



Email - Thursday, December 1, 2016

Subject: Recent FLSA Overtime Rule on Hold

On November 22, 2016, a U.S. District Court Judge issued a [preliminary injunction](#) postponing the effective date of the U.S. Department of Labor's (DOL) overtime rule ("Final Rule"). The Final Rule, which extended overtime eligibility to certain employees, was scheduled to go into effect December 1, 2016. In order to comply with the Final Rule by the December 1 deadline, UNM began implementing compliance measures this November.

As a result of the court's order, the new FLSA Final Rule will NOT go into effect on December 1 as originally expected. According to Judge Amos Mazzant, the preliminary injunction will preserve the status quo while the court determines the DOL's authority to make the Final Rule, as well as its validity.

How will UNM Proceed?

FACULTY

Specifically with regard to research faculty and postdoctoral fellows affected, please contact the faculty administrative office for your area: Office of Faculty Affairs (505-277-4528) for main or branch campuses, HSC Faculty Contracts Office (505-272-4231) for HSC faculty, or SOM Office of Faculty Affairs and Career Development (505-272-8268) for School of Medicine faculty.

STAFF

Without a final rule in place and the compliance deadline temporarily lifted, UNM administration must consider options to minimize the impact to employees and manage the overall cost, while remaining in a position to adjust for compliance as needed when the final rule is determined. Therefore, at a time where budgets are tight, UNM will proceed in the following ways until further notice:

- 1. Exempt Staff Employees Converted to Nonexempt on November 26, 2016 and elected to remain on a Monthly Pay Schedule:**
 - a. Will be changed back to an exempt status effective November 26, 2016 and will be classified as exempt by Human Resources.
 - b. Will remain on a monthly pay schedule.
 - c. Will continue to report leave taken and will not need to begin tracking hours worked as originally informed.
 - d. Will not be paid for overtime worked (already or going forward) or allowed comp time since the injunction put the initiative on hold prior to the timeframe when any overtime could have been earned.
 - e. Pursuant to UAP 3200, Section 2 (Employee Classification), the Division of Human Resources determines which positions will be exempt or nonexempt. Human Resources' determination of an employee's exempt status governs and overrides any contrary references to that employee's status in Banner and/or LoboTime.

- 2. Exempt Staff Employees Converted to Nonexempt on November 12, 2016 and transitioned to a Biweekly Pay Schedule:**
 - a. Will remain on a biweekly pay schedule, but will be classified as exempt by Human Resources.
 - b. Will be paid for overtime worked on their December 2 check, for pay period 2R24 (11/12 - 11/25/16).
 - c. Will be changed back to an exempt status effective November 26, 2016.
 - d. Will continue to submit a biweekly timesheet, documenting hours according to assigned FTE and leave taken. For example:

- i. An employee working 1.0 FTE, will document 40 hours worked or leave taken per week on their timesheet and no more than 80 hours worked or leave taken each two-week pay period.
 - ii. An employee working .5 FTE would not report more than 20 hours per week in each two-week pay period.
 - iii. The only type of earnings that can be reported as an exempt employee are regular time, sick and annual leave, leave without pay, or other paid leave.
- e. Are not eligible for Overtime or Compensatory Time for pay period 2R25, 11/26/16 – 12/9/16 (the December 16 paycheck), and future pay periods.
 - i. Banner Time Entry Users: Timekeepers should not enter any overtime hours in Banner to be paid.
 - ii. LoboTime Users: Supervisors should adjust employee time worked such that it does not report overtime.
- f. Pursuant to UAP 3200, Section 2 (Employee Classification), the Division of Human Resources determines which positions will be exempt or nonexempt. Human Resources' determination of an employee's exempt status governs and overrides any contrary references to that employee's status in Banner and/or LoboTime.

3. Staff Employees in Salary Grade 13 Below Threshold

- a. Salary increases to bring current full-time employees in salary grade 13 to the new threshold (\$47,476) effective December 1, 2016, will no longer occur.

4. Staff Position Reclassifications and Grade Changes

- a. All reclassifications resulting from the FLSA Final Rule that have already been approved and processed will be reassessed. Employees impacted will be individually notified with regard to any changes in their situation.
- b. Reclassifications that are pending will not be processed at this time, nor will additional requests related to the FLSA Final Rule be accepted.
- c. Grade reviews that resulted in a grade and salary change scheduled to be effective December 1, 2016 and intended to comply with the FLSA Final Rule will no longer occur.

5. Posted Staff Jobs

- a. Jobs posted with grades that were determined to be affected by the FLSA rule change will be reassessed, and changes made as needed.
- b. Those hiring for positions that are grade 13 will now follow the salary schedule quartiles as identified in the August 16, 2016 staff salary structure. Hires into grade 13 positions no longer need to take place at the \$47,476 amount, the threshold amount that was expected to be the new grade 13 entry salary.

What Next?

UNM administration will assess how best to move forward and evaluate options that may ease the burden on employees and supervisors as we move into 2017. Additionally, we will continue to monitor the progress of the injunction, and evaluate how to respond to new or changing compliance measures as needed. It is imperative that we position UNM to respond to any final decisions regarding the FLSA while maintaining our fiscal responsibility. Employees will be updated as more information is available. Thank you for your understanding as we await further federal guidance.

If you have questions, please visit our [FLSA website](#) or contact Client Services at 505-277-2013 and a Consultant will assist you.

Thank you.
Division of Human Resources