

**BEFORE THE BOARD OF TRUSTEES
OF THE PUBLIC DEFENDER SERVICE CORPORATION
RELATIVE TO
THE ADOPTION OF A "POLICY GOVERNING
EXEMPT AND NON-EXEMPT EMPLOYEES"
FOR THE PUBLIC DEFENDER SERVICE CORPORATION**

RESOLUTION NO. PDSC 95-05

- WHEREAS, On April 21, 1995, Executive Order No. 95-11 was promulgated to exempt bona fide executive, administrative and professional (EAP) positions (employees) from incurring overtime or compensatory time; and
- WHEREAS, Executive Order No. 95-11 took effect April 30, 1995 and was promulgated in light of the dire financial needs of the government and its effort to reduce government spending; and
- WHEREAS, Although the Executive Order applies to employees in the executive branch, the Public Defender Service Corporation desires to implement similar provisions for its employees since the Corporation totally relies on the General Fund for its operation existence; and
- WHEREAS, Implementations of the provisions in the attached policy governing exempt and non-exempt employees are in accordance with Subsection (b) of Section 46006 of the Government Code, Fair Labor Standards Act; now therefore be it
- RESOLVED, The Board of Trustees of the Public Defender Service Corporation, in its meeting of June 13, 1995, directed the Executive Director to approve and implement the attached "**POLICY GOVERNING EXEMPT AND NON-EXEMPT EMPLOYEES**"; be it further
- RESOLVED, This "Policy Governing Exempt and Non-Exempt Employees" shall take effect commencing with the pay period beginning June 25, 1995.

DULY AND REGULARLY ADOPTED this 13th day of June, 1995.



Honorable ALBERTO C. LAMORENA III
Chairman



ROBERT J. TORRES, Esq.
Member



Senator MARK C. CHARFAUROS
Member

PUBLIC DEFENDER SERVICE CORPORATION
Government of Guam

POLICY GOVERNING EXEMPT AND NON-EXEMPT EMPLOYEES

I. LEGAL BASIS

On April 21, 1995, Executive Order No. 95-11 was promulgated to exempt bona fide executive, administrative and professional (EAP) positions (employees) from incurring overtime or compensatory time. The Executive Order takes effect April 30, 1995. The executive order was promulgated in light of the dire financial needs of the government and its effort to reduce government spending.

Although the Executive Order applies to employees in the Executive Branch, the Public Defender Service Corporation decided to implement similar provisions for its employees since the Corporation totally relies on the General Fund for its operational existence.

In addition, implementation of the following provisions is in accordance with Subsection (b) of Section 46006 of the Government Code, Fair Labor Standards Act (FLSA). This section of the law provides that the government is not required to pay overtime or compensatory time to employees who are employed in a bona fide executive, administrative, or professional capacity.

II. EXEMPT AND NON-EXEMPT EMPLOYEES

A. EXEMPT EMPLOYEES

Employees occupying and/or performing executive, administrative and professional duties are defined as salaried employees who are compensated not for the amount of time spent on the job, but rather for the general value of the services performed. The main requirement for application of the executive, administrative and professional (EAP) exemptions is the need to pay the employee on a salary basis rather than the traditional one hour work for one hour pay.

According to the Fair Labor Standards Act, EAP employees are defined as follows:

1. **Executive employees** are supervisors, foremen, or managers who supervise at least two subordinate employees and who meet all of the following criteria:
 - a. The employee's primary duty consists of management or supervision;
 - b. The workers supervised constitute a recognized organizational unit;
 - c. The employee regularly exercises discretion and independent judgment, under only general supervision, in planning, directing and controlling the work of the unit supervised;
 - d. The employee performs significant personnel management duties.

2. **Administrative positions** are occupations, other than professional occupations, that require the kind of knowledge, evaluation judgment and breadth of outlook expected of competent personnel, equivalent to college graduates. Employees are required to apply this breadth of knowledge and perspective in solving problems for which guides, precedents, and rules and regulations are not fully controlling. Quality of judgment required at the full performance levels depends primarily on reasoning ability and perceptiveness rather than on knowledge, gained through past practices, problems or how prior similar cases have been treated or decided upon.

3. **Professional occupations** are those that require knowledge in a field or science of learning customarily and characteristically acquired through education and training that meets the requirements for a bachelor's or higher degree with major study in or pertinent to the specialized field, as distinguished from general education. The work of professional positions is creative, analytical, evaluative, or interpretive; and is characterized by personal responsibility to keep abreast of and exercise judgment and broad perspective in the application of an organized body of knowledge that is constantly studied to

POLICY GOVERNING EXEMPT AND NON-EXEMPT EMPLOYEES

Page 3

make new discoveries and interpretations and to improve the data, materials, and methods.

Although it is the employee who is or is not exempt, the exemptions are applied to the positions based on the factors listed above. EAP employees (positions) that spend more than 20% of their time in a work week performing non-exempt work may not be covered under the exemption provisions.

