

HR Connections

Diocese of Lansing

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The FLSA proposed change to the minimum salary requirement for non-ministerial salaried positions is scheduled to increase on January 1, 2020. This newsletter outlines the changes that will take effect, unless the law changes prior to implementation, on January 1, 2020 and how it will affect our church employees.

The Ministerial Exception and FLSA

Which employees are ministers?

It is important to note that the Church is not exempted from the FLSA. We must adhere to the rules, however certain ministerial positions within the Church are classified as eligible for a “ministerial exception” and therefore the wage and hour component of the law doesn’t apply.

From the Department of Labor Field Handbook:

- *Persons such as nuns, monks, priests, lay brothers, ministers, deacons, and other members of religious orders who serve pursuant to their religious obligations in the schools, hospitals, and other institutions operated by their church or religious order shall not be considered to be “employees.”*

All other non-ministry positions within our parishes will need to be evaluated to determine if the position should be nonexempt from overtime and paid an overtime rate of 1.5 times the hourly rate for all hours worked over 40 in a 7 day week, or exempt from overtime and paid a flat salary. This is determined by applying a duties test to each non-ministry position. I have reviewed and revised several [position description templates](#) on my portion of the website. I will continue to add to the list as I am able.

What are the Duties Tests?

Executive, Administrative, and Professional Duties

The FLSA allows employees to be exempted from overtime if they meet certain tests. Here is a summary of each of the tests that would allow a parish to pay a non-ministry employee a flat salary.

Executive Duties Test

- Must be paid at least **\$684/week or \$35,568/year (effective January 1, 2020)**.

Quick Tips



- Please take the time to fully evaluate and reclassify positions as necessary.
- Link to more resources: www.dioceseoflansing.org/human_resources

- Must be paid a flat salary regardless of the hours worked.
- Primary duty (more than 50% of time) is management of the enterprise or of a customarily recognized department or subdivision;
- Customarily and regularly directs the work of two or more other full time employees; and
- Authority to hire or fire other employees or whose suggestions and recommendations as to hiring, firing, advancement, promotion or other change of status of other employees are given particular weight.

Administrative Duties Test

- Must be paid at least **\$684/week or \$35,568/year (effective January 1, 2020)**.
- Must be paid a flat salary regardless of the hours worked.
- Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.
- Discretion and independent judgment factors include, but are not limited to:
 - Whether the employee has authority to commit the employer in matters that have significant financial impact;
 - Whether the employee has authority to waive or deviate from established policies and procedures without prior approval;
 - Whether the employee has authority to negotiate and bind the company on significant matters;
 - Whether the employee provides consultation or expert advice to management.
- Discretion and independent judgment *does not* include:
 - Applying well-established techniques, procedures or specific standards described in manuals or other sources;
 - Clerical or secretarial work;
 - Recording or tabulating data;
 - Performing mechanical, repetitive, recurrent or routine work.

Learned Professional Duties Test

- Must be paid at least **\$684/week or \$35,568/year (effective January 1, 2020)**.
- Must be paid a flat salary regardless of the hours worked.
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character, and which includes requiring the consistent exercise of discretion and judgment.
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction. This must be a requirement of the job.

Creative Professional Duties Test

- Must be paid at least **\$684/week or \$35,568/year (effective January 1, 2020)**.
- Must be paid a flat salary regardless of the hours worked.
- Primary duty of the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

What Positions Are Exempt from Overtime?

Exempt vs. Nonexempt

Now that we are applying the ministerial exception, let's take a close look at the positions that will be considered exempted or excepted from overtime rules.

Exempted or Excepted from Overtime and Wage and Hour Rules:

- Ministry positions. Ministry descriptions and actual duties must be primarily ministry. The position must have responsibilities/functions that advance the religious mission of the organization. The position is required to be Catholic. The person in the position must be primarily doing at least one or more of the following: teaching the faith, spreading the faith, church governance, supervision of a religious order, or leadership and participation in religious ritual, prayer, and worship. The position must require an educational background in ministry and prior experiences that are ministerial in nature. **Note: Not all church musicians will qualify as ministers.** See http://www.dioceseoflansing.org/hr_position_descriptions for sample position descriptions.
- Teachers who are employed by a bona fide educational institution (our Catholic schools). These positions include: state certified teachers in grades K – 12.
- School Administrators who are employed by a bona fide educational institution. These positions include: principals, assistant principals, academic counselors, curriculum specialists, directors of preschools, and instructional coaches such as tutors and aides as long as they are paid at least the salary of an entry level teacher at the school.

