

# Employee Compensation Rules for Churches and Ministries – Part 3

The presentation will begin shortly...



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# CPE needed?

- Within one week, send an email requesting CPE, complete the course evaluation and provide the list of CPE codes provided during the presentation to:

[info@battershellnichols.com](mailto:info@battershellnichols.com)

- Only available for those attending live
- All CPE codes are provided in the presentation via polls.



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# Remote Accounting Services

- We provide bookkeeping services to churches and Christian nonprofits, including:
  - Produce a monthly financial report for leadership
  - Process contributions and bills
  - Record all transactions in the general ledger
  - Reconcile bank accounts, credit cards, and close the books each month
  - Process payroll and file all quarterly and annual payroll forms
  - Provide budget and cash flow projection oversight
  - Give assistance with internal controls



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# Remote Accounting Services

- **Why do we provide this service?**
  - With online software solutions dramatically improving, outsourced bookkeeping has become a popular alternative to in-house bookkeeping
- **Top reasons our clients use our remote accounting services:**
  - Managing finances distracts the organization from its mission
  - Leadership and member increased confidence in their finances
  - Tax and accounting regulations are complex and changing faster than ever
  - They want a trusted advisor to provide CPA oversight



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# Overview of topics for this webinar series

- Federal and WA State Employment Laws
  - Federal - Federal Labor Standards Act (FLSA)
  - WA State – Washington Minimum Wage Act (WMWA)
- Exempt v. Non-Exempt Employees
  - Top Three Exempt Employee Types
  - Rules to Be An Exempt Employee
  - Paying Overtime for Both Exempt and Non-Exempt Employees





# Overview of topics for this webinar series

- Paying Salaried Employees
  - Part-time salaried employees
  - Paying overtime
  - Salary thresholds in WA State
  - Rules for tracking hours worked for salaried and part-time employees
- Ministerial Exception
- Stipends and Internships
  - How minimum wage and overtime rules apply to seasonal workers and interns



# Overview of topics for this webinar series

- How non-exempt employees are compensated during travel time, camps, and retreats
- The difference between an employee and a contractor
- Compensating volunteers
- Separation (Severance) Agreements





# Federal and Washington state employment laws

- Federal Law - Fair Labor Standards Act (FLSA)
- WA State Law – Minimum Wage Act





# Fair Labor Standards Act





# Fair Labor Standards Act

- In 1938 Congress enacted the Fair Labor Standards Act to protect employees engaged in interstate commerce from substandard wages and excessive working hours
- Requires employers to pay non-exempt employees at least the federal minimum wage
- Top 3 Exempt Employee Roles:
  - Executive
  - Administrative
  - Professional





# Fair Labor Standards Act

- Exempt employee – Executive
  - Salary Basis Rule
    - ❖ \$684/wk minimum salary threshold
    - ❖ Must receive full compensation regardless of hours worked
    - ❖ Must be exclusive of housing or food
    - ❖ Generally ministers are exempt from FLSA (same is true with WA Minimum Wage Act)
  - Primary duty
    - ❖ Principle duty of employee is management of organization



# Fair Labor Standards Act

- Direct the work of 2 or more employees
  - ❖ Two FTE employees
  - ❖ Customarily and regularly manage
- Does the employee have the authority to hire/fire employees?
  - ❖ Or they at least they have weight to offer such decision
- Exempt employee – Administrative
  - Salary basis – the same
  - Primary duty – office or non-manual work related to the operations i.e. accounting, marketing, etc.
  - Includes exercise of discretion to formulate policy





# Fair Labor Standards Act

- Exempt employee - Professional
  - Salary basis – the same
  - Primary duty – work requiring advanced knowledge
  - Predominately intellectual
  - In the field of science or learning
  - Proof is usually by earning an academic degree in this field
  - IE Law, Medicine, Theology, Accounting, Engineering, Sciences
  - Creative Professionals – sound techs, worship leaders, web and graphic design



