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The New Overtime Rule and How It Will Affect Your Organization

Presented by Pete Blum with Battershell & Nichols and
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The presentation will begin shortly...



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The New Overtime Rule and How It Will Affect Your Organization

How this will affect:

- Salary requirements for exempt employees
- Ministers who qualify for ministerial exception
- Employees who work in Washington state

Overview of Labor Laws From:

- Fair Labor Standards Act (FLSA)
- Ministerial Exception
- Washington Minimum Wage Act (WMWA)

Summary of New Minimum Salaries for Exempt Employees from Department of Labor

- The new regulations establish the minimum salary at the 35th percentile of full-time salaried workers in the lowest wage Census region, which is \$1,128 (it was formerly the 20th percentile).
- Because the new minimum represents a significant increase over the previous minimum of \$684, the DOL opted for a phased-in approach:
 - ❖ Phase 1: \$844 per week (equivalent to \$43,888 per year) on July 1, 2024
 - ❖ Phase 2: \$1,128 per week (equivalent to \$58,656 per year) on January 1, 2025
- After that, the minimum salary will change every three years on July 1, starting in 2027.

Summary of New Minimum Salaries for Exempt Employees from Department of Labor, Continued

- This new rule only updates the minimum salary thresholds for exempt employees. It does not make any changes to the definition of an exempt employee.
- The new rule supersedes state and local wage laws, UNLESS the state or local law is more favorable to the employee.
- Exempt employees paid less than the minimum salary threshold must be paid overtime for over 40 hours worked.
- The minimum salary for exempt status applies for part-time employees. Simply put, the minimum salary for exempt status applies whether an employee works one hour or 40 hours a week.

Summary of New Minimum Salaries for Exempt Employees from Department of Labor, Continued

- The salary thresholds for highly compensated classification also increased from \$107,432 to \$132,964 (for 2024) and \$151,164 for 2025.
 - ❖ The employee's primary duty includes performing office or non-manual work, and
 - ❖ Customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee
 - ❖ For details, see this link from the DOL: [Fact Sheet #17H: Highly-Compensated Workers and the Part 541-Exemptions Under the Fair Labor Standards Act \(FLSA\) | U.S. Department of Labor \(dol.gov\)](#)

How This New Law Affects Church Employees

- Churches should evaluate all positions and determine which qualify for the ministerial exception.
 - ❖ Ministerial exception positions (clergy, pastors, ministers, and others with spiritual duties) have broad exemptions from most labor laws, including federal and state minimum wage and overtime laws. These laws are based on a series of cases starting with *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*
- If employees do not qualify as ministers under the ministerial exception, then employers should determine what positions may change from salary to hourly under the new minimum salary test, starting July 1st.
- Revisit the duties of exempt employees to determine if they still qualify as an exempt employee. If not, you must change them to non-exempt employees and pay overtime when they work over 40 hours.
- If they do meet the minimum duties, then they can remain as exempt employees assuming they are paid at least the new minimum salaries.

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.
- 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 four most common exemptions are:
 - ❖ Executive
 - ❖ Administrative
 - ❖ Professional
 - ❖ “White Collar” (Highly compensated)

Fair Labor Standards Act, Continued

- **Exempt Employee – Executive**

- ❖ Salary Basis Rule

- ❑ \$884/wk minimum salary threshold starting July 1, 2024 (formerly \$684/wk)
- ❑ Must receive full compensation regardless of hours worked
- ❑ Must be exclusive of housing or food
- ❑ Ministers are generally exempt from FLSA (same is true with WA Minimum Wage Act)

- ❖ Primary Duty

- ❑ Principle duty of employee is management of organization
- ❑ Direct the work of 2 (FTE equivalent) or more employees

- ❖ Authority to hire/fire employees? (Or they at least have weight to offer such decision)

Fair Labor Standards Act, Continued

- **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

- **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
 - ❑ i.e. Law, Medicine, Theology, Accounting, Engineering, Sciences
 - ❑ Creative Professionals – sound techs, worship leaders, web and graphic design

Fair Labor Standards Act, Continued

- Common employee 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)
- A salaried employee does not always mean an exempt employee; to be exempt from overtime, they must fall into one of the exempt categories.