Exempt from Overtime:

- Other school administrators such as Athletic Directors who are paid more than the minimum threshold salary (**\$35,568**) AND who meet the administrative duties tests.
- Other administrative positions such as business managers, human resources personnel, department directors, etc who meet the administrative duties test AND the minimum annual salary threshold of **\$35,568**.

Employees in positions who DO NOT meet the above requirements will need to be reclassified to nonexempt and will need to be paid an overtime rate of 1.5 times their hourly rate for any hours worked over 40 in a 7 day pay week.

Nonexempt from Overtime:

Positions on the payroll such as those listed below that do not meet the EAP duties tests:

- Parish or School Secretary
- Janitor/Custodian
- Maintenance
- Receptionist
- Database Administrator
- Daycare provider
- Preschool/PK/ DK Teachers
- Classroom Aides
- Bookkeeper
- Bulletin Editor
- Payroll Administrator
- Lunchroom/Cafeteria Worker or Supervisor

Employees in these positions and others that do not meet the salary threshold and duties tests will need to be paid an hourly wage for hours worked and paid an overtime rate of 1.5 times their hourly rate for any hours worked over 40 in a 7 day work week. Employees are not allowed to volunteer in their paid positions, nor are they allowed to carry “comp” time into future pay weeks, even within the same pay period.

Fair Labor Standards Act Frequently Asked Questions

1. We have High School Counselor (nonacademic) who chaperones overnight trips and retreats with the youth. If I now have to pay them hourly, how will I pay for these long trips?

All time spent while on an overnight field trip attending to students and/or performing other work (even while eating) is compensable. Time spent not working (resting, sleeping, duty free meal, etc.) is NOT compensable. Example: While on an overnight field trip a non-exempt classified employee attends to students and performs work from 8:00 AM until 4:30 PM with a duty free half hour lunch (8 hours worked). The employee then continues to attend to students while she and the students have dinner and participates in activities from 5:00 PM until 8:00 PM - at which time she is free to do what she likes and retire to her room until the following morning. The employee must be paid for 11.5 hours for this day.

2. Our school secretary is currently paid a salary and is paid year round. How should she correctly be paid?

Secretaries, as with all non-exempt employees, should be paid an hourly wage for hours worked and for paid holidays and according to paid time off policies. To compute an hourly wage for your school secretary, figure out how many hours she works in a year. For example, if she does not work for 8 weeks in the summer, but you pay her holiday pay for two weeks at Christmas and a week at spring break, you would calculate her hourly rate based on 44 weeks x 40 hours/week = 1760 hours per year. If her annual salary is \$25,000 then her new hourly rate will be \$14.20 and she will not receive a paycheck for those eight weeks of the year.

3. Our paid time off schedule is tied to the exempt or nonexempt classification of the employee. For some employees, changing their status means that they will lose a few weeks of vacation pay. How should I handle this?

Because this is a change being imposed by the federal government, you could “grandfather” current employees who are affected by this so that they are able to maintain their current time off balances going forward. That way the only employees affected will be those hired after reclassification. This may also be a good time to revisit your current paid time off policies and determine if you would like to change the policy for all employees for the upcoming fiscal or calendar year.

4. Some of my current salaried employees work through their lunches and often work late into the evenings, sometimes from home. Will I have to pay overtime going forward once they are reclassified?

If you don't already have an overtime policy in place, you will want to put one in place stating that all overtime requires approval in advance. This doesn't get you out of paying the overtime if the employee works it without approval, however it will allow you to discipline an employee who continues to work overtime without getting approval in advance. This new rule will require former salaried employees to change their habits. Working

through lunch and working from home at all hours of the day or night will be compensated time. Employees will need to learn to manage their time so that they are able to get their work done within a 40 hour work week. If they aren't able to do so, the job description should be reviewed to determine if duties should be removed or if the employee needs some volunteer support or needs to attend a time management seminar to better manage his/her time.

5. Can I simply make my employees independent contractors?

Short answer is no. Generally, the majority of the positions we have in our parishes and schools would not qualify as independent contractors. The primary question you must ask regarding whether a position is an independent contractor includes: Does the individual have an established business set up whereby they have other clients? Ex: a bookkeeper who comes to the parish twice per week to pay bills and process payroll. The bookkeeper also serves other clients. In this case, yes, the person is an independent contractor.

