

TO: Budget Unit Heads

DATE: August 19, 2004

FROM: Jessie Roberts
Human Resources Director

RE: DOL Clarifies FLSA Status for Graduate Research Assistants

The U.S. Department of Labor (DOL) has clarified for the College and University Professional Association for Human Resources (CUPA-HR) that it will not assert that an employee-employer relationship exists between graduate research assistants and a higher education institution. *“In some cases graduate students in college and universities are engaged in research in the course of obtaining advanced degrees and the research is performed under the supervision of a member of the faculty in a research environment provided by the institution under a grant or contract. Normally the graduate students involved in these programs are simultaneously performing research under the grants or contracts and fulfilling the requirements of an advanced degree. Under such circumstances, Wage and Hour will not assert an employee-employer relationship between the students and the school, or between the student and the grantor or contracting agency, even though the student received a stipend for their services under the grant or contract. Where no employment relationship exists, there is no application of the minimum wage and overtime pay provisions of the FLSA.”* Therefore, the new FLSA regulations, which become effective Monday, August 23, 2004, will not apply to graduate research assistants.

As a result we will change Graduate Research Assistants back to the monthly payroll. They will be paid a stipend rather than an hourly wage rate. Their first check will be paid with the Graduate Teaching Fellows on September 15, 2004. Based on this additional information, Graduate Research Assistants will not be required to punch the time clock. Their time will be auto-populated in TimeCentre. Payroll will delete any punches that are already in the system this week for the Graduate Research Assistants.

Budget unit heads and graduate assistant supervisors are reminded that they must continue to abide by the university’s definitions of what the various categories of appointments are for graduate assistants.

“Categories of Appointment

Teaching Fellows (TF).

The graduate assistant teaches a course(s) and has full responsibility for the course(s). He/she is the Instructor of Record for the course(s).

Teaching Assistant (TA).

Teaching assistants usually assist faculty members in teaching their courses, but the faculty members remain responsible for and serve as the Instructors of Record for these

courses. In some departments, teaching assistants may be assigned to assist a faculty member with taking roll, grading papers, conducting help sessions, etc. In other departments, teaching assistants may serve a period of apprenticeship under the supervision of a faculty member.

Research Assistant (RA).

The graduate assistant primarily performs research assignments for a faculty member. Often the research assistant is working together with the faculty member in conducting a research project.

Administrative Assistant (AA).

The graduate assistant performs assignments primarily of a clerical nature or supervisory nature, although he/she may be assigned other duties.”

[Excerpt from the Graduate Assistant Handbook]

If a Teaching Assistant or an Administrative Assistant is purposely misclassified by their supervisor as a Research Assistant in an attempt to circumvent the FLSA, and if we are audited and found to be in violation, the supervisor responsible will be personally liable for the fines and penalties. The university would also be responsible for damages and back wages. These fines could be up to \$10,000 for each violation. A second violation can result in imprisonment. Willful violations are also subject to civil money penalties of up to \$1,000 for each violation.