



**DATE:** May 11, 2017

**TO:** Personnel Commission

**FROM:** Director of Human Resources

**SUBJECT:** Revised Job Description for Paralegal

### **RECOMMENDATION**

That the Personnel Commission reviews and comments on the revised job description for the position of Paralegal to ensure that employment standards are job-related. Job-related standards address all aspects of the job description, including supervision exercised, education, special requirements, and experience.

### **BACKGROUND/ DISCUSSION**

In addition to adoption and approval of the City's Classification Plan, the Personnel Commission reviews job descriptions to ensure that employment standards are job-related. The City utilizes a standard format when creating and revising job descriptions. Human Resources staff reviews all job descriptions with the respective departments and updates each to align the job description with the City's Classification Plan. Furthermore, Human Resources staff makes any adjustments to the job requirements as provided by the department prior to initiating a recruitment process.

Incumbents in the Paralegal classification provide paraprofessional, administrative, and technical assistance to professional legal staff in the Office of the City Attorney. Incumbents also provide direct supervision to support staff, manage office operations and clerical activities conducted in support of departmental programs, and provide highly responsible administrative assistance to the City Attorney. This classification is currently exempt from Fair Labor Standards Act (FLSA).

The FLSA requires that most employees be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half of the employees' regular rate of pay for all hours worked over 40 hours in a work week. However, the FLSA provides an exemption from minimum wage and overtime pay for employees who perform executive, administrative, professional, and outside sales functions for employers. To qualify for exemption, employees must meet tests regarding their job duties. Job titles do not determine exempt status; therefore, for an exemption to apply, an employee's specific job duties must meet all the requirements of the Department of Labor's regulations.

The City Attorney requested Human Resources to analyze the appropriateness of the current FLSA status of the Paralegal classification. When analyzing the proper FLSA category for a job classification, several factors are considered including duties, decision making, involvement with labor and employee relations, supervision or management exercised, and how similar agencies treat like positions. To that end, Human Resources staff completed an analysis and surveyed comparable jurisdictions to ascertain how other agencies treat this classification.

Human Resources staff surveyed 17 local jurisdictions and compared the job descriptions and FLSA status of the Paralegal classification at those jurisdictions. From the 17 agencies surveyed, only nine (9) had a classification similar to the Paralegal. Of the nine (9) jurisdictions with comparable classifications, seven (7) agencies classify their Paralegals or equivalent classes as FLSA non-exempt, while only two (2) jurisdictions classify this classification as FLSA exempt:

Agency	FLSA Status
Oakland	Non-exempt
Berkeley	Non-exempt
Fremont	Non-exempt
Santa Rosa	Non-exempt
Concord	Exempt
City & County of San Francisco	Non-exempt
Livermore	Non-exempt
Walnut Creek	Non-exempt
Richmond	Exempt
Tracy	Not Comparable
Mountain View	Not Comparable
Santa Clara	Not Comparable
Palo Alto	Not Comparable
San Jose	Not Comparable
San Mateo	Not Comparable
Sup Court of CA - Alameda	Not Comparable
Sup Court of CA - Contra Costa	Not Comparable

Human Resources staff also sought the feedback of the City Attorney and interviewed incumbents to inquire about the nature of their everyday duties and responsibilities and compared the Paralegal classifications with other comparable classifications within the City. From those interviews, it became clear that most of the incumbents' duties do not meet the exemption tests under the FLSA. They do not meet the executive, professional and outside sales tests. The nature of their responsibility and purview also do not meet the administrative test. For an employee to be exempt under the administrative test, the employee's primary duty must include the exercise of discretion and independent judgement with respect to matters of significance.

Paralegal staff currently, do not supervise any clerical staff and per the job description provide clerical and secretarial support to the City Attorney. In their current role, they do not exercise discretion and independent judgement on matters of legal significance in the Office of the City Attorney.

An analysis of comparable classifications at the City also showed that the majority of classifications that are similar to the Paralegal are not exempt from FLSA. Based on internal analysis of duties performed and the survey results, Human Resources staff concludes that the FLSA status of this classification should change from exempt to non-exempt.

Therefore, it is the recommendation of the Human Resources staff that the Commission adopt the change to the Paralegal job specification which updates the FLSA status from exempt to non-exempt.

The change to the job description is as follows:

**Paralegal**

FLSA Status:

Add: "Non-..." (to "Exempt")

**FISCAL IMPACT**

The change in the FLSA status of the Paralegal classification will have a nominal fiscal impact because it makes incumbents eligible for overtime compensation at the rate of time and a half of their regular rate of pay, if they work more than 40 hours per week.

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Approved by:



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Kelly McAadoo, City Manager