

## **Summary of Federal Law Changes – Final Ruling Affecting Exempt/Non-Exempt Worker Status**

On September 24, 2019, the United States Department of Labor (“DOL”) announced a final rule to the Fair Labor Standards Act (“FLSA”) overtime exemption rules. The Final Rule strengthens overtime protections for workers. This change raises the salary level from its previous amount of \$23,660 per year to \$35,568 per year for exempt (salaried employees). These changes take effect on January 1, 2020. Churches should continue to review their employee’s duties and job responsibilities to make proper classifications to be compliant with the FLSA.

Here are some steps to properly classify your employees.

**Step 1:** Determine if your employee is covered under the FLSA. There are two ways employees can be covered by the law: enterprise coverage and individual coverage. Employers that employ at least two employees and have an annual dollar volume of sales or business done of at least \$500,000 are covered under the enterprise theory. Even if there is no enterprise coverage, employees are protected by the FLSA if their work regularly involves them in commerce between states (“interstate commerce”). Examples of employees who are involved in interstate commerce include those that send letters out of state, make telephone calls to people in other states, handle records of interstate transactions, travel to other states as part of their job, etc. Most employees working for the churches in the Conference will meet either the enterprise or individual coverage jurisdiction as set forth above.

**Step 2:** Determine if the church staff may meet the ministerial exception to the FLSA. In other words, the FLSA will not apply to ministerial staff even if the requirements are met in Step 1. The Fourth Circuit Court of Appeals has recognized that Ministers are not covered under the FLSA. "The general rule is that 'if the employee's primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship, he or she should be considered clergy'" and, thus, subject to the ministerial exception. *Id.* (quoting *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985)). Regardless of an employee’s title, this determination is based upon the primary duties test. "In summary, the ministerial exception to the FLSA applies only where the employer is a religious institution and the employee's primary duties are ministerial in nature. The exception does not apply to the religious employees of secular employers or to the secular employees of religious employers." *Shaliesabou*, 363 F.3d at 307.

All of the members of the local church's pastoral staff (Senior Pastor, Pastor, Associate Pastor, Minister of Adult Ministries, and Minister of Visitation) are covered by the ministerial exception because their "primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship." This exception is likely to include Director of Youth Ministries, Director of Music Ministries, Contemporary Worship Leaders, and other ministers that meet the primary duties listed above. For employees that meet the ministerial exception, no further analysis needs to be done. If your employee does not meet the ministerial exception, they are covered under the FLSA and proceed to Step #3.

**Step 3: For employees covered under FLSA (see Step 1), classify each employee as either exempt (salaried) or non-exempt (hourly).**

**Question #1:**

- (a) Is the employee paid on a salary basis (paid a predetermined and fixed salary that is not subject to reduction because of variation in the quality or quantity of work performed) and**
- (b) The amount of salary paid must meet the minimum of \$684 per week (\$35,568 per year)?**

If the answer to either 1(a) or (b) is no, then the employee must be classified as non-exempt. If the answer to both 1(a) and (b) is yes, then go to Question #2.

**Question #2: Does the employee have job duties that primarily involve one of the below categories?**

- (a) Executive** – Employee whose primary duty is to manage the business or a recognized department/entity and who customarily directs the work of two or more full time equivalent employees. Also includes individuals who hire, fire or make recommendations that carry particular weight regarding employment status. Examples: executive, director, owner, manager, supervisor.
- (b) Administrative** – Employee whose primary activities are performing office work or non-manual work on matters of significance relating to the management or business operations of the firm or its customers and which require the exercise of discretion and independent judgment. Examples: coordinator, administrator, analyst, accountant.

**(c) Professional/creative** – Employee who primarily performs work requiring advanced knowledge/education and which includes consistent exercise of discretion and independent judgment. The advanced knowledge must be in a field of science or learning acquired in a prolonged course of specialized intellectual instruction. Creative professionals perform work requiring invention, imagination, originality and/or talent in a field of artistic endeavor. Examples: attorney, physician, statistician, architect, biologist, pharmacist, engineer, teacher, author, editor, composer, musician, artist.

**(d) Computer professional** – Employee who primarily performs work as a computer systems analyst, programmer, software engineer or similarly skilled work in the computer field performing a) application of systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional specifications; or b) design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specification; or c) design, documentation, testing, creation or modification of computer programs based on and related to user or system design specifications; or a combination of the duties described above, the performance of which requires the same level of skills. Examples: system analyst, database analyst, network architect, software engineer, programmer.

If the answer to 2(a), (b), (c) or (d) is no, then the employee must be classified as non-exempt.

#### **Payroll guidelines for non-exempt employees**

- Must be paid on an hourly basis for actual hours worked in a week. Holiday, vacation, sick, and personal days do not count as hours worked.
- Must be paid 1 ½ times their regular rate of pay for all hours worked over 40 hours in a work week.
- Must maintain records for all hours worked (i.e.--time clock, timesheet, etc.).

#### **Payroll guidelines for exempt employees**

- Must be paid their salary regardless of hours worked.
- Must be paid a predetermined and fixed salary that is not subject to reduction because of variation in the quality or quantity of work performed.
- Must be paid a minimum of \$684 per week or \$35,568 annually beginning January 1, 2020.