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DOL White Collar Wages – Where are we now?

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DOL LAW CHANGES

In 2019, the minimum salary for exempt employees, was increased from \$23,660 to \$35,568 per year effective 1/1/2020.

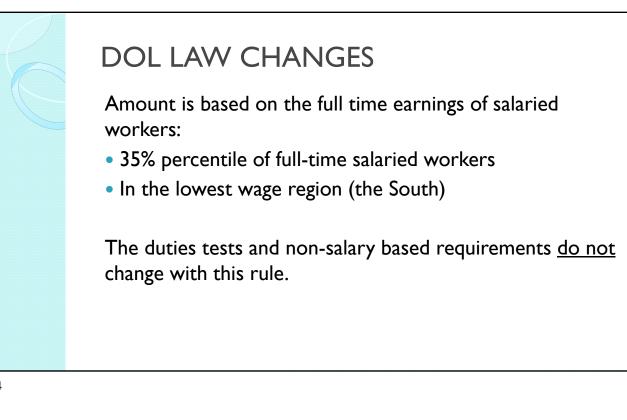
The original proposal in 2019 was in the range of \$46,000 per year.

As of April 23, 2024 we have a new final rule.

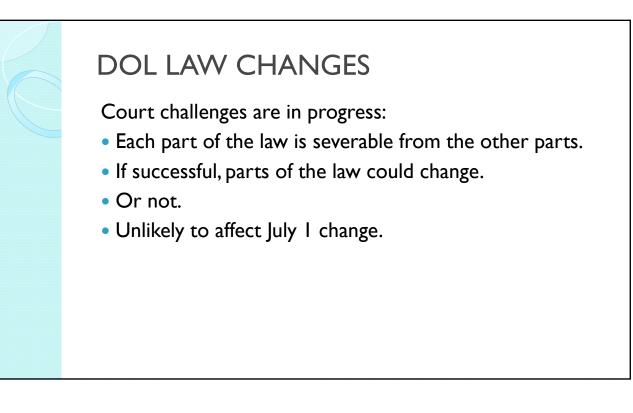
The new rule requires a minimum salary of \$43,888 per year effective July 1,2024.

Effective January 1, 2025 the minimum salary rises to \$58,656.

Starting July 1, 2027 and every three years thereafter, there will be automatic increases on a prescribed methodology.



"This rule will restore the promise to workers that if you work more than 40 hours in a week, you should be paid more for that time." Acting DOL Secretary Julie Su



DOL rules related to salary are part of the Fair Labor Standards Act (FLSA)

DOL LAW CHANGES

Terms:

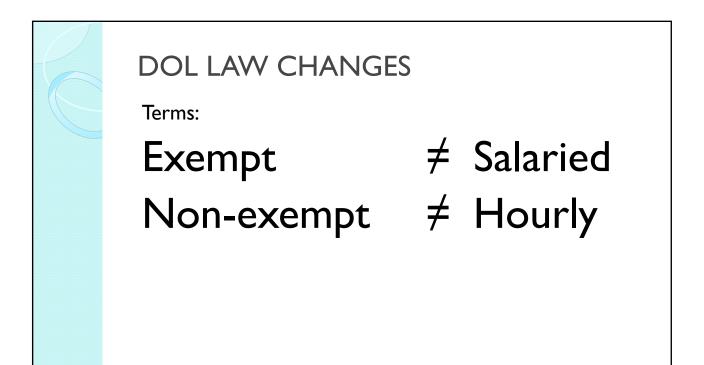
Exempt employees are those that are not subject to the FLSA standards requiring overtime.

Non-Exempt employees are those who are covered by the FLSA standards requiring overtime. Sometimes referred to as covered employees.

Terms:

Salaried employees are those who are paid a fixed amount of pay each workweek.

Hourly employees are those who are paid for each hour they work in a workweek.

