DOL LAW CHANGES

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DOL White Collar Wages – Where are we now?

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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.

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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.

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Amount is based on the full time earnings of salaried workers:

- 35% percentile of full-time salaried workers
- In the lowest wage region (the South)

The duties tests and non-salary based requirements <u>do not</u> change with this rule.

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"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

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Court challenges are in progress:

- Each part of the law is severable from the other parts.
- If successful, parts of the law could change.
- Or not.
- Unlikely to affect July 1 change.

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

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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.

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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.

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Terms:

Exempt	≠	Salaried
Non-exempt	≠	Hourly

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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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Employees on a salary that is less that the minimum salary CANNOT be exempt, even if meeting the duties tests.

The minimum salary cannot be prorated for part-time employees.

Salary is all or nothing!

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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.

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Some employees are exempt from minimum salary requirements under current standards

- Employees who do not work in interstate commerce where the employer is not a covered employer.

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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.

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Examples of interstate commerce:

- Interstate phone calls or faxes
- Shipping or mailing to another state
- Ordering goods online from another state
- Use of credit card processing
- Emails to individuals in another state

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Conclusion:

Most church and ministry employers will not be covered enterprises under the FLSA.

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

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Ministerial exception (aka exemption) under the FLSA:

Non-clergy staff who fall under the courts' definition of "ministers" may be exempt under the FLSA – see EEOC vs. Hosanna-Tabor

- The employee must have important religious duties as part of the job.
- No clear criteria – proceed with caution if dealing with non-clergy.

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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/2021_01_08_02_FLSA.pdf

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Key points – ministerial exception:

- Job title is not binding
- Job description is not binding
- Employees' actual duties are binding
- Duties must involve an important role in conveying the Church's message and carrying out its mission

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Implementation – ministerial exception:

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

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Implementation – ministerial exception:

Consider revising job descriptions to list all the important religious functions the employee will actually do.

Establish the ministerial exception in offer letter or employment contract if you intend to rely on it.

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"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."

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Troublesome areas in Churches:

- Administrative employees
- Custodial staff
- Musicians
- AV/Tech staff
- Social media
- Day care and nursery workers

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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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Options for employers of otherwise exempt employees:

- Increase salary to $844/week, or
- Treat as non-exempt and pay hourly, with overtime as required.
- Adopt a legal, hybrid method allowed under FLSA.

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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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Other options:

- ◦ Prorated salary – must pay time and ½ for hours over 40 in a workweek
- ◦ Fixed salary – must only pay ½ time, unless minimum wage is not reached ("half-time" plan). <u>Hours worked must fluctuate above and below 40 in this plan.</u>

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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 ½ for hours over 40 and establish a salary for 40 hours of work.

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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 ÷ 40 x 24 = $360) instead of $600 for that workweek.

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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.

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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 ½ of $225 for hours over 40 for total pay of $825.

($600 ÷ 40 x 1½ x 10 = $225)

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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.

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Fluctuating

Example 1. 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.

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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 ÷ 50 x ½ x 10 = $80), for a total of $880 for that workweek.

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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.

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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 ÷ 60). Because that amount is below the minimum wage, using a fluctuating half-time plan would not be permissible in this situation.

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Fluctuating

This example shows that before implementing a half-time plan, an employer needs to determine the maximum 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.

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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.

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Time keeping:

- The FLSA does not require time clocks but does require accurate time reporting for non-exempt employees.
- It doesn't require stop and start times, but does require total hours and overtime hours.
- May use exception reporting for employees with regular, fixed hours.

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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.

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To join the Phoenix Chapter of The Church Network (it's free!)

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