Each of EAP exemption category contains a primary duty requirement, which varies with each exemption. In order to identify those primary duties of executive, administrative and professional employees, the rule of thumb is that an employee in the EAP shall spend approximately 50 percent of his/her time in the performance of such duties and responsibilities which meet the factors provided as a guide below:

1. The relative importance of managerial duties as compared with other types of duties;
2. The frequency with which the employee exercises discretionary powers;
3. The relative freedom from supervision; and
4. The relationship between the employee's salary and the wages paid other employees, for the same kind of work.

For purposes of the Corporation and as defined in 29 CFR, Part 541 of the Fair Labor Standards Act, the following positions in the Corporation are considered EXEMPT POSITIONS and, accordingly, shall not receive overtime pay or compensatory time for working more than forty (40) hours per week:

| <u>POSITION TITLE</u> | <u>EXEMPT</u> | <u>EAP</u> |
|-------------------------|---------------|--------------|
| DIRECTOR | X | Executive |
| ADMINISTRATIVE DIRECTOR | X | Executive |
| ATTORNEY I | X | Professional |
| ATTORNEY II | X | Professional |

POLICY GOVERNING EXEMPT AND NON-EXEMPT EMPLOYEES

Page 4

| | | |
|------------------------------|---|----------------|
| ATTORNEY III | X | Professional |
| ATTORNEY IV | X | Professional |
| CHIEF FISCAL OFFICER | X | Administrative |
| CHIEF INVESTIGATOR | X | Administrative |
| SPECIAL INVESTIGATOR I | X | Administrative |
| SPECIAL INVESTIGATOR II | X | Administrative |
| SPECIAL INVESTIGATOR III | X | Administrative |
| SPECIAL INVESTIGATOR IV | X | Administrative |
| PERSONNEL SPECIALIST IV | X | Administrative |
| SERVICES DIVISION SUPERVISOR | X | Administrative |
| SYSTEMS PROGRAMMER | X | Administrative |

In addition, the above positions must also meet the short or long tests prescribed by FLSA. Specifically, the long test prescribes in detail the duties, responsibilities and obligations of the employee. It also requires that the employee be paid on a salary basis (rather than hourly) and specifies a minimum salary of \$155 per week for the employee to qualify for the exemption. This test is administered on a weekly basis. The short test sets forth fewer conditions related to the employee's duties and requires a higher minimum salary of \$250 per week for the employee to be exempt. This test is administered on a yearly basis. An employee whose duties satisfy either the long or short test will be deemed exempt from the FLSA overtime standards.

B. NON-EXEMPT POSITIONS

All other positions not listed above are NON-EXEMPT positions and are covered under the overtime pay or compensatory time provisions.

The following positions, although supervisory (EAP) in nature, have been determined to be non-exempt positions since employees in these positions spend more than 20% of their time in a work week performing non-exempt duties.

LEGAL CLERK SECTION SUPERVISOR

LEGAL SECRETARY SUPERVISOR
PROCESS OFFICER SUPERVISOR

C. REDETERMINATION OF POSITION

If an employee is not satisfied with the determination of his/her position as being exempt or non-exempt, the employee may officially request for a redetermination from the Personnel Office. If the employee is not satisfied with the findings of the Personnel Office, the employee may seek redetermination from the Department of Labor.

III. TIME AND ATTENDANCE REQUIREMENTS

A. EXEMPT EMPLOYEES

The concept of exempting EAP employees from overtime compensation under FLSA provides the flexibility for those employees to perform work and be compensated for the value of that work rather than on the time spent on the job. This flexibility therefore does not require that employees in EAP positions be required to punch time clocks or log in on time sheets. Neither are these employees charged leave for time off the job when their absence does not exceed eight (8) hours a day.

In line with the foregoing concept, the following policy and procedure governing attendance and leaves of absence for exempt employees is hereby established:

1. Exempt employees are not required to record their time and attendance by time cards through the use of the time clock or through the use of timesheets.
2. Absences of less than eight (8) hours do not require the submission of leave application, be it annual or sick leave. Such absences, although not charged to leave, shall still require the employee to inform management of the employee's whereabouts for accountability purposes.
3. Any absences of eight (8) hours or more must still follow the provisions contained in Policy Memorandum No. EP-01. All

leave applications must be submitted no later than Monday after the ending of the pay period.

4. All previous mandates and/or memoranda relating to time and attendance affecting exempt employees are superseded by this policy.

B. NON-EXEMPT EMPLOYEES

Non-exempt employees shall continue to comply with Policy Memorandum No. EP-10 governing time and attendance.

C. COMPENSATORY TIME OFF AND/OR STRAIGHT TIME OFF

Exempt employees who have unused balances of compensatory time off and/or straight time off hours are required to exhaust such unused balances within thirty (30) days after the effective date of this policy.

IV. IMPLEMENTATION DATE

The effective date for implementation of this policy shall be the date set forth by the PDSC Board of Trustees.