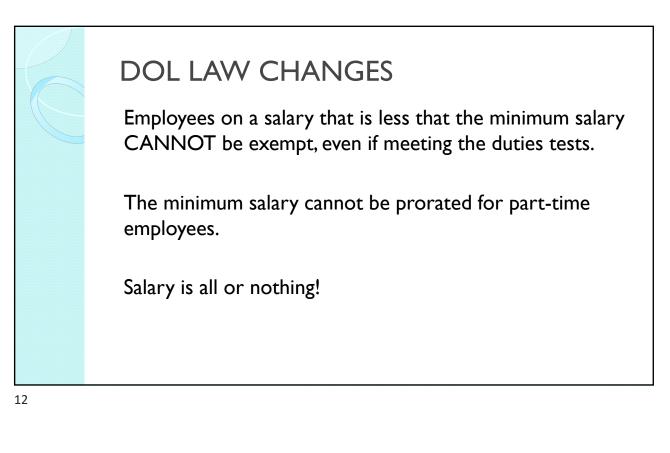


Three requirements for an employee to be exempt* from FLSA overtime requirements:

- Work is executive, administrative, professional, outside sales or computer employee and,
- Employee is paid the minimum salary and,
- Salary is fixed and paid each week without deductions, except as allowed.

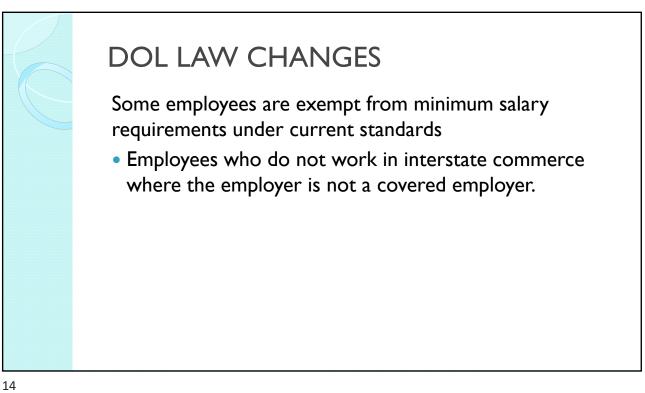
*Exempt = overtime pay is not required for working over 40 hours in a work week.

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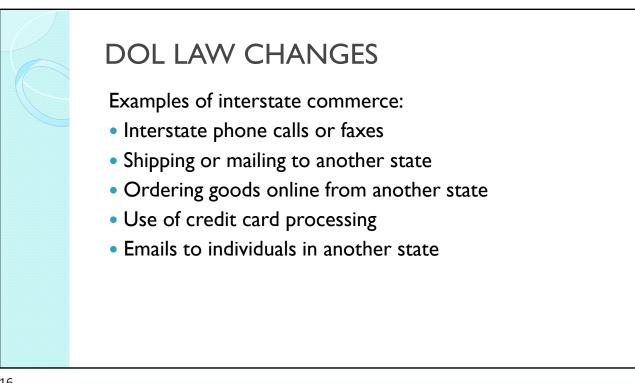
Some employees are exempt from all of part of the FLSA:

- Clergy courts, and a few DOL references indicate they are exempt from minimum wage and overtime.
- Teachers exempt from minimum wage and overtime. Includes preschool teachers, but not day care or nursery workers.



Covered employers – more than \$500,000 in "annual sales made or business done". Commerce does not include contribution income, but does include sales for a fee if done for a business purpose.

Covered employees – employees who engage in interstate commerce for covered or noncovered employers.

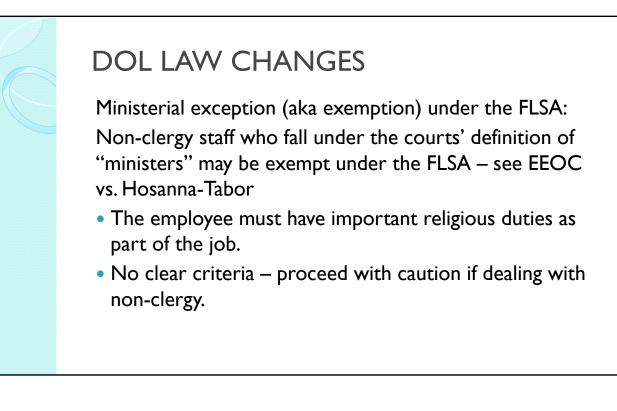




Conclusion:

Most church and ministry employers <u>will not</u> be covered enterprises under the FLSA.

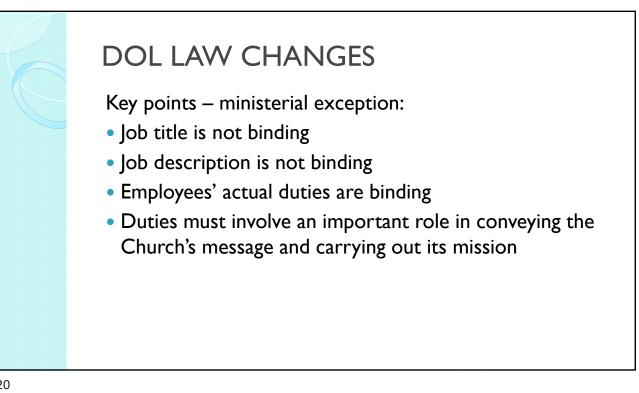
Most employees of churches and ministries <u>will be</u> covered employees under the FLSA, unless they qualify under the ministerial exception.



