

# PECBA Exclusions and Unclassified Service



Analyzing positions for appropriate bargaining unit status

# THE PURPOSE OF A POSITION DESCRIPTION

## ☞ Recruitment and Selection

- Establishes required knowledge, skills, and abilities to perform the position
- Identifies minimum qualifications

## ☞ Job Performance

- Regular and on-going conversations; setting expectations with description of the duties

## ☞ Performance Evaluation

- What does the employee need to do to meet expectations?
- Is any training necessary for success in the position?

## ☞ Classification Allocation

- Determines terms and conditions of employment

# Key Sections of the PD

## ☞ Position Summary

- What is the primary purpose of the position?

## ☞ Decision Making/Guidelines

- Defines the scope of the position
- What decisions will be made independently? What are the impacts of those decisions? What policies, laws, or regulations are used?

## ☞ Position Duties

- List duties by primary sections, ordered by percentage of time
- Each statement should identify an action, for what or to whom, and what output or result is expected

## ☞ Minimum Qualifications

- What skills, education, and/or experience are required to successfully perform the job?

# ORGANIZATIONAL CHARTS

- ✎ Shows the structure of an organization and the relationships of the positions within it.
- ✎ Allows administrators to make decisions about resources and visualize the structure of the organization.
- ✎ Assists employees in understanding the organization and their role within it.
- ✎ <http://hr.oregonstate.edu/sites/hr.oregonstate.edu/files/ercc/organizational-charts.pdf>

# Reviewing and Analyzing a PD

- ✎ All positions are considered represented by default, UNLESS the criteria for exclusion are met:
  - PECBA Exclusion for Supervision, Management, or Confidential duties.
  - Unclassified Service or Community of Interest demonstrated

# PECBA EXCLUSION - Supervisory

## ∞ SUPERVISORY

- Position has responsibility for and exercises independent judgment in the supervision of staff. Full range of supervision includes: hiring and training; planning, assigning and approving work; establishing performance goals and responsibility for performance evaluation; discipline up to and including dismissal (or effectively recommending such actions).
  - Organizational Chart
  - Position Summary
  - Duty Statements
    - Lead Work or Supervisory Responsibilities
    - Percent of Time on Lead Work or Supervision
    - Employees Directly Supervised – must be at least 2 employees

# Supervisory Exclusion Test

“Yes” answers to all of the following questions are required to meet the Supervisory exclusion from the bargaining unit:

- ∞ Does the employee exercise the full range of supervisory functions over at least 2 employees (may be unclassified or classified) with sufficient authority to use independent judgment when dealing with the employee?
  
- ∞ Does the employee have the authority to use independent judgment or make effective recommendations for any of the following?
  - o Discipline – may issue and/or recommend oral reprimand, written reprimand, salary reduction, etc.;
  - o Promotion – participation in promotional decisions and recommendations for promotion or upward reclassification;
  - o Grievance Handling – authority to participate in Step 1 grievances, resolve complaints informally;
  - o Hiring – participation in interviews, reference checking, assessment of work during trial service and decision to terminate or retain employee after trial service;
  - o Discharge – participation in decisions to dismiss employee;

# Supervisory Exclusion Test, con't

“Yes” answers to all of the following questions are required to meet the Supervisory exclusion from the bargaining unit:

- ☞ Does the employee exercise authority for any of the following?
  - o Scheduling work and adjusting schedules;
  - o Authorizing overtime;
  - o Assigning work and directing employees where work is to be performed;
  - o Granting time off;
  - o Require employees to notify them in case of absences due to illness or other reasons;
  - o Receiving notification of on-the job injuries/illness;
  - o Evaluating work and work plans;
  - o Completing performance appraisals;



# PECBA EXCLUSION - Confidentiality

## ∞ CONFIDENTIALITY

- ERB is generally conservative in designating as Confidential only the minimal number of positions necessary to provide back up and support to management in collective bargaining.
- Position provides substantial and effective assistance to a position that formulates, determines, and effectuates management policy in the area of collective bargaining.
  - Duty Statements – a significant percentage (>25%)
    - Copy, type, or file management negotiation proposals;
    - Attend or take notes at management negotiation meetings;
    - Perform cost analysis for bargaining proposals
    - Research and make recommendations to primary confidential employee

# Confidential Exclusion Test

“Yes” answers to the following questions indicate the position may meet the Confidential exclusion from the bargaining unit:

- ∞ Does anyone in the department/unit actively participate in contract negotiations by reviewing contract proposals, suggesting proposals, attending meetings where bargaining strategy is discussed, formulate, determine, and effectuate management policies in the area of collective bargaining?
- ∞ Does the employee in the position assist and act in a confidential capacity to anyone described above with contract negotiations and have access to proposals and strategies?
- ∞ Does the employee have a substantial involvement and investment of time vs. occasionally assisting the person described in the first bullet? (“substantial” would be at least 25% of assigned duties or time).

# Confidential Exclusion Test, con't

Typical duties that do NOT meet the Confidential exclusion criteria are:

- ✎ Employee who works with confidential information, but not with *collective bargaining* information;
  - Involved in hiring, discharge, discipline or other personnel matters not involving negotiations;
  - Has access to personnel files;
  - Provides raw payroll data;
  - Is the designated Strike Coordinator for the unit
  - Does not perform work connected with bargaining at the time the position is established, but the unit is considering assigning it in the future.

