NEW OVERTIME RULES AFFECT YOU AND YOUR EMPLOYEES

EFFECTIVE JANUARY 1, 2020

What is FLSA?
What changes have been made?
How it affects you (Why you need to care)?

Presented by the Offices of Human Resources and Legal Services

ARCHDIOCESE OF
NEW ORLEANS

UPDATED for January 2020 FLSA Rules
**WHAT IS FLSA?**

• **Fair Labor Standards Act (FLSA)**

The Fair Labor Standards Act | FLSA is a federal law which establishes minimum wage, overtime pay eligibility, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments.
The Fair Labor Standards Act | FLSA distinguishes between those who are owed overtime, and those who are not under the act:

1. Non-exempt employees
2. Exempt employees
These employees are *not exempt* from getting overtime. They *ARE* due overtime pay.

Non-exempt employees are entitled to overtime pay for all hours worked over 40 hours in a workweek.

1 ½ times their hourly rate for any hours over 40 worked
These employees are *exempt* from getting overtime pay, regardless of how many hours they work.

There are several different reasons an employee may be exempt, which will be covered later in this presentation.

The designation of ‘exempt’ or ‘non-exempt’ is not an indicator of either the importance of the job or the value of the employee. *(Example: Movie theatre workers are exempt; licensed nurses are not)*
WHAT IS THE OVERTIME RULE?

- The FLSA requires that most employees be paid at least 1.5 times their regular rate of pay for any hours they work beyond 40 in a work week.

- Each work week stands on its own for overtime purposes.

- However, the “white collar exemptions” to the FLSA exclude certain executive, administrative, and professional employees from federal minimum wage and overtime requirements.
## EXEMPTIONS

<table>
<thead>
<tr>
<th>EXECUTIVE:</th>
<th>ADMINISTRATIVE:</th>
</tr>
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<tbody>
<tr>
<td>1. Primary duty of management</td>
<td>1. Primary duty of office work</td>
</tr>
<tr>
<td>2. Must possess the authority to hire, fire, or otherwise affect the status of other employees or to recommend such actions</td>
<td>2. Directly related to the management or general business operations of the employer or the employer’s customers</td>
</tr>
<tr>
<td>3. Regularly directs two or more employees</td>
<td>3. Regularly exercises discretion and independent judgment</td>
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<tr>
<td>4. Paid on salary basis</td>
<td>4. May be paid on salary or fee basis</td>
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</tbody>
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UPDATED for January 2020 FLSA Rules
## Exemptions, Cntd.

<table>
<thead>
<tr>
<th><strong>Education Administrators:</strong></th>
<th><strong>Learned Professionals:</strong></th>
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<tbody>
<tr>
<td>1. Salary of at least the current minimum, or not less than entrance salary for teachers</td>
<td>1. Primary duty is performing work that requires advanced knowledge in a field of science or learning</td>
</tr>
<tr>
<td>2. Primary duty of performing administrative functions directly related to academic instruction or training in an educational establishment</td>
<td>2. Knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction</td>
</tr>
<tr>
<td>3. Does not include jobs directly related to instruction (though other exemptions may apply)</td>
<td>3. May be paid on salary or fee basis</td>
</tr>
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*Updated for January 2020 FLSA Rules*
<table>
<thead>
<tr>
<th>TEACHERS, DOCTORS, LAWYERS:</th>
<th>HIGHLY COMPENSATED EMPLOYEES:</th>
</tr>
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<tbody>
<tr>
<td>1. No minimum under FLSA</td>
<td>1. The minimum salary for employees exempt under the “highly compensated” employee exemption will increase to $107,432 from $100,000.</td>
</tr>
<tr>
<td>2. State Law specific (In other words, these exemptions are for the FEDERAL law—FLSA—but state laws may require otherwise)</td>
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# Exemptions, Cntd.

**Other Specific (Odd) Exempt Employees:**

1. Movie theatre workers;
2. Rail and air carriers;
3. Certain forestry workers;
4. Certain fruit and vegetable transportation workers;
5. Taxi drivers;
6. Farm equipment, trailer, boat or aircraft salesmen or mechanics;
7. **Live-in** domestic help;
8. Raw poultry or dairy buyers;
9. Maple sap processing workers;
10. Agricultural reservoir workers;
11. Fisher (wo)men.
12. Seasonal
WHAT WERE THE OLD REGULATIONS?