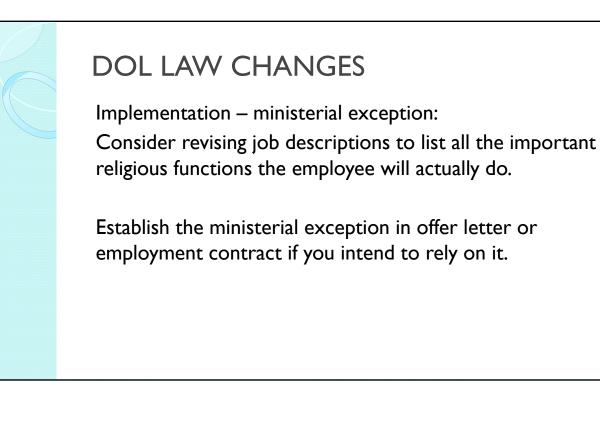
See DOL Fact Sheet 17A related to exempt employees.

Remember, clergy and teachers in a school are not employees for this purpose, nor are individuals with "essential religious duties" (ministerial exception doctrine).

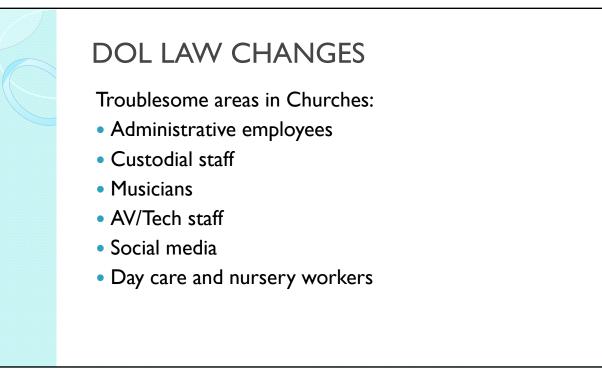
For a good analysis see this 1/8/2021 document: https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/20 21 01 08 02 FLSA.pdf



Implementation – ministerial exception: There is no checklist to determine if the ministerial exception applies.

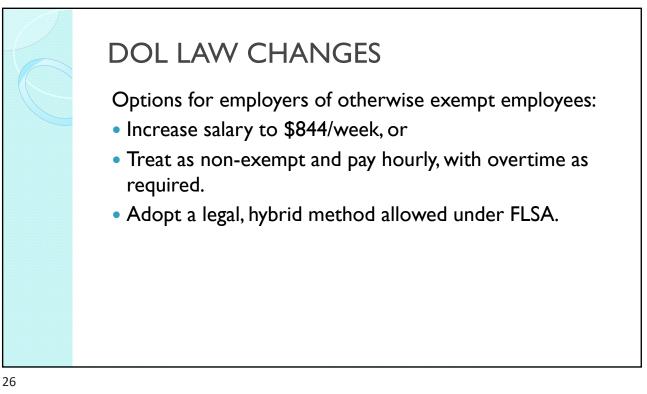


"The question must be answered on a case-by-case basis and requires considering all relevant circumstances surrounding each employee to determine whether each particular position implicates the fundamental purpose of the exception. Ultimately, ministerial status depends on the employee's role in carrying out the employer's mission and conveying the employer's message."



DOL LAW CHANGES What to do now.... • Review all employees who may qualify under the ministerial exception. • Review your current payroll to determine if which employees will need changes. • Fix any noncompliance with the FLSA related to duties. • Determine how to address employees who will no longer be exempt (or never should have been exempt!)

