

Personnel Policies for Staff Members 30 (Salary)
Frequently Asked Questions
September 2013

These Frequently Asked Questions have been developed to clarify what is *currently allowed* under PPSM 30 and Delegation of Authority 2070 with regard to dual employment for policy-covered staff employees. They also provide information on appropriately determining an employee's FLSA designation when dual employment or multiple appointment situations exist.

Dual Employment

1. *What is dual employment?*

Dual employment is the term used to describe additional time worked by a staff employee in a second appointment when he/she also holds a 100% appointment. Dual employment occurs when the employee performs the additional work repeatedly, rather than on a one-time or sporadic basis.

2. *Is dual employment allowed under policy?*

Dual employment is only allowed in certain circumstances. *Delegation of Authority 2070* (July 29, 1996) authorizes Chancellors, the Laboratory Director, the Executive Vice President–Business Operations, and the Vice President–Agriculture and Natural Resources to approve dual employment if all of the following criteria are met:

- a. The employee is appointed to a full-time position in the Professional & Support Staff personnel group;
- b. The additional work is in another department or in a different classification in the same department;
- c. It is impractical to employ another person;
- d. The additional appointment will not exceed a total of twelve calendar months;
- e. The time worked in the additional appointment will not have a negative impact on the employee's performance; and
- f. The employee's full-time department head agrees to the arrangement.

Locations may have local procedures with additional restrictions to those listed above. Otherwise, *PPSM 30*, Section K. states that an employee with a 100% appointment can only receive additional compensation from the University for:

- Overtime earned by non-exempt employees,
- Teaching regularly scheduled University Extension courses, and
- Administrative stipends.

An employee who receives additional compensation for any of these reasons does not have dual employment.

3. *Can the Chancellor, Laboratory Director, Executive Vice President–Business Operations, and the Vice President–Agriculture and Natural Resources redelegate the authority to approve dual employment?*

Yes. *Delegation of Authority 2070* allows the Chancellor et al. to delegate the authority to approve dual employment appointments. This authority can be further

redelegated; however, locations should be mindful of the appropriate level of approval for such appointments. It is recommended that the authority to approve dual employment not be redelegated below the level of Chief Human Resources Officer.

4. Are employees appointed to the Managers & Senior Professionals personnel group allowed to hold dual employment?

Delegation of Authority 2070 states that dual employment may only be approved if the employee is appointed to a position in the Professional & Support Staff personnel group (see 2.a. above). Consequently, employees appointed to the Managers & Senior Professionals personnel group are not eligible to hold dual employment.

5. What is the difference between dual employment and multiple appointments?

Dual employment occurs when an employee holds one 100% appointment and a second appointment. Multiple appointments occur when an employee does not hold a 100% appointment, but rather two or more appointments that are each less than 100%.

6. Is an employee allowed to have multiple part-time appointments that together add up to more than 100%?

Delegation of Authority 2070 does permit an employee to hold multiple part-time appointments that together add up to more than 100%, but only if the criteria listed above in question 2 b-e is met.

7. Can an employee hold dual employment or work over 100% without any restrictions if the additional appointment is at another location?

No, the restrictions in *PPSM 30* and *Delegation of Authority 2070* apply to all appointments an employee holds, regardless of location. In addition, an employee who works at multiple locations is limited to 100% total per *Accounting Manual P-196-38 (Interlocation Transfers and Appointments)*.

8. How should pay and overtime be addressed when an employee holds dual employment?

Pay and overtime should be addressed in the following ways for dual employment situations:

- If the employee is non-exempt, the employee must track all of the hours he/she works in each appointment and be paid overtime at the premium rate (1½ times the regular rate of pay) for all hours worked over 40 in a workweek (except for Police personnel, Hospital employees, and Firefighters – see *PPSM 32 (Overtime)*, Section III.C.1-3).
- If the employee is exempt, the employee does not track his/her hours and is paid a percentage of his/her base salary for the second appointment. The percentage will be determined based on the value of the work performed in the second appointment.

