

## CHANCELLOR FOR COMMUNITY COLLEGES MEMO

CCCM# #2400 (April 1987)

SUBJECT: Federal Labor Standards Act (FLSA)

A. Reference:

1. Federal Fair Labor Standards Act (FLSA) of 1938, as amended.
2. Administrative Procedure A9.035, Fair Labor Standards Act (FLSA).

B. Background and Purpose:

1. Public sector jurisdictions are not exempt from provision of the Fair Labor Standards Act of 1938, as amended, according to a recent Supreme Court decision. Therefore, the University of Hawaii, as a public employer must now be in compliance.
2. The purpose of this memorandum is to identify - responsible administrators to implement the New Administrative Procedure A9.035 to ensure compliance with the FLSA.

C. Responsibilities:

1. Chancellor for Community Colleges:
  - a. Establish procedures for determining positions covered under FLSA.
  - b. Establish guidelines for maintenance of adequate work records.
  - c. Develop and disseminate forms to maintain work records.
  - d. Coordinate or provide training to campus personnel in the implementation of FLSA.
  - e. Provide advisory assistance.
2. Provost (and other equivalent community college executives):
  - a. Identify positions covered under FLSA.
  - b. Establish procedures to monitor attendance and/or maintain work records for each employee covered under FLSA.
  - c. Ensure that positions covered under FLSA are provided

payment/compensatory time-off for all FLSA earned overtime.

- d. Retain attendance or work records for five (5) years.

#### D. Guidelines

1. Suggested procedure for determining positions covered under FLSA and a form for maintaining a listing of positions affected.
  - a. Attachment A-1 - Procedures for determining positions covered under FLSA.
  - b. Attachment A-2 - Form for maintaining listings of affected positions.
2. Suggested forms to maintain attendance or work records for each employee covered under FLSA: Forms B-1 and C-1 are being provided to offer alternatives to maintaining the work records.
  - a. Attachment B-1 - DPS Form 7, Attendance and Leave Record (with instructions)
  - b. Attachment B-2 - Samples
  - c. Attachment C-1 - CC Personnel Form 2400, FLSA Time Sheet (with instructions)
  - d. Attachment C-2 - Sample
  - e. Attachment C-3 - Blank Form
3. Important Reminders
  - a. FLSA has set 240 hours as the maximum number of hours of compensatory time that any covered employee can accumulate. All overtime in excess of this amount must be paid in cash.
  - b. FLSA overtime provision applies only when the total hours worked are in excess of 40 hours per week. (Refer to A9.035 FLSA, page 2, Guidelines and procedures for more details.)
  - c. By State DPS requirement, attendance or work records must be maintained for each employee covered under FLSA for at least five years.

Joyce S. Tsunoda  
Chancellor for Community Colleges

Attachments

PROCEDURES FOR DETERMINING POSITIONS COVERED UNDER FLSA

1. Community College Administrators or designees must make individual determinations of exemptions from provisions of the FLSA on a case by case basis and not on the basis of job titles or position description which may not be updated. Actual job duties and responsibilities expected to be performed and authority expected to be exercised are to be used.
2. Use the criteria that follow to determine positions covered under FLSA. If the employees' duties and responsibilities do not fulfill all the criteria for either the Executive, Administrative or Professional occupational category, the position is covered under FLSA and overtime records must be maintained.

A. Executive Positions

The individual must meet all of the following requirements:

1. Weekly salary of \$250 or more (about \$1075 monthly).
2. Must customarily and regularly direct the work of two or more employees.
3. Primary duty is the management of the enterprise or a customarily recognized department or subdivision thereof. In general, the decision is based upon whether or not the employee spends more than 50% of his time functioning as a manager. Time alone, however, is not the only test. Some other factors to consider are:
  - a. The relative importance of the managerial duties as compared with other types of duties; and,
  - b. The frequency with which the employee exercises discretionary powers; and,
  - c. The relative freedom from supervision.

Some examples of recognized management duties are:

- (1) Interviewing, selecting, and training of employees.
- (2) Adjusting rates of pay and hours of work.
- (3) Directing work.
- (4) Handling complaints or grievances and discipline.

(5) Apportioning work.

All executive/managerial excluded positions with bargaining unit codes of "88" or "87" are exempt.

B. Administrative Positions (Refer to Regulations, Part 541 for more detailed examples.)

1. The employee must be paid a salary of \$250 or more per week; and,
2. The primary consists of responsible office or non-manual work directly related to related to management policies or general business operations (generally, 50% or more of work time) and requiring the exercise of discretion and independent judgement, such as,
  - a. A Private Secretary I, who "screens" incoming mail requiring the exercise of discretion and independent judgment to determine whether to answer correspondence personally or call it to the attention of the Chancellor, would fulfill the primary duty criteria and be exempt from the FLSA, as opposed to a Secretary II that may merely open the mail and route it to the attention of the Director of Administrative Services or other addressee for reply instead of using her discretion and judgment to personally answer correspondence for the Director.
  - b. A Computer Systems Analyst who develops methods to process accounting information or develops a system for processing data to obtain solutions to complex business problems is clearly doing work using discretion and judgment, that meet the exemption test. A data processing employee that "debugs" a program, or prepares instructions to the console operator are highly technical and mechanical operators but do not require the level of discretion and judgment to meet the exemption test.
3. Employee does responsible work in the administration of a school or educational establishment or institution or department or subdivision thereof that is directly related to academic instructions or training.