Ministerial Exception

- Based on the first amendment of the US Constitution and, by extension, the Ecclesiastical Abstention Doctrine. It prohibits the government from interfering with spiritual or religious decisions.
- As it relates to employees who work for religious organizations and are spiritually important to the mission of the organization, they are likely exempt from certain employment laws, such as the FLSA.
- Two court cases to note about discrimination of 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, Continued

- There are two components to the Ministerial Exception: for tax purposes (e.g. housing), and for First Amendment (i.e. discrimination and other employment issues) purposes.
- This includes certain church employees being exempt from FLSA and state laws like the Washington Minimum Wage Act (WMWA).
- To be exempt, the employee's work must be tied to the mission of the church.
- 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.

Ministerial Exception, Continued

- Be careful to not 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.
 - ❖ Written job descriptions and Employee handbooks are critical to have in place to clarify employee roles
 - ❖ It is important to have an attorney that understands how this legal framework can protect an organization, even from the time of a job posting
- 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, Continued

- **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 (does a devotion, or includes spiritual and biblical truths in the curriculum)
 - ❑ Other roles that have a basis in moving the mission forward—recently a guidance counselor who was charged with praying for staff, spiritually guiding students, etc. was seen by a federal court as falling under the Ministerial Exception

WA State Minimum Wage Act, Continued

- 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 over Federal standards (FLSA)
- Salary thresholds as of January 1, 2024:
 - ❖ \$1,362/wk or \$69,264/yr. (1.75 x minimum wage); it will increase every year through 2028
 - ❖ 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, Continued

- Overtime is 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.

Practical Action Steps

- ✓ Comply by increasing exempt employees salaries to at/above the new threshold
 - This can be done on an employee-by-employee basis
 - Make sure they are an exempt employee
 - Can you afford this?
 - For WA state employees, the minimum salary in 2024 is \$69,264, compared to the Federal minimum salary that will be \$43,888 as of July 1, 2024, and \$58,656 as of January 1, 2025
- ✓ Convert salaried to hourly employees
 - Or you can still pay them a salary for 40 hours, then pay OT beyond that
 - Be careful – salaried employees who work a lot of OT will be paid more as an hourly employee. Compare it to paying them the new salary minimum
- Are you set up to monitor employee hours to manage OT?
 - Timesheets
 - Overtime policies in place?
 - Approval process for OT in place?
 - Rules in place for remote work or after hours work at home (i.e. email, calls, etc.)

Practical Action Steps, Continued

- ✓ Revisit the duties test for exempt employees
 - Make sure they meet the minimum duties test
 - Focus particularly on those employees that will be affected by this increase in the salary threshold
- ✓ Unintended Consequences
 - Employee morale – salaried people are not used to tracking hours, especially when outside the office
- ✓ Clarify ministerial exception qualifications for your organization
 - Review/revise Employee Handbook to more clearly characterize employee duties as contributing to the spiritual and religious purposes of the church
 - Update job description to reflect ministry qualifications and duties

Want to learn more about Employee Compensation for Churches and Ministries?

- Last summer we did a three part webinar series on Employee Compensation Rules for Churches and ministries:
 - ❖ Part 1: Fair Labor Standards Act and WA State Minimum Wage Act (WMWA)
 - ❖ Part 2: Ministerial Exception
 - ❖ Part 3: Stipends and Internships, Paying Volunteers, Key components to include in an employee handbook
- While this webinar summarizes these compensation rules, the three-part webinar series provides a deep dive to bring further clarity.
- You can access these webinars at www.battershellnichols.cpa, and select Webinars located at the top of the home page. These webinars are free and include handouts that you can download.



Questions?

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