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## HOW WILL NEW OVERTIME RULES AFFECT YOUR CHURCH?

**NOTE:** The following document is likely to offer more questions than answers. While the federal government has issued new regulations, there is no explanation specifically outlining their impact on religious organizations such as local congregations, and there is no past history of enforcement to help reliably interpret the regulations. The purpose of this document is *not* to direct you how to respond or tell you what you should do. Rather, what we intend to offer is simply to provide you with the regulations, explain where the sticky points are, and encourage you to respond accordingly and appropriately in your context. Ultimately, the leadership in local congregations (pastors, Staff-Parish Relations committees, Finance, etc.) will have to review the current and updated rules and make their own decisions about compensation for employees.

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### Background

On May 18, 2016, the United States Department of Labor (DOL) announced changes to the current Fair Labor Standards Act (FLSA) “white collar” overtime exemption rules. These changes go into effect on December 1, 2016. Specifically, the rule change strengthens overtime protection for employees by raising the minimum salary level threshold for “exempt” status (those people who are exempt from being paid overtime) from its previous amount of \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year). In other words, effective December 1, 2016, a number of formerly “exempt” employees will now be considered “non-exempt,” making them eligible for overtime pay any time they work beyond the standard 40-hour work week.

*NOTE: this new rule does not change the “duties” requirements for exempt or non-exempt status. According to current DOL guidelines, only certain types of work/staff members may be considered “exempt” from overtime (an employee is not “exempt” simply because they are salaried or simply because their employer chooses to classify them as such). In addition to the salary threshold, exempt employees must engage in executive or administrative duties, or fall into a salaried creative/professional category (see attached). The impending rule change is to raise the salary threshold for exempt status. Local churches are strongly encouraged to review their classification of all employees, both for the new salary threshold, but also for compliance with the existing “duties” requirements.*

### How Does This Apply to Churches?

Generally speaking, local congregations and other non-profits with less than \$500,000 per year in commercial income (excluding charitable donations) do not meet the enterprise standard for overtime rules, unless they operate a preschool, school, hospital, or older adult or disability care facility. By and large, most of our congregations do not meet this threshold and are thus not required to comply with these rules. However, the DOL stipulates that even if an organization like a church or non-profit is not obligated to follow the overtime standards, individual employees of that organization may nonetheless be protected or covered by FLSA rules and guidelines. Specifically, if a staff member engages in any form of interstate commerce (such as phone calls, emails, making purchases, or travel that crosses state lines), that employee may be covered and eligible for overtime if s/he works more than 40 hours in a single week. This is very murky but local churches are encouraged to consider the extent to which staff members engage in any form of interstate commerce to determine if they may or may not be protected by FLSA standards regarding overtime.

Further, ordained and licensed clergy are not covered under FLSA overtime rules, given the primarily religious nature of their work—a “ministerial exception.” In The United Methodist Church, the “ministerial exception” is understood to clearly apply to those persons who have been licensed or ordained (or are commissioned for ordination). Lay supply pastors and Certified Lay Ministers who serve as a *functional equivalent* to the pastor-in-charge of a local church may also fall under the ministerial exception. Nevertheless, lay staff members who are not performing primarily religious or missional or clergy-type functions might not be excepted, even if they bear the title of “minister” in their position description. These staff members, if non-exempt, may be eligible for overtime pay if they work more than 40 hours per week.

In sum, if a local congregation has a lay staff member engaging in some form of interstate commerce such as sending email or mail across state lines, making purchases across state lines (such as from Cokesbury or Amazon), or making calls or traveling across state lines, and that staff member is not exempted by the duties guidelines, and his or her salary falls below the new DOL threshold for exemption (\$913 per week or \$47,476 per year), that employee may be eligible for overtime if s/he works more than 40 hours a week.

