

FAIR LABOR STANDARDS ACT DESIGNATION

REPORT OF FINDINGS

DECEMBER 1996

EXECUTIVE SUMMARY

Since July 1, 1985, state agency appointing authorities have been responsible for determining the overtime exemption status for each of their employees under the Fair Labor Standards Act (FLSA). As a single employer, the State must comply with provisions of the Code of Federal Regulations administered by the Federal Department of Labor, and Oregon Administrative Rules administered by the Bureau of Labor and Industries. These determinations have significant monetary consequences both for agencies and for individual employees. This audit was conducted to ensure that the State Executive Branch is meeting these obligations.

The review included 349 position descriptions from 57 agencies. In order for positions to be exempt from the overtime requirements of the Act, the work being performed by employees must satisfy certain job duties tests to qualify for either an executive, administrative, or professional exemption as defined by the Act. These tests were applied to each position description by the audit team. The following are the major findings:

- Of the 349 positions reviewed, 185 (53%) were designated by the agencies as exempt. The remainder were either designated as nonexempt or were not marked.
- The audit review resulted in agreement with agency designations for 221 (63%) of the positions.
- Of the remaining 128 positions, 84 were designated by the agencies as exempt but were found not to meet the job duties tests for exemption. There were 44 positions designated as nonexempt that were found to meet exemption tests.
- The position description entry and the coding in the Position and Personnel Data Base were inconsistent in 89 (26%) instances.

Recommendations were made that agencies review the work being done by employees in positions where there is disagreement, including interviews with position incumbents and their supervisors, and make the necessary corrections.

It was also recommended that agencies establish internal procedures, if not currently in place, to ensure that the information recorded in the Position and Personnel Data Base and the position description is in agreement.

An additional technical recommendation was made regarding an improvement to the position description format which would enhance the administration of FLSA requirements.

CONCLUSIONS AND RECOMMENDATIONS

The findings identified by this audit are based solely on an auditor's review of position descriptions and organization charts submitted by the agencies. In those cases where the findings disagree with current agency FLSA designations, agencies should conduct a thorough review of the work being performed by their employees, including desk audits, to arrive at a final determination of the FLSA designations for the positions in question.

Conclusion:

The FLSA designations of 89 positions (26%) were either in disagreement between the PDs and the PPDB or were missing from the PDs.

Recommendation:

As stated in the *Classification Guide*, the PD is the primary document of personnel administration in the state. It must be current, accurate, and complete. Agencies should establish internal procedures, if not currently in place, to ensure that information recorded in the PPDB system agrees with the information contained in PDs.

Conclusion:

Of the 349 PDs reviewed in the audit, 127 (36%) were found to be inappropriately designated.

Recommendation:

We recommend that agencies review the work being performed by their employees to verify the FLSA designations assigned to their positions, and make the necessary corrections. These reviews should include interviews with incumbents and their supervisors. Agencies should check with their assigned labor relations manager in the case of represented employees, especially when changing from nonexempt status to exempt status.

We recommend that agencies become familiar with the two handbooks available from the Bureau of Labor and Industries: *Wage & Hour Laws - A Handbook for Oregon Employers* and *The White Collar Exemptions - A Handbook for Oregon Employers*, 1996 Editions. Another valuable reference is the Thompson Publishing Group's *Public Employer's Guide to FLSA Employee Classification*, 1995 Edition. These are excellent references to augment applicable OARs and CFRs.

Conclusion:

Section 1 of the current PD form (PD 122) provides a space to indicate whether the position is exempt or nonexempt. Neither the instructions in the *Classification Guide* nor the PD form provide for entering the exemption category (executive, administrative, or professional) for exempt positions. The job duties tests for each of these categories have different criteria, and the identification of the exemption category (or categories if more than one) on the PD would be valuable whenever duties are established, revised or reviewed.

Recommendation:

We recommend that upon future revision by HRSD, Section 2.5 of the *Classification Guide* and Form PD 122 be revised to incorporate the entering of FLSA exemption category information.