

Classifying Your Workers: Part II

Exempt or Nonexempt? The Fair Labor Standards Act



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UUA Office of Church Staff Finances



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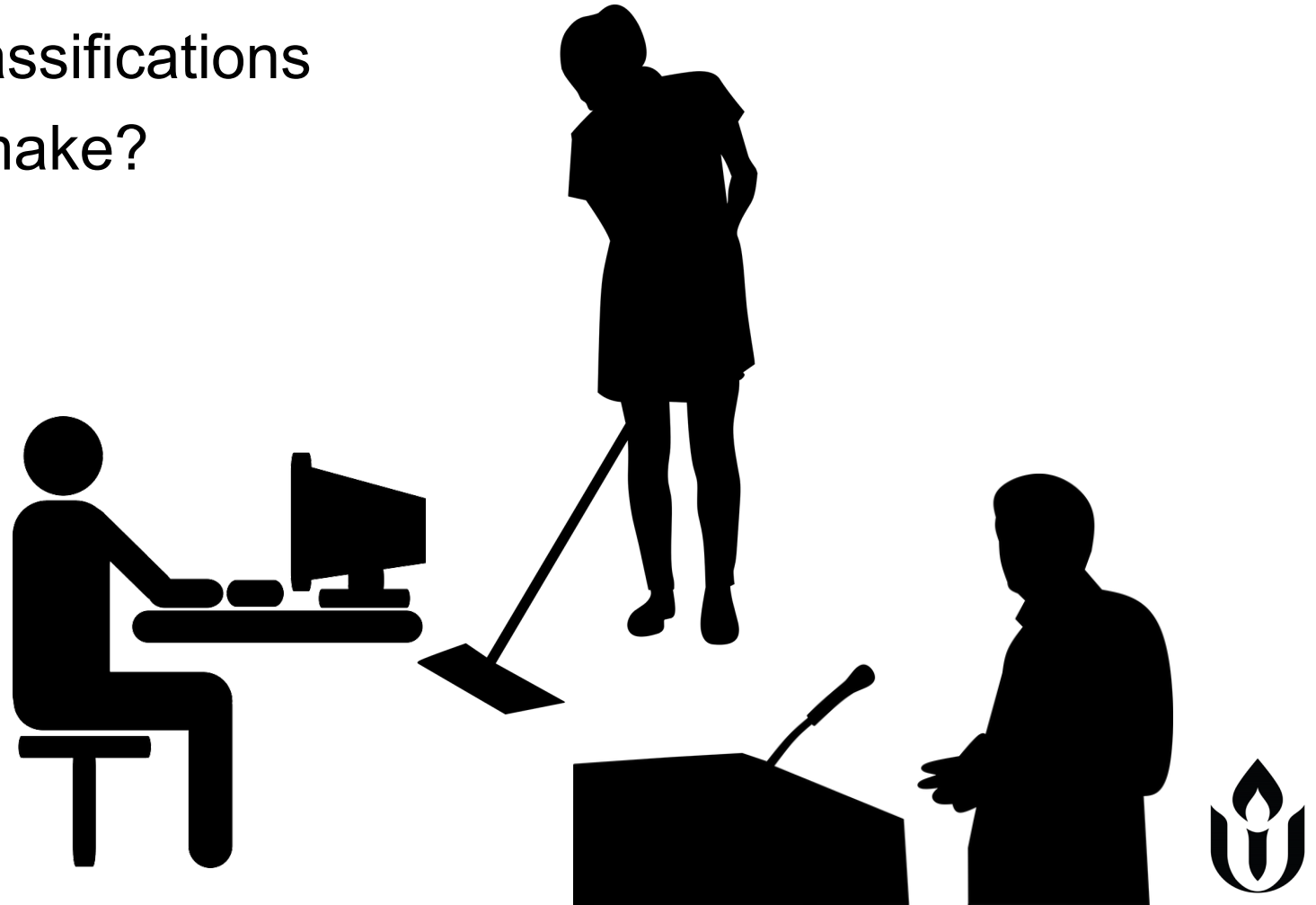
Our Mission

Guided by the values of our faith,
we equip congregations for excellence as employers and their staff for financial competence and well-being.