6. I've hired an organist who is part time, gets the music for the masses at least a week in advance so she can practice, plays the masses on the weekends, and works as a music professor at a local community college and plays the piano or organ for other churches and events. Can I make her an independent contractor?

This type of work could be contracted work. The position simply plays music that the pastor assigns weekly and the musician is employed elsewhere as her primary source of income. Just be sure to put a contract agreement into place and have me review it before anyone signs it. You could also classify this person as fee for service and pay them as a part time employee.

7. What if my hourly employee works on a paid holiday? Example: My maintenance worker clears snow on Christmas Day.

You will want to establish a policy for this. A sound policy would be to pay the employee their 8 hours of holiday pay and time and a half for the hours they work on the paid holiday.

8. Can my parish secretary volunteer as a Sacristan or a Lector on Sundays or will I have to pay her for those hours?

An employee may volunteer his/her time for the employer so long as: the employer does not request, or otherwise direct, the employee to volunteer; the work the employee performs is not the same type that constitutes his/her normal work activity; and the work is performed outside the employee's normal working hours. In the absence of any of these factors, the volunteer work that the employee is performing is working time and must be paid.

9. We have a gift shop at our parish and often have volunteers help run it. Is that allowed?

According to the FLSA, if an individual volunteers in a part of a non-profit that engages in commercial business and serves the public by exchanging money for goods or services (such as retail stores and other businesses); those workers won't be deemed volunteers. Rather, they'll be considered employees subject to the minimum wage and overtime wage requirements of the FLSA.

10. My Business Manager who will have to be reclassified as hourly serves on a diocesan committee and has to drive to Lansing every so often for meetings. If he's now an hourly employee, do I have to pay him to attend those meetings? What about travel time?

Nonexempt employees must be paid for their time attending any committee meetings that their supervisor approved and for the travel time for business trips and meetings. For a one day assignment, all travel time is compensable if the nonexempt employee travels to a location in another city. However the employer may exclude the employee's normal daily commute time as well as any bona fide meal periods.

11. I am planning to take several staff to a conference next month. If my employees are hourly, will I have to pay them for the hours they are there?

Yes, all hourly employees that the employer asks to attend the conference will need to be paid for their hours in attendance. To avoid overtime I suggest adjusting the hourly employees' schedules during the 7 day pay week by reducing their hours on other days to avoid overtime pay.

12. What if my hourly employee takes 8 hours of vacation time but then has a total of 45 hours in the week? Do I have to pay five hours of overtime even though they took a vacation day?

*Nonexempt employees are only paid overtime for **hours worked** over 40. In this case, the employee took 8 hours of vacation, so they only worked a total of 37 hours. Therefore they would be paid 8 hours of vacation and 37 hours of straight time, no overtime pay. However the employee needs to reduce their vacation time to 3 hours rather than 8 to save some vacation time and still get paid for their maximum 40 hours in a week. If you allow them to tack on vacation or sick time beyond their 40 hours they will essentially add extra paid days to their pay over the course of a year.*

13. Can I have salaried, non-exempt employees and how would that work?

Yes, you may have salaried non-exempt employees and pay them under the \$35,568 year threshold. The employee will need to have a set work schedule, the salary will need to equal at least minimum wage, and the employee will need to turn in timesheets so that if they go over 40 hours in a week they will be paid overtime. This type of classification works well for employees who will most likely never reach 40 hours in a week. Example: Receptionist who works part time (15 hrs/week and 35 weeks per year) for \$10,000. Just be sure they turn in a time sheet each pay period so that the employer has a record of hours worked and can calculate minimum wage as well as overtime if necessary.

14. Are the Preschool/PK/DK teachers who teach in the classroom exempt like the school teachers are?

In order to be exempted from the wage and hour portion of the law, teachers have to be "bona fide teachers" working in a "bona fide educational establishment." The term "educational establishment" under the statute means elementary or secondary schools that provide elementary or secondary education, as determined under State law. This includes the curriculums in grades K through 12. Preschools in the state of Michigan are not considered part of elementary schools and the "teachers" working there are not considered teachers like those in K – 12 grades. Preschool/PK/DK/JK Young Fives teachers should be paid an hourly rate and scheduled so that they don't go over 40 hours worked in a week or you will need to pay them overtime.

15. Why can't we simply allow our employees to carry "comp time" when they go over 40 hours in a week to use at a later date?

