

New Overtime Ruling

On December 1, 2016 the federal annual salary threshold for employees exempt from overtime pay will double, increasing to \$47,476 from \$23,660. Employees who make less than the threshold must be paid time-and-a-half for any hours worked beyond the 40-hour workweek. While the overtime rule does not mandate that employers use any specific method for recording work hours, it does require the records be accurate. Simply stating that an individual's work schedule is 9 am to 5 pm won't suffice according to labor attorneys.

How does this affect the church? Aren't non-profits (including churches) exempt from these laws? The answer is a resounding NO! The FLSA (Fair Labor Standards Act) does allow for some rules around "ministerial exemption" from these laws, but you must be careful in applying this category.

The ministerial exemption is not written into the FLSA, but there are rulings that are considered case law that support this exemption. The ruling states the individual's primary tasks must involve important teaching, promoting the faith, church governance, supervision of a religious order, supervision or participation in ritual worship, and the church and individual regard the position as ministerial. If the position is truly ministerial, the minimum salary above, which requires tracking of actual hours worked, does not apply.

So, where does this leave all the other positions in your church that do not meet the definition of ministerial? This will most likely include administrative, finance, janitorial, groundskeepers, day care workers (there are also exceptions that may apply to certified teachers) – all staff that do not meet the ministerial definition above. If these positions are paid less than the new threshold of \$913 per week, (\$47,476 annually), they must be considered non-exempt, must track their hours worked in each week, be paid for all hours worked, including time and one-half of their hourly rate for any hours over 40 in your stated work week.

You can determine if your work week begins on Saturday night at midnight, and ends on Saturday night at 11:59 pm, or if you want to begin your week on Sunday night. You must be consistent in tracking the hours worked in that 7 day period, regardless of when it starts or ends.

You cannot provide "comp" time in a subsequent week, rather than paying overtime – that is not legal. You cannot allow your employees to "volunteer" hours in their area of responsibility, just because they love their "ministry". You cannot call these employees "contractors" and pay them a flat rate each week – unless they meet the federal definition of "contractor". (I will cover the definition of contract employees in a future article).

And if they make more than the \$47,476 annually, they must still meet the "duties" test that is part of the FLSA. If you have not updated your job descriptions lately, this is a great time to take a look at the tasks being handled by all positions in your church.

In the past non-profits (including churches) have not typically been targeted by the DOL for auditing of these types of issues. The trend is changing, and you should be cautious if you decide not to ask your employees to track actual hours worked. Should the Department of Labor

determine that employees have not been classified appropriately (exempt vs non-exempt) and paid appropriately, significant fines and penalties (plus back wages) could be imposed.

You may access more information on these changes on the Department of Labor website by following this link: <https://www.dol.gov/whd/overtime/final2016/index.htm> I will be glad to provide guidance, and in some cases, consulting with a legal professional may be necessary to ensure compliance. Kathy Odell, WNCC-UMC Director of Human Resources:
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