Exempt or Nonexempt?

- People You Pay: Two Classifications
- What difference does it make?
- Deciding Factors
- State Law
- Ministers
- Other Workers
- Resources



People You Pay

Businesses

Individuals

Independent
Contractors

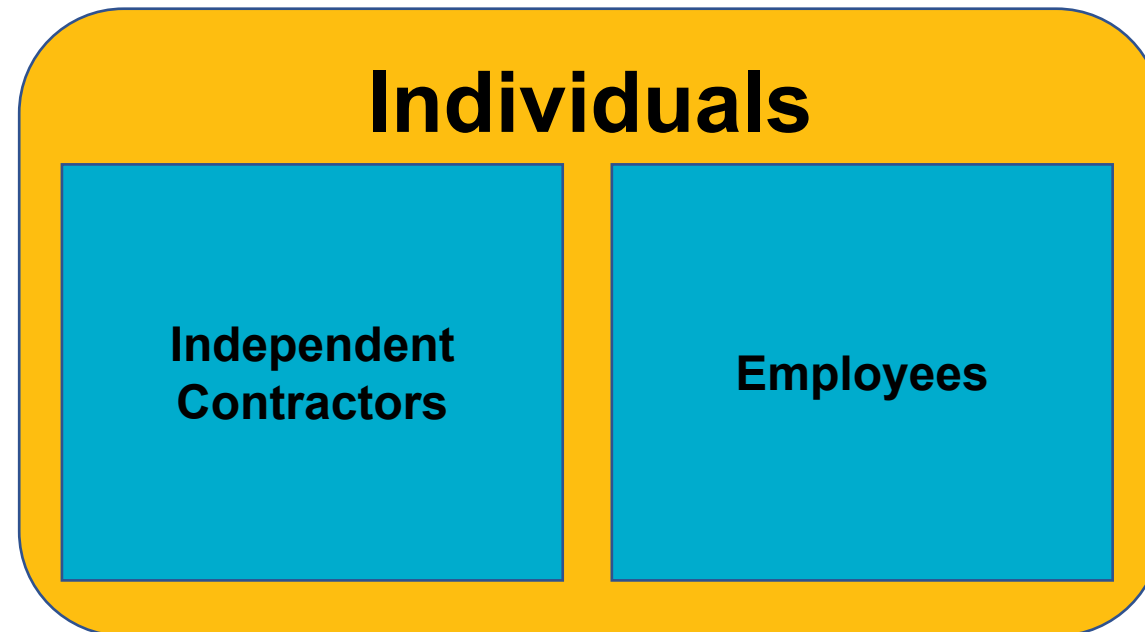
Employees

Exempt

Nonexempt



People You Pay



Most workers in your congregation are *employees*.

The distinction between Employee and Independent Contractor is the topic of Classifying Your Workers, Part I. See resources as part of the Worker Classification LeaderLab article: <https://www.uua.org/leaderlab/worker-classification>.



People You Pay

Individuals

Each of your employees is either exempt or nonexempt.

Employees	
Exempt	Nonexempt



Exempt or Nonexempt

What difference does it make?