• **Who previously qualified for overtime exemption?**
  - Minimum Salary: $455 per week ($23,600 annually)
  - Meets the ‘Duties Test’
  - An employee who is paid on a salary basis if s/he has a "guaranteed minimum" amount of money s/he can count on receiving for any work week in which s/he performs "any" work.

• **Who was exempt?**
  - Highly compensated employees who earn more than $100,000 per year were exempt
  - Specific exempt job duties (executive; learned professional, administrative; educational administrators; teachers, doctors, lawyers)
NEW Minimum Salary:

$684 per week ($35,568 annually)

- Index set at the 40th percentile of weekly earning of full-time salaried (non-hourly) workers in the lowest-wage Census region

Use of incentive to meet salary threshold (i.e., bonuses and commission)

- Allows non-discretionary bonuses, incentive payments and commissions to be included
  - Up to 10% of salary, if paid at least quarterly
  - Must pay 90% of salary each week
    - ($615.60/week, $31,831.20 annually)
<table>
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<th>OLD RULE:</th>
<th>NEW RULE:</th>
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<tr>
<td>- Must earn $455/week ($23,660/year)</td>
<td>- Must earn $684/week ($35,568/year)</td>
</tr>
<tr>
<td>- Salary amount is fixed</td>
<td>- Must pass the duties and salary tests</td>
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<td>- Must pass the duties and salary tests</td>
<td>- Bonuses and commissions can be used to meet threshold</td>
</tr>
</tbody>
</table>
Three tests must be met for the FLSA’s exemption to apply

1. **Salary Basis Test**: The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity or work performed.

2. **Salary Level Test**: The amount of salary paid must meet a minimum specified amount ($684 week, $35,568/year)

3. **Duties Test**: The employee’s job duties must primarily involve executive, administrative, or professional duties as defined by the regulations.
WHEN DO THE NEW REGULATIONS GO INTO EFFECT?

January 1, 2020
The Archdiocese strongly recommends for all entities to be compliant by December 1, 2019
The changes will make 35% of all full-time, salaried workers eligible for overtime based on their pay.

The Department of Labor (DOL) expects 4.2 million jobs will be reclassified.

A $1.2 billion pay increase for workers is expected.
51% of full time salaried workers in Louisiana will be affected by this new rule.
IT WILL AFFECT YOU (and us) AS AN EMPLOYER

- Schools
- Administrative offices
- Nursing homes
- Healthcare facilities
- School Food and Nutrition
- Church offices
WHO DOES THIS RULE APPLY TO AT YOUR SITE?

- Administrative assistants
- Secretaries
- Teacher’s assistants
- School counselors
- Licensed practical nurses
- Cafeteria workers
- Cafeteria managers
WHO IS **EXEMPT** FROM THE OVERTIME RULE?

- **Volunteers**
  - *But beware if the volunteer is also an employee. Document!*
- **Religious** [*Ministerial Exemption]*
  - *Which may include *employees hired for religious jobs.*
- **Teachers**
- **Certified athletic trainers**
- **Lawyers**
- **Doctors, registered nurses, registered/certified medical technologists, certified physicians assistants**

**Archdiocese of New Orleans**

*UPDATED for January 2020 FLSA Rules*
A volunteer is an individual who “without promise or expectation of compensation, but solely for his personal purpose or pleasure, worked in activities carried on by other persons either for their pleasure or profit”

How to distinguish between an employee and a volunteer:
- Volunteers normally serve on a part-time basis and should not displace employees or perform work that would otherwise typically be performed by employees.
- Have them sign a form acknowledging that they are volunteering and will receive no compensation.
  - Documentation such as a Volunteer Agreement
- An employee cannot volunteer to do the same job and in the same capacity for which they are employed
- Example: A maintenance worker volunteering for an event should not empty trash cans, but should be assigned a task not generally performed during his/her job, like selling raffle tickets.
- Think about galas, parish fairs, ordinations.
What is a religious employee?

- 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," and therefore are exempt.

- Ministerial exception (CYO? ORE? Schools?)
  1. Employed by religious institution?
  2. Chosen for position based "largely on religious criteria"
  3. Perform some religious duties and responsibilities
• Teachers under contract receiving a salary are exempt from this rule.

• Teacher’s assistants are normally not exempt.
WHAT DID NOT CHANGE?

