



New Mexico State Personnel Board State Personnel Office

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MEMORANDUM

TO: Cabinet Secretaries, Agency Directors and Human Resource Managers

FROM: Justin Najaka, Director *Justin Najaka*

DATE: November 10, 2016

SUBJECT: 2016 Changes to the Fair Labor Standards Act

Effective December 1st, 2016, the federal regulations regarding the Fair Labor Standards Act ("FLSA"), 29 CFR part 541, *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees* will change. These newly revised regulations significantly change the salary threshold and will have an effect on how your agency administers the "white-collar" exemptions to the FLSA. It is critical that your agency be in compliance with both federal and state regulations and State Personnel Board rules. The final rule focuses primarily on updating the salary and compensation levels needed for white-collar employees to be exempt. Specifically, the Final Rule:

1. Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South, which is \$913 per week or \$47,476 annually for a full-year worker;
2. Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally, which is \$134,004; and
3. Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption.

2600 Cerrillos Road, Santa Fe, New Mexico, 87505 (505) 476-7759



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Additionally, the Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level. The Final Rule makes no changes to the duties tests.

The initial increases to the standard salary level (from \$455 to \$913 per week) and HCE total annual compensation requirement (from \$100,000 to \$134,004 per year) will be effective on that date. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

These changes will result in employees who were exempt from the overtime provisions of the FLSA (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.

The State Personnel Office and the SHARE team provided information regarding these changes at the HCM User Meeting on November 2, 2016. In this session, attendees were provided an overview of the changes and specific instructions on how to change employee status and workgroups were covered. These and other reference documents can be found on the [FLSA Resource and Overtime](#) page on the State Personnel Office website. On November 9, 2016, additional training was provided on administering the “white-collar” duties tests. SPO staff is available to provide additional guidance and answer any specific questions you may have.

Most agencies have determined which employees will be affected and how they will comply with the revised FLSA rule change. However, if your agency has not started its review, immediate action should be taken to ensure your agency is in compliance with the new rule changes. Agencies should evaluate all FLSA-exempt employees whose salary falls between the current \$23,660 salary threshold and the proposed \$47,476 salary threshold. Employees whose status is determined to change from FLSA-exempt to FLSA non-exempt must be notified in writing of the change prior to November 19, 2016.

1.7.4.14 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 agency’s 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 FLSA, please contact your designated SPO consultant or Justin Najaka, State Personnel Director, via email at Justin.najaka@state.nm.us . If you have technical questions on how to update records in SHARE, please contact the HCM user support desk at share.infocenter@state.nm.us .