

TECHNICAL ASSISTANCE – EXEMPTING POSITIONS FROM THE STATE PERSONNEL SYSTEM

Prepared by the Division of Human Resources in the Department of Personnel and Administration. Revised December 7, 2009.

GENERAL

Colorado Constitution and statute allow positions meeting specific criteria in the Department of Higher Education to be outside (exempt from) the state personnel system. C.R.S. 24-50-135(1) authorizes college and university presidents and the executive director of the Commission on Higher Education to approve their respective institution's positions as exempt from the personnel system. This authority may be delegated to another position in the institution. The role of the state personnel director is one of data collection and oversight through audits and the statutorily mandated annual report submitted by each institution. Positions are assumed to be in the state personnel system unless exempted by Constitution or statute. Exemption decisions are subject to appeal to the State Personnel Board.

The purpose of this technical assistance is to provide definitions and clarifications to be applied in concert with the statutory provisions; to outline a recommended "benchmark" process for institutions to use in reviewing and approving their exempt positions and, to provide parameters for the statutorily mandated annual reporting requirement.

DEFINITIONS

Professional

The term "professional" has been subject to many definitions, depending upon the specific usage and intent. To remain consistent with the legislative intent, DHR refers to the following definition used by the Federal Office of Personnel Management (OPM). OPM defines professional work in its *Job Family Standard for Professional Work in the Natural Sciences Group*.

“Professional Work. Professional work involves exercising discretion, analytical skill, judgment, and personal accountability and responsibility for creating, developing, integrating, applying, and sharing an organized body of knowledge that characteristically is:

- uniquely acquired through an intense education or training regimen at a recognized college or university;
- equivalent to the curriculum requirements for a bachelor's or higher degree with major study in or pertinent to the specialized field; and
- continuously studied to explore, extend, and use additional discoveries, interpretations, and application and to improve data, materials, equipment, applications, and methods.”

A commonly found definition that is not acceptable is one where professional is meant to infer a certain high standard of “bearing and demeanor” where actions are performed with “tact, diplomacy, and courteousness.” These personal characteristics may be desirable in many types of work but do not distinguish professional level work as intended by Statute and as defined above.

Executive Assistant

Executive assistants report directly to the top executive in an institution. Duties include maintaining the personal and confidential relationships involved in analyzing, evaluating, and developing the strategies, goals, and policies of the institution for the Executive.

Academic/Academic Support

Professional positions, the duties of which directly relate to students, curriculum, faculty and instruction. One can make a logical connection to an academic purpose. These do not include administrative, clerical, or IT related support positions.

Principal Professional Subordinate

Principal professional subordinate is defined as the first level professional reporting directly to the head of an administrative or academic department or division.

Duration of initial appointment

For purposes of appointments, the duration of “initial appointment” is the period of time covered by the initial start date through the original expiration date of the research grant or project. Please note the statute states “known expiration date”. This is not necessarily the same time period for funding cycles. For example a research grant may be awarded from October 1, 2010, through September 20, 2013, with an annual budget approval requirement. Thus, the duration of the initial appointment would be October 1, 2010, through September 20, 2013.

This part of the statute must also be applied in concert with the intent of C.R.S. 24-50-137(4) that covers employee rights following an initial appointment to an exempt position. Institutions must ensure employees are informed of their rights and that these rights will be forfeited upon a second appointment to an exempt position.

INTERNAL REVIEW AND APPROVAL - A BENCHMARK PROCESS

General Considerations

Ensuring the efficient management of the exemption of positions from the state personnel system is mandatory. This is accomplished by having a sound documented internal review and approval process. This includes the oversight, training, review and determination, recordkeeping, and reporting of all requests to exempt a position. Institutions have differing needs and philosophies, yet in all settings, emphasis must remain on compliance with the constitutional and statutory provisions for exempting positions from the state personnel system. This process must also reflect that any certified employee whose position has become exempted from the state personnel system has been given the appropriate appeal rights.

Training

Human resource professionals involved in the processing of exempt positions must fully understand the institution-specific processes. Questions related to the statutory provisions, statutorily mandated annual reporting and this technical assistance are addressed by the Division of Human Resources (DHR).

Processing Requests

At a minimum, an accurate, thorough job description, a current organizational chart, and funding source information are needed to accurately assess the exempt status of a position. Best practice involves developing a request form to track exemption request and approval.

Review and Determination

Per statute, the president or the executive director, or delegate must approve the exemption. If the approving person is other than the president or director, the delegation must be in writing. Each request is reviewed and approved by the individual(s) with appropriate delegated authority. Some form of notification of the approval or disapproval of each request is sent to the requestor.