# Fair Labor Standards Act

- Churches are generally excluded from FLSA because of their religious affiliation
  - But if a church has a business such as preschool, café, or other Unrelated Business Income centers, then the church is subject to FLSA
  - Online activity subjects churches to interstate commerce, thus subject to FLSA
- Ministers under the Ministerial Exception are more broadly exempt—but with a few caveats and important clarifiers
  - Long standing legal principle that exempts employee from both the FLSA and the WA State Minimum Wage Act





# WA State Minimum Wage Act



# WA State Minimum Wage Act

- Revised Code of Washington (RCW) 49.46.005 to 49.46.920
- Minimum Wage Act (WMWA) establishes the minimum standards of wages, hours, and working conditions for non-exempt employees
- Any standard under the WMWA that is more favorable to employees takes precedence





# WA State Minimum Wage Act

- Salary thresholds
  - For employers less than 50 employees- \$1100/wk or \$57,000/yr. 1.75 x minimum wage; it will increase every year until 2028
  - For employers more than 50 employees - \$1259/wk, or \$65,000/yr
  - Employee in this case is a person, not Full Time Equivalent (FTE)
  - The WMWA act is more burdensome for the employer than FLSA



# Salary threshold implementation schedule

*Salary thresholds for overtime exempt workers are a multiplier of state minimum wage for a 40-hour workweek*



## 2023 Salary thresholds

- Small businesses: \$1,101.80/week (\$57,293.60 a year)
- Large businesses: \$1,259.20/week (\$65,478.40 a year)

When the rule takes effect		July 1, 2020	Jan. 1, 2021	Jan. 1, 2022	Jan. 1, 2023	Jan. 1, 2024	Jan. 1, 2025	Jan. 1, 2026	Jan. 1, 2027	Jan. 1, 2028
For small employers with 1-50 employees	Multiply minimum wage by...	1.25x	1.5x	1.75x	1.75x	2x	2x	2.25x	2.25x	2.5x
	Projected salary threshold Weekly (Annual)	\$675 (\$35,100.00)	\$821.40 (\$42,712.00)	\$1,014.30 (\$52,743.60)	\$1,101.80 (\$57,293.60)	\$1,332.00* (\$69,264.00)	\$1,362.40* (\$70,884.80)	\$1,557.00* (\$80,964.00)	\$1,584.90* (\$82,414.80)	\$1,794.00* (\$93,288.00)
For large employers with 51 or more employees	Multiply minimum wage by...	1.25x	1.75x	1.75x	2x	2x	2.25x	2.25x	2.5x	2.5x
	Projected salary threshold Weekly (Annual)	\$675.00 (\$35,100.00)	\$958.30 (\$49,831.00)	\$1,014.30 (\$52,743.60)	\$1,259.20 (\$65,478.40)	\$1,332.00* (\$69,264.00)	\$1,532.70* (\$79,700.40)	\$1,557.00* (\$80,964.00)	\$1,761.00* (\$91,572.00)	\$1,794.00* (\$93,288.00)

Note 1: The asterisks on the salary thresholds after 2023 are projections based on forecasted changes in the Consumer Price Index. These projections have been updated from previous versions.

Note 2: This table does not apply to computer professionals paid by the hour who have higher minimum wage multipliers.





# WA State Minimum Wage Act

- Overtime
  - Paid 1.5 x hourly rate
  - Compensatory time off – meaning, time off equivalent to hours of overtime
    - ❖ Should be in writing as an option
    - ❖ The employee should have a choice between this and being paid; employer cannot make them take this
  - Do salaried employees get paid OT? Yes, anytime beyond 40 hours, but it needs to be tracked.
  - How about part-time salaried employees? Yes, but not the OT rate (1.5x) until over 40 hours.





# WA State Minimum Wage Act

- Non-Exempt Workers

- Every employer must pay non-exempt hourly employees at least the minimum wage. These wages have increased yearly pursuant to the WMWA.
- How should an employer stop or mitigate against inadvertent or unapproved overtime?
  - ❖ Generally done through policies or procedures. Like requiring employees to get employer written permission for OT.
  - ❖ If OT happened without authorization, then a written notice should be issued to the employee that states the policy and a consequence (i.e. termination) if employee violates the policy again.
  - ❖ But either way, if an employee works OT, whether authorized or not, the employer must pay OT to that employee.