• Rules for determining non-exempt status:
  - Salary Basis test
  - Job Duties test

• Those not affected by this ruling:
  - Hourly workers
  - Workers with regular workweeks of 40 or fewer hours
  - Workers who fail the duties test

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The method for compliance is entirely within each employer’s discretion. The Department of Labor does not dictate or recommend any method.*
EVALUATING CURRENT EXEMPT JOBS

- **Pull compensation information**
  - Identify all exempt employees paid below $684/week ($35,568 annualized)
  - Identify all exempt employees paid just above the threshold

- For those that are below, analyze what it would cost to push their salary over the threshold. Look for justification as you compare duties, responsibilities and equality to other employees.

- Does it make fiscal sense to ‘bump up’ some salaries? Calculate the cost of overtime.
1. **Classify all positions**
   - Salary basis test
   - Salary level test
   - Duties test

2. **Communicate with staff re/ changes**
   - Explain FLSA
   - Consider employee morale
   - Stress the importance of accurately recording time
   - Reorganize workloads or adjust schedules (flex time)
   - Consider adjusting pay

3. **Plan implementation**
   - Update comp plans (flex time)
   - Review and update accurate timekeeping and payroll policies and procedures
   - Establish a set workweek
   - Communicate best practices for recording hours worked
   - Train managers and supervisors

4. **Implement**
   - Communicate
   - Monitor compliance

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PLANNING THE LOGISTICS OF IMPLEMENTATION:

- How will employees track time?
- How will employer monitor employee's time and control overtime?
- Determine whether it makes sense to bump someone’s pay.
- Communicate BEFORE implementation.
- Designate someone to handle all questions by employees. Keep lines of communication open.
- Remind employees that this change will affect a majority of employees in Louisiana and that it does NOT reflect on an employee’s worth or value to the organization.
These are only federal cases, not counting the state court cases.

The 2016-2017 estimates will be off the charts after the new overtime rule takes affect.
• “I will have a policy that states that no overtime is permitted. Furthermore, if anyone works overtime, they will not be paid overtime because our policy forbids it”
  ○ This is ILLEGAL! Why? Because employers are required to pay overtime under the law.

• If an employee works overtime, authorized or not, policy or no policy banning the working of overtime, YOU MUST PAY THEM OVERTIME under the FSLA.

• **So how do I prevent overtime?**
  1. Supervise hours; review time cards
  2. Communicate and remind employee of policy
  3. Formal written warnings
  4. Discipline employee

**PRACTICAL GUIDANCE**
POSSIBLE PENALTIES FOR NON-COMPLIANCE

- Complaint to DOL can trigger compliance check on entire payroll for the last two years.
- DOL will demand restitution of wages for all violations found.
- Employer is liable for unpaid minimum wage, overtime compensation and liquidated damages.
- Civil penalties can be up to $2,014 per violation, *which includes penalties for failure to keep proper records.*
- Criminal fines of $10,000 and prosecution.
- Employee may also privately sue, recover double unpaid wages up to three years, attorney’s fees and court costs.
- **Most importantly, it’s the right thing to do.**

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RECENT NOLA HEADLINES

OCT. 2, 2019
OVERTIME VIOLATION

Uptown New Orleans restaurant ordered to pay $238,300 overtime wages to employees
BY DOUG MACKASH | STAFF WRITER OCT 2, 2019 - 11:00 AM

SEPT. 26, 2019
CHILD LABOR VIOLATION

Jacques-Imo’s fined $55,000 for child labor law violation after 13-year-old severely burned
BY DOUG MACKASH | STAFF WRITER SEPT 26, 2019 - 3:15 PM

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DOL FINDINGS

SUPERIOR SEAFOOD

- DOL Finding Published Sept. 30, 2019
- FAILURE TO PROPERLY PAY OVERTIME

JAQUES IMOS

- DOL Finding Published Sept. 24, 2019
- MINOR LABOR VIOLATION

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Reminder of Related Issues

- Paying employees at least current minimum wage of $7.25/hour (established in 2009 law)
- Updating handbooks to include new and relevant information.

https://nolacatholic.org/hr-downloads
GOOD TIME TO **HEED OTHER REQUIREMENTS**

**EMPLOYEE RIGHTS**
UNDER THE FAIR LABOR STANDARDS ACT

**FEDERAL MINIMUM WAGE**

$7.25 PER HOUR

BEGINNING JULY 24, 2009

The law requires employers to display this poster where employees can readily see it.

