

ACADEMIC AFFAIRS COUNCIL

AGENDA ITEM: 5.P

DATE: June 11, 2014

SUBJECT: ACA Update

Since the last briefing on the Affordable Care Act (US H.R. 3590) during the May 8 AAC meeting 12 system staff have been working with council representatives to refine the method for calculating hours worked by graduate students. The issue that remains to be resolved is that there is no safe harbor exempting graduate research assistants from reporting hours worked. Currently only two choices exist including: 1) provide healthcare coverage and continue to manage research assistants as in the past; or 2) track hours and provide coverage to individuals who are entitled to coverage under the ACA (see Attachment I for guidelines established by Dr. Shekleton).

On May 29, representatives from a number of councils took part in a conference call to specifically discuss the impact on the graduate students. Following this discussion Nathan Lukkes developed the flowchart identified below for assisting campus administrators with the making decisions related to which of the two above options graduate students will align with.

GRA Benefit Eligibility Flowchart:

1. Will the GRA average 30 hours or more a week in the lab working on their thesis or dissertation (i.e. analytical work they will use to complete their degree requirements) and performing compensable work?
 - If no, benefits are not required.
 - If yes, continue to question 2.

2. Is the GRA's compensation based either: (1) solely on their thesis or dissertation work; or (2) solely on non-thesis or non-dissertation work?
 - If yes, benefits are required.
 - If no, continue to question 3.

(Continued)

RECOMMENDED ACTION

Discussion and Recommendation.

3. Can you identify the percentage of the GRA's hours that is expected to be allocated to projects, tasks or work that will not comprise part of the analysis presented in their thesis or dissertation?
 - If no, please revisit question 2 because it would appear the GRA is being compensated solely for their work on their thesis or dissertation.
 - If yes, continue to question 4.

4. Does the percentage obtained in question 3, multiplied by the total number of hours the GRA will average each week exceed 30?
 - If yes, benefits are required.
 - **If no, the GRA is not eligible for benefits under the ACA.**

Creating an Auditable Paper Trail.

The determination has been made that the GRA is not eligible for benefits under the ACA, all that's left to be done is to create the record. Generally speaking, there's a three pronged approach to creating a paper trail that will survive IRS scrutiny. It's worth noting that none of the three in isolation should be expected to clearly establish compliance, but in conjunction, the three should establish absolute compliance. The three components necessary to adequately demonstrate ACA compliance are as follows: (1) Policies/Procedures; (2) Offer Letter/Contract; and (3) Time Keeping.

1. Policies/Procedures

Adequate policies and procedures must be established to create the framework necessary to differentiate between positions which are ACA eligible and those which are not. The expectations regarding the number of compensable hours a GRA is allowed to work each week must be clearly established, which should also include the non-ACA related rationale for limiting the number of hours GRA's should work each week (i.e. academic performance implications of excessive workload). Likewise, a general distinction between the categories or concept of compensable and non-compensable activities should be addressed.

Furthermore, adequate procedures should be in place for tracking and monitoring the GRA's activities on a weekly or monthly basis. The logging of any weekly timesheet in excess of 25 compensable hours should require approval/sign off at a heightened level. Requiring this will not only discourage GRAs from pushing the envelope, but it will also ensure those who should be aware of GRAs who are approaching/surpassing the 30 hour threshold are in fact made aware. Keeping in mind the 30 hour threshold is an annualized average, so proper tracking and monitoring can ensure compliance even if a GRA occasionally busts the 30 hour weekly cap.

2. Offer Letter/Contract

The offer letter or contract should clearly state the expectations and compensation parameters applicable to the GRA. The foregoing should include, without limitation, the maximum number of hours per week for which the GRA will be compensated; whether or not the position is benefit eligible; the projects, tasks or work for which the GRA will be compensated; the projects, tasks or work directly related to the GRA's thesis or dissertation, which comprise the GRA's "educational experience," and for which no compensation will be rendered; and the requirement that the GRA allocate their time spent between activities for which the GRA is compensated and those for which they are not. If you can only identify one of the two categories of activities (compensable or not compensable) then the time allocated to the identified class is just that, and by default, all other time must fall into the other category.

3. Time Keeping

Similar to what's currently done for effort certification, each GRA will be required to log their total hours and then allocate, on a weekly basis, what percentage of those hours were attributable to compensable activities and non-compensable activities. The faculty member responsible for direct supervision of the GRA should be required to verify the hours and allocation submitted by the GRA. In the event a GRA submits a weekly time log containing in excess of 25 compensable hours, the GRA should be required to submit an explanation of why their hours were increased during that week, in addition to providing their assurance that it was an isolated incident and their hours in the weeks to come will comply with the established parameters. At that point the timesheet and supplemental information is presented to the approving authority to validate, which in-turn allows for the immediate flagging and continued monitoring of the GRA's hours to ensure their annualized average remains below 30 hours a week.

This information has been distributed to campuses and discussed during the June 16 ACA working session in Pierre. As a part of this continued dialogue, campuses are still in the process of identifying graduate research assistants who may become eligible for benefits. Campuses have been asked to assess the potential impact on their budgets and provide a firm number of graduate students that could become eligible for benefits. On May 20, the HR Directors held a conference call to discuss the report that RIS developed and other specific questions that are needed to be resolved in order to implement the ACA in Banner. This too will be addressed during the work session on June 16.

The Board Office recognizes the cost of implementation of the ACA could be significant for the system. By the end of June, we hope to have a clear understanding of those costs so we can educate the Bureau of Human Resources and Office of Bureau of Finance and Management about the finance impact of the ACA on the Regental system. AAC representatives should be prepared to discuss questions/concerns being raised by their campuses as guidelines/frameworks for managing ACA are developed.

