EMPLOYEE INFORMATIONAL SESSION

FAIR LABOR STANDARDS ACT (FLSA) CHANGES TO THE LAW

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What Changed and Who Changed It

• In May 2016, the U.S. Department of Labor revised a regulation that increased the salary threshold where employees are eligible to receive overtime. This was a major change to employee exemption criteria under the Fair Labor Standards Act (FLSA). The salary threshold which has been in place since 2004 increased from $455 per week (the equivalent of $23,660 annually) to $913 per week (the equivalent of $47,476 annually).

• Automatic increase of salary threshold has been established to occur every three years with the first one scheduled for 2020 at approximately $51,168.

• Faculty, teachers and coaches with a primary responsibility of instruction remain excluded from the FLSA salary requirement and will remain exempt.

• The regulations specify the change in exempt to nonexempt status, based on the new threshold, must be in effect as of December 1, 2016.

• NMSU has established an effective date of December 1, 2016. This is a change from the November 1, 2016 implementation date, in light of the pending litigation of the new FLSA rules in federal courts.
Efforts in Washington

- Efforts in Washington; Legislation out there to address the FLSA rule change.
  - **H.R. 4773 - Protecting Workplace Advancement & Opportunity.** This bill would require DOL to conduct an economic analysis before making changes.
  - **H.R. 5813 - Overtime Reform and Enhancement Act (OREA)** would phase-in new salary threshold over 3 years and eliminate the escalation clause.
  - **H.R. 6094 - Regulatory Relief for Small Business, Schools, & Nonprofits** bill would require a six-month delay in the effective date of the rule. Labor HHS overtime appropriations riders.

- At this time the White House has not released a Statement of Policy on the legislation and there is no change to the federally mandated December 1, 2016 implementation date.
• FLSA established three tests that must be met in order for an employee to be exempt from overtime pay eligibility. If you meet the duties test but not the salary level test, then you must be eligible to earn overtime:
  o Duties Test - the employee’s job duties must primarily involve executive, administrative, professional, computer or outside sales duties (also known as “EAP” or “white collar” duties).
  o Salary Basis Test - the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed;
  o **Salary Level Test - the amount of salary paid must meet a minimum specified amount ($913 per week).**

• 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.
  o Nonexempt employees are eligible to earn overtime
  o Exempt employees are not eligible to earn overtime
**NMSU Implementation Strategy**

- NMSU will convert all classifications in pay grades 08 and below to nonexempt.
  - Exception for grade 08 classifications with 0% cost impact, which could be regraded to a grade 09.
  - Exception for classifications determined to have a significant/unique need and reclassification funding can support the change.

- NMSU’s implementation strategy decisions, under the DOL’s new FLSA rules, were difficult and represents our best effort to minimize the impact of these changes to all affected employees. The key factors considered were:
  - The lowest impact to NMSU’s employees, business operations and budget.
  - Remain compliant with all DOL regulations, NMSU Administrative Rules and Procedures and the AFSCME Agreement.
  - Ensure both short term and long term implications of final decisions have been evaluated.
Strategy Research and Data

- As a result of differences in compensation structures and pay incentives, other universities may implement in a different manner than NMSU. The most prevalent consideration for NMSU is the pay incentives between exempt and nonexempt.

- HRS contacted peers to determine how they are implementing the new rules. At this time, only four (4) universities have responded:
  - **Texas Tech (Lubbock)** - At TTU we are converting based on the salary the majority of the employees in a certain position make, but allowing those that meet the salary minimum to have a new title to remain exempt. We will not have full time employees in the same job title having mixed nonexempt and exempt status. HRS is pending a response to the pay incentive question.
  - **University of New Mexico** – Convert all exempt positions, grades 8-12, to nonexempt and keep grade 13 positions exempt. This will result in an increase in the total number of nonexempt employees to 3614 from 2639, a difference of 975. 572 positions would remain exempt and 48 positions would require pay increases to raise them above the new threshold. This will have an immediate total cost impact of approximately $160,000. There will still be a potential cost impact for overtime; however, we can develop policies and procedures to mitigate this potential cost.
  - **University of Arizona** – via phone conversation, they are implementing strictly based on DOL threshold and allowing multiple exemption statuses. However, U of AZ does not have different pay incentives for exempt and nonexempt.
  - **University of Wyoming** - We are going to allow mixed classifications. HRS is pending a response to the pay incentive question.
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BENEFITS FOR EMPLOYEES
Benefits for Employees