**OVERTIME PAY**
At least 1.5 times the regular rate of pay for all hours worked over 40 in a workweek.

**CHILD LABOR**
An employee must be at least 16 years old to work in non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. However, at 14 or 15 years old, they may work in school hours in various non-manufacturing, non-mining, non-marine jobs with certain work hour restrictions. Different rules apply in agriculture employment.

**TIP CREDIT**

Employees of “tipped-employees” who meet certain conditions may claim a partial wage credit based on tips received by them. Employees must pay tipped employees a cash wage of at least $2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee’s tip credit combined with the employee’s cash wage is at least $2.13 per hour does not equal the minimum hourly wage, the employer must make up the difference.

**NURSING MOTHERS**

The FLSA requires employers to provide reasonable break time for a nursing mother employee who is breastfeeding her child for one year after the child’s birth. The employer is required to provide a place, other than a bathroom, that is close to her work area and is free from view and free from interruption from coworkers and the public, which may reasonably be occupied by the employee to express breast milk.

**ENFORCEMENT**

The Department has the authority to recover back wages and an equal amount in liquidated damages in cases of minimum wage, overtime, and other violations. The Department may initiate and/or recommend criminal prosecution. Employees may be assessed civil money penalties for each willful or repeat violation of the minimum wage or overtime pay provisions of the law.

In some instances, the Department may also be assessed civil money penalties for violations of the FLSA’s child labor provisions. Significant civil money penalties may be assessed for each child labor violation that results in the death or serious injury of any minor employee, and such assessments may be doubled when the violations are determined to be willful or repeat.

**ADDITIONAL INFORMATION**

- Certain occupations and establishments are exempt from the minimum wage and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of the Puerto Rico.
- Some state laws provide greater employee protections; employees must comply with both.
- Some employees incorrectly classified as independent contractors when they are actually employees under the FLSA. It is important to know the difference between the two because employers (usually exempt) are entitled to the FLSA’s minimum wage and overtime pay protections and correctly classified independent contractors are not.
- Certain full-time students, student interns, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

Displaying of posters as required by law in common employee areas

- These are available on the Archdiocese HR home page under “Required Workplace Posters” and at
  - [www.dol.gov/whd/resources/posters.htm](http://www.dol.gov/whd/resources/posters.htm)

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• *Break Time for Nursing Mothers

• *Paid short break “reasonable period”

• **FULL POSTER**

*Note to Smaller Entities:

If an employer has fewer than 50 employees AND can demonstrate that compliance with this law would impose an undue hardship on the employer, that employer does not have to provide nursing breaks.
DOL WEBSITE RESOURCES

WATCH & LEARN VIDEO SERIES

- Short FLSA compliance ‘Videos’ on the Wage & Hour Division Website.

Watch and Learn - FLSA Compliance Videos

Learn about Fair Labor Standards Act (FLSA) requirements simply by viewing our new series of short COMPLIANCE VIDEOS.

These brief, plain-language explanations of FLSA requirements strip away the “legalese” and provide employers the basic information they need to understand their obligations and to comply with the law.

We consulted a variety of employers and other stakeholders during the production of these FLSA tutorials, and incorporated their feedback to provide these user-friendly, straightforward primers, delivered in a language and format that’s engaging and easy to understand.

Add this page to your favorites and check back often. Additional videos explaining even more FLSA topics are coming soon!

VIDEO LIBRARY:

- **Topic 1: Coverage** – Does the Fair Labor Standards Act (FLSA) apply to my business?
- **Topic 2: Minimum Wage** – What minimum wage requirements apply to my business?
- **Topic 3: Deductions** – Can I charge my employees for uniforms or other business expenses?
- **Topic 4: Hours Worked** – Do I have to pay for that time?
- **Topic 5: Overtime** – When do I owe overtime compensation, and how do I pay it correctly?

UPDATE for January 2020 FLSA Rules
Please reference our UPDATED Detailed FAQ’s

• CLICK HERE for ‘Frequently Asked Questions’ in our ANO Programs & Ministries
Remember, we are all facing these changes together and have a team [NOT] working overtime ready with answers.

*Help is a call away:*

1. Contact your site’s HR person
2. Contact Archdiocese of New Orleans HR team
3. Contact Accounting Office of the Archdiocese
4. Contact the CFO or
   Financial team of the Archdiocese
5. Contact General Counsel

*thank you*