**Affordable Care Act
Regental System Graduate Research Assistant Guidelines**

I. Affordable Care Act & IRS Guidance

- A. The Affordable Care Act defines full-time employment in terms of average hours “of service per week,” and it charged the Internal Revenue Service, in consultation with the US Department of Labor with the task of implementing that mandate to cover all employees, including those who are not compensated on an hourly basis.
- B. The implicit IRS mandate was to maximize large-employer coverage in furtherance of the objectives to maximize access to health insurance, with the intent to use its common law definition of employment as the baseline for determining who would be deemed to be employed.
- C. Higher education advocates early saw that the standard IRS definition, 26 C.F.R. § [31.3121\(c\)](#) would capture broad ranges of student employees. The American Council on Education advocated adoption of DOL guidelines that accommodate the range of standard university practices that were cited by the various institutional speakers during the conference call.¹ ACE articulated the interrelationship between Graduate Assistant duties/responsibilities and research conducted toward the thesis/dissertation which were rejected by the IRS.
- D. Even though hours worked are immaterial for purposes of overtime payment under the Wage and Hour rules implementing the Fair Labor Standards Act, hours worked must be tracked in order to comply with IRS requirements implementing the Affordable Care Act.
- E. No safe harbor exempting graduate research assistants from reporting hours worked exists and Regental Institutions must either: (1) provide healthcare coverage and continue to manage research assistants consistent with previous practice; or (2) track hours and provide coverage to individuals who are entitled to coverage under the ACA. For those graduate assistants not receiving benefits, hours will be tracked in the same fashion as those of other part-time academic and research employees.

II. Instructional & Administrative Activities

- A. Hours devoted to instructional activities for graduate assistants with teaching assignments will be tracked in the same way as are those of part-time instructional staff.
 1. Hours spent by teaching assistants for purposes not incidental to direct instruction (e.g., office hours, departmental meetings or mandatory employee

¹ See, US Department of Labor Field Operations Handbook, http://www.dol.gov/whd/FOH/FOH_Ch10.pdf, § 10b18 (“In some cases graduate students ... 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, [DOL Wage & Hours] 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 receives a stipend for their services under the grant or contract.”).

training) will be tracked hourly in the same way as other part-time instructional staff.

2. Hours worked by graduate assistants with exclusive assignments to grade will be tracked hour for hour.
3. Hours worked by graduate administrative assistants, including graduate residence assistants, are to be tracked hour for hour.

III. Research Activities

- A. Hours worked by all research assistants are to be tracked hourly.
- B. Assistants Assigned Duties Unrelated to Thesis/Dissertation Designated Tasks
 1. The research assistant contract should specify what range of tasks that will be compensable.
 2. The object here is to establish a foundation for differentiating between tasks that are compensated and tasks that may take place in the same laboratory or on the same project, but that involve high order research skills whose mastery is essential to completing degree requirements.
 3. In the optimum case, a research assistant can be compensated for work that is wholly unrelated to the research that forms the basis for the student’s degree program.
- C. Assistants Assigned Tasks Aligning with Thesis/Dissertation
 1. In circumstances where the GRA is compensated for work on a research project that will also provide the basis for the research used to satisfy degree requirement the focus should be placed upon laboratory tasks that might equally be performed by a laboratory assistant or a work study student (i.e., cleaning equipment, managing inventory, feeding laboratory animals, weighing animals, preparing slides, recording data and other such support work that is distinguishable from the key elements considered in designing experiments and evaluating results). Compensation should only occur for the technical work (record only hours for technical work), and limit hours on technical tasks to discipline norms for avoiding interference with progress towards degrees.
 2. Where it is not possible to identify a bundle of technical tasks that can form the basis for compensating a resident assistant, and where resident assistants are likely to spend thirty (30) hours or more per week in a laboratory or on a research project, write budget proposals to include health insurance coverage into grant requirements.

IV. Reporting Requirements

- A. There is no basis for concerns that tracking hours for purposes of IRS monitored Affordable Care Act compliance will compromise recognized exemptions from wage and hours laws established by the US Department of Labor.
- B. Two sets of requirements are readily distinguished from one another as it is applied to graduate assistantships generally:

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| | Graduate Teaching Assistant | Graduate Assistant | Research | Graduate Administrative Assistant |
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| FLSA | Exempt Hrly/OT if meets teaching exception | Exempt Hrly/OT if meets 1994 DOL Op Ltr for no employee/employer relationship | NON Exempt from Hrly/OT (track hours and pay OT/Comp) |
| ACA | Use 2.25 x weighted credit hrs +service hours (30 hrs avg) | Track hours for ACA 30 hrs avg purpose | Track hours for ACA 30 hrs avg purpose |

- C. Pursuant OMB A-21 grant accounting standards, and consistently with FLSA rules, institutions have for years used payroll data as the basis for estimating hours devoted by research assistants to grant-funded research projects. If existing Banner system data definitions fail to accommodate the tracking of hours worked by FLSA exempt employees (such as graduate research or teaching assistants), a work rule or protocol should be established to confirm that hours are tracked solely for the purposes of complying with IRS directives for administering the Affordable Care Act or OMB standards for documenting compensable hours devoted to grant funded research.
- D. Where graduate assistants are reasonably expected to work 30 hours per week or more, the positions should be budgeted to include health insurance.
- E. In most other cases, graduate assistants should be confined to work schedules of twenty hour per work or less. This approach serves two purposes:
1. It is consistent with good practice, since studies show that students whose non-academic endeavors exceed that level are less likely to make consistent acceptable progress towards their degrees; and
 2. It avoids situations in which it appears that the employer is manipulating graduate assistant hours for the sole purpose of avoiding ACA employer coverage obligations while still maximizing the level of services received.