# WA State Minimum Wage Act

- What about minors?
  - Hiring anyone under 18 years old in WA, there are specific laws employers must follow.
  - Generally, the employer has to get a minor work permit that is connected to their business license.
  - Link to WA L&I about hiring minors:
    - ▶ <https://www.lni.wa.gov/workers-rights/youth-employment/how-to-hire-minors>
  - Common roles in churches:
    - ❖ Nursery worker
    - ❖ Café
    - ❖ Bookstore
    - ❖ Teacher assistance
    - ❖ Be careful with volunteers in this area – are you requiring them to be there, are they interns?





# WA State Minimum Wage Act

- Stipends – be careful, it's compensation
  - Employer subject to both FLSA and WMWA
  - They can fall under the ministerial exception – depends on type of work
- Penalties - failure to pay OT, the employer will then:
  - Pay what is rightfully owed
  - Civil penalties – cost for attorney fees
  - Double Damages for willful violation – you know or should have known to pay OT to employee
- Jurisdictions (i.e. Seattle)
  - Generally higher than the WMWA
  - If employer falls in a jurisdiction, those rules apply over WMWA





# WA State Minimum Wage Act

- Minister's Wages and Overtime – recently litigated
  - US Court of Appeals 9<sup>th</sup> Circuit created the first amendment for ministerial exemptions to the claim of overtime
  - It determines if an employee falls under the ministerial exemption, they are exempt from FLSA and WMWA
- Time outside of normal work place:
  - Conference time – paid within the normal hours of a day
  - Qualifications for pay for conference:
    - ❖ If employer requires you to go
    - ❖ Employee must be on duty
    - ❖ Employee must be on employer premise or a prescribed location by employer



# WA State Minimum Wage Act

- Time outside of normal work place (continued):
  - Commute time – don't need to pay the worker with FLSA, but they do with WMWA. Including flight time, and waiting at the airport.
  - Travel time – if it's not required by employer, then employer doesn't have to pay, unless they choose to do so.
  - Work from home – can employee be compensated for commute to office? No, but it's not been litigated yet.





# Ministerial Exception





# Ministerial Exception

- Based on the first amendment of the US Constitution and, by extension, the Ecclesiastical Abstention Doctrine. It prohibits our government from interfering with spiritual or religious decisions.
- So if employees who work for religious organizations have a spiritual component to their job, they are exempt from certain employment laws (i.e. ADA).
- Two court cases to note about discrimination on employee:
  - *Hosanna-Tabor Evangelical Lutheran Church & School, v. EEOC*, 565 U.S. 171 (2012)
  - *Our Lady of Guadalupe School, v. Morrissey-Berru*, 140 S.Ct. 2049 (2020)





# Ministerial Exception

1. Wage laws and Employment laws are different:
  - An employee who is not a minister can qualify under the ministerial exception.
2. Ministerial Exceptions exempt certain qualifying employees from both Federal and WA state employment statutes
  - But it does not bar from lawsuits from employees (i.e. Fraud)
3. Involvement with religious duties – their work is tied to the mission of the church. Even if it was brief in their work (i.e. 15 minute devotion from a school teacher is sufficient) because it is in line with the mission of the church





# Ministerial Exception

- *Woods v. Union Gospel Mission* will likely have lasting impact on Ministerial Exception
  - An intern with UGM applied for a job posting online to be a staff attorney, but disclosed he was bisexual. UGM denied his job application on the grounds of the ministerial exception.
  - UGM won at the state level. WA Supreme Court remanded the case and thought that this case did not fall under the ministerial exception.
  - It was then sent to the US Supreme Court who denied the case, thus leaving it pending and unresolved. But two conservative judges stated that “the day is going to come where this issue will need to be confronted”.





