

New Overtime Rules; What This Means for Your Church

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New Jersey Synod

Evangelical Lutheran Church in America

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Disclaimer

This material is presented for your information. If you have specific questions pertaining to your church and the new overtime regulations, you should seek legal advice from a qualified attorney.

Source material for this presentation is from:

- The United States Department of Labor
- Paul Rivera, The StartChurch Advisor
- Joy Hacker, Accountant, Northeastern Ohio Synod



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Background

The Fair Standards Labor Act (FSLA), passed in 1938, established minimum wage, overtime pay, recordkeeping, and youth employment standards.

The overtime portion of the act does not apply to all workers.

- Workers who are paid hourly or earn below a certain amount are protected by overtime regulations and known as “**nonexempt**” workers. They are entitled to overtime pay at a rate of one and a half times the regular rate of pay after 40 hours of work in a work week.
- Workers who are not protected by the overtime regulations (“**exempt**” workers) are those who earn more than the regulated income threshold and are considered to be “executive, administrative, and professional employees.”



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Definitions

- Non-exempt:** Any employee who is subject to FLSA recordkeeping and overtime rules.
- Work-week:** Any seven consecutive days may be designated as the employee's regular work week. The work week does not need to coincide with the calendar week.
- Overtime hours:** Any hours worked in excess of 40 during a single work week by a non-exempt employee. Hours worked for this purpose includes only time actually worked (e.g. vacations, holidays, and sick leave are excluded).
- Comp. Time:** Compensatory time off may be provided to a non-exempt employee in lieu of overtime pay only if provided during the same work week that extra work hours were incurred. Overtime hours must be paid in cash on employee's next pay date.
- Exempt:** Not subject to FLSA recordkeeping and overtime rules.



2016 change

On May 18, 2016, President Obama and Secretary Perez announced updates to the overtime regulations which will automatically extend overtime pay protections to over 4 million workers starting December 1.

The key question: How does this change the overtime and reporting rules for your church employees?



Exempt or non-exempt?

A church must start by determining whether each employee is exempt or non-exempt for FLSA purposes. All employees are non-exempt unless they meet the requirements for a specific exemption; recordkeeping and overtime provisions apply to all non-exempt employees.



Exempt or non-exempt?

1. Clergy generally are **exempt** from FLSA. Although this exemption is not specifically stated in FLSA regulations, it was specifically recognized in a 2012 Supreme Court case.



Exempt or non-exempt?

2. Employees whose duties do not include interstate commerce are **exempt**. Examples of interstate commerce include:

- Making or receiving interstate telephone calls or email messages
- Using the internet
- Typing, assembling, or mailing documents to other states
- Ordering or receiving supplies from other states
- Business travel to other states

Positions that may be exempt under this scenario could include organist, choir director, or janitor. Positions generally not qualifying for exemption under this scenario would likely include secretary or bookkeeper.



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Exempt or non-exempt?

3. Administrators are **exempt** provided four requirements are met:
- Compensation is paid on a salary basis,
 - Annual salary is at least \$23,660 (increases to \$47,476 on December 1),
 - Primary duty must be performance of office or non-manual work directly related to management of church business operations, AND
 - Primary duty includes exercise of discretion and independent judgment with respect to matters of significance.

A church office manager might qualify under this exemption.



Exempt or non-exempt?

4. Professionals are **exempt** provided all three requirements are met:
- Compensation is paid on a salary basis,
 - Annual salary is at least \$23,660 (increases to \$47,476 on December 1),
 - Primary duty must be performance of office or non-manual work directly related to management of church business operations, AND
 - Primary duty must be performance of work requiring advanced intellectual knowledge in a field of science or

An Associate in Ministry might qualify under this exemption.



Requirements

All non-exempt hourly employees:

- Must submit time reports at least weekly. The reports normally must include the total number of hours worked each day however, an employee working a fixed schedule with minimal deviation may instead report only deviations from the regular schedule.
- Must be paid the federal minimum wage rate (currently \$7.25 per hour) or the applicable state minimum wage rate, whichever is higher. New Jersey's current minimum wage rate is \$8.38 per hour.
- Must be paid 1.5 times their normal hourly rate for all overtime hours in any work week.



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Example

A church administrator usually works at least 45 hours per week and earns an annual salary of \$30,000. Under the previous overtime regulations, the church administrator for ABC Church was exempt from the overtime rules. However, beginning on December 1, 2016 the church administrator's annual salary of \$30,000 will no longer be above the salary threshold and thus no longer exempt from overtime regulations. Therefore, if the church administrator continues to work 45 hours per week when the new overtime regulations go into effect, then over the course of a year, the church administrator will earn an additional \$5,623.80 from the overtime hours worked.



3 ways to address

1. **Limit employees' hours to 40 per week:** Implement a strict policy stating that overtime hours for non-ministerial employees must first be approved.
2. **Raise the employees' salaries above the new salary threshold:** In some instances it may be more reasonable and affordable to simply raise one's salary above the new salary threshold than to pay overtime.
3. **Pay time-and-a-half for overtime work.**



What to do next

1. Identify all non-exempt employees.
2. Ensure minimum pay is compliance.
3. Implement recordkeeping.
4. Budget and pay for overtime.



Resources

Recordkeeping Requirements under FLSA

www.dol.gov/whd/regs/compliance/whdfs21.pdf

FLSA Guidance for Non-Profit Organizations

www.dol.gov/whd/overtime/final2016/nonprofit-guidance.pdf



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Resources

ANALYSIS OF CHURCH EMPLOYEES FOR FLSA

Follow these questions for each employee until you reach “exempt” or “non-exempt”

Question 1: Is employee a pastor?

If yes: **EXEMPT**

If no: Go to Question 2

Question 2: Is employee a teacher in church school?

If yes: **EXEMPT**

If no: Go to Question 3

Question 3: Is employee involved in interstate commerce (see Scenario A above)?

If yes: Go to Question 4

If no: **EXEMPT**

Question 4: Is employee paid on salary basis?

If yes: Go to Question 5

If no: **NON-EXEMPT**

Question 5: Is employee’s salary at least \$23,660 per year (\$47,476 per year starting December 1)?

If yes: Go to Question 6

If no: **NON-EXEMPT**

Question 6: Do employee’s duties qualify for an Administrative or Professional exemption?

If yes: **EXEMPT**

If no: **NON-EXEMPT**



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