University Administrative Council

NOVEMBER 12, 2019

HUMAN RESOURCES

Fair Labor Standards Act (FLSA)

I-9 Compliance
Internal Audit

Performance Evaluation
Process

BE BOLD. Shape the Future.
What is FLSA?

The Fair Labor Standards Act (FLSA) is a federal law administered by the Department of Labor. Specifically, the FLSA governs overtime provisions, which ensure employees receive pay at a rate no less than time-and-a-half for all time worked in excess of 40 hours in a work week.
How has the FLSA changed?

Currently, the salary threshold for exemption status is $23,660 per year ($455 per week). On September 24, 2019, the Department of Labor announced a final ruling to increase the salary threshold to $35,568 per year ($684 per week), effective January 1, 2020. The threshold of $35,568 is only one element of the exemption test to determine the appropriate exemption status.
What is the impact to NMSU?

• There are about 368 possible impacted positions (Gr. 05 & 06).
• Pay adjustment from on-time to lag pay will result in a delayed paycheck after conversion (e.g. Conversion January 1, next paycheck January 31).
• Eligibility for OT for some positions.
• Employees will need to submit a timesheet each pay period accounting for the hours worked on a daily basis.
• Employees may feel that they are undervalued or not seen as professional (exempt to nonexempt).
What are the steps in the review?

HRS completed the initial review of positions in grade 05 and 06 and below using the following process:

• Application of the “FLSA exemption test” to each position.

• The most recent information provided in position classification actions and postings will be reviewed to determine if the positions meet the exemption tests.
What is the FLSA exemption test?

Completion of a questionnaire to determine the exemption status of a position (executive, professional, administrative, certain computer related jobs). To qualify for an exemption, at minimum the following elements must apply:

- Scope of the work: Example--The primary duties consist of performing office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers.

- The work includes the exercise of discretion and independent judgment with respect to matters of significance.

- Is pay at least $35,568 per year ($684 weekly), effective Jan. 1, 2020?
Communication Plan?

- HRS have contacted departments with impacted positions at the end of October thru the first week of November.

- In November, HRS will have open forums for employees and their supervisors to discuss the upcoming changes in general to the exemption status.

- A web page is available and a Q&A sheet is published online as well as other relevant information regarding the change.
Employee impact of FLSA Changes

• 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
Supervisor Responsibilities

Supervisor:
• 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

Supervisors approve:
• Overtime – within allowed departmental and college/division budgets
• Time Off requests
• Work Schedule Change requests
Training

Training sessions will be offered in December for impacted employees on how to enter time, the pay schedule and the AFSCME agreement, as well as provide other information relative to the changes.
Resources

• Administrative Rules and Procedures of NMSU – Rule 7.20 Staff Overtime Pay or Comp Time
  https://arp.nmsu.edu/7-20/

• Department of Labor – Final Rule: Overtime Update

• Department of Labor – U.S. Department of Labor Issues Final Overtime Rule
  https://www.dol.gov/newsroom/releases/whd/whd20190924

• Department of Labor – Overtime Pay
  https://www.dol.gov/whd/overtime_pay.htm

• Department of Labor – Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemptions for Executive, Administrative, and Professional Employees
  https://www.dol.gov/whd/overtime2019/overtime_FS.htm

• Department of Labor – Highlights of the Final Rule on Overtime Eligibility for White Collar Employees
  https://www.dol.gov/whd/overtime2019/overtime_FAQ.htm

• Department of Labor – Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act (FLSA)
  https://www.dol.gov/whd/overtime/whdfs17s.pdf
Resources

• Fair Labor Standards Act (FLSA) Information for NMSU
  https://hr.nmsu.edu/flsa/
• FLSA FAQs
  https://hr.nmsu.edu/flsa/flsa-faqs/

Human Resource Services 575-646-8000
hrs@nmsu.edu
There will be a solution or option(s) offered to address the lag pay.

More information to come.
I-9 Compliance

HRS Internal Audit

September, 2019
# I-9 Forms With Errors

<table>
<thead>
<tr>
<th>Month</th>
<th>Errors (Total)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>September, 2019</strong> (362)</td>
<td></td>
</tr>
<tr>
<td>Errors by Employee</td>
<td>23</td>
</tr>
<tr>
<td>Errors by Originator</td>
<td>41</td>
</tr>
<tr>
<td><strong>January, 2019</strong> (366)</td>
<td></td>
</tr>
<tr>
<td>Errors by Employee</td>
<td>18</td>
</tr>
<tr>
<td>Errors by Originator</td>
<td>51</td>
</tr>
</tbody>
</table>
Most Common I-9 Errors (September 2019)

Originator Errors

• Completed reverification section in error
• Incorrect issuing authority (SSC)
• Expiration date incorrect
• Representative did not sign or date section 2

Employee Errors

• All fields not completed
• Signed in reverification section in error
• Entered incorrect data (Date of Birth) (SSC)
I-9 Training

What actions have been taken to improve compliance?

