Memorandum to Presidents

Date: September 25, 1985

From: Offices of the University Counsel and Vice Chancellor for Legal Affairs; Vice Chancellor for Employee Relations and Educational Services

Subject: Fair Labor Standards Act Implementation

To: Presidents, State-Operated Campuses
    Presidents, Community Colleges

In February, the United States Supreme Court overturned a long-standing precedent and held the Fair Labor Standards Act (FLSA) applies to State and local governments. The FLSA is applicable to State University as of April 15, 1985, the date on which the Supreme Court decision became final. The U.S. Department of Labor has announced that it will begin investigating state and local government compliance with the FLSA on October 15, 1985. This memorandum is the first in a series of advisories on the effect of the FLSA on the State University.

REQUIREMENTS OF THE ACT

The three main requirements of the Act are the payment of overtime for hours worked in excess of 40 per week, the maintenance of extensive employee records, and the payment of a minimum wage. The most significant changes the University can anticipate are the mandated overtime payments to certain employees in the professional service who were never before eligible for overtime, the payment of on-call and recall pay, and the development of new record-keeping systems. Most of our employees are paid above the minimum wage, so that provision should not present major problems. Impact on certain other policies such as compensatory time and extra service is being evaluated.

The requirements of the Act apply to all employees unless they are defined as professionals, executives or administrators under the Fair Labor Standards Act who qualify for one of the exemptions. As a first step, each campus will need to identify all employees who are not subject to the overtime requirements. This will be a detailed process and one that in some instances requires job by job review, since the FLSA does not identify exempt employees by title, but rather by duties and responsibilities. Thus, in the case of two employees in the same title, one could be eligible for overtime and the other exempt depending upon the nature of specific responsibilities and the proportion of time the employees spend in various tasks.
IMPLEMENTATION

Although legislation has been introduced in the United States Senate to change the effect of the recent Supreme Court ruling and to exempt State and local governments from the payment of overtime, this legislation faces substantial opposition from public employee unions. We will keep you advised of any significant developments in Congress.

Detailed information is being forwarded to the Personnel Officers at the State-operated campuses which asks that certain positions in the unclassified service be reviewed to determine if the employees are exempt or nonexempt. Each campus will be asked to review certain unclassified positions in PR grades 1 through 4. SUNY faculty and upper level management and executive positions need not be reviewed at this time. Most employees in the classified service currently are eligible to receive overtime under current law, so it would appear that the State is already in compliance with the FLSA as to those employees. We are advised that the Governor's Office of Employee Relations is reviewing implementation of the FLSA generally for all State civil service employees.

Future advisories will cover such subjects as record keeping, the assignment and control of overtime, and budget impact.

Questions relating to the implementation of the FLSA should be addressed to Joyce Villa, Assistant Vice Chancellor (518-473-1868). Questions relating to the inclusion or exclusion of a particular title or position should be addressed to Nick Paradiso, Assistant Vice Chancellor (518-473-1857).

The FLSA applies with equal force to the community colleges. Although most of the principles set forth in this Memorandum will generally pertain, we recommend that the community colleges consult further with representatives of their sponsors and appropriate local counsel on specific procedures for compliance.

cc: Personnel Officers, State-operated Campuses
    Business Officers, Community Colleges

Copies for information only sent to:
    President Coll
    Vice Provost Spencer
    Deans, Statutory Colleges