

Did you know that New York State has new minimum wage and overtime rules?

These rules are important for any church or church affiliated organization with non-clergy employees, full or part time. Last year the federal Department of Labor proposed new rules under the Fair Labor Standards Act increasing the minimum wage and making more employees eligible for overtime wages. Specifically, any employee earning less than \$913.00 per week; \$47,476.00 per year could not be classified as an exempt employee but would have to be non-exempt, paid at an hourly rate and also paid overtime (one and one half times the hourly salary) for any hours over 40 in a given week.

The US Department of Labor rules, which were supposed to go into effect on December 1, 2016, have been indefinitely put on hold pending review by the US Courts. HOWEVER, the New York State Department of Labor enacted similar rules on December 28, 2016, which went into effect on December 31, 2016.

The new NY State rules (12 NYCRR 142) became effective the same date as New York's new minimum wage laws. Unlike the federal Dept. of Labor rules, the NY rules (with very limited exceptions) do not have an exception for small employers, including non-profits.

Under the new rules, any non-exempt employee must be paid at least minimum wage (currently \$9.70 per hour for upstate New York) and time and a half for any hours over 40 per week. The hours must be measured in 7 day periods, not pay periods. In order for an employer to **not** pay overtime to an employee, the employee must meet one of the following exemptions:

1. **Professional:** this category is very specific and includes teachers, clergy, attorneys, doctors and a few more. This category does not have to meet the income threshold.
2. **Administrative:** For this category the employee must earn **at least \$727.50 per week / \$37,830.00 per year**. (The amount will increase each year until 2020). The employee must meet additional criteria in order to be exempt.

Basically, the employee must:

- a. have primary duty consisting of the performance of office or non-manual field work directly related to management policies or general operations;
- b. customarily and regularly exercise discretion and independent judgment; and
- c. regularly and directly assist the employer in a bona fide executive capacity or perform under general supervision work along specialized or technical lines requiring special training, experience or knowledge.

The terms are each not specifically defined but the Department of Labor has provided some guidance. The key term “exercise discretion and judgment” includes such factors as:

- i. Does the employee formulate, affect, interpret or implement policies or practices?
 - ii. Does the employee carry out major assignments in conducting the business?
 - iii. Can the employee commit the employer in matters that have significant financial impact?
 - iv. Does the employee have authority to waive or deviate from established policies and procedures without prior approval?
3. **Executive:** This is another narrow category. Again, the threshold salary must be at least \$ 727.50 per week / \$37,830 per year. This exemption also includes other duties, including, most important, the ability to hire and fire subordinates.

Please note: the NYS Department of Labor has hired additional personnel to review compliance and the fines for violation are very high. Further information can be obtained from the Upper New York Conference Human Resources Office; Ms. Debi Marshall, DebiMarshall@unyumc.org.

In addition, Conference personnel recommend that in order to ensure to ensure proper classification of your employees, it is recommended churches contact an employment law attorney for counsel.