

Welcome to HR Presents

October 26, 2016

10:30 am – 12:00 pm

Milton Hall | Room 185

WELCOME & INTRODUCTIONS

BENEFIT NEWS

Presented by: René S. Yoder

Director, Benefit Services

ANNUAL COMPLIANCE TRAINING

Presented by: Jennifer Gabel

Center for Learning & Professional Development

Annual Compliance Training

- As of today
 - # Enrolled
 - # In Progress
 - # Not Started
 - # Completed

Annual Compliance Training

- Reporting & Notifications
 - Reminders - 2 weeks prior to due date
 - Overdue reminder
 - Upon completion
- Reports
 - Nov 15 (incomplete)
 - Jan 2, 2017 (overdue)
 - Remind managers to use the Team Dashboard
 - Special requests must be approved by Teresa Burgin, Dir. CLPD

Annual Compliance Training

Resources

- Compliance Website

<https://training.nmsu.edu/annual-compliance-training/>

- Compliance FAQ's

<https://training.nmsu.edu/annual-compliance-training/compliance-training-faqs/>

trainingcentral@nmsu.edu

575-646-7444

HOW DO I SUPERVISE NONEXEMPT EMPLOYEES?

Presented by:

Kathy Agnew

Dir, Employment & Comp Services

Presented by:

Ralph Lucero

Dir, Employee & Labor Relations

Introduction

- In May 2016, the U.S. Department of Labor (DOL) 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).
- The regulations specify the change in exempt to nonexempt status, based on the new threshold, must be in effect as of December 1, 2016.
- As a result of the new rule implementation, Ralph and I have received a significant number of concerns:
 - Supervisors are not aware of DOL, internal NMSU and AFSCME contract rules
 - Supervisors create an unspoken expectation to go “above and beyond” the standard work hours on a consistent basis.
 - Employees are concerned that this will continue post conversion under FLSA
 - Employees are concerned that following the rules, and **limiting** their work hours to **ONLY 40** per week, will reflect poorly on their performance evaluations

Employee Impact of FLSA Changes

- Cultural Changes and Morale
 - Moving to nonexempt may feel like a demotion
 - Impact on employee engagement
 - Clarifying roles and responsibilities
- 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.

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

**WAGE AND HOUR DIVISION (WHD)
FAIR LABOR STANDARDS ACT
(FLSA)**

**NMSU RULES AND PROCEDURES &
AFSCME CONTRACT**

Suffer or Permit to Work

- DOL Wage and Hour Divisions (WHD) Fact Sheet #22: Hours Worked Under Fair Labor Standards Act (FLSA)
 - Definition of "Employ": By statutory definition the term "employ" includes **"to suffer or permit to work."** The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place. "Workday", in general, means the period between the time on any particular day when such employee commences his/her "principal activity" and the time on that day at which he/she ceases such principal activity or activities. The workday may therefore be longer than the employee's scheduled shift, hours, tour of duty, or production line time.
 - Application of Principles: Employees "Suffered or Permitted" to work: Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. **The reason is immaterial.** The hours are work time and are compensable.

NMSU Nonexempt Employment

- Which NMSU employees are covered under the FLSA Overtime Rules?
 - Employees compensated on an hourly basis:
 - Regular nonexempt employees
 - Temporary staff and student employees compensated hourly (temporary faculty and Grad Assistants are excluded)
- Which NMSU employees are covered under the AFSCME Contract
 - Regular, non-probationary, nonexempt employees working within the state of New Mexico
 - Excludes supervisory and confidential nonexempt employees

