



New Mexico State Personnel Board

State Personnel Office

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MEMORANDUM

TO: Cabinet Secretaries, Agency Directors and Human Resource Manager
FROM: Sandra K. Perez, State Personnel Director
DATE: September 8, 2004
SUBJECT: Changes to the Fair Labor Standards Act

Effective August 23rd, 2004, the federal regulations regarding the Fair Labor Standards Act, 29 CFR Part 541, *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Computer and Outside Sales Employees* changed. These new revised regulations are significantly different in many ways and have an effect on how your agency administers the "white-collar" exemptions to the Fair Labor Standards Act. It is critical that your agency be in compliance with both federal regulations and State Personnel Board rules.

These changes may have resulted in employees who were exempt from the overtime provisions of the Fair Labor Standards Act (FLSA-exempt) becoming FLSA non-exempt, requiring payment of overtime at one and one-half times the hourly rate for any hours actually, physically worked over 40 hours within a workweek. Conversely, there may also be employees who were identified as FLSA non-exempt under the old regulations, who would now be identified as FLSA-exempt under the new regulations, removing the requirement to pay the affected employees overtime. The only way to determine what employees are FLSA-exempt or FLSA non-exempt is to conduct a full scale review of all positions in your agency.

Two training sessions were offered to agency human resource managers regarding these changes at the State Personnel Office on May 10th and August 16th, 2004. In these sessions an overview of the changes was covered. Attendees were provided a handout of the training slides, a copy of the new regulations, and general direction on what needs to be done to be in compliance.

I will presume your agency has completed its review. **If not**, the following action should be taken to ensure your agency is in compliance with the new regulations.

- Evaluate all FLSA-exempt employees under the new regulations to determine if the employee's status will remain FLSA-exempt or change to FLSA non-exempt.
 - Employees whose status is determined to remain FLSA-exempt must be notified in writing and a copy of the determination letter must remain on file with the agency.
 - Employees whose status is determined to be FLSA non-exempt under the new regulations must be notified in writing of the change.
- Evaluate the exemption status of all FLSA non-exempt employees under the new regulations to determine if the employee will remain FLSA non-exempt or change to FLSA-exempt.
 - Employees whose status is determined to change to FLSA-exempt must be notified in writing at least 30 days prior to the effective date of the change and a copy of this determination letter must remain on file with the agency.
 - Employees whose status is determined to remain FLSA non-exempt under the new regulations should be notified in writing that their FLSA exemption status has not changed.
- This review must be completed by December 31st, 2004. Note: Any changes in the employee's exemption status due to the changes in the federal regulations which would result in the agency owing money to the employee must be made retroactively to August 23rd, 2004. Changes which would remove premium overtime pay would be effective the first pay period after employee notification has occurred.
- Once an agency determines that an employee's overtime status has changed and notified the employee in writing, the status must also be changed in the HRMS system for payroll purposes. Human Resource or Payroll staff must go into screen "003" and change the field "FLSA STAT" to either a "Y" (FLSA non-exempt) or "N" (FLSA-exempt). Care must be taken to ensure this is processed properly in payroll as well.
- If any retro-active overtime needs to be paid, it should be processed on a timesheet using an "Additional Gross" earnings code.

1.7.4.15 NMAC Overtime provides guidance on administering overtime for employees in the classified service. This rule also allows for employees to appeal their overtime status. Employees may file a complaint through the agencies written complaint procedure. Upon notification of the agency's decision, an employee may file an appeal with the State Personnel Director within 30 calendar days of the date of the agencies decision.

If you have any questions regarding changes in the federal regulations governing the Fair Labor Standards Act, please contact Justin Najaka, Compensation Manager at 476-7737 or via e-mail at Justin.najaka@state.nm.us or Marc Williams, Staff Development Specialist at 476-7768 or via e-mail at marc.williams@state.nm.us .