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Navigating the FLSA Overtime Rule

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Outline

- FLSA Overview
- 2024-2025 Key Changes to FLSA Overtime Rule
- Potential Implications
- Strategies to Address the Changes
- Case Study
- Tips for Communicating to Stakeholders
- Questions

Fair Labor Standards Act Overview

- The FLSA is the Federal Law which sets minimum wage, overtime, recordkeeping, and child labor standards.
- There are two ways in which an employee can be covered by the law and thus entitled to its protections.
 - 1. Enterprise coverage: FLSA applies to employees employed by businesses with annual gross volume of sales made or business done of at least \$500,000. Charitable, religious, educational or similar activities of organizations operated on a non-profit basis where such activities are not in substantial competition with other businesses do not result in the organizations being considered a covered enterprise.
 - 2. Individual coverage: Employees not covered by the FLSA on an enterprise basis may still be entitled to its protections if they are individually engaged in interstate commerce. This includes making/receiving interstate telephone calls, shipping products to another state, and/or receiving products from another state. The Department of Labor (DOL) has a very broad definition of interstate commerce which results in most employees being able to seek this protection.

FLSA Exemption Status

- FLSA provides an exemption for employees from both minimum wage and overtime so long as certain tests are met regarding their job duties and are paid on a salary basis not less than \$684 (current number) per week.
 - Executive Exemption: Employee must be compensated on a salary basis; primary duties must be managing the enterprise, managing a department or subdivision of the enterprise; must regularly direct the work of two or more fulltime employees; AND have the authority to hire or fire or the employee's recommendations as to hiring or firing must be given particular weight.
 - Administrative Exemption: Employee must be compensated on a salary basis; primary duty must be the performance of office or non-manual work directly related to the management or operations of the business; AND primary duties include the exercise of discretion and independent judgment with respect to matters of significance.
 - Professional Exemption: Employee must be compensated on a salary basis; primary duty must be the performance of work requiring advanced knowledge; the advanced knowledge must be in a field of science or learning; AND the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.
 - Outside Sales Exemption: Employee primary duties must be sales AND the employee must be regularly engaged away from employer's place of business.
 - Computer Employee Exemption: Employee must be compensated on a salary basis; employed as a system analyst, programmer, engineer or other similarly skilled worker in the computer field; AND primary duty consists of application of systems analysis, design/development/modification of computer systems related to the user, or design/testing/creation/modification of computer programs related to machine operation.

FLSA Exemption for Teachers

- A teacher is exempt from FLSA if his/her primary duty is teaching, tutoring, instructing, or lecturing to impart knowledge AND if he/she is performing that duty as an employee of an educational establishment. Education establishments include elementary school systems, secondary school systems, institutions of higher education and other educational institutions. If a teacher meets this duty requirement, the salary level and salary basis tests do not apply.
- The relevant inquiry is to the teacher's actual job duties.

Ministerial Exception and the FLSA

In January 2021, the DOL issued guidance on whether the ministerial exception would apply to FLSA cases.

The DOL said:

“Whether employees actually qualify as ministers depends on their duties as employees, not upon the employer’s designation. There is no checklist one case us to determine whether the ministerial exception applies. Instead, a variety of factors may be important cased on their relations to the employee’s role in conveying the Church’s message and carrying out its mission. 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. Ministerial status depends on the employee’s role in carrying out the employer’s mission and conveying the employer’s message.

For these reasons, we conclude that the employees, if they qualify for the ministerial exception, may be paid on a salary basis that would not otherwise comport with the FLSA.”

FLSA Overtime Exemption Key Changes for 2024 - 2025

What changes:

Effective July 1, 2024: Salary threshold increases from \$684 per week (\$35,568 per year) to \$844 per week (\$43,888) per year.

Effective January 1, 2025: Salary threshold increases to \$1,128 per week (\$58,656 per year)

The final rule also includes a new mechanism that automatically increases the salary threshold every three years beginning July 1, 2027, based on then current earnings data.

What stays the same:

Bonuses and incentive payments can satisfy up to 10% of the standard.

The existing job duties test for any exemption.

What we don't know:

Whether legal challenges to the rule will stay the enforcement of the rule. Stay tuned!

Potential Implications/Why does this matter? (Risk)

- **Wage and Hour Compliance Claims:** An employee who makes a claim and is successful can recover 2 years of back pay. If it is determined the violation was willful, the employee can recover 3 years of back pay.
- **Organizational reputation:** One of the tenets of Catholic Social Teaching is the dignity of work. We should always be striving, when possible, to provide fair wages which exemplifies the dignity of work.
- **Employee engagement:** Consider the impact on employee morale. Remind employees they are valued and let them know you are required to make changes in light of the federal government's new wage and hour rules. DOL has made it clear that the goal is to make more people eligible for overtime which means more workers will likely need to be converted to non-exempt.

Strategy for Addressing the FLSA Changes

1. Review all Job Descriptions for FLSA status based on duties test ASAP.
2. Determine which exempt jobs will fall under the threshold changes for July 1, 2024 and Jan 1, 2025.
3. For impacted positions, analyze the options.
4. Seek legal counsel with any questions. Be prepared to implement changes as of July 1, 2024, but be aware this law will be subject to legal challenges that may delay its enforcement.

