

Fair Labor Standards Act

JUNE 2024

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 \$35,568 per year (\$684 per week). On April 23, 2024, the Department of Labor announced a final ruling to increase the salary threshold to \$43,888 per year (\$844 per week), effective July 1, 2024. **The threshold of \$43,888 is only one element of the exemption test to determine the appropriate exemption status.**



What is the impact to NMSU?

- For those positions changing from Exempt to Non-Exempt, the Pay adjustment from on-time to lag pay will result in a delayed paycheck after conversion (e.g. Conversion July 1, next paycheck July 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, instead of a leave report.

What Pay Gap Assistance is available?

- FLSA Annual Leave Buy Out – In the amount of recorded annual leave balance as of June 10, or 80 hours, whichever is less.
- Pay Gap Loan – amount equal to no greater than net pay after taxes and deductions per the May 31, 2024 paycheck.
- Combination of Annual Leave Buy Out and Pay Gap Loan.



What's the process for making the change?

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

- HRS reviewed positions in grade 05 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?

To qualify for an exemption from overtime eligibility, (executive, professional, administrative, certain computer related jobs), 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 \$43,888 per year (\$844 weekly), effective July 1, 2024?



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



Communication Plan

- HRS has notified employees who are impacted, along with their supervisors.
- Open forums are 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 – U.S. Department of Labor Issues Final Overtime Rule <https://www.dol.gov/agencies/whd/overtime/rulemaking>
- Department of Labor – Overtime Pay <https://www.dol.gov/agencies/whd/overtime/general-guidance>
- Department of Labor – Federal Register - Final Rule <https://www.federalregister.gov/documents/2024/04/26/2024-08038/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and>
- Department of Labor – Frequently Asked Questions: Final Rule on Defining and Delimiting the Exemptions for Executive, Administrative, and Professional Employees <https://www.dol.gov/agencies/whd/overtime/rulemaking/faqs>
- Department of Labor – Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act (FLSA) [Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act \(FLSA\) | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/agencies/whd/overtime/rulemaking/faqs)



Resources

- Fair Labor Standards Act (FLSA) Information for NMSU

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

FLSA HRS FAQs

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

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