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Code: HR 93-17

Date: July 15, 1993

To: Presidents

From: June M. Cooper
Vice Chancellor
Human Resources and Operations

Subject: FAIR LABOR STANDARDS ACT (FLSA) POLICIES AND
PROCEDURES CLARIFICATION

federal law, established a minimum wage and a 40-hour overtime
standard for employees covered by the law. Additionally, the law
established the Wage and Hour Division of the U. S. Department of
Labor, which is charged with enforcement of FLSA. FLSA requires that
employees who are covered by its provisions shall be paid time and
one-half for all hours over forty (40) worked in each work week. Most
public agencies, including state and local governments, have been
determined to be subject to the requirements of FLSA. Employees who
are subject to the regulations of FLSA are categorized as non-exempt
and employees who are not subject to FLSA regulations are categorized
as exempt.

Non-exempt employees must be paid at the rate of time and one-half
the regular rate of pay for all hours worked over 40 in a work week.
Exempt employees do not earn overtime, either as cash or
Compensating Time Off (CTO). Additionally, exempt employees who
have absences of less than a full day should receive a full day’s salary
and should not have their salary docked nor should they be charged
leave for less than a full day.

Distribution:
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Personnel Officers
Payroll Supervisors
Affirmative Action Officers
Employee Relations Designees
Chancellor’s Office Staff
The following topics of information on the application of FLSA to the policies and procedures of the California State University (CSU) are addressed in Attachments A and B:

**ATTACHMENT A**

* Non-exempt employee
* Non-exempt employee time and attendance issues
* Exempt employee
* Public accountability policy
* FLSA and exempt salary
* CSU exempt employee time and attendance policy
* MPP exempt employees
* CSEA contract agreement - Ratified May 19, 1993
* Agriculture and firefighter exemptions
* CSEA contract - exempt and nonexempt changes

**ATTACHMENT B**

* CSU classifications

Please direct questions regarding FLSA to Julie DeLaricheliere in Human Resources at (310) 985-2654. Thank you.

JMC/cr

Attachments
NON-EXEMPT EMPLOYEE

Employees classified as non-exempt are employees who do not qualify for exemptions from the overtime provisions of the Fair Labor Standards Act (FLSA). These employees must be paid at the rate of time and one-half the regular rate of pay for all hours worked over 40 in a work week. Overtime is not required for hours over 8 in a day, until 40 hours have been worked. Please refer to Attachment B for a list of CSU exempt and non-exempt classifications.

The full-time work week for employees classified as non-exempt is a work week of 40 hours, 7 consecutive days, or 168 consecutive hours.

Overtime for non-exempt employees is payable in cash or as Compensating Time Off (CTO) at time and one-half the straight time hourly rate of pay. Specific provisions regarding the accrual and use of CTO for employees represented by unions are contained in Memoranda of Understanding.

NON-EXEMPT TIME AND ATTENDANCE ISSUES

When scheduling non-exempt staff, managers and supervisors must be careful not to set schedules that result in overtime expenses unless overtime expenses are necessary. Even though campus departments have policies prohibiting unauthorized overtime, policies alone are not sufficient. Policies on unauthorized overtime must be enforced so employees do not work beyond their normal schedule.

If non-exempt staff work beyond their schedule, they may later attempt to recover overtime payments. Non-exempt employees must be paid at the rate of time and one-half the regular rate of pay for all hours worked over 40 in a work week. Overtime is not required for hours over 8 in a day, until 40 hours have been worked. If the CSU, the employer, knows or has reason to believe that a nonexempt employee is working over 40 hours in a work week, then the employee must be paid for overtime. Supervisors must be attentive of practices which can incur overtime expense, such as non-exempt employees who arrive at the work station and begin work 15 minutes before the start of the normal work day or who work through a scheduled lunch or stay past the normal end of the work day. Supervisors can avoid overtime by prohibiting such practices in fact, not just in word, or by adjusting work hours so that the 40 hour weekly limit is not exceeded.
EXEMPT EMPLOYEE

Employees classified as exempt are salaried employees who are exempt from FLSA provisions for overtime payment requirements. **Exempt employees do not earn overtime, either as cash or CTO.** Please refer to Attachment B for a list of CSU exempt and non-exempt classifications.

