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DEPARTMENT OF ADMINISTRATION ORGANIZATIONAL CIRCULAR NO.: 2024-012

To: All Line Agency and Department Heads
From: Director of Administration
Subject: **Exempt and Non-Exempt Employees**

Buenas yan Hafa Adai!

Categorization of employees is defined by the Fair Labor Standards Act. This law defines exemptions from overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. Guam's employees are subject to the requirements of this law, as Guam has no local law complementing these requirements.

U.S. Department of Labor (USDOL) has proposed changes which involve increasing the minimum salary which qualifies employees as exempt to \$55,068 annually (\$1,059 per week). Previously Guam was granted a lower threshold than the U.S. standard. These proposals are administrative and require a comment and acceptance period before implementation. They are also liable to challenge in the Courts. If implemented, a significant change to GovGuam categories will be required.

In a case entitled *Helix Energy Solutions Group, Inc. et al vs. Hewitt*, the U.S. Supreme Court has ruled that a periodic payment in intervals, which is less than a weekly payment, such as hourly or daily may cause the exemption threshold to be overridden and the employee to be categorized, for however long such payment interval obtains, as non-exempt.

It has been the practice for most GovGuam agencies for all employees to be paid at hourly intervals. Clearly, this opinion should cause us to review this practice and pay employees who would otherwise be categorized as exempt at a different interval, such as weekly or per pay period. There are many implications of such a change and DOA/HR will be reviewing these and making recommendations which, in turn, may require changes to the Personnel Rules and Regulations.

It is recognized that accrual of vacation and sick leave is statutorily calculated hourly, so a process will have to be devised to continue this process. Agencies will be consulted as changes will also be necessary to timekeeping and attendance practices.

DOA/HR will be contacting your agency to ascertain current procedures and if changes to Rules and Regulations are required.

Si Yu'os Ma'ase.



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