

Regulation on the “Student-Employee” Exclusion from the State Human Resources Act

I. On October 13, 1976, the State Human Resources Commission adopted the following policy on “Student-Employees”:

A. The employment of students by the institutions in which they are enrolled is designed primarily to constitute one type of student financial aid. Such employment usually is characterized by flexible accommodation of the student’s primary involvement in educational pursuits. Thus, in terms of hours worked, scheduling of work, and required skill and productivity, such student workers are materially distinguishable from regular career employees.

B. Any person who during any period of enrollment as a student in a public educational institution concurrently is employed by that institution shall be considered an employee within the meaning of and subject to the State Human Resources Act only if the student-employee is employed by the institution on a full- time permanent basis (as defined by regulations issued by or under the authority of the State Human Resources Commission) in a permanent position established and governed pursuant to requirements of the State Human Resources Commission.

II. This policy was adopted after concern was expressed by the University that “student employment” within the higher education context is not amendable to close, detailed, and uniform regulation of the type otherwise applicable to employment within the jurisdiction of the State Human Resources Commission. Of particular (though not exclusive) concern was the potentially negative impact on institutional “student financial aid” programs of the originally proposed requirement that “student workers” be compensated for their employment in the same manner and to the same extent as “other employees.” Recognition of the special character of “student employment” and the corresponding inducements to treat “student-employees” differently is reflected by the policy adopted by the State Human Resources Commission.

III. Under the State Human Resources Commission policy, a person who is properly determined to be a “student-employee” is thereby excluded from the coverage of the State Human Resources Act. However, a person may not be so excluded if employed (1) on a “full-time permanent basis” (2) in a “permanent position” within the classified State Human Resources Act service. But the policy does not otherwise provide a clear basis for defining the class of persons (viz., “student-employee”) which is the subject of the exclusion.

IV. Consistent with the clear spirit of the policy adopted by the State Human Resources Commission, the following conclusions are reached:

A. The fact that an individual concurrently is both enrolled in the institution and employed by the institution does not, standing alone, render an individual a “student-employee” for purposes of exclusion from the State Human Resources Act.

B. Classifying a person under the State Human Resources Commission policy should rest on

the following judgmental inquiry: was it the primary purpose and intent of the institution in establishing its relationship with the individual to confer student status or to confer employee status?

If a person is primarily a student and employment is merely incidental to student status, then that person is a "student-employee." Conversely, if a person is primarily an employee and enrollment is merely incidental to employee status, then that person is not a "student-employee."

V. Although administration of this primary-status test would be simplified by the availability of an easily applied formula, the matter is not usually amendable to such treatment. Rather, the institution most often must determine from all pertinent circumstances whether or not, in its judgment, the individual is a "student-employee." Pertinent circumstances to be considered would include, but not necessarily be limited to, the following:

- A. the relative amounts of time devoted to enrollment and to employment;
- B. whether the employment was initiated before, concurrent with, or after assumption of student status;
- C. whether or not the employment constitutes a form of "student aid" responsive to the individual's financial needs.

VI. The classification of individuals relative to the State Human Resources Commission policy is simply achieved in two types of situations: the individual is not a "student-employee" if:

- A. the individual is an employee of the institution but is not enrolled in the institution; or
- B. the individual is enrolled in the institution and, in addition, is employed by the institution on a full-time permanent basis in a permanent position within the classified State Human Resources Act service.

However, in all other cases in which there are concurrent enrollment and employment, the judgmental exercise prescribed above must be undertaken.

[This is a rewrite of Administrative Memorandum #99.]