



# 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 29, 2016

**SUBJECT:** Federal Injunction Suspending DOL's 2016 Changes to the Fair Labor Standards Act

As you all know, the U.S. Department of Labor ("DOL") published on May 23, 2016 in 29 C.F.R. Part 541 a new Fair Labor Standards Act ("FLSA") rule purporting to increase the salary threshold for FLSA "exempt" status to include those employees commonly referred to as "white collar" or "EAP" exempt, which was scheduled to take effect on December 1, 2016. The new rule was challenged on various legal grounds and on November 22, 2016 the U.S. District Court for the Eastern District of Texas issued a temporary injunction of the DOL's final rule described at 81 Fed. Reg. 32,391, which "preserves the status quo while the court determines the (US Department of Labor's) authority to make the final rule as well as the final rule's validity." The DOL is considering their legal options, which may include an appeal.

In light of the injunction, the State will not implement the new DOL rule and, as such, there will be no change to employee status under the FLSA rules. In order to prevent mistakes in payroll and erroneous overtime payments, each agency should immediately reverse any changes in FLSA designation which were made to comply with the new DOL regulations, which are presently unenforceable. Employees whose status was previously determined to change from FLSA-exempt to FLSA non-exempt must be notified in writing of the reversal as soon as possible (a form notice is provided for ease of use).

Updates on the litigation and DOL action will be provided as soon as possible. If you have any questions, please contact your designated State Personnel Office consultant or Justin Najaka, State Personnel Director, via email at [Justin.najaka@state.nm.us](mailto:Justin.najaka@state.nm.us). State Personnel Office staff will be reaching out to agency Human Resource managers with specific guidance on how to reverse changes in SHARE.

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