The above differs from the language in *Delegation of Authority 2070*; however, Fair Labor Standards Act (FLSA) rules have been updated since that delegation was

issued. See the next section for information on determining an employee's FLSA designation.

9. Which DOS codes should be used to pay an employee with dual employment?

The following DOS codes must be used to pay an employee with dual employment:

- a. **DEE** – For dual employment at a fixed dollar amount (exempt employees).
- b. **DES** – For dual employment at the straight-time rate (non-exempt employees).
- c. **DEP** – For dual employment at the premium (time and one-half) rate (non-exempt employees).

Using these codes will ensure that employees are paid appropriately and will allow the University to track and report on these appointments.

The same codes will be used in the PeopleSoft system to pay and track dual employment appointments after the University transitions to UCPath; however, they will be called Earnings codes rather than DOS codes.

Fair Labor Standards Act (FLSA) Designation

10. In a dual employment situation, what happens if the employee's appointments have different FLSA statuses (one appointment is non-exempt and one is exempt)?

If a person holds appointments with different FLSA statuses, a decision must be made as to whether the person is exempt or non-exempt, and that decision applies to both appointments. To decide the appropriate FLSA status, the location must conduct an individualized analysis to determine which FLSA status is most appropriate based on the employee's primary duties.

In the case of dual employment, the work in the employee's 100% appointment is more likely than not the employee's primary duty. Before that determination can be made, however, the individualized analysis must be done and all of the work the employee performs in both appointments must be considered together to determine the employee's primary duties. Depending on that analysis, the employee's FLSA designation will either be exempt or non-exempt for work performed in both appointments while he/she holds dual employment.

11. What happens if an employee holds multiple appointments with different FLSA statuses?

Like a dual employment situation, if an employee holds multiple appointments, all of the employee's appointments must be reviewed together to determine the employee's appropriate FLSA designation based on the employee's primary duties. That FLSA designation then applies to all of the appointments. When a staff employee's work is closely split between exempt and non-exempt staff duties it can be more difficult to determine what the employee's FLSA status should be. In these situations, the employee should be treated as non-exempt. This ensures the employee will be properly compensated for his/her work and any overtime and ensures the University will be in compliance with FLSA regulations.

For an employee who holds academic and staff appointments at the same time, the academic appointment might make up the employee's primary duties regardless of the percent time of the academic appointment. An individualized analysis must be done that considers all of the duties performed by the employee in all of the appointments. Note that if an employee with a 100% staff appointment takes on an academic appointment, the employee will be required to reduce his/her staff appointment percentage so that both appointments together do not exceed 100%.

12. What is the definition of primary duty?

Department of Labor regulations define "primary duty" as the "principal, main, major or most important duty that the employee performs." The Regulations go on to say that factors to consider when determining an employee's primary duty include, but are not limited to:

- The relative importance of exempt or non-exempt duties as compared with other types of duties,
- The amount of time spent performing exempt or non-exempt work,
- The employee's relative freedom from direct supervision, and
- The relationship between the employee's salary and wages paid to other employees for the kind of non-exempt work performed by the employee.

When considering how much time the employee spends performing exempt or non-exempt work, locations should consider the amount of *actual* time the employee spends completing that work, rather than the employee's appointment percentage. Remember that while the amount of time an employee spends performing exempt or non-exempt work can be useful in determining the employee's primary duty, it is not the only factor to consider. This is especially true for some academic appointments with low appointment percentages. The employee's duties at the University must be considered as a whole.

13. Who does the evaluation and makes the final FLSA status determination?

The local Compensation, Human Resources, or Academic Personnel offices evaluate and make the final FLSA status determination, in compliance with the legal requirements of the FLSA and with these FAQs. The Office of General Counsel should be consulted when a complicated employment situation exists.

14. Who should departments contact with questions about dual employment or FLSA designation?

Departments can contact the local Compensation, Human Resources, or Academic Personnel offices with questions about dual employment or FLSA designation.