NMSU/AFSME Work Hours

- NMSU/AFSCME Contract Rules “Work Week” (Ref Article 17)
 - The work week for payroll purposes shall be the calendar week from 12:00 a.m. Sunday through 11:59 p.m. Saturday. The University’s official human resources/payroll system (e.g., currently the Banner system) shall be used for the entry of all time worked and leave taken.
 - The normal work schedule for full-time employees **shall consist of five (5) consecutive days with eight (8) hours per day**, Monday thru Friday. The parties agree that due to the operational needs of the University community there may be work schedules other than the normal work schedule, but these alternative schedules should be kept to minimum, wherever possible. The scheduled starting and ending times shall remain consistent throughout the work week. Changes in the regular scheduled starting and ending times shall be communicated to each effected employee **in writing two (2) weeks prior to the scheduled changes becoming effective** unless the operational needs of the Employer demand otherwise, in which case reasonable notice shall be provided as soon as practicable.
 - Due to the operations of the University there is a need to allow for positions specifically in Special Events and the Golf Course to have a flexible work schedule to accommodate for business needs. The days worked and the starting and ending times shall be established no less than weekly and communicated to the employee in writing at least 48 hours prior to 12:00 a.m. Sunday. Additionally, the hours worked each week shall remain consistent with the assigned full-time equivalency (FTE). Positions that have a flexible work schedule shall be posted with the following language, “flexible work schedule to be established each week based on needs of the hiring department”. At the time of hire, employees will be provided with a letter of offer indicating the conditions of employment to include the requirement of a flexible work schedule.

Work Hours Rules Cont.

- NMSU/AFSCME Contract Rules “Work Breaks” (Ref Article 17)
 - A fifteen (15) minute work break is allowed for each 4-hour segment (or major portion thereof) of the work period; as feasible, approximately in middle of each segment of the work period. Non-usage of work breaks may not be used to make up time spent away from work. General guidelines regarding break times are below:
 1. Break times cannot be added to the meal break and generally should not be taken within one (1) hour before or after the meal break.
 2. Break times cannot be deducted from the beginning or end of the work period to reduce overall length of total work period.
- NMSU/AFSCME Contract Rules “Meal Breaks” (Ref Article 17)
 - There shall be an unpaid duty-free meal break of at least thirty (30) minutes for employees working on shifts of six (6) hours or more. Meal breaks should normally be scheduled at the mid-point of the employee’s regular work shift. Bargaining unit positions currently receiving a paid meal break on the effective date of this Agreement shall continue to receive this benefit under this Agreement.

DOL Waiting Time and On-Call

- DOL Wage and Hour Divisions (WHD) Fact Sheet #22: Hours Worked Under FLSA
 - Waiting Time: Whether waiting time is hours worked under the Act depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was **waiting to be engaged** (which is not work time). For example, a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is working during such periods of inactivity. These employees have been "engaged to wait."
 - On-Call Time: An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.

NMSU/AFSCME Standby

- NMSU/AFSCME Contract Rules “Standby” (Ref Article 17)
 - The Employer may assign an employee to standby status in accordance with the following:
 - 1) Standby is defined as time that an employee is required to be ready to report for duty or to respond to a work-related call during his/her time off where he/she cannot use his/her time off freely. Such time shall include time that an employee has been directed to remain within contact by telephone or electronic beeper in order to respond to a call within a specified timeframe during his/her time off.
 - 2) Standby pay shall be an amount equal to \$1.00 per hour for each hour of assigned “standby” status.
 - 3) Standby status shall not be concurrent with work time.
 - 4) This Section will be administered in accordance with the Fair Labor Standards Act (FLSA).

NMSU/AFSCME Contract On-Call & Call Back Pay

- NMSU/AFSCME Contract Rules “Unrestricted On Call” (Ref Article 17)
 - Voluntary unrestricted on call lists may be maintained for the purposes of offering available overtime pay so long as the employee is not required to remain in any specific geographical area or required to return to work within a specific time period. Employees on such status may decline to return to work if contacted, without penalty, discipline or other reprisal if they acknowledge they are not fit to report to duty.
- NMSU/AFSCME Contract Rules “Call-Back Pay” (Ref Article 17)
 - On-Call employees who are required to return to work, or those other employees who are called back to work on a regularly scheduled on-duty day after going off-duty or who are called to work on a regularly scheduled off-duty day, shall be guaranteed a minimum of two (2) hours of pay for the actual time worked at the applicable straight time or overtime rate. For employees called back to work, paid time shall commence at the time the employee begins travel to report for work and ends at the completion of the call-back assignment. The University shall not use these call-back pay provisions of the Agreement to undermine or circumvent the distribution of overtime.

