HOUSE DIRECTORS UNDER THE FAIR LABOR STANDARDS ACT

Coverage Under the FLSA
FLSA coverage is triggered when the “employer” has annual gross receipts of $500,000 or more from commercial activities – sales of goods, rental income, fees from room and board, and interest income. Most local chapters or house corporations will not likely meet this threshold. The National Fraternity does not employ House Directors or manage the day-to-day activity of the House Director.

If we presume that the local chapter or housing corporation is the employer, and that it does not have sufficient revenue to be deemed a covered enterprise under the FLSA, the analysis under the FLSA ends. The House Director is not entitled to overtime under the FLSA. However, employees of entities not covered by the FLSA may be covered by the overtime laws of the states in which they are employed. For example, a House Director at an Indiana college employed by a local chapter or housing corporation with less than $500,000 in annual revenue, would be “covered” by Indiana’s overtime law. “Coverage” and “exempt status” are two different concepts. If it is determined that either the FLSA or state law “covers” the House Director, the next question is whether the House Director is exempt from the overtime requirements of either the federal or state law under which he or she is covered.

Exempt Status of House Directors
While each case must be reviewed individually, the primary duties of a House Director (managing the affairs of a house, including purchasing food and other resources; and operating within an established budget utilizing discretion and judgment to do so) would generally appear to fit within the administrative exemption. In some houses, the House Director may even fit within the executive exemption. While most state overtime laws adopt these same exemptions in one form or another, it is advised that individual state laws be reviewed before an organization concludes exempt status exists. Job duties alone do not establish exempt status. Under both federal and state laws, there exists a requirement that to be exempt, an employee must be paid a minimum salary. Under the FLSA, the minimum weekly salary is $455. State law minimum salaries vary.

If an organization determines that state, not federal, law applies, then the organization must look to the minimum salary required for exemption under that state’s overtime law. For example, in Indiana, the minimum weekly salary for exempt status is $150. This is why the coverage question, i.e., “Who is the employer,” is so important. A House Director at an Indiana college is exempt from overtime if he or she is paid a weekly salary of $150, provided his or her employer has gross revenues of less than $500,000 per annum (i.e., the local chapter). The same House Director must be paid $455 per week if his or her employer has gross receipts in excess of $500,000.

Some organizations have asked whether they may take credit for reimbursement to exempt employees for room and board. The answer is “no.” To the extent a House Director is viewed as an exempt employee, the $455 salary (or a lower salary to the extent state law covers) must be paid in cash. The minimum salary cannot be met by the payment of room and board. This is contrasted to the situation described below, where an employer may take credit for certain expenses toward minimum wage for a non-exempt employee.
**Transitioning to Non-Exempt Status**

If a House Director is covered under state or federal law, and if a decision is made to treat the individual as a non-exempt employee, the individual must be paid overtime for hours worked in excess of 40 in a work week and must receive the applicable minimum wage.

To the extent an individual is deemed non-exempt, the employer may be able to take credit towards its minimum wage obligation for the reasonable cost of providing room and board to the House Director.