1. Recordkeeping requirements
2. Pay: how and how much
3. Treating staff fairly and legally

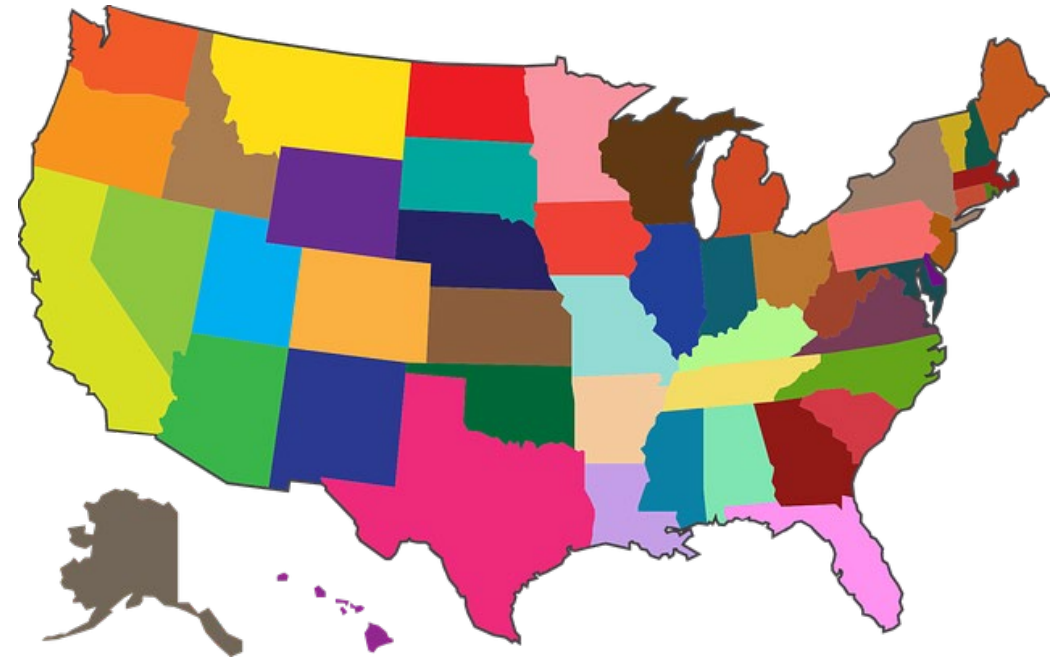


Fair Labor Standards Act (FLSA)

Federal law that protects workers

- Overtime pay
- Minimum wage
- Recordkeeping requirements
- Youth employment restrictions

Most businesses/individuals not protected by FLSA under federal law are still protected under state law.



Related State (and Local) Laws:
Follow whichever is more stringent.



Key Point

The Fair Labor Standards Act protects workers by requiring employers to keep records of hours worked, to pay a minimum wage, and to provide overtime pay.


The FLSA applies to nearly all employees unless they meet the criteria for an exemption.



FLSA Classification

Exempt Staff

- No overtime pay
- Simpler recordkeeping



*Think: the **employer** is exempt from having to follow the rules.*

Nonexempt Staff

- Overtime pay (time-and-a-half) for >40 hours in a workweek*
- Must keep records of total daily and weekly hours worked

*California and possibly other states use stricter OT definition.

*Cannot average hours across workweeks.



FLSA Classification

Nonexempt = the default

Assume an employee is nonexempt
unless you can show that an exemption applies.



Exemptions

White-collar Exemptions

- Executive
- Administrative
- Professional

Each exemption has

- Duties tests (specific to each exemption)
- Salary threshold*

\$684/week (equivalent \$35,568 annually)

Scheduled to increase to \$844/wk (\$43,888/yr) on 07/01/24

Additional increase to \$1,128/wk (\$58,656/yr) on 01/01/25

*Proposed to increase automatically every 3 years after 2025



Salary threshold NOT prorated
for part-time.



Key Point

To be exempt
under one of the FLSA white-collar exemptions,
an employee must meet

duties tests *and* a salary threshold.

Duties tests: specific to Executive, Administrative, and Professional exemptions.

Salary threshold: same for all 3.



Key Point

The weekly salary threshold for FLSA white-collar exemptions is ***not pro-rated*** for part-time staff.



