

# FLSA Determination Process for Students with Multiple Positions

## Background:

The federal Fair Labor Standards Act (FLSA) establishes that employees must be designated either exempt or non-exempt. Exempt positions are usually salaried and do not get paid overtime. Non-exempt positions are paid hourly and are eligible for overtime pay if the individual holding the position works beyond forty hours in a work week.

Academic Student Employee (ASE) titles (GSI, Reader, Tutor) are designated exempt for FLSA purposes regardless of salary, as they have a teaching exemption.

Student Assistant titles are, by default, designated non-exempt.

A conflict emerges when students are appointed to both an ASE title and a Student Assistant title. In these instances, an FLSA determination is required.

(For Graduate Student Researcher appointments, see section II, below.)

## I. ASE/Student Assistant FLSA Determination Process

Appointments will be reviewed on a semester-by-semester basis.

- A. When a student is appointed to both an ASE title and a Student Assistant title for the full semester (from the beginning through the end of the semester instruction period):
  - a) If the ASE appointment percentage is greater or equal to the Student Assistant appointment percentage, the ASE appointment will be primary and all appointments will be exempt. Pay schedules for these appointments will be determined by the ASE pay schedule.
  - b) If the Student Assistant appointment percentage is greater than the ASE appointment percentage, then the Student Assistant appointment will be primary and all positions will be non-exempt, bi-weekly pay schedule. Labor Relations must be notified prior to converting any ASE appointment to non-exempt status. Please see section D, below, regarding the notification process.
  - c) If the student has multiple ASE or Student Assistant appointments, the combined ASE appointment percentage should be compared to the combined Student Assistant appointment percentage.
  - d) Summer sessions will be treated similarly to academic-year semesters.
- B. If a student takes on an additional job mid-semester, and all jobs will be active through the end of the semester:
  - a) If the combined ASE appointment percentage is now greater, all positions will be exempt, and the pay schedule will be determined by the ASE title.
  - b) If the combined Student Assistant appointment percentage is now greater, all positions will be non-exempt, bi-weekly pay schedule. Labor Relations must be notified prior to converting any ASE appointment to non-exempt status. Please see section D, below, regarding the notification process.
- C. If a student drops a job, or a job ends, the FLSA status will be re-evaluated by BRS staff, as above, for any remaining jobs.

- a) Note, if a primary ASE position ends (e.g., at the end of the semester) and the Student Assistant position continues, the student's FLSA will need to be changed to non-exempt, bi-weekly pay schedule.
- D. All FLSA determinations that lead to a non-exempt ASE appointment will be tracked on the [FLSA Determination Tracking Sheet](#). BRS staff are responsible for adding the necessary information. This sheet will serve as the notification to Labor Relations for cases that require union notification. Once the sheet has been updated, unless the case requires APO review (see section F below), BRS staff can proceed with the FLSA change.
- E. Any time changes are made to a student's FLSA status and/or pay schedule, the student and supervisor need to be notified about the change in FLSA and time reporting requirements.
  - a) Any tutor paid on a bi-weekly basis, including those working at the Athletic Study Center and Student Study Center, will remain on a bi-weekly pay schedule if they pick up a Student Assistant appointment.
- F. Please consult with APO at [appolicy@berkeley.edu](mailto:appolicy@berkeley.edu) about unusual circumstances. Inquiries should include a link to the [FLSA Determination Tracking Sheet](#), where the appointment details for the case in question should be listed. Please include the name of the student in the subject line of the email and a link to the appropriate tab of the tracking sheet in the body of the message.
  - a) For example, if a student adds a job in a different FLSA status at a higher appointment percentage, but the new job will be active for only a short duration (i.e., not through the end of the semester), please consult with APO about which job is primary.
  - b) Routine FLSA determinations that follow the guidelines above do not need to be submitted to APO for review. FLSA adjustments to GSR appointments (as outlined in the next section) also do not require APO review.

## II. Graduate Student Researcher (GSR) Appointments (revised March 2021)

- A. The GSR title defaults to exempt in UCPath and is treated as exempt for the purposes of evaluating dual appointments.
  - a) When combined with a GSI, Reader, or Tutor appointment, the FLSA status will be exempt and the pay schedule will be determined by the ASE pay schedule.
  - b) When a GSR position is combined with a Student Assistant position, the FLSA status will depend on which appointment is primary. The assessment will follow the ASE/Student Assistant FLSA Determination Process, outlined above. Because the GSR title is not covered by the ASE contract, non-exempt GSR appointments do not need to be recorded on the FLSA Determination Tracking Sheet for union notification (i.e., section I.D will not apply).

## III. Additional Information

- A. Graduate students with appointment percentage(s) totaling 51% to 75% during the academic year require an exception from the student's head graduate advisor.

- B. Students with appointment percentage(s) totaling 76% or more during the academic year require advance approval from the Graduate Division.
- C. International students may not exceed a total appointment percentage of 50%.
- D. Information on fee remission eligibility and graduate student appointment title codes is available on this [summary page](#) and the Graduate Division [website](#).
- E. Information on graduate student appointment types is available in the Graduate Division [appointments handbook](#).

#### IV. ASE Title Codes

001508 ASSOC IN \_\_ -AY-1/10-GSHIP  
 001509 ASSOC IN \_\_ -AY- 1/10 -NON-GSHIP  
 001511 ASSOC IN \_\_ - FY-GSHIP  
 002286 NURSERY SCHOOL ASST-GSHIP  
 002287 NURSERY SCHOOL ASST-NON GSHIP  
 002300 TEACHG FELLOW-GSHIP  
 002301 TEACHG FELLOW-NON GSHIP  
 002305 COMM TEACHG FELLOW-GSHIP  
 002306 COMM TEACHG FELLOW-NON GSHIP  
 002320 TEACHG ASST-1/10-GSHIP  
 002321 TEACHG ASST-1/10-NON GSHIP  
 002500 READER-NON STDNT  
 002510 TUT-NON STDNT  
 002550 ACT INSTR-GRAD STDNT-GSHIP  
 002551 ACT INSTR-GRAD STDNT-NON-GSHIP  
 002850 READER-GSHIP  
 002851 READER-NON GSHIP  
 002860 TUT-GSHIP  
 002861 TUT-NON GSHIP

#### V. Student Assistant Title Codes

004919 Student Assistant 4  
 004920 Student Assistant 3  
 004921 Student Assistant 2

#### VI. GSR Title Codes

003266 GSR-NO REM  
 No fee remission, regardless of effort: title code used when expenditure of funds on tuition and fees (benefits) is disallowed. Another fund source must be used to pay the equivalent of partial or full fee remission if the effort is 25% or greater.

003276 GSR-PARTIAL FEE REM  
 No fee remission if effort is 24% or less  
 Partial fee remission if effort is 25%-44%

003282 GSR-FULL FEE REM  
 Full fee remission, effort 45% or more

003284 GSR-TUIT & FEE REM  
 Full fee remission plus non-resident supplemental tuition, effort 45% or more.