

## **FAQ Series FLSA, Revised October 2019**

**UUA Office of Church Staff Finances**  
24 Farnsworth Street, Boston, MA 02210  
[JGartner@uua.org](mailto:JGartner@uua.org)

Both federal and state laws require most employers to pay their employees minimum wages and overtime. The purpose of this FAQ is to give you basic information about these requirements and to whom they apply in an effort to make sure you are complying with these obligations.

### **What is the Fair Labor Standards Act?**

The Fair Labor Standards Act (FLSA) is a federal law that mandates minimum wage and overtime pay for many employees. This law was designed to **protect employees** by assuring that employers pay eligible employees at least minimum wage for all hours worked and overtime for any hours worked over 40 per week.

### **To which employers and employees does the Fair Labor Standards Act apply?**

#### **Enterprise and Individual Coverage**

The FLSA applies to employees of covered “enterprises” and to employees who are individually engaged in interstate commerce.

Generally speaking, enterprise coverage does not apply to a private, non-profit enterprise where the charitable activities of the non-profit enterprise are not in substantial competition with other businesses. Consequently, the Department of Labor concluded in one situation that a local church that did not receive financial support through any commercial ventures was not covered by the FLSA as an enterprise. (Because schools are covered enterprises, your church may be a covered enterprise if it operates a school, such as a pre-school or primary school – not as a rental but as a ministry of the congregation.)

Although few congregations are covered enterprises, employees of most congregations are likely to be individually covered – and therefore entitled to minimum wage and overtime pay – if they are engaged in interstate commerce, the production of goods for commerce, or activities closely related and directly essential to the production of goods for commerce. Examples of these activities include making/receiving interstate telephone calls, mail, or electronic communications; shipping materials to another state, ordering and/or receiving supplies from out of state; and transporting people to another state. Most congregational staff are individually covered by the FLSA, given the broad interpretation of interstate commerce.

#### **The Ministerial Exception**

There is an ecclesiastical exemption, commonly called the ministerial exception, from coverage under the FLSA as well as comparable state laws. (This is not an FLSA exemption, per se, but rather a consequence of federal court rulings based on the First Amendment.) This means that even if they meet the enterprise or individual coverage definitions, ministers are typically exempt from the FLSA requirements. For FLSA purposes, ministers are defined as employees who regularly perform essential religious duties. Thus, some of our employees who are not titled ministers can fall under this exemption provided that they spend a significant amount of time

performing “essential religious duties.” In other words, their responsibilities must require them to be “involved in the active practice of our faith.” There is no bright line test for this. The U.S. Supreme Court in 2012 held that it depends on a “totality of the circumstances.” Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 132 S.Ct. 694 (2012).

Note that the ministerial exception is applied based on job responsibilities only. Unlike the exemptions described below, the salary level doesn’t matter.

Don’t stop reading here. You must follow both Federal and State law in all employment matters.

## What about state law?

Even if your organization and individual employees are not covered by the FLSA, it is very important to determine whether state requirements regarding minimum wage and overtime apply to your employees. As is the case with most regulations regarding employees, whichever regulation is more favorable to the employee is the one congregations must follow. So if your state has overtime and minimum wage requirements, it is very important to check them to determine whether you must follow the federal or state rules.

For example, Massachusetts minimum wage and overtime requirements apply to anyone engaged in an “occupation,” which is defined as an industry, trade or business, whether operated for profit or otherwise, and any other class of work in which persons are gainfully employed. See M.G.L. c. 151, s. 2. Accordingly, most employers that are not covered as an “enterprise” under the FLSA in Massachusetts will be subject to the local minimum wage and overtime requirements.

## What’s the difference between “exempt” and “nonexempt”?

Employees whose jobs are governed by the FLSA are either "exempt" or "nonexempt." Nonexempt employees are entitled to overtime pay. Exempt employees are not. (Think of it this way: the employer is exempt from having to pay overtime to exempt employees.) Employer record-keeping is required for both classifications, but is much more stringent for nonexempt employees.

For most employees, whether they are exempt or nonexempt depends on:

- (a) how they are paid (the “salary basis test”),
- (b) how much they are paid (the “salary level test”) and
- (c) what kind of work they do (the “duties test”).

To be classified exempt, an employee must meet ALL THREE tests.

