



Board Agenda Item 30.1

DATE: December 6, 2016

TO: Board of Supervisors

SUBMITTED BY: Paul Nerland, Director of Human Resources

SUBJECT: Fair Labor Standards Act Designation Update

RECOMMENDED ACTION(S):

- 1. Approve Amendment to the Salary Resolution revising the Fair Labor Standards Act designations for impacted County classifications effective December 5, 2016, reversing the action taken on November 15, 2016, as reflected on Appendix A.**
- 2. Authorize the Director of Human Resources to administratively amend the Salary Resolution if the preliminary injunction issued by the United States District Court for the Eastern District of Texas is lifted and the United States Department of Labor's Final Rule is reinstated.**

Approval of the recommended action will revise the Fair Labor Standards Act (FLSA) designations for impacted County classifications from non-exempt to exempt (i.e. not subject to FLSA overtime), thereby reversing your Board's action taken on November 15, 2016 and authorizing the Director of Human Resources to amend the Salary Resolution as previously approved if the United States District Court for the Eastern District of Texas (Eastern District Court) preliminary injunction is lifted and the criteria remains unchanged.

ALTERNATIVE ACTION(S):

Should Recommended Action No. 1 not be approved, the current FLSA designations, approved on November 15, 2016, would remain for impacted County classifications as non-exempt, and therefore subject to overtime payment for all hours worked in excess of forty (40) in a workweek. This would be inconsistent with the preliminary injunction. If Recommended Action No. 2 is not approved and the Eastern District Court preliminary injunction is lifted there is a possibility that the County would be out of compliance with FLSA while waiting for another Board meeting to amend the Salary Resolution. If not approved, the Salary Resolution amendment would be retroactive and may require payroll adjustments.

FISCAL IMPACT:

There will be no additional costs associated with approval of the recommended action. However, there may be cost savings due to the re-designation of the impacted classifications to exempt status with regard to FLSA overtime. If the injunction is lifted, the associated increased costs would depend on department's usage of overtime and the new positions that would be entitled to overtime.

DISCUSSION:

On November 15, 2016, your Board approved the revision of the FLSA designations for impacted County classifications from exempt to non-exempt to be in compliance with the United States Department of Labor's (DOL) Final Rule, effective December 1, 2016; which raised the federal salary basis for exempt employees to \$47,476 per year. However, on November 22, 2016, the Eastern District Court issued a nationwide preliminary

injunction on the DOL's Final Rule. The Court's order halting implementation applies "nationwide" and is effective immediately absent further judicial order. At this item, it is unknown whether the DOL will appeal, seek other relief, or what position it will take on the effectiveness of the order.

As a result of the injunction, the approved designations should be reversed from non-exempt to exempt until there is final adjudication in this matter. Those impacted classifications would no longer be subject to FLSA overtime payments for all hours worked in excess of forty (40) in a workweek.

Should the preliminary injunction issued by the Eastern District Court be lifted and the DOL Final Rule be reinstated, Recommended Action No. 2 would authorize the Director of Human Resources to administratively amend the Salary Resolution consistent with the original rule as approved by your Board on November 15, 2016, if the Final Rule is implemented based on the same criteria as previously approved by your Board. Should there be other modifications, the Director of Human Resources would return to your Board with a Salary Resolution Amendment.

County Departments will be notified of the changes and advised to avoid overtime where possible for impacted classifications until there is final adjudication in this matter. If the injunction is lifted, the FLSA overtime would need to be in the system, but the payroll mechanism would not be in place to properly track or calculate the FLSA overtime.

REFERENCE MATERIAL

BAI # 30, November 15, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

Salary Resolution Amendment - Appendix "A"

CAO ANALYST:

Sonia De La Rosa