# Review of Parts 1 and 2: Employee Compensation for Churches and Ministries

- Federal law that protects employees to be paid fairly, including overtime pay.
- With few exceptions, all churches and ministry organizations are subject to FLSA (likely because of interstate commerce and the Commerce Clause).
- There are some employees that can be exempt from FLSA—meaning, these employees are generally exempt from overtime. The three most common exemptions are:
  - Executive
  - Administrative
  - Professional





# Review of Parts 1 and 2: Employee Compensation for Churches and Ministries

## The Fair Labor Standards Act (FLSA), continued

- Most common rules for exempt employees
  - Salaried
  - Primary duty:
    - ❖ Management (Executive)
    - ❖ Office work related to operations (Administrative)
    - ❖ Advanced knowledge (Professional)
  - Authority to fire/hire (Executive)
  - Direct the work of 2 or more employees (FTEs)





# Review of Parts 1 and 2: Employee Compensation for Churches and Ministries

## The Fair Labor Standards Act (FLSA), continued

- Common roles exempt in a church
  - Pastors (exempt due to the Ministerial Exception and related legal doctrines)
  - Managers
  - Controller
  - Sound techs, worship leaders, graphic designers (Creative Professionals that contribute to the mission of the church)
- Salaried employees does not always mean exempt employees; to be exempt from overtime, they have to fall into one of the exempt categories.





# Review of Parts 1 and 2: Employee Compensation for Churches and Ministries

- **Washington State Minimum Wage Act**
  - Generally, establishes minimum standards of wages and hours for non-exempt employees.
  - Is generally (but not always) more burdensome for the Employer than FLSA.
  - Whether WMWA or FLSA, the standard that is more favorable to employees takes precedence.
  - Exempt Salary thresholds are considerably higher than FLSA (see L&I's schedule).





# Review of Parts 1 and 2: Employee Compensation for Churches and Ministries

## Washington State Minimum Wage Act, continued

- Part time salaried are paid the same threshold. Generally, it's better to pay part time employees hourly.
- Non-exempt employees are paid OT, even if they are salaried.
- Be careful with stipends! They are subject to FLSA and WMWA. Not recommended.





# Review of Parts 1 and 2: Employee Compensation for Churches and Ministries

## Ministerial Exception, continued

- There are two components to the Ministerial Exception: for tax purposes (e.g. housing) and for First Amendment (i.e. discrimination and other legal issues) purposes. Based on the First Amendment and long-standing legal doctrines, the Ministerial Exception prohibits our government from interfering with spiritual or religious decisions of churches.
- This includes certain church employees being exempt from FLSA and WMWA.
  - To be exempt, the employees work must be tied to the mission of the church. See, e.g., *Morrissey-Berru*.





# Review of Parts 1 and 2: Employee Compensation for Churches and Ministries

## Ministerial Exception, continued

- This can include non-licensed ministers depending on their role(s) and responsibilities within the organization. This issue is currently being litigated in Washington in the *Woods v. SUGM* case.
- Be careful to put any employee under this exception without understanding how the doctrine and standards work. Standardized practices, including handbooks and contracts with employees, should map out clearly how the employee relates to the mission, vision and values of the organization—including lifestyle.





# Review of Parts 1 and 2: Employee Compensation for Churches and Ministries

- Written job descriptions and Employee handbooks are critical to have in place to clarify employee roles.
- It has been challenged recently in the courts (Woods v. Union Gospel Mission case). It will likely have a lasting impact on this exception.





# Ministerial Exception

- This is why it's critical for the church to be clear with their employees about:
  - Clear job description that is explicit about the spiritual role of the employee that is tied to the mission of the church
  - Church should be explicit to their employees that their position is vital to carry out the mission of the church
  - Be explicit in their job duties that they do or participate some way in helping those with a spiritual function of the church



# Ministerial Exception

- What roles can be under the ministerial exception?
  - Licensed ministers
  - Non-licensed ministers that have a spiritual and/or creative role with the mission of the church:
    - ❖ Youth Pastor, Children's Pastor, Worship Pastor
    - ❖ Creative roles: Graphic Arts, Audio/Visual – a support team that helps bring the mission of the church to people
    - ❖ Teachers of preschool or school that have direct impact on students that express the mission of the church (do a devotion, or include spiritual and biblical truths in the curriculum)





# Ministerial Exception

- **Critical** – All employees, especially those under the ministerial exception, need to have clear, explicit job descriptions about the spiritual nature of their job and it being critical to the mission of the organization.



