no overtime requirement for exempt employees performing this work.

However, if an exempt represented employee holds an additional non-exempt position and that position is ongoing (i.e., does not meet the "occasional or sporadic" definition), the employee is considered non-exempt for pay purposes and should be paid overtime for any hours worked in excess of forty (40).

³ For detailed information on determining the regular rate of pay and calculating overtime, refer to HR/Salary 2003-03.

Overtime Calculation Examples

Example #1: A fulltime non-exempt CSEA employee proctors an exam for four hours within a workweek period. To pay the employee for proctoring the exam, the campus appoints the employee in a temporary (A52) hourly intermittent appointment (Item 310 = "H", Item 405 = "INT") in the Casual Worker classification (class code 1800) at the rate of \$15 per hour.

Step 1: Determine the "regular rate of pay":

Monthly base salary rate in fulltime CSEA position	= \$3935
Weekly rate equivalent for forty (40) hours	= \$ 908.08 (3935 x12/52)
Proctor pay for four (4) hours in one work week	= <u>\$ 60.00</u> (\$15 x 4 hours)
Add the intermittent pay to weekly rate equivalent	= \$ 968.08
<i>FLSA regular rate of pay</i>	= <i>\$22.00 (968.08/44 hours)</i>

Step 2: Determine overtime compensation

FLSA overtime premium formula	= [.5 x "regular rate" x # OT hours] = .5 x \$22.00 x 4 = \$44.00
Determine OT @ 4 hours	= regular rate x OT hours = \$22.00 x 4 = \$88.00 (of which \$60 is paid from posn #2)
<i>Total overtime premium</i>	= <i>\$132.00 (of which \$60 is paid from posn #2)</i>

Step 3: Determine regular rate OT rate = \$33.00 (\$22 x 1.5)

Step 4: Total compensation for the pay period (the employee receives three checks, all subject to taxation)

1. Monthly salary warrant position #1:	= \$ 3935
2. Posn #2 Pipped @ straight rate	= \$ 60
3. OT pay keyed from posn #1 via "OF6" ¹ :	= <u>\$ 72.27</u> (\$33.00 x 2.19 hours*) – see below
Actual pay period compensation	= \$ 4067.27
Actual OT pay is \$132 minus \$60	= \$72.00
Note that 72/33.00 (the OT rate)	= 2.18 hours, and 2.18 x \$33.00 = \$71.94
Which is less than what is minimally due	
So, must round up to	= 2.19 x 33.0 = \$72.27

¹ Earnings ID Code "OF6" is used when the hourly rate is manually calculated and entered on the PIP. The overtime factor for code OF6 is 1.5. Refer to Section G of the State Controller's Payroll Procedure Manual for additional information.

Overtime Calculation Examples

Example # 2: A non-exempt employee is regularly scheduled to work 30 hours each week (timebase is .75). In addition, the employee proctors two exams within one work week period for three hours each exam, and then proctors a four-hour exam for two consecutive weeks within the pay period. Proctor pay is \$15.00 per hour.

Work week 1 - Total Hours in both positions = 40 (30 +3+3+4)

Work week 2 - Total Hours in both positions = 34 (30 +4)

In this instance, no overtime compensation is due. The campus should appoint the employee in the Casual Worker classification (class 1800) as an hourly intermittent, and process payment for 14 hours at the rate of \$15 per hour at the end of the pay period in which the proctor work was performed.

If, however, in a given workweek period, the employee worked more than his/her regularly scheduled hours, and when combined with the number of hours he/she proctored within the work week, the total hours exceeded 40, the campus would have to apply the formula used in Example #1 above to calculate the regular rate of pay for all hours worked in excess of forty.

Example # 3: A fulltime exempt employee agrees to proctor two exams within a given work week for a total of eight hours. Proctor pay is \$15.00 per hour.

In this instance, no overtime compensation is due because the employee is exempt (PIMS Item 355 (FLSA) = "E") and the non-exempt work performed is considered "occasional or sporadic" and is significantly different than the employee's primary position. The campus should appoint the employee in the Casual Worker classification (class 1800) as an hourly intermittent, and process payment for 8 hours at the rate of \$15 per hour at the end of the pay period in which the proctor work was performed.
