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# MEMORANDUM

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Date: November 30, 2016

To: The Honorable Chair and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry   
County Administrator

Re: **Status of Implementation of New US Department of Labor Fair Labor Standards Act (FLSA) Rules for Overtime**

On November 29, 2016, staff from the Human Resources and Finance and Risk Management Departments and from the County Attorney's Office met to discuss the impact of the Federal Court injunction enjoining the implementation of the new US Department of Labor's FLSA rules for overtime. Their recommendation is that the FLSA changes Pima County has already implemented be left unchanged.

In anticipation of the December 1, 2016 effective date of the proposed rule change, Pima County already implemented changes to 92 job classifications for 649 employees, changing them from exempt to nonexempt, increased the salaries for 67 of those employees (having an impact of \$102,711 for the current fiscal year and \$166,901 for next fiscal year), and made the necessary changes to the ADP Human Resources modules and the ADP Payroll module. Basically, Pima County is already in compliance with the proposed rule changes, and the impacted employees who previously did not track time with daily punches have already begun to do so.

The injunction applying to the proposed rule changes is a temporary injunction that is subject to appeal and subject to future pleadings and hearings to determine whether to make the injunction permanent. At some future date, the injunction may be lifted or modified. With a new administration about to begin in Washington, DC, there is also the possibility the rules would be modified in a way that would impact fewer positions but still require some changes.

Options available to the County while we await the ultimate determination of the litigation include the following:

1. Roll back all of the changes made over the past six months. This is a labor-intensive process but could be done by issuing 649 new Personnel Actions Forms (PAFs) and by individually modifying the ADP files for each of the 649 employees separately in each of the three modules (in Human Resources and in Finance) that control how an employee is paid. This would require 1,947 manual entries into the ADP system. For the 67 employees who received salary adjustments,

pay could be reduced to the prior amount if they are in the 34 employees in unclassified positions, but could probably not be done for the 33 employees in classified positions. Although the minimum pay amounts were the driving force in the determination of which classifications were modified, the other component of the analysis is the "duties test" to determine whether an employee is eligible for overtime. The conclusion of the Human Resources Department is that many of the 92 job classifications may not qualify to be exempt from overtime even if the wage levels set by the US Department of Labor do not increase. Each of those 92 classifications would need to be examined to determine which ones could actually be rolled back to an exempt status.

2. Leave the changes that have been made, but no longer require the 649 employees track their time daily. This would require the same 1,947 manual adjustments to ADP described above but would not require new PAFs. This option, however, would establish two types of nonexempt employees; one having to track time daily through punches and one not having to do so. Such disparate requirements for like-kind employees has the potential of raising other personnel issues relating to equal implementation of the Merit Rules and Personnel Policies.
3. Leave the changes that have been made and, basically, fully implement the proposed rules that have been enjoined. The County Attorney's Office advises that doing such does not violate statutes and is within the authority of the County. The changes have already been made, and employees are already adjusted to the changes; some for nearly three months. In the future, these changes would be needed if the injunction is lifted. Any future change to the proposed rules would likely be less restrictive, in which case the County would already be in compliance.

I have decided the least disruptive option to pursue is Number 3 above and that the changes already implemented by the County in anticipation of the US Department of Labor rule changes be left in place.

CHH/mjk

c: Elected Officials  
Appointing Authorities  
The Honorable Kyle Bryson, Presiding Judge, Superior Courts