# PECBA EXCLUSION - Managerial

## MANAGERIAL

- Position possesses authority to formulate and carry out management decisions or represents management's interests by taking or effectively recommending discretionary actions that control or implement employer policy, and who have discretion in the performance of these management responsibilities beyond the routine discharge of duties
  - Organizational Chart
  - Decision Making/Guidelines
  - Duty Statements
    - Develops strategic plan for the unit
    - Reviews and assesses impacts of exceptions to policy;
    - Has authority to grant exceptions to policy

# Managerial Exclusion Test

“Yes” answers to the following questions may indicate that the position would meet the “Managerial” exclusion criteria from the bargaining unit. Specific examples must be identified to support the response.

- ⌘ Does the employee make decisions that direct the course of the organization, or does the employee represent management’s interest by taking or effectively recommending discretionary actions that control or implement employee policy?
- ⌘ Does the employee have discretion in the performance of these management responsibilities beyond the routine discharge of duties?
- ⌘ Does the employee have responsibility for establishing university policy, and have the authority to grant exceptions to the policy?

# Managerial Exclusion Test, con't

⌘ Note: To be “Managerial”, an employee must play an active role in the administration of the organization or unit. This should be evidenced by participation on the unit’s Leadership team, and demonstrated on the organizational chart.

# Unclassified Service - Ranked

## ∞ Academic Rank – OSU Policy 580-020-0005

- Graduate ranks are GRADUATE TEACHING ASSISTANT, GRADUATE RESEARCH ASSISTANT, and FELLOW.
- Faculty titles and ranks are (in alphabetical order): AFFILIATED FACULTY, CLINICAL PROFESSOR (assistant clinical professor, associate clinical professor, clinical professor) or PROFESSOR OF PRACTICE (assistant professor of practice, associate professor of practice, professor of practice), INSTRUCTOR (instructor, senior instructor I, senior instructor II), LECTURER (lecturer, senior lecturer I, senior lecturer II), LIBRARIAN (assistant librarian, associate librarian, senior librarian), RESEARCH ASSISTANT (research assistant, senior research assistant I, senior research assistant II), RESEARCH ASSOCIATE (research associate, senior research associate I, senior research associate II), RESEARCH FACULTY (research assistant professor, research associate professor, research professor), TENURE TRACK OR TENURED FACULTY (assistant professor, associate professor, professor, distinguished professor)
- Faculty titles will not be given to graduate students

# Unclassified Service – Community of Interest

- ∞ Unclassified Service – OSU Policy 580-020-0006
- ∞ Community of interest is defined by ERB Rule 115-025-0050
- ∞ Unclassified service includes positions that do not meet the criteria for academic faculty but which, based on professional job requirements and responsibilities:
  - Share a community of interest with academic faculty, AND
    - Include academic research, public service, or instruction, or
    - Exercise discretion in establishing policy, or
    - Require education and training comparable to academic faculty, or
    - Have administrative decision-making responsibilities beyond office clerical duties



# Examples of Community of Interest

- ∞ Examples of positions that may meet the criteria listed above include, but are not limited to:
- (1) Chancellor, Chancellor's cabinet;
  - (2) Presidents, president's cabinet;
  - (3) Provosts, vice provosts, associate vice provosts, and assistant vice provosts;
  - (4) Vice presidents and associate vice presidents;
  - (5) Deans and associate deans;
  - (6) Directors and associate directors of academic, administrative, and service units;
  - (7) Controllers and budget officers;
  - (8) Registrars and associate registrars;
  - (9) Legal counsel and attorneys;
  - (10) Athletic directors and associate athletic directors;
  - (11) Executive and other special assistants to each of the positions listed in numbers one through ten (above), providing that the executive or other special assistant positions otherwise meet the criteria for unclassified service;

# Examples of Community of Interest, con't

- (12) Assistant vice presidents, assistant deans, department heads/chairs, assistant directors, managers, and assistant registrars where positions require specialized/degree education and training;
- (13) Librarians, archivists, and museum or collection curators where positions require specialized/degree education and training or where responsibilities include academic research or instruction but does not include positions having primarily clerical responsibilities;
- (14) Advisors and counselors, including academic, financial aid, admissions, career, residential life, and athletic, where positions require specialized/degree education and training;
- (15) Assistant athletic directors, athletic coaches, assistant athletic coaches, athletic trainers, assistant athletic trainers, and athletic eligibility and compliance officers where positions require specialized/degree education and training;
- (16) Interpreters;
- (17) Development and advancement officers where positions require specialized/ degree education and training;
- (18) Physicians, psychologists, and clinical counselors where positions require specialized/degree education and training;
- (19) General managers, directors, producers, and announcers of state radio and television service;
- (20) Managers, directors and administrators of student affairs functions, where positions require specialized/degree education and training.

# Demonstrating Community of Interest

- ✎ Factors include similarity of duties, skills, benefits, promotional ladders, and common supervision.
- ✎ Specialized Education, Degree, and Training required for the position – “degree of choice” does not meet definition
- ✎ Advanced degrees similar to Academic Faculty
- ✎ Primary purpose of position is research, instruction, or public service

# Risks of Misallocating a Position

- ✎ Employee may be incorrectly compensated for the work
  - Professional Faculty salaries are benchmarked against OSU comparator groups using specific scope cuts
  - Represented employees' salary is negotiated on their behalf by their union
  - FLSA Exempt classified employees receive Exchange Time; Professional Faculty employees do not
  - Salary increases are administered differently
- ✎ Vacation accruals and benefits are different
  - Professional Faculty earn 15 hours/month
  - Classified employees earn based on negotiated terms in the CBA
  - Paid holidays are different