Summary of *Flores v. City of San Gabriel* and Impact on County of Los Angeles

Background on FLSA and Calculating the "Regular Rate of Pay" for Overtime
The Fair Labor Standards Act (FLSA) requires employers to pay employees one and one-half times their "regular rate of pay" for work performed in excess of the regularly scheduled hours in a week, usually 40 hours per week. FLSA "regular rate of pay" is the hourly rate used to compensate non-exempt employees for FLSA overtime hours.

Generally, all compensation paid to employees that does not fall within one of the exceptions provided by the FLSA must be included in the regular rate of pay calculation. A few examples of the exceptions provided by the FLSA are payments for periods when no work is performed due to vacation, holiday, or illness, or contributions to bona fide plans for providing old-age, retirement, life, accident, or health insurance for employees. *Flores* addresses the exemption for contributions to a bona fide plan.

Facts in *Flores*
The Ninth Circuit considered a cafeteria plan much like those sponsored by the County. Under the City of San Gabriel's cafeteria plan, the City furnished a designated dollar amount ("allowance") to each employee for the purchase of medical, dental and vision benefits. While employees were required to use a portion of the allowance to purchase vision and dental benefits, an employee who had alternative medical coverage could waive coverage and receive the remainder of the allowance as an additional cash payment (the "cash-in-lieu payment").

In 2012, police officers working for the City of San Gabriel filed a lawsuit seeking to recover overtime pay under FLSA. Employees claimed that the City failed to include the benefits allowance when calculating their regular rate of pay.

Holding of Court
The Ninth Circuit held that the City of San Gabriel incorrectly calculated the employees "regular rate of pay" for purposes of FLSA overtime hours. The Court concluded that:

- Cash-in-lieu payments under the cafeteria plan had to be included in the employees' FLSA regular rate of pay for purposes of calculating FLSA overtime.
- Because employees of the City received more than 40% of the total benefit allowance as cash, the City's benefit plan was not a bona fide plan under the FLSA. Thus, the entire allowance available under the Plan -- not just the cash-in-lieu payment -- had to be used in calculating the FLSA regular rate of pay.

Conclusion re: Impact on County:
Choices is a bona fide plan for FLSA purposes. Nevertheless, under the holding in *Flores*, amounts received by a non-exempt employee as cash-in-lieu payments under Choices must be included in that employee's "regular rate of pay." The County has revised its payroll process to reflect this rule.

Source: County of Los Angeles, 7/18.