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The Fair Labor Standards Act (FLSA)

- The FLSA was enacted in 1938
- The FLSA covers several workplace matters, including:
  - Minimum Wage Rate
  - Overtime
  - Employment/Use of Interns & Volunteers
The Fair Labor Standards Act (FLSA)

- **Overtime Under the FLSA**
  - Employees not covered by the FLSA (Exempt from the Act)
  - Those who *are* covered by the FLSA (*Exempt or Nonexempt from Overtime*)

  **Exempt** = Salaried Employees* who meet required $$Pay and Duties Test
  - No entitlement to overtime/compensatory time

  **Nonexempt** = Hourly Workers*
  - Work performed > 40 hours/week = overtime
  - Overtime is paid @ **Time and a half for hours over 40 per work week**

* It is advisable to avoid the use of the terms “hourly or “salaried”
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- Regardless of salary, the FLSA exempts the following categories of employees from coverage of the Act:
  - Clergy*
  - Religious*
  - Teachers (including substitutes and tutors)
  - Coaches who spend much time teaching athletes

* - Unless working in a non-ministerial capacity
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How does the DOL decide if an employee is Exempt?

- Step 1 - Salary Test - objective criteria
- Step 2 - Duties Test - subjective
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Exempt from the FLSA?

Step 1 - SALARY TEST

CHANGE EFFECTIVE Jan. 1, 2020:
Minimum salary level for Exemption...

From: To:
$455/week $684/week
$23,660/year $35,568/year
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Exempt from the FLSA?

Step 2 - DUTIES TEST – Assuming SALARY TEST is met:

- **Executive Exemption**
  - Primary duty - Manage entity’s general business operations
  - Supervise > 2 employees - exercise significant HR authority

- **Administrative Exemption**
  - Office/non-manual work related to business operations
  - Apply discretion and independent judgment

- **Professional Exemption**
  - Work requires advanced science or specialized knowledge acquired by a prolonged course of specialized intellectual instruction.
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Options for the currently Exempt positions that are affected?

- Retain current Exemptions
  - Pay the new minimum salary ($35,568)
  - Cost may be prohibitive for many jobs

- Convert current Exempt jobs with full-time annual salaries below $35,568 to Nonexempt
  - Risk of overtime obligations
  - **Accounting and documentation of work hours required**
  - Need for widespread understanding
  - All work performed is compensable
The Fair Labor Standards Act (FLSA) Strategies to Consider:

- **Establish a standard work week** and communicate it to staff (Recommend biweekly cycle with Sunday to Saturday work week)

- **Document and track work hours and leave** → Timesheets

- **Enact restrictions** on any work >40 hours/week without express permission – should be in writing

**Time-shifting** (allowing employees to change work days/ hours within the week to avoid the obligation of overtime)

- **Designate a “timekeeper”** whose job it is to collect and document/enter work data for payroll purposes.
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Concern Areas:

- Volunteering Time
- No “Comp” (Compensatory) Time
- Donating Overtime
- Working from Home
- Extended working hours for special events
- Travel and Overnight Activities
- Multiple Jobs – Joint Employment
Overtime: >40 Hours - Two Different Jobs

A **joint employer relationship** may result in overtime when:

- 2 or more jobs with employers that are not “sufficiently disassociated”; or
- One employer is under **common control** with other employer

▶ Need to check to see if your Parishes with Schools are “sufficiently associated”

▶ **When the 2 jobs are different, the “primary duty” governs FLSA status**

- **Example #1:** Employee is a Teacher at the Parish School and is an after care worker at the school
  - Primary duty must be determined (usually teaching = Exempt).
- **Example #2:** Employee is secretary for Parish and after care worker for School

▶ Both jobs are Nonexempt, but with different pay rates

- Calculate a “regular hourly rate”
How Standardized Payroll Can Help

Run payroll reports.

Your target individuals are:

- Individuals who need to make $684 a week
- Individuals who need to make $1368 bi-weekly

Review job descriptions and ensure that the duties tests is being met.
Priorities

Educate Business Managers/Pastors on FLSA
- Who’s Eligible for Overtime
- Emphasize Accurate Job Descriptions

Provide Strategy for January 1 Reclassifications
- Refer to Duties Test, Fact Sheets
- Most Cases = Track Hours & Pay Overtime
Educate on FLSA

Business Managers, Principals & Pastors need to learn the FLSA pieces that apply to the situations they supervise.

Exempt/Hourly need to understand what FLSA means to them.

Exempt = No Overtime

Classifications determined from actual work and duties test (no change/update to this)
Communication, Communication, Communication!!!

Ongoing communication

Education must be part of the process

Education and Communication need to be made available at every level and through various media