Overtime

- NMSU/AFSCME Contract Rules “Overtime” (Ref Article 17)
 - The University shall compensate all employees covered under this Agreement at the rate of one and one-half times the employee’s regular hourly rate of pay, including any pay differential, for hours worked in excess of forty (40) hours during the work week (hereinafter referred to as “overtime”).
 - **An employee’s daily or weekly schedule shall not be changed to avoid the payment of overtime or accrual of compensatory time...**
- NMSU/AFSCME Contract Rules “Distribution of Overtime Opportunities” (Ref Article 17)
 - If overtime is required that is not within the specific job assignment of an individual employee, then the supervisor shall first offer overtime to the employees under his/her supervision who are qualified to perform the necessary work. If more than one qualified employee volunteers to work overtime, the supervisor shall assign overtime based on classification seniority within the work group that he/she supervises and rotate overtime assignments in a fair and equitable manner. If no volunteers are available, then the supervisor will designate employees capable and qualified to perform the work based on reverse classification seniority and mandatory overtime shall be rotated in a fair and equitable manner. The University shall have the right to require employees to work overtime consistent with this section.

Compensatory Time (Comp Time)

- NMSU/AFSCME Contract Rules “Compensatory Time” (Ref Article 17)
 - A. Upon election by the employee, overtime work may be compensated in the form of compensatory time off (referred to hereinafter as “comp time”). When such form of compensation is elected, **the employee shall be paid for all hours worked in excess of forty (40) hours during the work week (hereinafter “overtime hours”) at the employee’s regular hourly rate of pay and earn comp time at an additional 0.5 times the overtime hours worked.** The Employer shall designate two (2) opportunities each year for employees to change their current election to receive either comp time or pay for overtime hours worked, to be effective on January 1 and July 1.
 - B. The date to be taken as comp time off shall be scheduled by agreement between the supervisor and the employee. Supervisory approval for the use of comp time shall not be unreasonably withheld. A supervisor may direct that an employee use accrued comp time.
 - C. A maximum of one hundred and twenty (120) hours of comp time may be accrued in a fiscal year. Comp time earned for overtime and reported by the payroll deadline shall be accrued at the next regularly scheduled pay day. An employee may request payment of accrued comp time at any time, which shall then be paid at the next regularly scheduled pay day. All comp time must be used or paid by the end of each fiscal year or prior to transfer or termination.

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.
 - 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.
 - 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.
 - 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.
 - 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.

Management Responsibilities and Authority

- Managers:
 - 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
- Managers approve:
 - Overtime – **within allowed departmental and college/division budgets**
 - Time Off Requests
 - Work Schedule Change Requests
- NMSU/AFSCME Contract Rules “Workload Standards” (Ref Article 17)
 - The University shall assign workloads to treat employees as equitably as possible. The Employer shall consider re-distribution of staff or positions among a department’s programs, shifts, or work sites or other means to alleviate excess workload and shall specifically consider hiring additional staff where there are chronic workload problems. In addition, the parties shall utilize the Labor Management Committee, Article 30 to address workload issues for employees that are assigned caseloads.

Typical Problems

- Problems arise when employers fail to recognize and count certain hours worked as compensable hours. For example:
 - An employee who remains at his/her desk while eating lunch and regularly answers the telephone, checks email, etc. is working.
 - An employee who arrives early or stays late and regularly answers the telephone, checks email, etc. is working
 - Mobile Communication Device Usage: supervisors need to be aware that usage of these devices outside of the standard work hours constitute work time.
 - Travel

Resources

- Administrative Rules and Procedures of New Mexico State University
 - https://manual.nmsu.edu/files/2013/10/11thEdARPrev080916v081816_mc.pdf
- Agreement between NMSU & AFSCME Local (AFSCME Contract)
 - http://hr.nmsu.edu/wp-content/uploads/2013/04/R_I_AFSCME_Agreement_w_NMSU.pdf
- Fact Sheet #22
 - <https://www.dol.gov/whd/regs/compliance/whdfs22.pdf>

QUESTIONS?

CLOSING REMARKS & ADJOURNMENT