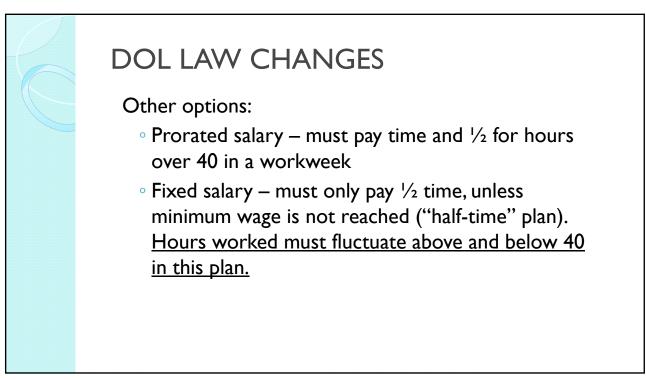
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Non-exempt employees can be paid a salary if:

- Hours are tracked to ensure Federal/State minimum wage is paid (\$14.35/hour for AZ) and
- Overtime premium is paid for hours worked in excess of 40 in a workweek

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Prorated salary:

The employer is allowed to prorate the salary for any hours not worked. But it must pay time and $\frac{1}{2}$ for hours over 40 and establish a salary for 40 hours of work.

DOL LAW CHANGES

Prorated Salary:

Example 1. Suppose an employee typically receives a salary of \$600 per 40 hour workweek. One workweek, he works only 24 hours. The employer may prorate his salary and pay him $(600 \div 40 \times 24 = 360)$ instead of \$600 for that workweek.

Prorated Salary:

Example 2. Suppose an employee typically receives a salary of \$600 per workweek. She performs no work in a particular workweek. She is not entitled to any compensation for that workweek.

DOL LAW CHANGES

Prorated Salary:

Example 3. Suppose an employee typically receives a salary of \$600 per 40 hour workweek. She works 50 hours in a particular workweek. She is entitled to time and $\frac{1}{2}$ of \$225 for hours over 40 for total pay of \$825.

(\$600 ÷ 40 x 1½ x 10 = \$225)

Fluctuating salary rules:

- Salary is intended to compensate for all hours worked whether few or many.
- Hours must fluctuate above and below 40.
- Cannot be used if employee must work specific, fixed hours each week.

DOL LAW CHANGES

Fluctuating

Example I. Suppose an employee receives a salary of \$600 per workweek. One workweek, he works only 24 hours. He is entitled to his entire \$600 salary for that workweek because the salary is intended to compensate him for the hours he works in a workweek, whether few or many or over or under 40.

Fluctuating

Example 2. Suppose an employee receives a salary of \$800 per workweek. One workweek, he works 50 hours. He is entitled to his entire \$800 salary plus overtime compensation in the amount of \$80. ($$800 \div 50 \times \frac{1}{2} \times 10 = 80), for a total of \$880 for that workweek.

DOL LAW CHANGES

Fluctuating

Example 3. Suppose an employee receives a salary of \$800 per workweek. He performs no work in a particular workweek. He is not entitled to any compensation for that workweek.

Fluctuating

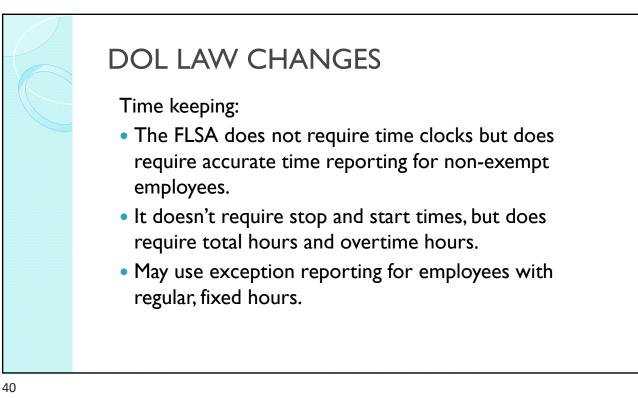
Example 4. Suppose an employee receives a salary of \$600 per workweek. One workweek, he works 60 hours. His regular rate for that workweek is \$10.00 ($600 \div 60$). Because that amount is below the minimum wage, using a fluctuating half-time plan would not be permissible in this situation.

DOL LAW CHANGES

Fluctuating

This example shows that before implementing a halftime plan, an employer needs to determine the <u>maximum</u> number of hours an employee will work in a workweek and make sure his salary is large enough that his regular rate will never fall below minimum wage.

DOL LAW CHANGES Salary arrangements for non-exempt employees must be in writing. The method of over-time pay for salaried, non-exempt employees must be stated clearly. Time records must be prepared and monitored and overtime paid accordingly.



Exception reporting:

- Can be risky for the employer if adequate records are not maintained.
- Should be signed by the employee, not a supervisor.
- Exceptions must include more or fewer hours worked than scheduled on a daily basis.
- Must have a report for every workweek.