- **To meet the “salary basis” test**, an employee must be paid a predetermined and fixed salary from which only limited types of deductions can be made. More about that under the “rules” question.
- **To meet the “salary level test,”** the amount of the salary must meet a certain threshold. For a number of years, this salary threshold has been \$455 per week. (For a full-year position, this is a salary of \$23,600.) **Effective January 1, 2020, this level will increase to \$684/week (\$35,568 annualized).** This weekly pay amount is not prorated for employees who work less than full-time. In other words, a half-time employee still must be paid a salary of at least \$684/week to be correctly classified as exempt. (A part-year employee who meets the weekly test does meet the salary level test during the time employed.)
- **To be exempt, employees must also meet the “job duties” test**, which will be explained below in more detail. Incorrect classification of an employee as “exempt” means you will incur liability for unpaid overtime pay for any hours they work over 40 in a workweek.

## **How can I determine whether our employees are exempt or nonexempt?**

### **Use the Three Tests**

Does your employee pass the “salary basis” test? If so, then look at the salary level. If it is at least \$684/week (as of 01/01/20), then look at the job functions the employee performs to determine whether they meet the “job duties” test.

As a reminder, if you’ve already determined that an employee has job duties that allow you to exempt them through ministerial exception, they need not meet the salary basis, salary level, or any other job duties tests.

### **Job Duties: Executive, Administrative, and Professional Exemptions (often referred to as EAP or “white-collar” exemptions)**

Generally, jobs in our congregations that might fit one of the exemptions will be in the Executive, Administrative, or Professional areas. There are additional exemptions, so if you have other specialized employees, such as computer professionals, you may want to dig more deeply into the FLSA job duties requirements for exemptions.

**The executive exemption** requires that:

- the employee’s primary duties must include managing the congregation;
- they must supervise the equivalent of two or more full-time employees (not volunteers); and
- they must have the authority to hire and fire (or have significant input into that decision)

**The administrative exemption** requires that:

- the employee primarily performs office or non-manual work directly related to the management of the congregation; and
- they regularly exercise independent judgment and discretion regarding matters of significance to the congregation

**The professional exemption** requires that:

- the employee’s primary duties include performing work that requires the application of advanced knowledge;
- this work must be intellectual and require exercise of discretion and judgment;
- the work must be in a recognized field of science or advanced learning;
- the knowledge must come from extensive and specialized instruction offered over a long period, and
- if the profession is creative (e.g., music, art) the work must be characterized by imagination, creativity, originality, or exceptional talent.

## **We have concluded that some of our employees are nonexempt. What are the rules?**

Exempt employees must be paid their regular weekly salary for any week in which they perform any work. There are some deductions from this pay which employer is permitted to make, but deductions based on quality or quantity of work are not permissible.

Nonexempt employees are entitled to minimum wage and overtime pay (time and a half) for all hours over 40 in a workweek. Some states and local jurisdictions have higher minimum wages and stricter overtime pay requirements. Congregations should always comply with those requirements which are more favorable to their employees.

## What records must we keep?

The FLSA **requires** employers to keep records on wages, hours, and other items, as specified in Department of Labor recordkeeping regulations. Most of the information is of the kind generally maintained by employers, either as a normal business practice or as required in order to comply with other regulations. The records do not have to be kept in any particular form and congregations are not required to use time clocks. These records must be preserved for three years.

### For **exempt** employees, the following records must be kept:

1. personal information, including employee's name, home address, occupation, gender, and birth date if under 19 years of age
2. time of day and day of week when the employee workweek begins
3. total wages paid each period
4. date of payment and the pay period covered by each payment
5. you may also track days used for vacation, sick or personal days

### For **nonexempt** employees, the following records must be kept:

1. personal information, including employee's name, home address, occupation, gender, and birth date if under 19 years of age;
2. hour and day when workweek begins;
3. total hours worked each workday and each workweek;
4. total daily or weekly straight-time earnings;
5. regular hourly pay rate for any week when overtime is worked;
6. total overtime pay for the workweek;
7. deductions from or additions to wages;
8. total wages paid each pay period; and
9. date of payment and pay period covered.

## What should we do now?

Given the increase to the exempt salary threshold starting in 2020, the Office of Church Staff Finances (OCSF) recommends that congregations assess the current classifications of all their employees. If any of your existing employees need to be reclassified, now is an excellent time to do it. The [FLSA Compliance Guide](#) available on our [Fair Labor Standards Act](#) webpage walks you through a process to check for compliance and has links to additional resources.

**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.**