Exemption of Positions from the State Classified System

Frequently Asked Questions:

1. What has changed in the exemption statute C.R.S. 24-50-135 (House Bill 11-1301) regarding professional positions as of August 11, 2011?

The revised statute further defined the eligibility criteria to exempt professional staff positions from the state personnel system. This provides greater flexibility for individual higher education institutions to identify those functions that they deem meet the criteria.

1. What is the definition of “professional” pursuant to the statute?

Functions are “professional” if they involve “the exercise of discretion, analytical skill, judgment, personal accountability and responsibility for creating, developing, integrating, applying, or sharing an organized body of knowledge that characteristically is: (a) acquired through education or training that meets the requirements of a bachelor’s or higher degree, or equivalent specialized experience; and (b) continuously studied to explore, extend, and use additional discoveries, interpretations, and application to improve data, materials, equipment, applications, and methods”.

1. How can I find out if the job function that I’m performing is eligible for exemption pursuant to the professional definition?

If you wish to find out if the function that you are performing is eligible for exemption, you must complete the Request For Review of Duties For Possible Exemption form and submit to Human Resources. The HR Department will notify you directly of the outcome in writing once the review process is completed.

1. What does it mean to be exempt from the State Personnel System?

Based upon functions described in statute, certain positions are exempted from the rules, procedures and regulations that govern the classified system. Specifically, the Colorado State Personnel Board Rules or the Personnel Director’s Administrative Procedures does not govern positions exempted from the Classified System.

These positions are, however, subject to all other applicable federal and state law and regulations, as well as laws and policies set forth by MSCD Board of Trustees and other MSCD policies and procedures.

1. Are Exempt positions eligible for overtime?

It depends on the functions performed. The Human Resources Department is responsible for reviewing each individual position for overtime eligibility under the Fair Labor Standards Act. It should not be assumed that all Exempt positions would also be exempt from overtime.

1. What are the differences and similarities between exempt Administrators and Classified staff?

There are some differences but also similarities between these two employment statuses. For specific details, please refer to the handout entitled “Differences and Similarities Between Administrator and Classified Status”.

1. Do I have to change from a Classified position to an Administrative position if I’m notified that the job function I’m performing is eligible for exemption?

Absolutely not! Current classified employees are not required to change to exempt Administrator positions even if their job functions now meet the exemption criteria. Further, Metro State College will not tolerate any pressure or retaliation against an employee who chooses to remain in classified status.

1. What should I do if I want to move from Classified to Administrator status?

Discuss your interest with your supervisor and submit the Request form to HR. Additionally, your supervisor would submit a position description of your job function using PeopleAdmin and the Create New Position and Fill action. Once the request has gone through the various levels of approval and is submitted to Human Resources, the HR Department reviews the position description pursuant to the established exemption criteria. If the function performed is deemed to qualify for exemption from the Classified System, HR will notify the Classified employee of the outcome. At that time, the Classified Employee and the supervisor would request approval from the President for reassignment to an Administrative position without search. At the time of the administrative appointment, the Classified Employee must resign their current Classified position. You do have 10 days to appeal the decision to go exempt and the abolishment of the Classified position. The Classified Employee does, however, retain reinstatement rights to the Classified System for any vacancies at the College or in the State as long as they were certified in the classification.

1. Would I need to undergo a new background check?

Pursuant to MSCD procedure, movement into a new assignment may require a background check unless the employee has successfully passed a background check within the past three years.

Please refer to the Background Check Policy dated October 1, 2008 available at [www.mscd.edu/hr](http://www.mscd.edu/hr)

10. How is the salary range for Exempt positions determined? Is there a list of job titles and salary ranges? How are annual salary increases determined for Administrative/Exempt Positions?

The College uses a single source for salary comparison of administrative positions. The College and University Professional Association-HR (CUPA-HR) conducts annual salary surveys of over 4,000 colleges and universities in the United States. Each administrative position at the College has a comparison based on the duties performed absent title. The College’s compensation policy sets the minimum pay for a position at 90% of the CUPA average. Based on the annual budgeting process, increases may be recommended for administrators and faculty based on available funds. For more specific information, please refer to MSCD Policy VI B 1b (3) in the Handbook for Professional Personnel.

1. Will I get a salary increase if I request and receive Administrator status?

The expectation is that this is a cost-neutral process. Based on the function performed, an analysis of the current Classified salary and the Hiring Range for the administrative position will be conducted. If the current salary is within the Hiring Range, no additional salary will be recommended. However, if the current salary is less than the Hiring Range minimum, the employee will receive at least the minimum of the Hiring Range.

1. Can I stay in PERA? Do I have to stay in PERA?

Employees with at least one year of PERA service credit must make a choice whether to continue to participate in PERA or enroll in the College’s Optional Retirement Program (ORP) known as the Defined Contribution Pension Plan (DCPP). This election must be made within 30 days of your appointment to an eligible exempt position. If you chose to enroll in the DCPP, you may retain certain rights and benefits under PERA but will have no further participation in PERA while employed as an Administrator. This is a one-time, irrevocable election for eligible employees at higher institutions in Colorado and, therefore, you should consider carefully.

If you have less than one year of PERA service credit, you are required to participate in the ORP/DCPP program. You will receive a refund of any monies contributed from PERA.

1. What about the impact on my other benefits if I transfer or promote to Administrative/Exempt?

The issue of benefits is a highly personal and individual process. Administrators are required to participate in the CHEIBA Benefit Program. CHEIBA is comprised of several colleges and universities in Colorado (Metro State, University of Northern Colorado, Colorado School of Mines, CSU-Pueblo and System Office, Adams State College, Western State College, Ft. Lewis College, and AHEC) with representation from each of these schools. CHEIBA offers two plans – an HMO and a PPO with two rates, Employee Only or Family. The premium rates are the same regardless of which plan you choose. The College’s contribution can vary but currently is 60% of the premium cost. For more specific information on all benefits and costs, please refer to the comparison sheet handout entitled “2012 Benefit Comparison By Employee Type” or go to [www.mscd.edu/hr](http://www.mscd.edu/hr) and click on Administrator Benefits. Classified who participate in Kaiser should carefully consider their options since participation in Kaiser as an administrator is not available.

14. Will my current leave balances transfer?

In general, all applicable annual leave balances will be transferred if converting from Classified to Administrative. Leave accrued at maximum rates will be forfeited on July 1of each year. Sick leave balances do not transfer but are retained in the event that the employee returns to Classified status.

For specific information regarding leave, please refer to the handout entitled, “Differences between Administrative/Exempt and Classified.

You may also contact the Human Resources Department and/or refer to the State Personnel Board Rules Chapter 5 for more information.

1. Are Administrative employees at-will? What does this mean?

MSCD Administrative positions are at-will employees. At-will employment is an employment relationship where either party may terminate employment for any reason at any time, with or without notice. Unlike the classified system, there are no property rights, nor are there any retention rights. However, all terminations regardless of employment status must be reviewed prior to taking any action. All protections under Federal and State laws continue to apply regardless of employment status.

16. If I become Exempt status, and don’t like it, may I go back to a Classified position?

If you choose to become Exempt status and your request is approved pursuant to the exemption criteria, you have 10 calendar days to rescind your request from the date of your signature. After the 10 day period has ended, the classified position that you vacated is abolished.

However, you retain rights as a former classified employee to be reinstated to any announced vacant classified position in which you were previously classified.