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Date: November 14, 1995

To: Presidents

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

Subject: STUDENT SERVICES PROFESSIONAL I

Please be advised that the Student Services Professional I classification (class codes 3078, 3079, and 3080) has been reviewed and its designation under the Fair Labor Standards Act (FLSA) has been determined to be non-exempt. This determination only impacts the payment of overtime. It does not change any provision of the Unit 4 collective bargaining agreement. Non-exempt CSU employees are paid overtime hours worked in excess of 40 in a work week; however, they do not receive overtime for working over 8 hours in a workday.

The CSU retained an international human resources consulting firm to conduct a review of the SSP I classification and the non-exempt determination was the result of its extensive comprehensive review. Attached for your reference is a highlighted summary of that review. The summary addresses the following:

- Overview of FLSA
- Exemptions from FLSA
- FLSA Exemption Tests
  - Executive
  - Professional
  - Administrative
- Applying the Exemption Tests to the SSP I Classification

For information on California State University (CSU) FLSA policies and procedures, please refer to HR 93-17, issued July 15, 1993.

If you have any questions, please call Mr. Ron Hull, Director of Personnel and Compensation Programs, at (310) 985-2653.

JMC/vr
Attachment

Distribution:

Vice Presidents, Academic Affairs
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ATTACHMENT 95-18
THE FAIR LABOR STANDARDS ACT and
THE STUDENT SERVICES PROFESSIONAL I

THE FAIR LABOR STANDARDS ACT (FLSA):
• Determines when, where, and how much an employee must be paid.
• Establishes minimum wage and 40 hour per week overtime standard (29 U.S.C. 201) for those covered by the provisions of the FLSA.
• Covers state and local governmental agencies and their employees (29 U.S.C. 203), except non-civil service employees.
• Covers CSU employees, who are not covered under state law (Cal. Labor Code 220; Garcia v. San Antonio Metro).

EXEMPTIONS FROM FLSA:
• Limited exception from wage and overtime obligations for “white collar” employees (executive, administrative, or professional) who meet the following criteria:
  1. employee performs work of an “exempt” nature;
  2. exempt work performed is employee’s “primary duty” (e.g. primary duties are those in which the employee spends more than 50% of his/her time);
  3. employee is paid $250.00 or more a week; and
  4. primary duties involve the frequent exercise of discretionary decision making authority.

FLSA EXEMPTION TESTS:

Executive Exemption
The FLSA defines an executive as an employee:
  1. whose primary duty consists of the management of the enterprise, a recognized department, or a subdivision; and
  2. who customarily or regularly directs the work of two or more employees; and
  3. who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing, promotion, or change of status of other employees will be given particular weight; and
  4. who customarily/regularly exercises discretionary powers.

Professional Exemption
The FLSA describes a professional employee as one whose primary duty consists of the performance of:
  1. work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from apprenticeship, and from training in the performance of routine mental, manual or physical process; or
  2. work that is original and creative in character in a recognized field of artistic endeavor; or
  3. teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in the school system or educational establishment or institution in which she/he is employed; and
  4. work that requires consistent exercise of independent judgment and discretion; and
  5. work is predominately intellectual and varied in character.

Specific occupations licensed or certified by the State:
* Law (attorneys, not paralegals)
* Medicine (physicians, medical interns, and residents)
* Dentistry
* Pharmacy
* Optometry
* Architecture
* Engineering
* Teaching
* Accounting (certified public accountants only)
Administrative Exemption
The U.S. Department of Labor’s Regulations, Part 541 section 541.2 defines an exempt administrative employee as an employee:

1. whose primary duty consists of office or nonmanual work directly related to management policies or general business operations, or administration of a school system or educational establishment or institution; and
2. whose work requires the constant exercise of discretion and independent judgment; and
3. is compensated at a rate of not less than $250 per week.

APPLYING THE EXCEPTION TESTS TO THE SSP I CLASSIFICATION

Executive Exception Test
The SSP I does not meet the executive exemption test for the following reasons:

- There is no involvement in the management of the university.
- Incumbent does not have responsibility for hiring, firing, promoting or status changes of other employees.
- Independent discretion is limited by guidelines and established procedures.

Professional Exception Test
The SSP I does not meet the professional exemption test for the following reasons:

- Working knowledge required of the SSP I (Range A and B) is not equivalent to the “knowledge of an advanced type” as defined by FLSA.
- A four-year course of study does not constitute “a prolonged course of specialized intellectual instruction and study” (U.S. Department of Labor WH publication 1363)
- Work is not in a “recognized field of artistic endeavor.”
- Work is not “imparting knowledge...as a teacher.”

Administrative Exception Test

- SSP I, Range A does not meet the administrative exception test because the exemption does not apply to employees who are training for employment in an administrative capacity. (Department of Labor Regulations Part 541.210).
- SSP I, Range B does not meet the criteria of the administrative exemption because workers do not “customarily and regularly exercise discretion and independent judgment” as required by FLSA. Although the work is “office or nonmanual” and directly related to management policies or general business operations and the salary rate is “not less than $250 per week,” the position must meet all of the criteria to be exempt. This decision is based on the following statements from the SSP I classification standard:
  1. “Incumbents may perform duties in several program operations or services which are well structured and procedural in nature.”
  2. “Use of judgment is limited primarily to locating, selecting and organizing information.”
  3. “Oral presentations to groups follow well-structured or established format.”
  4. “Analysis is performed utilizing established guidelines, regulations, and precedents.”
  5. “Assignments typically are well structured by policies, procedures and guidelines, although incumbents may exercise independence within the established structure in selecting approaches; incumbents work with close direction where procedures and parameters are less defined and/or change frequently.”
  6. “Decision-making authority where it occurs is well-defined and of limited extent.”