Recordkeeping

Human resources offices must keep adequate documentation on the request, review, and final determination for each position in order to respond to audits, appeals, and open records requests. It is a recommended practice for the records to be kept in the position folders.

Periodic Reviews

To ensure that job descriptions are current and positions are properly classified, and exempted if appropriate, human resource directors must have process or policy that establishes the requirements for updating such records. It is recommended that exempted positions be reviewed when any of the following occur: substantial changes in the duty assignment, organizational changes, supervisory changes, funding source changes and statutory changes. Job descriptions must be updated and exempt positions reviewed whenever significant changes occur to the assignment. A recommended best practice is to review the position description yearly while conducting the performance reviews for the encumbered exempt position. If any significant changes have been made to the position then the exemption status must be reviewed to determine if exemption is still appropriate.

STATUTORILY MANDATED ANNUAL REPORTING

Institutions must submit statutorily mandated annual reports of all exempted positions to the state personnel director by December 31st of each year. Each year DHR will send a reminder to the HR director or president of each institution along with the required format. The submitted report must include all currently active positions exempted from the state personnel system for each institution, and not include positions that have been abolished or are no longer exempt. Reports must be submitted electronically to hrrs.consulting.services@state.co.us in the required format. Incorrect or incomplete reports will need to be corrected.

The report must include, at a minimum, the following information for each position:

- Institution Code: this is the COFRS code assigned to your institution
- Position number: only include currently active positions exempted from the state personnel system per this statute. For example: abolished, inactive, faculty, and classified positions are not to be included.
- Position title:
- Date last approved for exemption: (MM/DD/YY)
- Statutory criteria codes: These codes correspond to the statutory criterion the position meets. For purposes of annual reporting the following codes are to be used for specifically identifying and reporting statutory exemption criteria for all exempted positions.
 - (a.1) Officers of an educational institution
 - (a.2) Executive assistants to Officers
 - (a.3) Deans, directors, chairpersons
 - (a.4) Professionals in academic and academic support positions
 - (a.5) Heads of administrative or academic departments or divisions
 - (a.6) Principal professional subordinates to the heads of administrative or academic departments or divisions
 - (a.7) Professional employees of a governing board or educational institution having responsibility for or control of program operations or for the formulation, planning, and direction of the policies of the governing board or educational institution
 - (d) Heads of those functions of an educational institution that are supported primarily by student fees and charges, including heads of residence halls and their professional staff
 - (e) Heads and professional staff of departments of intercollegiate athletics
 - (f) Professional officers and professional staff of the department of higher education, including the professional staff of any governing board of an institution of higher education
 - (h.1) Heads of and professional staff involved in research and grant projects
 - (h.2) For the duration of their initial appointment, individuals in grant-funded positions where funding is limited by a known expiration date of the research project or grant

- Encumbered by a classified employee: indicate if the position being exempted is filled with a certified employee.
- Appeal rights given: if the position was filled with a classified employee when exempted, indicate if the classified employee received their appeal rights.

AUDITS, TRAINING, AND CONSULTATION

Periodic audits of institutions will include, but not be limited to, the following standards.

- Compliance with statutory criteria for exemptions.
- Adequacy of internal review and approval processes.
- Thoroughness of the annual report to the state personnel director.
- Special interest items.

For purposes of auditing positions exempted from the state personnel system, the state personnel director intends to apply these definitions. Audit reviews of exempted positions will be measured against these standards.

DHR will provide training and advice to institutions upon request. These technical guidelines will be maintained on the DHR Web site for ease of access by all users. DHR will monitor activities and recommend improvements in efficiency and effectiveness under the Consulting Services Unit's HR Auditing Program. DHR staff is available for consultation on exemption issues and questions whenever needed.

APPEALS

All individuals in classified positions, whose positions are subsequently exempted from the state personnel system, have the right to an appeal to the State Personnel Board. All employees in positions affected by an exemption decision must be given their appeal rights.

All appeals must be forwarded to the State Personnel Board on the *Colorado State Personnel System Consolidated Appeal/Dispute Form* within 10 days of notification of the exemption action. The form and instructions are available on the Web.

Every attempt is made to keep this information updated. For additional information, refer to the *State Personnel Board Rules and Director's Administrative Procedures* or (rules) contact your department human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the law and rule are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.

**TECHNICAL ASSISTANCE
DHR APPROVAL FOR PUBLICATION**

This signature page is required for new technical assistance or when major policy revisions are made resulting from changes in law, rule, directives, or official interpretation. As of March 1, 2009, new signatures are not required for non-substantive revisions resulting from correction of errors (e.g., typographical or grammatical), or updating factual information (e.g., minimum wage, statute or rule cites) or illustrative samples. Readers should always check the date on the first page to ensure they are using the most current version.

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