- Between 2018-2019 HRS conducted I-9 trainings for 311 individuals.
- HRS continues to provide one-on-one trainings to department liaisons as needed.
- NMSU provided departments a USCIS Smart Form that is user friendly and has proven results of decreasing errors.
## Submission Times (September, 2019)

<table>
<thead>
<tr>
<th>Submitted to HRS Early (Prior to day 3)</th>
<th>57%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submitted to HRS On-Time (On Day 3)</td>
<td>7%</td>
</tr>
<tr>
<td>Submitted to HRS Late (After Day 3)</td>
<td>36%</td>
</tr>
</tbody>
</table>
January and September 2019 Comparison

**Section 1 Completion**

- Early (Prior to Day 1): Sep-19 43%, 19-Jan 47%
- On-Time (Day 1): Sep-19 29%, 19-Jan 27%
- Late (After Day 1): Sep-19 28%, 19-Jan 26%

**Section 2 Completion**

- Early (Day 2 and Earlier): Sep-19 81%, 19-Jan 83%
- On-Time (Day 3): Sep-19 2%, 19-Jan 1%
- Late (After Day 4): Sep-19 17%, 19-Jan 16%
January and September 2019 Comparison

I-9 Received to HRS

- Early (Earlier than Day 2): 81% (Sep-19), 83% (19-Jan)
- On-Time (Day 3): 2% (Sep-19), 1% (19-Jan)
- Late (After Day 4): 17% (Sep-19), 16% (19-Jan)
### Late Hire Data - GA's and TFAC

<table>
<thead>
<tr>
<th>Summary Org</th>
<th>ECLS</th>
<th>Total Hires Fall and Academic Term*</th>
<th>Hires Loaded Into Banner after start date</th>
<th>% of Hires loaded after start date</th>
</tr>
</thead>
<tbody>
<tr>
<td>SG</td>
<td>2</td>
<td>2</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>C2</td>
<td>31</td>
<td>5</td>
<td>16%</td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td>103</td>
<td>36</td>
<td>35%</td>
<td></td>
</tr>
<tr>
<td>C2</td>
<td>89</td>
<td>88</td>
<td>99%</td>
<td></td>
</tr>
<tr>
<td>C2</td>
<td>105</td>
<td>24</td>
<td>23%</td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td>471</td>
<td>100</td>
<td>21%</td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td>12</td>
<td>12</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>C2</td>
<td>16</td>
<td>1</td>
<td>6%</td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td>41</td>
<td>15</td>
<td>37%</td>
<td></td>
</tr>
<tr>
<td>C2</td>
<td>55</td>
<td>52</td>
<td>95%</td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td>5</td>
<td>0</td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td>3</td>
<td>3</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>C2</td>
<td>452</td>
<td>142</td>
<td>31%</td>
<td></td>
</tr>
<tr>
<td>C2</td>
<td>78</td>
<td>60</td>
<td>77%</td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td>100</td>
<td>98</td>
<td>98%</td>
<td></td>
</tr>
<tr>
<td>C2</td>
<td>26</td>
<td>20</td>
<td>77%</td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td>209</td>
<td>171</td>
<td>82%</td>
<td></td>
</tr>
<tr>
<td>C2</td>
<td>31</td>
<td>31</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>C2</td>
<td>66</td>
<td>55</td>
<td>81%</td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td>34</td>
<td>22</td>
<td>65%</td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td>4</td>
<td>0</td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td>C2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td>1</td>
<td>0</td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td>8</td>
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<td>13%</td>
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<tr>
<td>SG</td>
<td>7</td>
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<td>0%</td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td>13</td>
<td>3</td>
<td>23%</td>
<td></td>
</tr>
</tbody>
</table>

**Grand Total**: 1956 total hires, 941 hires loaded after start date, 48% of hires loaded after start date.
### Units Who Processed the Most I-9s
**September, 2019**

<table>
<thead>
<tr>
<th>Rank</th>
<th>Department</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Auxiliary</td>
<td>76</td>
</tr>
<tr>
<td>2</td>
<td>Student Success &amp; Enroll Mgmt.</td>
<td>52</td>
</tr>
<tr>
<td>3</td>
<td>Agricultural, Consumer &amp; Env. Science</td>
<td>42</td>
</tr>
<tr>
<td>4</td>
<td>Dona Ana Community College</td>
<td>36</td>
</tr>
<tr>
<td>5</td>
<td>Arts and Sciences</td>
<td>34</td>
</tr>
</tbody>
</table>
# Originators Who Consistently Complete Forms Early

<table>
<thead>
<tr>
<th>Name</th>
<th>Department</th>
<th>Forms Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shaco Parra- Special Events</td>
<td></td>
<td>37</td>
</tr>
<tr>
<td>Judith Cox- CACC Carlsbad CC</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Carol Gumm- Auxiliary Administration</td>
<td></td>
<td>9</td>
</tr>
<tr>
<td>Eden Summers- Animal &amp; Range Sciences</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>Loretta Ramirez- Special Events</td>
<td></td>
<td>8</td>
</tr>
</tbody>
</table>
Consequences for non-compliance to be determined by the executive level of the institution:

Possible Recommendations:
- Deny access to NMSU computer resources to a new hire until hiring paperwork is properly completed by the department, including the I-9 form.
- Disciplinary action
- Department required training completed before new positions are approved for posting and department monitored for continued compliance.
- Discontinue preparation of manual checks for departments out of compliance.
Performance Evaluations

• Evaluation period: March-December, 2019
• No changes to the staff evaluation form in the system
• LEADS 2025 Alignment: At least one goal from the evaluation period should be assessed against the strategic plan. Instructions will be provided.
• All goals going forward will need to have relevance to one or more LEADS 2025 goal.
Performance Evaluations

• The staff evaluation system will open in December.
• Deadline: All evaluations need to be completed, including reviews/approvals by **March 16, 2020**.
• It’s absolutely critical to the department, colleges and NMSU overall success that QUALITY evaluations are completed. “Only you can make the evaluations have value for your department and your employees”