

TECHNICAL ASSISTANCE – EXEMPTING EDUCATIONAL POSITIONS FROM THE STATE PERSONNEL SYSTEM

Prepared by the Division of Human Resources in the Department of Personnel and Administration. Revised January 23, 2007.

GENERAL

Colorado Constitution and statutes allow certain types of positions in the Department of Higher Education to be outside (exempt from) the state personnel system. With the passage of SB04-007, new authority was granted to heads of higher education and the role of the state personnel director changed significantly. Those new powers are in C.R.S. 24-50-135(1), et seq. Effective August 4, 2004, college and university presidents and the executive director of the Commission on Higher Education are permitted 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 oversight through audits and reviewing the annual report submitted by each institution.

The basis for exempting positions remains intact – positions are assumed to be in the state personnel system unless exempted by Constitution or statute. Some of the statutory exemption criteria were changed to increase clarity, but the overriding intent of the law is unchanged. For the most part, the types of positions previously exempted under C.R.S. 24-50-135(1), et seq., remain substantially similar with one significant addition – positions in research and grant-funded positions where the funding is limited by a known expiration date. The revision of the statutes may result in positions changing to or from exempt status depending upon the organizational structure of an institution. For instance, heads of administrative units and their principal professional subordinates may or may not have been exempt under the prior statutes. Exemption decisions remain subject to appeal to the State Personnel Board.

The purpose of this technical assistance is threefold: to outline a recommended “benchmark” process for institutions to use in reviewing and approving their exempt positions; to provide the definition to be applied in concert with the statutory provisions; and, to outline the new annual reporting requirement. The first two parts are covered so that institutions fully understand the state personnel director's audit standards under which they will be evaluated in the future. The last part on reporting is a specific statutory requirement.

INTERNAL REVIEW AND APPROVAL - A BENCHMARK PROCESS

General Considerations

Each institution should design an internal process that will insure efficient management of the exemption of positions from the state personnel system. This includes the oversight, training, review and approval, and recordkeeping of all requests to exempt a position. The process should be automated as much as possible. Different institutions have differing needs and philosophies, but the emphasis must remain on compliance with the constitutional and statutory authorities granted to appointing authorities while, at the same time, preserving the rights of state employees in positions in the state personnel system.

Training

New human resource professionals need to receive training on the institution-specific processes from either other experienced professionals or from the Divisions of Human Resources (DHR) on the statutory provisions and technical assistance. It is also recommended that the human resources office train new human resource liaisons or coordinators who will prepare the requests for processing. Institutions should have their policies, processes, and forms on their Web sites for ease of access. Forms and instructions in electronic format will facilitate responsiveness to exemption requests.

Processing Requests

Electronic forms and review processes are the most efficient means of initiating requests for new exempt positions or updating vacant positions. Whatever means is chosen, it should be fully compatible with other human resource systems and processes, both manual and electronic. At a minimum, a job description, an organizational chart, and a request form are needed to either create or update an exemption request. The request form need not duplicate other human resources forms, but merely supplement them to show how the position's duties meet one or more of the statutory criteria for exemption.

Review and Approval

Each request should be reviewed and approved by the positions with appropriate delegated authority. At a minimum, the appointing authority for the position must review and approve the request. Per the statute, the president or the executive director, or their delegate must approve the exemption. If the approving person is other than the president or director, the delegation should be in writing. Some form of notification of the approval or disapproval of each request should be sent to the requestor.

Recordkeeping

Human resources offices must keep adequate documentation (paper or electronic files) on the request, review, and approval decision for each position in order to respond to audits, appeals, and open records requests. Records are typically kept in position folders. Copies of annual reports sent to DHR should also be kept on file for at least three years.

Periodic Reviews

To insure that job descriptions are kept current and positions are properly exempted or classified, human resource administrators should establish requirements for updating such records. At a minimum, job descriptions should be updated and reviewed whenever significant changes occur to the assignment.

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 applied the following definition used by the Federal Office of Personnel Management (OPM). OPM defines professional work in their *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.”

* DHR note: as used in two-year colleges, an associate’s degree plus 2-3 years of relevant experience may fit this part of the definition.

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 particularly distinguish professional level work as defined above and as intended by statute.

Executive Assistant

This term replaced the term “professional staff assistant”, in part, to avoid confusion with class titles and concepts used in the state personnel system. Executive assistants are those assistants to the top executive in an institution whose duties include the personal and confidential relationships involved in analyzing, evaluating, and developing the strategies, goals, and policies of the institution.

Academic/Academic Support

To be consistent with the historical use of positions “who relate to the educational function of an educational institution”, this type of position should have duties that **directly** relate to students, curriculum, faculty, instruction, etc. In other words, one can make a logical connection to an academic purpose. In contrast, a position that provides administrative support to some or all staff of an institution, such as counseling employees on work or family issues, would **not** be considered academic related. Similarly, a professional IT position responsible for the college’s financial reporting system would **not** be considered academic or academic support.

Duration of initial appointment

Questions have been raised about the length of time an initial appointment covers in subparagraph (h) regarding research and grant-funded positions. The intent 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, the duration of a research grant may cover a period of several years, but funding may be restricted to smaller periods of time, such as annual budget approvals. For purposes of appointments, the duration of “initial appointment” is the length of time in the original research grant or project. For example, a research grant may be awarded from October 1, 2004, through September 20, 2007, with an annual budget approval requirement.

Thus, the duration of the initial appointment would be October 1, 2004, through September 20, 2007.

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 insure employees are informed of their rights and that these rights will be forfeited upon a second appointment to an exempt position.

ANNUAL REPORTING

In order to comply with the reporting requirement, institutions must submit their annual reports to the state personnel director by December 31st. DHR will send a reminder each year along with a suggested format. The cumulative reports should be in a spreadsheet format (EXCEL or compatible substitute) showing all positions exempted *since* August 4, 2004. The data must include at a minimum: the position number, the position title (abbreviations acceptable), the date (MM/DD/YY) last approved for exemption, and the specific statutory paragraph letter (i.e., A, D, E, F, or H) authorizing that exemption. Electronic transmission of reports is required. Reports are to be forwarded to the DHR Division Director.

AUDITS, TRAINING, AND CONSULTATION

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

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

For purposes of exempting positions from the state personnel system, the state personnel director intends to apply a combination or variation of the above definitions as audit standards. Audit reviews of exempted positions will be measured against these standards.

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

APPEALS

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 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**

Technical Assistance Topic: Exempting Educational Positions From the State Personnel System

Effective Date of Revisions: January 23, 2007

Date of Superseded Version: November, 2005

Section Manager: Laurie Benallo Date: 1/22/07

Division Director: [Signature] Date: 1/23/07