Options for Addressing Impacted Positions

1. Keep position exempt and increase salary.
2. Convert position to hourly non-exempt/overtime eligible.
3. Convert position to salaried non-exempt/overtime eligible.

Case Study A: Teacher/ Admin Assistant Tania

- Current status: Exempt
- 0.8 FTE Teacher & 0.2 FTE Admin Assistant
- Paid on a salary basis, \$684 weekly (\$35,568 per year)
- Scheduled 40 hours per week
- Averages 50+ hours per week

- Meets current salary requirement (\$35,568+)
- Will NOT meet the new minimum as of July 1, 2024 (\$43,888+)
- Will NOT meet the new minimum as of Jan 1, 2025 (\$58,656+)





Step 1: Exemption Status Review

Duties Test

A teacher is exempt if his or her *primary* duty is teaching, tutoring, instructing, or lecturing to impart knowledge, and if he or she is performing that duty as an employee of an educational establishment. *See* [29 C.F.R. § 541.303](#).

If a bona fide teacher meets this duty requirement, the salary level and salary basis tests do not apply. → NO CHANGE NEEDED!

See [29 C.F.R. §§ 541.303\(d\), 541.600\(e\)](#)



Next...

Consider Indirect Impacts

The salary level and salary basis tests may not apply, but teachers may be indirectly impacted due to other school and parish employee salary adjustments.

Considerations:

- Morale due to not being part of changes → Consider communication strategy!
- Overall compensation under higher scrutiny → Provide transparency and clarity on salary scale as needed

Case Study B: Business Manager Bob

- Current status: Exempt
- Paid on a salary basis, \$850 weekly (\$44,200 per year)
- Scheduled 40 hours per week
- Averages 45 hours per week

- Meets current salary requirement (\$35,568+)
- Will meet the new minimum as of July 1, 2024 (\$43,888+)
- Will NOT meet the new minimum as of Jan 1, 2025 (\$58,656+)





Option 1: Keep position exempt and increase salary.

PROS:

- Most efficient method
- Unlikely to lead to EE morale issues
- No benefit eligibility issues
- No changes in hours tracking or payroll administration

CONS:

- May lead to budget concerns
- Salary compression
- Potential for morale issues among EEs with no raise
- Increases every 3 years

**Anticipated Increased Cost for Option 1:
\$14,456**



Option 2: Convert position to hourly non-exempt/overtime eligible.

PROS:

- Simple calculation
- EE feels compensated for all time worked and may receive slight increase if OT worked
- No salary compression issues

CONS:

- Frequent OT may lead to budget concerns
- Potential for change in benefits if delineated by salaried vs. hourly or exempt vs. non-exempt
- EE needs to start tracking hours regularly

**Anticipated Increased Cost for Option 2:
\$8,288.80**



Option 2: Convert position to hourly non-exempt/overtime eligible.

Determine rate with average hours worked:

- $\$850/40 \text{ hours} = \21.25 ← *Regular Hourly Rate*
- $\$21.25 \times 1.5 = \31.88 ← *Overtime Hourly Rate*
- Typical workweek: $(\$21.25 \times 40) + (\$31.88 \times 5) = \$1,009.40$
- $\$1,009.40 \times 52 \text{ weeks} = \$52,488.80$ Annualized

**Anticipated Increased Cost for Option 2:
\$8,288.80**



Option 3: Convert position to salaried non-exempt/overtime eligible.

PROS:

- Simple calculation
- Guarantees fixed salary while still compensating for OT
- EE feels compensated for all time worked and maintains any perceived “prestige” of being salaried

CONS:

- Must establish fixed minimum salary for 40 hours, regardless if the EE works 40 hours (FT only)
- Frequent OT may lead to budget concerns
- Potential for change in benefits if delineated by salaried vs. hourly or exempt vs. non-exempt
- EE needs to start tracking hours regularly
- Can be complicated if EE works irregular schedule

**Anticipated Cost for Option 2:
\$8,288.80**



Option 3: Convert position to salaried non-exempt/overtime eligible.

Salary stays at \$850 per week:

- $\$850/40 \text{ hours} = \21.25 ← *Regular Hourly Rate*
- $\$21.25 \times 1.5 = \31.88 ← *Overtime Hourly Rate*
- Typical workweek: $(\$21.25 \times 40) + (\$31.88 \times 5) = \$1,009.40$
- $\$1,009.40 \times 52 \text{ weeks} = \$52,488.80$ Annualized

**Anticipated Increased Cost for Option 2:
\$8,288.80**

Communicating with Stakeholders

- Consult with:
 - Pastor/ Parish Director
 - Finance Council
 - Personnel Committee
- Communicate with employees once you have a clear plan to avoid confusion.
- Provide written notice to employees of salary and/or status change, including time tracking implications and OT implications if changing.
- Educate supervisors of impacted employees.
- Anticipate questions from employees.

Questions?

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