Exemptions from FLSA overtime exemptions are limited and subject to stringent requirements. The exemptions, narrowly defined in the law, allow the CSU to forego payment of overtime to employees whose primary duties are executive, professional or administrative, who receive a **salary** of at least $250 per week, and who spend more than one-half of their work time performing work which requires the frequent exercise of discretionary decision-making. Subsequent rules issued by the Federal Wage-Hour Administrator have described conditions under which the executive or administration exemption may be lost if **more than 20%** of a workweek is devoted to non-exempt work. Case histories from the Wage and Hours Division of the Department of Labor describe categories of workers who qualify for FLSA overtime exemptions.

PUBLIC ACCOUNTABILITY POLICY

State governments, municipalities, and public agencies have had long-standing pay policies which assert that employees cannot be paid for time they have not earned under a theory that payment for time not earned constitutes a prohibited gift of public funds. In keeping with this policy, many public employees have had their pay “docked” or “adjusted” for absences of less than a full day. “Docking” of exempt pay occurred when sick and/or vacation leave hours were not sufficient to cover the partial day absence and pay was reduced. “Adjusting” of pay occurred when exempt employees were required to use earned leave credits to cover absences of less than a day for medical appointments and the like.

“Docking” or “adjusting” exempt pay for less than a day may have the effect of destroying the exempt status of employees andsubjecting employers to liability for overtime payment, as a result of a decision in the 9th Circuit (**Abshire v. County of Kern**). In this decision, the Court reasoned that if deductions for absences of less than a day can be made, then the employee cannot be considered salaried since his/her wages would have been calculated on an hourly pay rate basis. Additionally, the Court rejected the gifts of public funds defense based on the California Constitution, Article XVI, and reasoned that when money is spent for a public purpose "the appropriation is not a gift."
Currently, contradictory legal authority exists regarding the ability of a public agency, such as the CSU, to dock the pay of exempt employees or to require the use of accrued vacation/sick leave hours for absences of less than a full day without affecting such employees’ exempt status. Department of Labor (DOL) regulation 541.5d declares that exempt employees do not lose their exempt status if the deduction from pay is made under certain defined circumstances. However, the legality of Rule 541.5d in light of Abshire v. County of Kern, and the reasoning expressed therein, is suspect. The CSU has been advised by expert counsel to adopt a "no-dock"/"no-adjust" policy until reliable legal precedent is established to the contrary.

Accordingly, in order to avoid future CSU systemwide liability if Rule 541.5d is found to prohibit such “docking”/“adjusting”, the CSU will continue its present policy of not “docking” an exempt employee’s pay for absences of less than a day or “adjusting” an exempt employee’s pay by requiring the use of sick leave or vacation hours for absences of less than a day.

The CSU will continue to monitor challenges to DOL Rule 541.5d. A change in CSU policy that supports partial day “docking”/“adjusting” of exempt pay may be recommended in the future should legal precedent be established.

**FLSA AND EXEMPT SALARY**

FLSA regulations state that an employee must be paid a salary in order to be exempt from overtime requirements. According to the FLSA regulations, the wages of salaried employees are not subject to reductions because of the variations in the quality or quantity of the work performed. A salary has been determined to be a fixed sum for all of an employee's hours in a week, however many or few. The salary can be prorated, according to Abshire vs. County of Kern, only for complete days of absence due to vacation, illness, etc. In this decision, the Court went beyond the basic language of the FLSA regulations and asserted that salary is based on the value of services performed and has no relationship whatsoever to hours. In the words of the Abshire court, any reference to hours worked or not worked is simply "antithetical to the concept of a salaried employee." The Court determined that “docking” or “adjusting” the salary of an otherwise exempt employee for an absence from work for less than a full day had the effect of making the employee non-exempt and therefore eligible for overtime at time and one-half.
CSU EXEMPT EMPLOYEE TIME AND ATTENDANCE POLICY

Exempt employees who have an absence of less than a full day should receive a full day's salary and should not have their salary "docked" or "adjusted" for less than a full day nor should they be charged leave for less than a full day. Additionally, exempt employees do not earn overtime, either as cash or CTO.