The FLSA doesn't allow non-profit or private sector employees to carry comp time. We are required to pay overtime at 1.5 times the employee's hourly wage for any hours worked over 40 in a payweek.

16. How do we determine a pay week?

A payweek is a fixed and regularly recurring period comprised of seven 24 hour periods. They cannot fluctuate from week to week. The employer must establish the payweek for the employees when payroll cycles are established. For example, the payweek at the diocese starts on Saturday and ends on Friday. If an employee works an event on a Saturday and a Sunday, that is the beginning of the payweek. They would have until Friday to adjust their work schedule (if possible) so that they don't go over 40 hours during that payweek.

17. I'm hiring someone in the middle of the year in a position that meets one of the white collar exemptions and there's no way they are going to meet the \$35,568 annual salary threshold this year, but they will next year. Does that mean I will have to pay them hourly?

No. The FLSA has a weekly threshold of \$684/week. As long as the salaried employee meets that threshold AND the duties test, they can be exempted from overtime pay.

18. If I hire someone part time, is the FLSA salary threshold adjusted to accommodate the part time schedule?

No. The salary threshold requirement is not adjusted or pro-rated for part time workers.

19. Can I count the cost of benefits in the employee's salary? For example, if we pay 75% of the health insurance and we pay into the pension can I add that to their salary?

No. The only extra income that can be accounted for as salary is non-discretionary commission and bonuses (such as longevity bonuses) that account for up to 10% of the salary; these types of income may be added to meet the minimum threshold.

20. I have a full time teacher who also serves as a part time coach after school. Do I have to pay him hourly for his coaching duties?

No. Since his primary duties are as a full time teacher and he is exempt from the FLSA wage and hour requirements, the hours he spends coaching also falls under the exemption. You may pay him additional lump sum wages in his salary for the time spent coaching but the hours are not overtime eligible. This advice may be applied to any additional part time duties given to a full time teacher.

21. What about my volunteer coaches who get a "stipend" for their seasonal coaching?

The Department of Labor in an opinion letter dated in 2005 stated that volunteer coaches may receive a nominal fee, or a stipend, for their volunteer duties as long as the "nominal fee is not a substitute for compensation and must not be tied to productivity." 29 CFR §553.106(e). The coach must not be paid more if he/she works more hours or extends the season by making the playoffs. The "stipend" must not be tied to the team performance (wins vs. losses) nor the hours the coach puts in, but must simply be considered a nominal fee for the volunteerism. According to Congressional guidelines (29 USC § 213(c)(6)(G)) insubstantial or nominal fees can be determined by a 20% test; As long as the stipend for your coaches is at or below 20% of the current salary of a full time coach in the same position in your district it can be considered a nominal fee for volunteering and they aren't subject to wage and hour laws. However you will need to reflect their pay through your payroll and provide a W-2.

22. We have a number of roles in the parish where we have volunteers who help and we give them a small stipend. Is that okay?

The same rules apply to all volunteers who are paid a stipend as I outlined with the coaches in the previous question. The stipend must be nominal and must not be tied to performance. Ideally the stipend is paid in one lump sum or broken out into a couple of sums, but not paid along with the regular payroll. It cannot appear to be compensation.

23. We have a full time librarian on staff who teaches the children how to use the library. Is she a teacher?

Probably not, unless the librarian is teaching, is certified to teach in Michigan, is being observed and evaluated like all other teachers, and has a contract like all other teachers, then she is a teacher and is exempt from the FLSA. However if there are variances in the librarian position as compared to teachers, then the position needs to be classified as nonexempt and paid overtime for any hours worked over 40 in a work week.

24. What do I do when my hourly employee refuses to document her hours worked over 40 in a work week. She says she doesn't mind putting in the extra hours and it is her contribution back to the Church. Can I have her sign a waiver for overtime?

The FLSA will not permit an employee to waive their overtime pay or to donate extra hours worked. This is a performance issue that must be addressed with the employee. If they continue to violate the statute you can discipline them.

25. We have a number of volunteers who help with the fundraising efforts at our school and parish. They run our school SCRIP program, help at the parish festival, school spaghetti dinner, and in a variety of other ways. Are they subject to FLSA rules?

No, they are not subject to the FLSA rules. You may give them nominal non-cash thank you gifts for their service without having to report it as taxable income and the hours they work as volunteers are not subject to wage and hour requirements.