

Fair Labor Standards Act

A Guide to Compliance for UU Congregations

From the UUA Office of Church Staff Finances

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A Guide to FLSA Compliance

1. Learn the Law

Your first step to compliance is learning about the Fair Labor Standards Act (FLSA) and applicable state (and occasionally local) laws. The FLSA is a federal law that protects employees by requiring employers to pay 1) a minimum wage and 2) an overtime premium for more than 40 hours worked in a week. Some state laws are more stringent than the federal law.

Federal

Read our [FLSA FAQ](#) to learn the basics of the federal Fair Labor Standards Act.

State

If your state laws are more favorable to employees than the federal law, you must follow the state law. You can learn about applicable state law through your state's Department of Labor. (Massachusetts and California are among the states that have more stringent laws.)

For More Info on FLSA and State Law

- [Department of Labor \(DOL\) FLSA Compliance Assistance](#)
- [DOL Final Overtime Rule Fact Sheet](#)
- [DOL State Labor Law page](#)

2. Assume All Employees Covered

We recommend that you assume all of your nonministerial employees are covered by federal and/or state law. As explained in our [FLSA FAQ](#), employees can be covered under the Fair Labor Standards Act through either enterprise coverage or individual coverage. While enterprise coverage rarely applies to churches, individual coverage applies to many church employees. Technically, some employees may not fall under either federal or state law. (We'll get to exemptions from the law in a later section.)

Why do we recommend assuming coverage for all employees?

- "Interstate commerce" (the basis for individual coverage) is interpreted very broadly.
- Many states require minimum wage and overtime pay even when the federal FLSA does not apply.
- The basic worker protections provided by FLSA are in keeping with our values.

For More Info on Coverage

- [DOL Fact Sheet #14: Coverage Under the FLSA](#)
- [DOL Fact Sheet #14A: Non-profit Organizations and the FLSA](#)
- [DOL elaws: Engagement in Interstate Commerce](#)
- [Not Every Employee is Covered, But...](#)

3. Review Employee Information

Reviewing position descriptions, hours worked, and wages paid will help you correctly classify your employees as nonexempt or exempt (see “4. Determine Exemptions”) and enable you to make good decisions about other possible adjustments.

Position descriptions

It is a good practice to regularly review position descriptions for alignment with employee responsibilities. For the purposes of the FLSA, you want to be able to identify positions that qualify for an exemption. A position description need not list every task, but the purpose and key responsibilities of each position should be clear. Also note the stated number of hours for each position and whether they are paid hourly or by salary.

Hours and Pay

Hours Worked

It is likely that you have some employees who nearly always work the same number of hours each week, some who occasionally or regularly put in hours above the stated hours for their position, and still others whose schedule is quite variable. This is an important time to take stock of each employee’s situation – whether they are paid by salary or hours.

Time-tracking is often resisted by employees – because it’s a bother and/or because it can be construed as a lack of trust. However, as your congregation assesses its FLSA compliance, asking employees to track their hours can be a useful or necessary means of ensuring observance of the law and fairness to all staff. Pay particular attention to salaried employees with variable hours and how often their hours go above 40 in a workweek.

Wages Paid

Verify the salary or hourly wages for each employee. For salaried employees, calculate the hourly rate, based on the position’s stated hours.

Remember that to meet the salary basis test for white-collar exemptions, employees must be paid a predetermined salary for each pay period. To meet the salary level test for an exemption, the employee must be paid a weekly salary of at least \$913/week, as of December 1, 2016. (See below, “4. Determine Exemptions.”) This weekly rate works out to an annual salary of \$47,476 for a full-year, 40-hour/week employee.

Keep in mind that this is a weekly rate. *It is not prorated* for part-time employees. Any employee who earns less than \$913/week automatically does not meet the salary test, regardless of hours.

Example: If a 20-hour/week worker with a salary of \$26,000/year does not pass the salary test because they earn only \$500/week. (A 40-hour employee at the same rate would pass the test.)

If you have a *part-year* employee who earns at least \$913 week, they meet the salary level test.

Employees who meet the salary level test are not automatically exempt. They still need to meet the job duties test. (See next section.)

4. Determine Exemptions

Now that you have reviewed employee information on responsibilities, hours, and wages, you need to decide which of your staff qualify for an exemption, based not only on salary but also on job duties.

Ministerial Exception

The ministerial exception is the one exemption based only on responsibilities. Salary is immaterial. That's because the ministerial exception, sometimes called the "ecclesiastical exemption," is not part of the FLSA, but rather a consequence of federal court rulings based on the First Amendment.