# Stipends and Internships

- Stipends are not recommended
- Stipends are wages, and the rules of FLSA and WMWA apply
- Dept. of Labor (DOL) has applied FLSA to interns
- Interns can fall under the ministerial exception if they have a spiritual role and their work is critical to the mission of the church – should be clearly stated in their job description and internship agreement





# Volunteers

- No employment law applies to volunteers
- When you pay or gift something to a volunteer, employment laws would apply
- Tip: be clear on the work of volunteers – they are not required to work and they won't be paid
- What about non-cash gifts like luncheons, gift cards?
  - Small, yet considered compensation
  - You might think you are fine, until they file a complaint with L&I!
- Can employees volunteer?
  - Yes, but best if it's not in writing as an expectation of their employment
  - Their volunteer work should be different than their work as an employee





# Employee Handbook

- It helps to protect the ministerial exception
- Helps clarify to employees what the church mission is and the part they play
- Helps avoid lawsuits
- Have it prepared by an attorney that understands churches
- Key components of Handbook
  - Statement of Faith
  - Code of conduct or lifestyle statement – emphasizing that every employee affects the witness of the organization and its mission
  - At will employment statement – allows to terminate for any reason and the employee can quit for any reason; it's not a contract





# Employee Handbook

- Handbooks can and will change
- Compliance with federal and state laws to the extent they are applicable to the religious organization
- Dispute resolution – can include spiritual or biblical practices (i.e. Matthew 18) to resolve disputes
  - Exceptions: abuse or harassment



# Separation (Severance) Agreements

- A separation agreement is a useful tool to bar an employee from suing the organization, particularly when the employee is receiving additional benefits or moneys that they are not owed by the organization.
- “Silenced No More Act” became law retroactive to June 2022; bars confidentiality and non-disclosure clauses in cases where certain types of allegations are made by the employee. Has not been tested with Ministerial Exception. See RCW 49.44.211.
- Separation Agreement(s) must account for all prior agreements; employee handbook should be seen as a potential agreement.



# Separation (Severance) Agreements

- For churches, this also means accounting for housing allowances and any other fringe benefits *prior to* the agreement being executed.
- Unused vacation is not required to be paid unless agreed to in a contract or employee handbook. See, e.g., *Sornsin v. Scout Media, Inc.* 450 P.3d 193 (Wash. Ct. App. 2019).
- Generally, sick leave pay is not required to be paid out upon termination *unless previously agreed to*.

# Separation (Severance) Agreements

- **Considerations in proposing a severance agreement:**
  1. Time for employee to seek legal counsel
  2. Release of rights must be fully described
  3. Consideration—the employer must give something of value to the employee for the contract to be valid
  4. Date of termination—when is the termination finalized?



# Separation (Severance) Agreements

## Considerations in proposing a severance agreement, continued:

5. Discrimination claims—review all correspondence and potential claims with an attorney prior to engaging in a severance agreement.
6. Payment—what is included? Fringe benefits, tax withholdings, etc. must be considered. Housing allowance should also be considered—this issue has not been addressed by the IRS or any court.
7. Dispute resolution (e.g. binding arbitration or mediation).



# Dept. of Labor Recent Announcement

- The U.S. Department of Labor (DOL) announced today that it intends to significantly raise the exempt salary threshold from \$684 per week to \$1,059, meaning employees would need to earn \$55,068 or more per year to be exempt from OT pay.
- This new Federal minimum is still less than WA State at \$57,294 for 1-50 employees and \$65,478 for >50 employees. WA salaried employees will follow whichever favors them (Federal or WA State), and this potential ruling will not affect WA State full-time exempt salaried employees.
- However, full time salaried employees that are not exempt are still paid overtime.
- Link to DOL Announcement on August 30, 2023:  
<https://www.dol.gov/newsroom/releases/whd/whd20230830>





Questions?

[cstewart@ohswlaw.com](mailto:cstewart@ohswlaw.com)



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# Next Webinar

**Employer and Employee Payroll Taxes for Churches  
and Ministries**

**October 18, 2023: 12:00p.m. – 1:00p.m.**



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**Thank you for joining us!**

Please reach out with any questions:

[info@battershellnichols.com](mailto:info@battershellnichols.com)

(253) 839-1620



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