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FLSA: FairPay UPDATE Teacher Exemptions in Child Care

It's been nearly two years since the regulations defining the exemptions to the Fair Labor Standards Act (FLSA) have been revised. In this time, many of the questions regarding interpretation of the regulations have been answered. One issue however, which has yet to be resolved is under what circumstances do teachers in daycare qualify as exempt from the FLSA? As the law currently stands there are two categories in which a daycare teacher may fit, the "Learned Professional Exemption," and the "Teacher Exemption," each with its own requirements and potential pitfalls for daycare providers.

I. The "Learned Professional Exemption" and Daycare Teachers

A teacher in child care will qualify as an exempt employee under the "learned professional" exception to the FLSA if **three** requirements are met. 1) The teacher must be paid on a salary basis not less than \$455 a week. 2) The teacher's *primary* duty must be either imparting knowledge, or some other type of work which is intellectual rather than manual in nature. 3) The job being performed by the teacher must require "advanced knowledge in the field of science or learning" which is "customarily acquired by a prolonged course of specialized intellectual instruction." What this last requirement essentially means is the teaching position in question must require at a minimum a 4 year degree from an accredited college or university in ECE, Elementary Education or a related field.

If a center employs both teachers who meet the minimum education requirements as well as those who do not, it may be necessary to establish two separate job titles/ job descriptions in order to preserve the exempt status of the more highly educated teachers.

II. The "Teacher Exemption" and Daycare Teachers

In addition to the "Learned Professional Exemption" to the FLSA, the regulations also include a specific "Teachers Exemption." This exception has much more lax educational requirements than the "Learned Professional" exemption. In fact, according to a DOL opinion letter published in October 2005, "there is no minimum educational, or academic degree requirements for bona fide teaching professionals in educational establishments." Additionally, unlike the "learned professional exemption" the "Teacher Exemption" has no minimum salary requirement.

At first blush it appears as though this FLSA exception is an ideal fit for day care teachers. However, the "teachers exemption" has one added requirement which makes it inapplicable to most daycare providers. **In order to qualify for the teacher's exemption the teacher must be employed in an "educational establishment" which is defined by the regulations as school "licensed by a state agency responsible for the state's educational system or accredited by a nationally recognized accrediting organization for career schools."** Because a day care center is in no way a "career school" this second part of the definition is inapplicable. Therefore, unless the center is certified by the State Department of Education as a pre-school or kindergarten, the "teacher exemption" to the FLSA is inapplicable. One caveat to this rule is Head Start Agencies which have been considered "educational establishments" under other federal legislation such as the Individuals with Disabilities Education Act (IDEA), and therefore could by extension be considered educational establishments under the FLSA.

As mentioned earlier the regulations defining the exemptions to the FLSA are still new, and will require more time before all the intricacies of the exemptions are clarified through case law and DOL opinion letters. Nonetheless at the present time the above guidelines most accurately reflect the current state of the law regarding the exemptions and should be taken into consideration when determining whether to treat an employee as an hourly or FLSA exempt employee. It is possible that this interpretation will change in the future.

For more information on the FLSA and its exemptions check out the document center on our website at www.childproviderlaw.com or visit the Department of Labor website, www.dol.gov.