

Fair Labor Standards Act

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Human Resource Services



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Fair Labor Standards Act (FLSA)



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What is FLSA?

The Fair Labor Standards Act (FLSA) is a federal law administered by the Department of Labor. Specifically, the FLSA governs overtime provisions, which ensure employees receive pay at a rate no less than time-and-a-half for all time worked in excess of 40 hours in a work week.



How has the FLSA changed?

Currently, the salary threshold for exemption status is \$23,660 per year (\$455 per week). On September 24, 2019, the Department of Labor announced a final ruling to increase the salary threshold to \$35,568 per year (\$684 per week), effective January 1, 2020. **The threshold of \$35,568 is only one element of the exemption test to determine the appropriate exemption status.**



What is the impact to NMSU?

- There were about 368 possible impacted positions (Gr. 05 & 06).
- Pay adjustment from on-time to lag pay will result in a delayed paycheck after conversion (e.g. Conversion January 1, next paycheck January 31).
- Eligibility for OT for some positions.
- Employees will need to submit a timesheet each pay period accounting for the hours worked on a daily basis.



HRS is working with Administration and Finance to determine feasible options to address the lag pay.

More information to come.



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What's the process for making the change?

Over the past month, HRS has reviewed the impacted positions:

- HRS reviewed positions in grade 06 and below.
 - Application of the “FLSA exemption test” to each position.
 - The **most recent** information provided in position classification actions and postings were reviewed to determine if the positions meet the exemption tests.



What is the FLSA exemption test?

Completion of a questionnaire to determine the exemption status of a position (executive, professional, administrative, certain computer related jobs). To qualify for an exemption, at minimum the following elements must apply:

- ✓ Scope of the work: **Example**--The primary duties consist of performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers.
- ✓ The work includes the exercise of discretion and independent judgment with respect to matters of significance.
- ✓ Is pay at least \$35,568 per year (\$684 weekly), effective Jan. 1, 2020?

Employee impact of FLSA Changes

- Exempt vs Nonexempt - these terms refer to the eligibility to earn overtime. Compensation at an hourly rate does not define the job role. Professional staff can be compensated at an hourly rate of pay without a change to job duties or levels of authority and responsibility.
 - Nonexempt employees are eligible to earn overtime
 - Exempt employees are not eligible to earn overtime
- No changes in duties, responsibility or authority – the job duties and responsibilities will not change with a conversion to nonexempt. The change is to eligibility for overtime.
- Timesheet – employees will need to submit a timesheet each pay period accounting for the hours worked on a daily basis.

Further Clarification....

- The change in FLSA exemption status is not an indicator of your professional status or decreases the importance and value of your work.
- Conversion to non-exempt is a matter of compliance. All jobs contribute to the institution's success.
- Your roles and responsibilities may be further clarified by your supervisor.



Supervisor impact of FLSA Changes

- Track Time Worked: Supervisors will need to ensure that employees do not work unapproved overtime or do not work “off the clock” hours
 - Overtime distribution and compensatory time policies
 - Standby Pay, On Call and Call Back Pay policies
 - Remote access email, work related texting and telephone calls
 - Travel
- Organizational Changes:
 - Workload distribution
 - Identifying critical and noncritical business needs
 - Hours of operation



Supervisor Responsibilities

Supervisor:

- Establish work schedules and hours of operations to meet business needs
- Establish workload distribution to meet the operational needs
- Assign duties (within the scope of the classification) to meet the operational needs
- Evaluate performance of assigned duties and workload distribution

Supervisors approve:

- Overtime – within allowed departmental and college/division budgets
- Time Off requests
- Work Schedule Change requests



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Communication Plan

- HRS has contacted supervisors and their employees with impacted.
- Open forums scheduled for employees and their supervisors to discuss the upcoming changes in general to the exemption status.
- Q&A has been published online as well as other relevant information regarding the change,
<https://hr.nmsu.edu/flsa/flsa-faqs/>

Resources

- Administrative Rules and Procedures of NMSU – Rule 7.20 Staff Overtime Pay or Comp Time <https://arp.nmsu.edu/7-20/>
- Department of Labor – Final Rule: Overtime Update <https://www.dol.gov/whd/overtime2019/index.htm>
- Department of Labor – U.S. Department of Labor Issues Final Overtime Rule <https://www.dol.gov/newsroom/releases/whd/whd20190924>
- Department of Labor – Overtime Pay https://www.dol.gov/whd/overtime_pay.htm
- Department of Labor – Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemptions for Executive, Administrative, and Professional Employees https://www.dol.gov/whd/overtime2019/overtime_FS.htm
- Department of Labor – Highlights of the Final Rule on Overtime Eligibility for White Collar Employees https://www.dol.gov/whd/overtime2019/overtime_FAQ.htm
- Department of Labor – Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act (FLSA) <https://www.dol.gov/whd/overtime/whdfs17s.pdf>



Resources

- Fair Labor Standards Act (FLSA) Information for NMSU

<https://hr.nmsu.edu/flsa/>

- FLSA FAQs

<https://hr.nmsu.edu/flsa/flsa-faqs/>

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