

# Classifying Your Workers: Part II

## Exempt or Nonexempt? The Fair Labor Standards Act



With Jan Gartner

**UUA Office of Church Staff Finances**



# UUA Office of Church Staff Finances

## 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.



Photo: Last Minute Linda

# 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

## Individuals

Independent  
Contractors

Employees

Most workers  
in your  
congregation  
are *employees*.

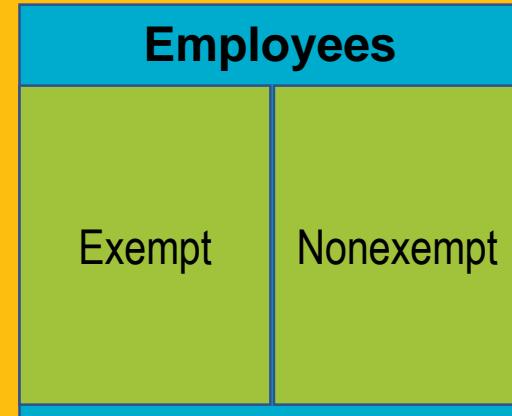
The distinction between Employee and Independent Contractor is the topic of Classifying Your Workers, Part I. See resources for Employee or Independent Contractor LeaderLab article: <https://www.uua.org/leadership/library/employee-or-contractor>.



# People You Pay

## Individuals

Each of your employees is either exempt or nonexempt.



# Exempt or Nonexempt

What difference does it make?

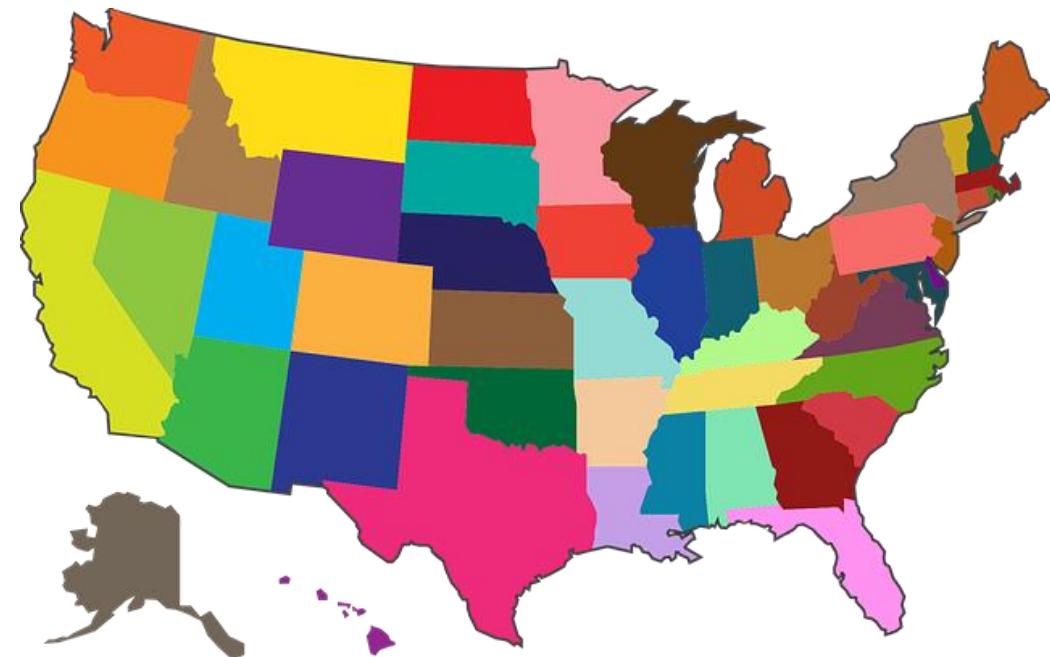
1. Recordkeeping requirements
2. Pay: how and how much
3. Treating staff fairly and legally



# 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 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\*

\$35,568 for year-round position



Salary threshold NOT prorated for part-time.

\*Increased from \$579/week on 01/01/20



# 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.



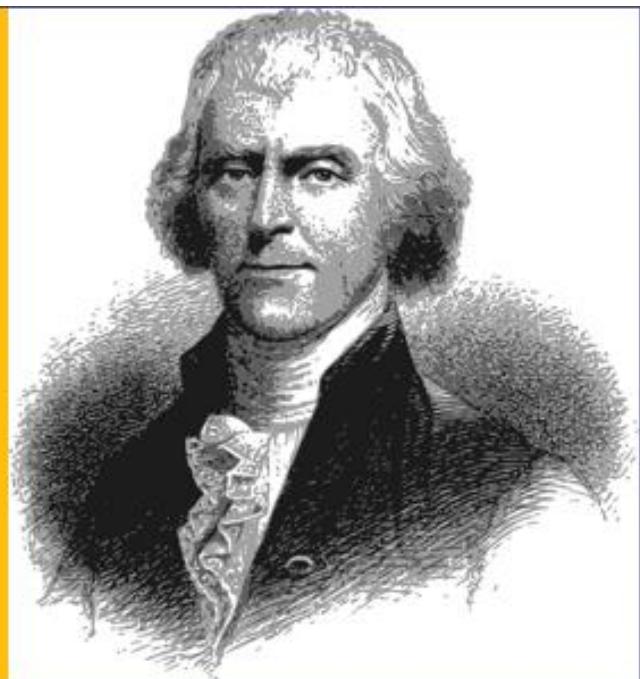
# Exemptions

## The Ministerial Exception\*

- Essential religious duties
- No salary threshold

\*Not part of FLSA

*"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 (as of 01/01/20).
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/leadership/library/fair-labor> (UUA LeaderLab article)
- [comp@uua.org](mailto:comp@uua.org) (generic email for Jan Gartner)
- 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.