Some typical examples of other positions that appear to qualify for exemption are:

- a. Administrative assistants who assist an executive/managerial in the performance of the manager's duties; e.g., Assistant to the Director, Secretary iv (SR-16) that assists the Provost or Executive/Managerial person,

- b. Staff specialist positions who advise management, e.g., Personnel officer, Budget Analyst, and Administrative Officers.
- c. One-person staff department managers, e.g., Procurement Specialist.

C. Professional Positions

1. The employee must be paid a salary of \$250 or more per week; and
2. Must perform work requiring knowledge of an advanced type in a field of science or learning (generally 50% or more of person's time). Work performed requires consistent exercise of discretion and judgment and is predominantly intellectual and varied in character. Generally speaking, the professionals which meet the requirement for a prolonged course of specialized intellectual instruction and study include law, medicine, nursing, accountancy, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, including Pharmacy and registered or certified medical technology. The typical symbol of the professional and the best prima facie evidence of its possession is the appropriate academic degree, and in these professions an advanced academic degree is a standard (if not universal) prerequisite.

All faculty are exempted under this provision.

A Graphic Artist must perform work that is original and creative as opposed to work which can be produced by a person endowed with general manual intellectual ability and training to meet the exemption criteria.

Work which is directly and closely related to the performance of the professional duties will not be exempt unless it is also "an essential part of and necessarily incident to" the professional work.

D. Positions not covered by FLSA:

("Workers" in the following positions do not fit the statutory definition of employee.)

1. Independent Contractors

Contractor/customer relationship rather than employee/employer relationship. Work controlled by agency only to extent of task to be done, not as to means of doing the task.

2. Trainees

Non-paid student or intern type worker.

3. Volunteers

Individuals who volunteer their services, usually part-time for public service without contemplation of pay. However, when paid more than a nominal fee, expenses or reasonable benefits, they become employees.

E. All other positions

1. Positions that do not fall in any of the above categories A through D usually are covered under the FLSA and must be paid for overtime worked or, provided compensatory time off. Additionally, attendance or work records must be maintained.

2. Some typical examples of positions that may generally be covered under FLSA are:

- . General office clerks, clerk-typist, clerk-steno's, personnel clerks
- . Blue collar non-supervisory positions such as custodians; groundskeeper, mechanics, electricians, painters.
- . APT positions such as those in the Technical Operators, (e.g. UH Scientific Illustrator, UH meter Technician); Skill Trades (e.g. UH Machinist I, Electronics Technician I) would generally not qualify for exemption because of the difficulty in fulfilling the 50% or more primary duty criteria and discretion and judgment requirement. (For additional interpretation examples, refer to Title 26, Part 541, of the Code of Federal Regulations.)

COMMUNITY COLLEGES FLSA TIME SHEET INSTRUCTIONS

This form or the DPS Form 7 is to be maintained on a current basis for all employees who are subject to the overtime provisions of agreement negotiated with public employee unions and the Fair Labor Standards Act (FLSA).

1. Month/Year: Enter Month and Year
2. Employee Name: Print or type employee name
3. Date: Enter the applicable numeric month and calendar day for each day of the week in this column. Example: 01/01
4. Actual Time Worked: Enter starting and ending time for all hours worked for each &y in these columns.  

<u>Example:</u>	<u>Start</u>	<u>Stop</u>	<u>Start</u>	<u>Stop</u>
	7:45	4:30		
	9:00	11:00	2:30	4:30
5. Regular Hours Worked(R): Enter in column scheduled hours ACTUALLY worked each day. (should not exceed 8 hours per day). Example: 8.00
6. Total Hours Worked(D): Enter in column Total Actual Hours worked during the calendar day.  

<u>Example:</u>	8.00
	10.00
7. Paid Leave: Enter if appropriate leave time taken in applicable column for vacation (V), sick leave (S), holiday (H).
8. Other Leave: Enter in column if appropriate, Alpha Code and hours taken for the following leave:

<u>Other Leave</u>	<u>Example</u>
Funeral (F)	F-8
Jury Duty (J)	J-2
Military (M)	M-8
Industrial Inj (I)	I-3
9. Administrative Time Off(A): Enter in column, hours taken as Administrative time off:

<u>Example:</u>	.	Collective Bargaining
	.	Educational Meetings
	.	Primary Election

- . Time Off decreed by the Governor
- . Treatment for Industrial Injury during regular working hours.

10. Leave Without Pay(L): Enter in column alpha code (if appropriate or notate type of specific leave to help explain entry) and hours taken as authorized and unauthorized LWOP.

<u>Authorized LWOP</u>	<u>Example</u>	<u>Remarks</u>
. Personal Reasons	8	Personal
. Child Care	8	Child Care
. Sick	8	Sick Leave

<u>Unauthorized LWOP</u>	<u>Example</u>	<u>Remarks</u>
. Suspension	8	Suspension
. Strike	8	Strike

11. Stand By (X): Enter in column, scheduled hours on stand-by.

Example: 24

12. State Overtime(CTZ): In general, state overtime equal to regular hours worked in excess of 8 hours per day or over 40 total hours worked per week which include paid leave, other paid leave administrative time off and compensatory time. (Refer to applicable Collective Bargaining Agreement Provision)

13. FLSA Overtime (CTF): Total hours worked in excess of 40 regular hours worked per week equal FLSA overtime (CTF).

14. Compensatory Time Taken(T):Enter in column, the hours taken as compensatory time.

Example: 8.00

15. Remarks: Enter notations that will help explain your entries in the columns.Example: 12 hours pay or comp. time.

16. Sub-Total: Enter total time for each column to determine FLSA overtime hours and account for all hours taken during each week.

17. Signature of Employee: Self-Explanatory

18. Signature of Supervisor: Self-Explanatory

