



FLSA Fact Sheet #5: Applying the FLSA Changes to Residence Professionals in the UNC System

Introduction

Of particular challenge to institutions of higher education is the classification of various residence professional positions. “Resident professional” encompasses a broad range of positions requiring various levels of authority and discretion and various levels of supervisory authority, all of which need to be considered when determining whether a position meets the “duties” test for FLSA exempt status. In addition, many residence professional positions have a low salary, because part of their compensation is often given in the form of free room and board. The traditionally low salary rates, combined with frequent and long on-call hours, may trigger overtime obligations in light of the new and higher FLSA salary requirements taking effect on January 1, 2020.

This Fact Sheet answers some common questions that have arisen across the UNC system regarding options for assuring compliance with FLSA changes in the context of residence professionals.

Can a constituent institution raise salaries to either the new salary level (\$35,568/year) or to the level of your lowest paid educator?

The FLSA’s white collar exemptions allow an employee to be exempt if he/she meets certain salary and duties requirements. Similarly, the FLSA allows an exemption for “academic administrators” whose salary may be lower than the general requirement.

It is an option for a UNC constituent institution to raise a residence professional’s salary to the new salary level (\$35,568/year or \$684/week); however, this is not a requirement. Across the UNC system, the range of salaries earned by residence professionals varies widely. Many constituent institutions have indicated that the salaries paid currently are significantly enough under the new salary threshold to feasibly raise to the new required salary level.

Depending on the duties assigned to the residence professional, the individual may separately qualify as an “academic administrator” which would allow the employee to be exempt if his/her salary is at least equal to the lowest paid educator at the constituent institution.¹ Even so, for many of the constituent institutions the lowest paid educator’s salary currently is significantly higher than the salary earned by the residence professionals, making the academic administrator exemption unrealistic.

Several constituent institutions have indicated that they will be raising the salaries of at least some of their higher-salaried positions who are also performing exempt duties to meet the new salary level or to meet the lowest paid educator’s salary. Each constituent institution will have to review its own salary

¹ See FLSA Fact Sheet #7: Criteria for Qualifying as an Academic Administrator in the UNC System.

levels and job duties of the residence professionals to determine whether either of these options is viable.

Even if the residence professional’s salary is equal to or exceeds that of the lowest paid educator, does the academic administrator exemption apply?

In order to qualify for the academic administrator exemption, the employee’s primary duty must be “performing administrative functions directly related to academic instruction or training in an educational establishment.”² According to U.S. Department of Labor (DOL) guidance, in higher education settings “academic administrative personnel generally eligible for this exemption include department heads, academic counselors and advisors, intervention specialists who must be available to respond to student academic issues, and other employees with similar responsibilities.”³ Some residence professionals may meet this requirement; others will not.

It is critical to keep in mind that when analyzing positions with regard to the academic administrator exemption, you must ensure that both the minimum salary and the primary duty requirements are met.

How should “on-call” time be recorded?

If a residence professional is not able to be an FLSA exempt employee, then a constituent institution may be faced for the first time with having to track and record, and pay overtime for, hours during which certain residence professionals are “on-call.” Whether such hours, sometimes referred to as “waiting time,” is considered work time is fact-specific. The primary considerations, as articulated by one court, are “(1) the parties’ agreement, and (2) the degree to which the employee is free to engage in personal activities.”⁴ Factors to consider include:

- Is the employee required to remain on the premises?
- If allowed off the premises, is the employee restricted in where he or she may go?
- How often is the employee actually contacted while on-call?
- Can the employee easily trade on-call responsibilities with another employee?
- To what extent can the employee freely use his or her on-call time to engage in personal activity?

Essentially, it is a question of the amount of control exerted by the employer over the employee during the waiting time.

The determination of whether a residence professional’s on-call time or “waiting time” is compensable will be a fact-specific inquiry that will depend on the amount of control the constituent institution has over the employee during that time, and the expectations of the position. University counsel should be consulted as your institution analyzes and makes policy decisions around what constitutes compensable on-call time, and how those hours can be managed.

² 29 C.F.R. § 541.204.

³ U.S. Dep’t of Labor, Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act (May 18, 2016), <https://www.dol.gov/whd/overtime/whdfs17s.pdf>. See also FLSA Fact Sheet #7: Criteria for Qualifying as an Academic Administrator in the UNC System.

⁴ Owens v. Local No. 169, 971 F.2d 347, 350 (9th Cir. 1992).

Summary

Given the wide range of variables pertaining to residence professionals across the UNC system, including significant salary differences, job descriptions, and organizational structures, it is clear that each constituent institution must review its treatment of residence professionals and be thoughtful in formulating solutions to minimize the impact of the new FLSA regulations.

Provided in tandem with this analysis is the summary of a system-wide survey which gives some insight into how the constituent institutions are addressing these issues.