• Work life balance with the work week limited to 40 hours per week
  o Work breaks of 15 minutes for each 4-hour segment of the work period. Because these breaks are paid, employees are required to remain at the job site. These breaks may not be added to meal breaks or to adjust start and stop times of the work day.
  o Meal breaks, which are not compensated and therefore on your own time
  o Compensatory time

• Compensation: nonexempt employees are eligible to be paid time-and-a-half for hours worked over 40 in a work week
  o Standby, Unrestricted On Call and Call-Back Pay
  o Eligible for standard salary increases (probation, service, longevity)
    ▪ Probation: performance evaluation and increase to 5% above entry of salary range in grade
    ▪ Longevity: satisfactory completion of 3 regular consecutive years, 5% base adjustment
    ▪ Service: 10, 15, 20, 25 and 30 years of regular consecutive service, $750, $850, $1,000, $1,300, $1,500
    ▪ Shift differentials and multi-lingual pay
Impact to Employees

- 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.

- Pay adjustment from on-time to lag pay will result in a delayed paycheck after conversion (e.g. Conversion December 1, next paycheck December 31—note: the last check in December is processed and paid prior to the winter break)
  - NMSU will offer employees an option of receiving a Pay Gap Wage assistance equivalent to the net amount of one pay period rate. Amount to be repaid from January-June 2017.

- Timesheet – employees will need to submit a timesheet each pay period accounting for the hours worked on a daily basis.

- Cultural Changes and Morale
  - Moving to nonexempt may feel like a demotion
  - Impact on employee engagement
  - Clarifying roles and responsibilities
Travel – Planes, Trains and Autos (Fact Sheet #22)

• Attendance at lectures, meetings, training programs and similar activities need not be counted as working time only if four criteria are met, namely: it is outside normal hours, it is voluntary, not job related, and no other work is concurrently performed.

• Principles which apply in determining whether time spent in travel is compensable time depends upon the kind of travel involved.
  o Home to Work Travel: An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.

  o Home to Work on a Special One Day Assignment in Another City: An employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.

  o Travel That is All in a Day's Work: Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

  o Travel Away from Home Community: Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.
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NEXT STEPS
What are the Next Steps?

- **Conversion Plan Details**
  - Conversion Date: November 1, 2016 - December 1, 2016
  - Develop Pay Gap Assistance Program
  - Convert Grade 08 and below exempt to nonexempt with exceptions

- **Implementation Plan**
  - Meet with senior administrators
  - Notification to affected employees
  - Notification to supervisors

- **Communicate and Train**
  - Informational sessions
  - Nonexempt employee training (timesheets, lag pay, etc.)
  - Supervisor training (timesheets, nonexempt rules, etc.)
Department of Labor Links

- DOL Website – Final Rule
  - [https://www.dol.gov/featured/overtime](https://www.dol.gov/featured/overtime)
- Guidance for Higher Education Institutions
- Fact Sheet #17A (note: not updated by DOL yet)
  - [https://www.dol.gov/whd/overtime/fs17a_overview.pdf](https://www.dol.gov/whd/overtime/fs17a_overview.pdf)
- Fact Sheet #17G (note: not updated by DOL yet)
  - [https://www.dol.gov/whd/overtime/fs17g_salary.pdf](https://www.dol.gov/whd/overtime/fs17g_salary.pdf)
- Fact Sheet #22
- Questions and Answers from the General Information Overtime Webinars
  - [https://www.dol.gov/whd/overtime/final2016/webinarfaq.htm](https://www.dol.gov/whd/overtime/final2016/webinarfaq.htm)
- National Association for College Admission Counseling
- H.R. 4773 - Protecting Workplace Advancement & Opportunity
- H.R. 5813 - Overtime Reform and Enhancement Act (OREA)
- H.R. 6094 - Regulatory Relief for Small Business, Schools, & Nonprofits
QUESTIONS?