

## Overtime Ruling and Its Effect on Churches

Big news came out of the Department of Labor earlier this year regarding the salary threshold for exempting white-collar salaried workers subject to the duties test from overtime pay. The new rule more than doubles the salary threshold from \$23,660.00 to \$47,476.00 annually, and it is scheduled to go into effect on December 1, 2016.

What exactly does this mean?

It means that all workers earning less than \$47,476 per year (\$913/week) will now be eligible for overtime pay if they work more than 40 hours per week. On church staffs, where many non-ministerial salaries are below the new minimum threshold, this could have a huge impact on church budgets, salary considerations, and more.

### **1. Churches are not exempt.**

As a rule, the new rules and regulations will apply to most church staff employees.

### **2. A limited category of church employees are exempt.**

While mostly case-law driven, there is a long-standing ministerial exception to the Federal Labor Standards Act. Practically speaking, ministers aren't subject to minimum wage or overtime requirements of the act. These new provisions will primarily affect administrative employees in churches and any employees whose work concerns spiritual/pastoral functions but does not require ordination.

### **3. Comp time is not allowed.**

You cannot work around the new rules by offering compensatory time (time off in a future week for work done in the current week beyond the 40-hour threshold).

### **4. Volunteering is not a way around the rules.**

Employees cannot be considered to have "volunteered" any overtime hours if they are doing the same work for which they normally get paid.

### **5. You cannot average hours.**

In determining whether an employee works more than 40 hours per week, you must consider it on a week-by-week basis. Averaging hours across weeks will not be allowed.

While there are several legislative actions currently being debated to curtail these new regulations before they go into effect, churches should begin to prepare for the worst-case scenario.

First, review your church staff payroll and make a list of all employees, both ministerial and non-ministerial, that will be making less than \$47,476.00 as of December 1, 2016.

Second, for each of your church staff employees, review their weekly hours and begin tracking how many hours more than 40 hours per week each employee is working. Determine whether any extra hours are seasonal related (Christmas services, Easter services, etc.), or project related (launching new ministries), etc. The more information you have about each employee's hours, the easier it may be to tweak their hours during peak times to avoid paying overtime.

If you have employees on your church staff that consistently work more than 40 hours per week and are making less than \$47,476.00 annually, what are your options?

Here are four options your church might consider:

- 1. Raise salaries above \$47,476 to avoid paying overtime.**
- 2. Pay overtime above a salary.**
- 3. Adjust schedules and workload.**
- 4. Adjust base pay and pay overtime.**

Churches will no doubt have to pay close attention to the **Department of Labor Regulations** and any subsequent legislative rulings that might be made as they seek to analyze which of the above options might be best for them. Taking the time to prepare now for the December 1, 2016, implementation of these new rules and talking with employees so they fully understand the new provisions will be key.

***Disclaimer:** This communication is not intended to communicate legal advice. A qualified attorney should be consulted for any legal opinions.*