The ministerial exception applies to ministers and other staff who spend significant time on "essential religious duties" – in other words, whose responsibilities require them to attend to the religious needs and/or instruction of others. You may find the "Lesser-known Exemptions" article (link below) helpful. Case law has interpreted the definition of "minister" relatively broadly for this purpose, and we believe that director-level staff with authority and decision-making within a religious realm of congregational life (i.e., worship and religious education) meet the standard. However, we note that there is no "bright line test" and that different publications suggest slightly different criteria to consider. We encourage you to consult with legal counsel to determine which of your staff qualify for the ministerial exception.

White-Collar Exemptions

The executive, administrative, and professional exemptions – the so-called "white-collar" exemptions – may apply to some of your staff. Read our [FLSA FAQ](#) (see "How can I tell if our employees are exempt or nonexempt?") for details of requirements for each of these exemptions.

As explained in the [FLSA FAQ](#), in order to be exempt; the employee must meet **ALL THREE TESTS**: the salary basis test, the salary level test, and the job duties test (specific to each exemption). The salary level is a *weekly* amount – \$913/week as of December 1, 2016. It is not prorated for part-time employees. Do you have staff who qualify for any of these exemptions, based on all three tests?

Other Exemptions

There are additional FLSA exemptions that might come into play in our congregations very occasionally. The DOL Fact Sheet 17A (link below) includes information about the white-collar exemptions mentioned above, along with these additional exemptions: Computer Employee, Outside Sales, and Highly Compensated Employees. Do any of these apply?

For More Info on Exemptions

- [Lesser-known Exemptions: The "Ministerial Exception"](#)
- [DOL Fact Sheet 17A: Exemptions](#)

5. Make Adjustments

You've determined who is exempt and who is nonexempt. Do you have one or more currently exempt employees whose salary will no longer meet the salary level test – even though their duties would continue to qualify them for exempt status? (Remember: if they fall under the ministerial exception, the salary doesn't matter, so the suggestions below don't apply.) Consider these options for managing costs:

Reclassify positions or adjust wages

- **If an employee's salary is relatively close to the new salary level threshold of \$913/week**, you may want to bump up the salary to meet the new test and keep the employee exempt. Then you don't have to worry about overtime pay.
- **If the employee's salary is well below the new threshold** (or it's close, but you can't justify bumping it up), you will need to reclassify the employee as nonexempt. Nonexempt employees can either be paid hourly or salaried, although hourly is the preferred method. Please note:
 - Whether they are hourly or salaried, the recordkeeping requirements for nonexempt staff apply.
 - Whether hourly or salaried, the overtime rate must be paid to those who put in more than 40 hours in a workweek.
 - For the challenges of nonexempt salaried positions, see the article, "Can a Part-time Employee be Paid a Salary?" (Link in box below.) This article concludes with an important final cautionary note to avoid off-the-clock volunteering.
- **If you choose to convert to hourly** for an employee who works more than 40 hours per week on a regular basis, you can either budget for the anticipated overtime or make an adjustment to the hourly rate that keeps the total pay the same or greater after accounting for overtime. If you choose the latter, be certain that you are not inadvertently reducing total pay. You'll want to have a careful conversation with the employee to ensure they understand the change.
- **For nonexempt employees whose workweeks are sometimes above 40 hours and sometimes below**, you may want to look into the **fluctuating workweek method** of calculating overtime. (Link to articles in box below.) It's a little complicated, there are some limitations, and some states don't allow it. If you pursue this option, we suggest consulting with a legal professional.

Shift workloads or schedules

If your reclassification of an employee to nonexempt is likely to result in overtime pay, consider these options to avoid overtime:

- Is it possible to shift some responsibilities to another employee?
- Make some judicious decisions about the employee's workload, finding ways to limit their hours.
- You are allowed to change your workweek. For instance, if extra hours tend to occur on Fridays and Saturdays, your organization's workweek can run from Friday through

Thursday. That way, if some employees put in a lot of hours early in the workweek, their schedule can be adjusted later in the week to help keep hours under 40.

Important! *You may not average hours across workweeks to avoid paying overtime to a nonexempt employee (hourly or salaried). For example, if an employee works 50 hours one week and 30 the next, they are owed 10 hours of overtime pay for the first week.*

Recruit volunteers or hire temporary staff

As alternatives to paying overtime:

- Can volunteers help out with routine tasks or special projects to allow optimal use of staff time?
- Consider hiring temporary workers during busy seasons.