CSU employees in exempt classifications are exempt from FLSA which means they are exempt from overtime payment requirements. If exempt employees need to work hours in excess of the normal business week or business day, they do not receive overtime or CTO. Exempt employees are expected to accomplish assigned work without regard for numbers of hours worked. When it is necessary for employees to work extended hours, managers may authorize informal adjustments in work hours. Normally, it is not necessary to keep complex records of hours worked. If a manager feels an employee is not working an appropriate number of hours, the employee should be counseled. If corrective actions are being considered, performance records should be maintained. Generally, an exempt employee should not be disciplined for absences of less than a day. Any non-disciplinary, corrective action by supervisors should be addressed to failures by the employee to meet job performance standards and requirements. Typically, such cases should usually involve consultation by the supervisor with the campus Personnel Officer. The Personnel Officer is informed of FLSA requirements and able to obtain advice from the Office of General Counsel as needed.

MANAGEMENT PERSONNEL PLAN (MPP) EXEMPT EMPLOYEES

By definition, all employees in the MPP are exempt, and therefore, exempt from provisions of the FLSA. A few MPP classifications have previously been listed in the CSU Salary Schedule as eligible for overtime. This overtime eligibility is not applicable and will be removed from the Salary Schedule. MPP classifications which have previously been listed as eligible for overtime are:

1501  Shipping and Receiving Assistant II
1109  Supervising Clerk I
2020  Supervising Custodian I
2021  Supervising Custodian II
1093  Supervising Departmental Secretary III
0711  Supervising Groundsworker I
1107  Supervising Payroll & Personnel Transactions Clerk III
1960  Supervising Senior Computer Operator

If any of these positions do not meet the FLSA exempt criteria, the incumbents should be reclassified out of the MPP.
CSEA CONTRACT AGREEMENT - MAY 19, 1993

The CSEA contract ratified by the Board of Trustees May 19, 1993, addresses work schedules for exempt and non-exempt employees in section 18.4. Additionally, section 19.2 clarifies that overtime is paid only as noted in Appendix C of the Agreement, consistent with provisions of FLSA.

AGRICULTURE AND FIREFIGHTER EXEMPTIONS

Agriculture employees, many of them seasonal employees, are covered under a separate section of the FLSA and can be paid CTO and still be classified as exempt. Appendix C of the current CSEA contract ratified May 19, 1993, contains information on the FLSA exemption for agricultural workers. Please note the CSEA contract does NOT provide for the payment of CTO to any agricultural classifications.

CSEA contract Appendix C also addresses special FLSA exemptions for firefighters who, along with peace officers, are subject to special provisions regarding allowable workweek calculations under FLSA.

CSEA CONTRACT - Exempt and Non-Exempt Changes

Previous CSEA contract language permitted payment of CTO to certain classes of exempt employees. As of May 19, 1993, CSEA exempt employees can no longer receive CTO. CSEA exempt employees with accrued CTO must use that CTO before May 31, 1995, in accordance with contract scheduling requirements, or the CTO will be forfeited.

Appendix C of the May 19, 1993, CSEA contract eliminates references to work week groups and identifies employee classifications as either exempt or non-exempt. Certain CSEA employee classifications have been changed from exempt to non-exempt to ensure compliance with FLSA. Work schedules for employees in these classifications need to be reviewed in light of the non-exempt status. The classifications formerly exempt and now non-exempt and eligible for overtime are:

<table>
<thead>
<tr>
<th>UNIT 2</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>7927</td>
<td>Clinical Laboratory Technologist I</td>
</tr>
<tr>
<td>7926</td>
<td>Clinical Laboratory Technologist II</td>
</tr>
<tr>
<td>8150</td>
<td>Registered Nurse I - 10 month</td>
</tr>
<tr>
<td>8151</td>
<td>Registered Nurse I - 12 Month</td>
</tr>
<tr>
<td>8153</td>
<td>Registered Nurse II - 10 Month</td>
</tr>
<tr>
<td>8154</td>
<td>Registered Nurse II - 12 Month</td>
</tr>
</tbody>
</table>
UNIT 9