## How Should My Church Respond?

For most of our congregations, with few or minimal staff (particularly beyond the person/s included in the “ministerial exception”), these DOL guidelines and the new rule will have little impact. However, for congregations with lay staff members, church leaders (pastors, SPRC, Finance, etc.) are strongly encouraged to review the status of all lay staff members in order to:

- (1) clarify the exempt or non-exempt status of their employees according to
  - a. the current, existing DOL rules regarding the “duties” requirements (executive, administrative, or salaried creative/professional), *and*
  - b. the change in the salary threshold for exemption status (\$913/week or \$47,476/year), effective *December 1, 2016*
- (2) ensure that all staff are adequately compensated, especially for overtime (but also for all hours worked up to a 40-hour work week):
  - a. non-exempt staff must be paid according to DOL guidelines regarding overtime (1.5 times the normal rate of pay for hours worked beyond a 40-hour work week)
  - b. further, all staff members should be compensated for all of their work—even if a staff member does not work overtime, s/he must be paid for the time spent working
  - c. in some cases, this may mean adjusting budgets to plan for possible overtime or even raising a salary to meet the new exemption threshold (as long as that employee meets the existing duties requirements), or adjusting hourly or salaried status for staff members who fall below the higher threshold for exemption

Consider these two examples:

*Sally is a church secretary who normally works 36 hours per week at an hourly (non-salaried) rate of \$18.00 per hour. During Charge Conference week she works 41 hours and is asked to attend Charge Conference, which takes an additional 1.5 hours. Sally's total hours are 42.5 hours for that week. She should be paid \$18/hour for the first 40 hours, and \$27/hour (one-and-a-half times her normal hourly rate) for the extra 2.5 hours of overtime. Her gross pay for this week is \$749.50.*

*Karen is also a church secretary, but she is considered salaried (non-exempt) at \$36,400/year or \$700/week. She is also expected to ordinarily work 36 hours/week. She likewise works 42.5 hours the week of her Charge Conference. Karen's hourly rate is \$19.44 (her annual salary divided by the number of hours expected to work every week). For the week of Charge Conference, she must be paid both for her hours worked above her expected work week (at her hourly rate) and for the 2.5 hours overtime (at 1.5 times her hourly rate). Karen would be paid her ordinary salary of \$700/week for the first 36 hours, plus the hourly rate (\$19.44/hour) for the extra 4 hours, plus \$29.16/hour for the 2.5 hours of overtime (beyond the 40-hour week). Her gross pay would be \$850.66.*

- (3) it is also recommended that local churches with non-exempt lay staff members take great care to recognize that travel and the use of technology (email, texting) outside of normal business hours may impact hours worked and staff should be compensated for such (or limits imposed on what may or may not exceed the hours expected).

One way to look at these guidelines and the rules change is for churches to consider if we are fairly and adequately compensating our lay staff members. While it is true that most of our staff members see their work as ministry and

serving a greater cause in Christ and for the Kingdom, it is also true that “laborers deserve their wages.” Often lay staff members are under-compensated for the work that they do. Given these guidelines, it is worth taking the time to ask if we’re treating our staff members fairly and adequately.

Last, but not least, the new threshold rule goes into effect December 1, 2016—an employee may suddenly be non-exempt and eligible for overtime pay just in time for the Advent and Christmas busy season!

## What's The Take-Away?

- If yours is a small church with just one employee (the pastor), or only one full-time employee plus one or more part-time employees, none of whom ever works more than 40 hours in a week—you probably don’t need to pay attention to this rule change (provided you are currently paying your employees for all hours worked).
- If your church has hourly or salaried staff members who make less than \$913 per week (i.e., \$47,476 per year), you need to decide if those employees are covered under the FLSA rules.
- If you determine that your church or employee may be covered under FLSA overtime rules, **employees will need to keep a record of hours worked every week** (even if they never work more than 40 hours a week). You will need the time sheet to demonstrate that no overtime was due.
- Churches will need to consider these issues carefully, and determine for themselves whether or not they will be impacted by the rule. You may wish to consult anyone in your church or area who works in an HR department, or lawyers who handle labor law.

## Still Have Questions?

I bet you do! So do the rest of us. Here are a few we can answer:

**Q.** Our church secretary is paid for 20 hours a week and frequently works more than that but she considers those additional hours as her gift to the church. Is this OK?

*A. No! Volunteer services may not be the same type of services routinely performed by the individual in his or her regular employment.*

**Q.** We give our employees comp time for extra hours they work. Is this OK?

*A. No. Although there are exceptions, it's usually illegal to give non-exempt employees comp time instead of paying them for all hours worked.*

**Q.** Is everyone who earns at least \$914/week exempt from overtime pay?

*A. No. In order to be an exempt employee, persons must meet not only the salary test but the duties test as well (see the attached flow chart).*

There are a couple of documents which might help your church as you look at your individual situation. These are .pdf's which you can download.

[Dept of Labor Guidance for Non-Profits](#)

[Dept. of Labor Overtime & Non-Profits](#)

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