For More Info on Payroll Change Options

- [Paying a Fixed Salary for a Fluctuating Workweek](#)
- [Code of Federal Regulations: Fixed Salary for Fluctuating Hours](#)
- [Can a Part-time Employee Be Paid a Salary?](#)

6. Ensure Ongoing Compliance

Keep appropriate records on all employees

Our [FLSA FAQ](#) describes what records you must keep for exempt and nonexempt employees. (See “What records must we keep?”)

Seek legal counsel as needed

It is beyond the scope of this resource and the expertise of our office to offer customized guidance for every situation or to address state-level considerations. We urge you to consult your own legal professional for assistance.

For More Info on Recordkeeping and Compliance

- [DOL Fact Sheet 21: FLSA Recordkeeping Requirements](#)
- [DOL FLSA Compliance Assistance](#)

7. In Summary

Who is EXEMPT? (These employees don't receive overtime pay.)

1) Ministerial exception

*** This is the one exemption that has no salary requirement. ***

Requirement:

Staff member has **essential religious duties** (See [FLSA FAQ](#) and Section 4, Determine Exemptions, above.)

2) White-collar exemptions

Must meet all 3 of these tests:

1. Paid on a salary basis, AND
2. Salary is at least \$913/week (as of 12/01/16), AND
3. Job duties meet the criteria for the executive, administrative, or professional exemption, as described in our [FLSA FAQ](#).

3) Other exemptions (rare)

There are also exemptions for computer professionals, outside sales, and highly-compensated employees. See the link to the DOL Exemptions fact sheet in Section 4.)

Who is NONEXEMPT? (FLSA overtime rules apply.)

- Any employee not paid on a salary basis**
- Any salaried employee paid less than the salary level needed for exempt status**
- Any salaried employee who does not meet the duties test for an exempt status, even if they meet the salary level test

*** unless they qualify as exempt through the ministerial exception*

Reminders and Clarifications

Please be a faithful employer!

Are your decisions and actions **guided by our values** as well as by the law? As you consider which of your employees can be classified as exempt from FLSA rules, remember that the Fair Labor Standards Act and our Unitarian Universalist principles share the goal of justice for workers. Exemptions do not justify lax recordkeeping or staff exploitation. Do right by your staff.

“Nonexempt” does not mean “non-professional.”

Staff whose positions are reclassified as nonexempt may feel that their job is being “downgraded” in some way. Please be sensitive to this. You can explain that the legal requirements for a position to be considered exempt include a salary threshold that is increasing. The expectations of the job and the value the person brings to it are not changing!

Salaried employees can be either exempt or nonexempt.

Paying someone a salary, by itself, does not mean they are exempt. The position still needs to meet other exemption requirements.

Avoid off-the-clock volunteering.

This is a common malady in all kinds of nonprofits. People are dedicated to the mission – and in the case of congregations, sometimes they are members of the congregation who want to volunteer “as a member.” While an employee-member may feel inclined to put in unpaid time on work-related activities, this is a no-no and a liability risk for the congregation. If your employee-member wants to donate time to the church, it must be in an area entirely unrelated to their responsibilities.

Flex time does not take the place of paying overtime.

Many church employees have flexibility and variation in their work hours. If any nonexempt employee works more than 40 hours in a workweek – whether salaried or hourly, they must receive overtime pay.

Example: A nonexempt hourly employee works 48 hours one week and only 32 hours the following week to offset the extra time worked the week before. Even though the two weeks average out to 40 hours, the employee still gets paid 40 hours of straight time and 8 hours at time-and-a-half for the first week. (And then 32 hours of straight time for the second week.)

Communicate well.

Changes in any kind of job-related matters – pay, hours, expectations – can be a source of anxiety. Think carefully about whom to involve in decision-making and how to communicate with your staff about any changes.

Checklist

- Read our [FLSA FAQ](#) to learn the basics.
- Learn about state (and occasionally local) wage and overtime laws.
- Start with the assumption that all employees are covered by the FLSA.
- Review position descriptions, hours, and pay for all employees.
- Determine who qualifies for the ministerial exception and other exemptions.
- Consider time-tracking for currently exempt employees.
- Make decisions about needed adjustments to FLSA status, pay, and/or staffing – together with staff members as appropriate. Consult a legal expert as needed.
- Communicate well to staff in advance of implementing changes.
- Keep appropriate records for all employees.

While we understand the above information to be correct, the staff of the UUA Office of Church Staff Finances are neither attorneys nor certified tax professionals. We encourage congregations to seek the services of their own legal and tax experts in dealing with unusual cases or individual circumstances.