1762 Accountant I
5341 Administrative Operations Analyst I
5342 Administrative Operations Analyst II
0670 Animal Health Technician
5287 Assistant Budget Analyst
1945 Instructional Computing Consultant I
0706 Nursery Technician I
0703 Nursery Technician II
6726 Planner/Estimator/Scheduler
0697 Poultry Technician
CSU CLASSIFICATIONS

EXEMPT

NONREPRESENTED EXEMPT CLASSIFICATIONS

Management Personnel Plan (MPP) employees

REPRESENTED EXEMPT CLASSIFICATIONS

Unit 1
Physician
Veterinarian I
Veterinarian II

Unit 2
Health Educator
Nurse Practitioner
Nutritionist
Pharmacist
Radiation Protection Specialist
Registered Nurse III
Sanitarian
Speech Pathologist

UNIT 3
All Classifications

UNIT 4
Counselor
Counselor and Test Officer
Educational Television Program Director
Extended Education Specialist I, II
Student Services Professional I, II, III, IV

UNIT 5
Farm Maintenance and Operations Worker

UNIT 6
No exempt classifications.

UNIT 7
No exempt classifications.

UNIT 8
No exempt classifications.
UNIT 9

Accountant II
Administrative Operations Analyst III
Assistant Systems Analyst
Assistant Systems Software Specialist
Associate Budget Analyst
Associate Systems Analyst
Associate Systems Software Specialist
Associate, Academic & Institutional Studies I, II, III
Campus Fire Apparatus Engineer
(special exemption for firefighters)
Crop Technician I, II (agricultural exemption)
Diving Safety Officer
Farm Laborer (agricultural exemption)
Farm Supervisor
Federal Programs Coordinator
Feed Mill Operator (agricultural exemption)
Fish Hatchery Manager
Instructional Computing Consultant II, III
Library Serials Editor
Livestock Technician I, II (agricultural exemption)
Media Production Specialist III
Programmer III
Public Affairs Assistant I, II
Radiation Safety Officer
Research Technician III
Sr. Planner/Estimator/Scheduler
Senior Systems Analyst
Senior Systems Software Specialist
Space and Facilities Utilization Officer
Special Assistant, EOP
Staff Systems Analyst
Staff Systems Software Specialist
Supervising Campus Fire Apparatus Engineer
(special exemption for firefighters)
Telecommunication Analyst
Television Engineer
NON-EXEMPT CLASSIFICATIONS

UNIT 1
No non-exempt classifications.

UNIT 2
Except for classifications listed as exempt in CSEA Agreement, Appendix C, ratified May 19, 1993, all other classifications are non-exempt.

UNIT 3
No non-exempt classifications.

UNIT 4
Credential Analyst I, II
Evaluator Trainee, I, II
Student Personnel Technician, Financial Aid

UNIT 5
Except for classifications listed as exempt in CSEA Agreement, Appendix C, ratified May 19, 1993, all other classifications are non-exempt.

UNIT 6
All classifications are non-exempt.

UNIT 7
All classifications are non-exempt.

UNIT 8
All classifications are non-exempt.

UNIT 9
Except for classifications listed as exempt in CSEA Agreement, Appendix C, ratified May 19, 1993, all other classifications are non-exempt.
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Date: July 23, 1993

To: Presidents

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Vice Chancellor
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Subject: FAIR LABOR STANDARDS ACT (FLSA) POLICIES AND PROCEDURES CLARIFICATION

HR 93-17 issued July 15, 1993, included Attachment B, a reference list of CSU exempt and non-exempt classifications. A revised Attachment B is provided with this memorandum and it corrects three CSEA Unit 9 classifications listed as exempt that should have been listed as nonexempt. These non-exempt classifications are:

* Assistant Systems Analyst
* Assistant Systems Software Specialist
* Public Affairs Assistant I

The classifications are correctly identified in the CSEA contract as nonexempt. Prior to the CSEA May 19, 1993, contract ratification, these classifications were exempt.

Attachment B has also been expanded to include executive (M98), excluded (E99) and confidential (C99) classes.