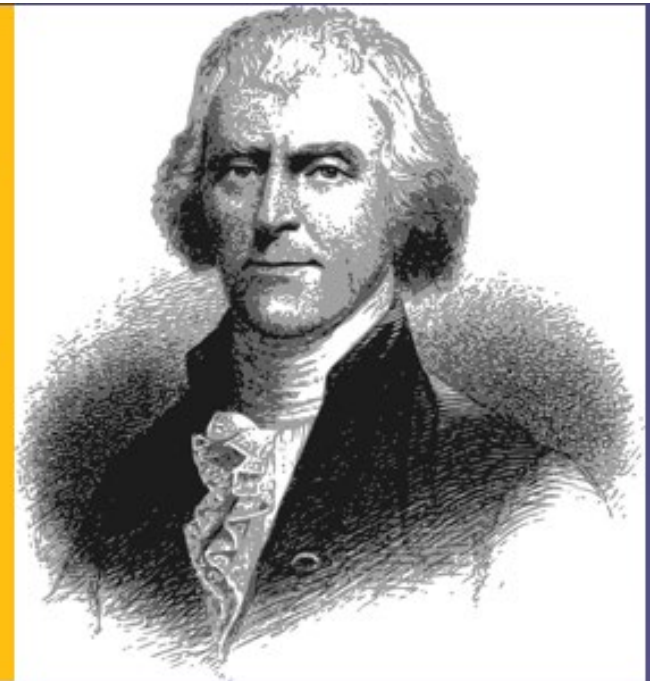
Exemptions

The Ministerial Exception*

- Essential religious duties
- No salary threshold

*Not defined by the FLSA, but consistently upheld by the courts

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."



The Ministerial Exception

Who has essential religious duties?

- Ministers (serving in ministerial capacity)
- Ministerial interns and student ministers
- Based on our read:
 - Staff who have leadership, authority, and decision-making responsibilities within a religious realm of congregational life
 - Guiding questions
 - ✓ Sharing or teaching UUism through their work?
 - ✓ Duties tied to a religious/spiritual aspect of the congregation's mission?
 - ✓ Job description (title/responsibilities) supports “essential religious duties”?



Key Point

For an employee to be exempt under the ministerial exception, they must have **essential religious duties**.

But there's no salary requirement, so the ministerial exception may apply to part-time employees (with essential religious duties) who don't qualify for white-collar exemptions.



Misclassification Risk

How is it discovered?

- Dept of Labor audit
- Worker complaint

What happens?

- Administrative and legal headaches
- Back pay to employee



Related: Salary or Hourly?

Exempt Staff

Must be salaried (consistent paycheck, even if hours vary)

Nonexempt Staff

- Legally can be salaried or hourly (hourly is safest)
- Salaried nonexempt is tricky!
 - ✓ Must still record daily/weekly hours
 - ✓ Ensure minimum wage and overtime pay based on *actual* hours
 - ✓ Complications when actual hours don't match nominal



Key Point

The safest way to pay nonexempt employees is
by the hour.

If salaried, be careful!

Recordkeeping, minimum wage, and OT rules of FLSA still apply.



Fair Labor Standards Act Reminders

1. Assume nonexempt unless exemption criteria clearly met.
2. Keep records of daily/weekly hours for nonexempt staff.
3. White-collar exemptions: duties test and salary threshold.
4. Weekly salary threshold for white-collar exemptions
= \$684/wk as of 01/01/20, increase to \$844/wk on 07/01/24, then \$1,128/wk on 01/01/25
5. Ministerial exception based on “essential religious duties.”
 - Use with care
 - No salary threshold
6. Caution for salaried nonexempt: nonexempt rules still apply.
7. Check your state’s wage and hour law



Fair Labor Standards Act

For More Information

- <https://www.uua.org/leaderlab/worker-classification> (UUA LeaderLab article)
- comp@uua.org
- Your legal and tax professionals*

Thank you for striving for
excellence as an employer!



* The staff of the Office of Church Staff Finances are not certified legal or tax professionals.

