

DEPARTMENT OF LABOR OVERTIME REGULATIONS

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FAIR LABOR STANDARDS ACT OF 1938

FLSA provisions cover

- Minimum wage
- Overtime pay*
- Recordkeeping
- Youth employment standards

* What we will discuss today

OVERTIME PAY PROVISIONS

- Cover employees in the private sector, and in Federal, State and local governments
- Covered nonexempt employees must receive overtime pay for hours worked over 40 per workweek at a rate not less than 1½ times their regular rate of pay
 - Independent contractors are not employees
 - Volunteers are not employees
 - Unpaid interns are not employees

WHO IS COVERED BY THE FLSA?

- Businesses - Enterprise Coverage:
 - At least 2 employees, annual dollar volume of sales or business of at least \$500,000 (donations, tithes don't count; goods provided for a fee do count – for example, parking lot rental or thrift store sales), or
 - Hospitals, businesses providing medical or nursing care for residents, schools and preschools, government agencies (no matter what size)
 - Not applicable to charitable, religious or educational activities not in substantial competition with for-profit businesses (like a church or synagogue)

WHO IS COVERED BY THE FLSA?

- Employees - Individual Coverage: employees engaged in interstate commerce
 - Receive or make out-of-state telephone calls
 - Send or receive interstate US mail, email
 - Process out-of-state credit card transactions
 - Order supplies that come from another state (think amazon.com)

FINAL REGULATIONS

Effective December 1, 2016:

1. Increase weekly earnings for white collar exception to \$913 (\$47,476/year) (40th percentile of earnings for full-time salaried workers in lowest wage Census region)
2. Increase highly compensated employee total annual compensation requirement to \$134,004 (90th percentile of earnings for full-time salaried workers nationally)
3. Threshold amounts automatically updated every three years

PENALTIES FOR VIOLATING FLSA

- Amount of unpaid overtime for past 2-3 years
- Fines, interest, possible criminal sanctions
- Attorneys fees for employees winning their wage and hour claims

EXEMPTION FROM OVERTIME PROVISIONS

“White collar” exemption (very common exemption):

- Employees employed as bona fide executive, administrative, professional and outside sales employees and certain computer employees
- Employees must generally meet certain tests regarding their job duties, and be paid on a salary basis at not less than a certain dollar amount

MINISTERIAL EXCEPTION

- No specific FLSA statutory exemption for ministers
- 2004 DOL Field Operations Handbook – certain members of religious orders who serve pursuant to their religious obligations in schools, hospitals and other institutions operated by their church or religious order shall not be considered employees under the FLSA
- Case law (federal and state courts) recognizes ministerial exception for those performing primarily religious duties. Person should be ordained, credentialed or commissioned as a minister. Job description should say that the person is part of the ministerial staff of the organization and emphasize religious duties.

MINISTERIAL EXCEPTION (CONT'D)

- Employees who may fall under ministerial exception = those who would be viewed as ministers by the courts
- Not without risk; consult employment attorney
- Examples:
 - Called teacher in Christian school
 - US missionaries – starting up new churches
 - Ministry staff that conduct bible study, lead prayer, conduct evangelical outreach
- Be aware of state law requirements – May be exempt from FLSA but subject to state overtime requirements

EXAMPLE – DIRECTOR OF MUSIC MINISTRY

- Employee or independent contractor?
- Does the position meet the white collar exemption from the FLSA?
 - Job duties test
 - Salary test (at least \$47,476/year)
- Ministerial exception?
- Applicable state law
- Does the individual work any overtime?

OPTIONS FOR EMPLOYERS

Options for employers having nonexempt employees:

1. Increase employee's salary to at least \$47,476/year
- 2a. Limit or forbid overtime for employees making less than \$47,476/year, and
- 2b. Hire additional part or full-time staff to cover the extra hours that used to be covered by formerly exempt workers
3. Increase payroll budget to cover nonexempt employees' overtime costs

THINGS TO THINK ABOUT

1. Use of electronic devices by overtime-eligible nonexempt employees outside of scheduled work hours
2. Are benefits tied to exempt/nonexempt employee status?
3. Does employer have adequate timekeeping systems in place to track nonexempt employee hours?