Please direct questions regarding FLSA to Julie DeLaricheliere in Human Resources at (310) 985-2654. Thank you.

JMC/cr
Attachment

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CSU CLASSIFICATIONS

NONREPRESENTED EXEMPT CLASSIFICATIONS

EXECUTIVE CLASSES (M98)

MANAGEMENT PERSONNEL PLAN (MPP) (M80)

EXCLUDED CLASSES (E99)
Chief of Party, Overseas
Graduate Assistant
Instructional Faculty, Extension
Instructional Faculty, Special Programs
Legislative/Executive Fellow
Teaching Associate

CONFIDENTIAL CLASSES (C99)
Administrative Operations Analyst III
Associate Systems Analyst
Legal Assistant
Presidential Aide
Senior Legal Assistant
Senior Systems Analyst

REPRESENTED EXEMPT CLASSIFICATIONS

UNIT 1
Physician
Veterinarian I
Veterinarian II

UNIT 2
Health Educator
Nurse Practitioner
Nutritionist
Pharmacist
Radiation Protection Specialist
Registered Nurse III
Sanitarian
Speech Pathologist
UNIT 3
All Classifications

UNIT 4
Counselor
Counselor and Test Officer
Educational Television Program Director
Extended Education Specialist I, II
Student Services Professional I, II, III, IV

UNIT 5
Farm Maintenance and Operations Worker

UNIT 6
No exempt classifications.

UNIT 7
No exempt classifications.

UNIT 8
No exempt classifications.

UNIT 9
Accountant II
Administrative Operations Analyst III
Associate Budget Analyst
Associate Systems Analyst
Associate Systems Software Specialist
Associate, Academic & Institutional Studies I, II, III
Campus Fire Apparatus Engineer
(special exemption for firefighters)
Crop Technician I, II (agricultural exemption)
Diving Safety Officer
Farm Laborer (agricultural exemption)
Farm Supervisor
Federal Programs Coordinator
Feed Mill Operator (agricultural exemption)
Fish Hatchery Manager
Instructional Computing Consultant II, III
Library Serials Editor
Livestock Technician I, II (agricultural exemption)
Media Production Specialist III
Programmer III
Public Affairs Assistant II
Radiation Safety Officer
Research Technician III
Sr. Planner/Estimator/Scheduler
Senior Systems Analyst
Senior Systems Software Specialist
Space and Facilities Utilization Officer
Special Assistant, EOP
Staff Systems Analyst
Staff Systems Software Specialist
Supervising Campus Fire Apparatus Engineer
(special exemption for firefighters)
Telecommunication Analyst
Television Engineer

NONREPRESENTED NON-EXEMPT CLASSIFICATIONS

EXCLUDED CLASSES (E99)
Helper Aid
Notetaker
Reader
Student Assistant
Student Legal Assistant
Student Trainee, Off Campus Work Study
Student Trainee, On Campus Work Study
Youth Summer Aid

CONFIDENTIAL CLASSES (C99)
Administrative Secretary
Administrative Operations Analyst I
Administrative Operations Analyst II
Clerical Assistant II
Clerical Assistant III
Clerical Assistant IV
Executive Secretary
Personnel Assistant
Programmer II
Secretary
Sr. Secretary

REPRESENTED NON-EXEMPT CLASSIFICATIONS

UNIT 1  No non-exempt classifications.
UNIT 2  Except for classifications listed as exempt in CSEA Agreement, Appendix C, ratified May 19, 1993, all other classifications are non-exempt.

UNIT 3  No non-exempt classifications.

UNIT 4  Credential Analyst I, II  
Evaluator Trainee, I, II  
Student Personnel Technician, Financial Aid

UNIT 5  Except for classifications listed as exempt in CSEA Agreement, Appendix C, ratified May 19, 1993, all other classifications are non-exempt.

UNIT 6  All classifications are non-exempt.

UNIT 7  All classifications are non-exempt.

UNIT 8  All classifications are non-exempt.

UNIT 9  Except for classifications listed as exempt in CSEA Agreement, Appendix C, ratified May 19, 1993, all other classifications are non-exempt.