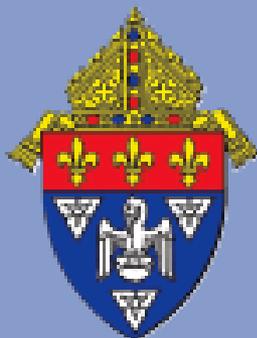


OVERTIME RULES that AFFECT YOU AND YOUR EMPLOYEES



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

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Revised 2017

WHAT IS 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.



TWO TYPES OF EMPLOYEES



1. Non-exempt employees
2. Exempt employees



NON-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 1/2 times their hourly rate for any hours over 40 worked).



EXEMPT EMPLOYEES



- These employees are exempt from getting overtime pay, however 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



EXECUTIVE:

1. Primary duty of management
2. Must possess the authority to hire, fire, or otherwise affect the status of other employees or to recommend such actions
3. Regularly directs two or more employees
4. Paid on salary basis

ADMINISTRATIVE:

1. Primary duty of office work
2. Directly related to the management or general business operations of the employer or the employer's customers
3. Regularly exercises discretion and independent judgment
4. May be paid on salary or fee basis



EXEMPTIONS, CNTD.



EDUCATION ADMINISTRATORS:

1. Salary of at least the current minimum, *or* not less than entrance salary for teachers
2. Primary duty of performing administrative functions directly related to academic instruction or training in an educational establishment
3. Does *not* include jobs directly related to instruction (though other exemptions may apply)

LEARNED PROFESSIONALS:

1. Primary duty is performing work that requires advanced knowledge in a field of science or learning
2. Knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction
3. May be paid on salary or fee basis



EXEMPTIONS, CNTD.



TEACHERS, DOCTORS, LAWYERS:

1. No minimum under FLSA
2. State Law specific (In other words, these exemptions are for the FEDERAL law—FSLA—but state laws may require otherwise)

HIGHLY COMPENSATED EMPLOYEES:

1. The minimum salary for employees exempt under the “highly compensated” employee exemption will increase to \$134,004 from \$100,000.



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.



WHAT ARE THE CURRENT REGULATIONS?



- Who qualifies for overtime?
 - Minimum Salary: \$455 per week (\$23,600 annually)
 - 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)



WHAT ARE THE KEY CHANGES IN THE *PROPOSED* REGULATIONS?

OVERTURNED:



Did NOT Go Into Effect!

- Minimum salary: \$913 per week (\$47,476 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 (\$821.70/week, \$42,728.40 annually)
- Automatic increases every 3 years
 - There will be a 180 days' notice of the new rate



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OLD vs. NEW:



CURRENT RULE: STILL EFFECTIVE!

- Must earn \$455/week (\$23,660/year)
- Salary amount is fixed
- Must pass the duties and salary tests

PROPOSED RULE: OVERTURNED!

- *Must earn \$913/week (\$47,476/year)*
- *Salary amount will be adjusted every 3 years*
- Must pass the duties and salary tests
- Bonuses and commissions can be used to meet threshold



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THE THREE TESTS TO DETERMINE EXEMPTION



- 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 of work performed.
 - 2. **Salary Level Test**: The amount of salary paid must meet a minimum specified amount (check FLSA Fact Sheet),
 - 3. **Duties Test**: The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations.



WHEN DO THESE REGULATIONS GO INTO EFFECT?



*Did NOT go into effect:
December 1, 2016*



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The Archdiocese strongly
recommends for all entities to be
compliant by
October 1, 2016.



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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.

WHO WILL THESE CHANGES AFFECT?

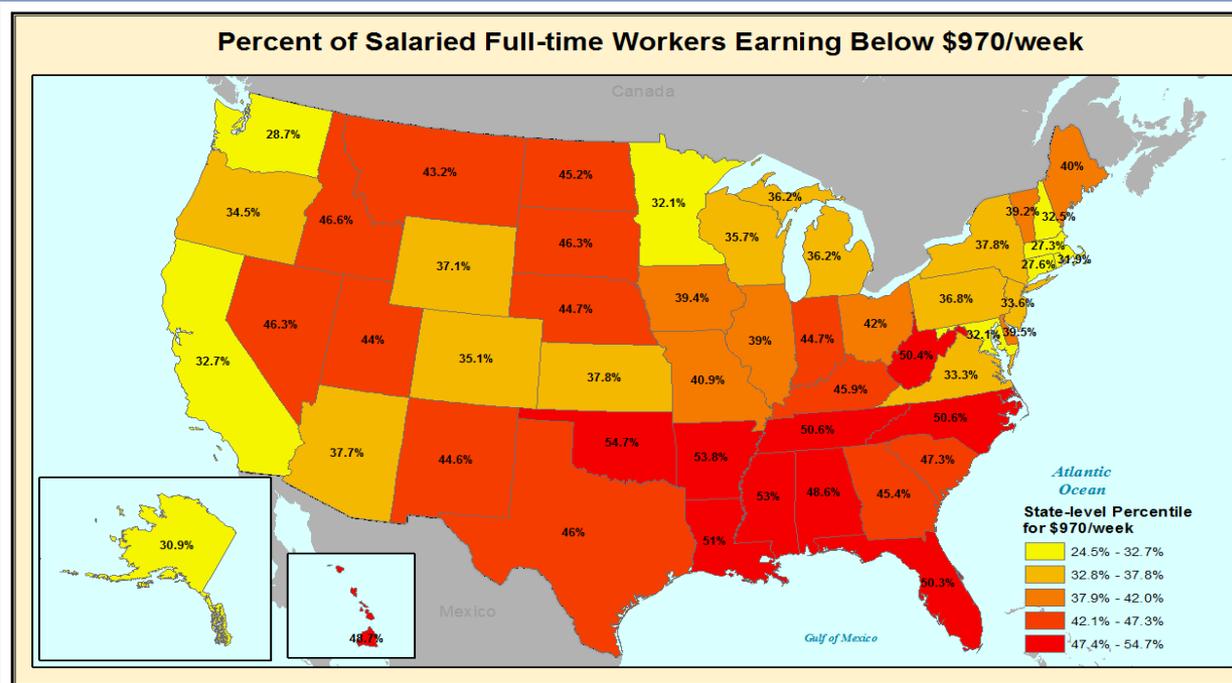


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HOW LOUISIANA WILL BE AFFECTED



- 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 THIS OVERTIME RULE?



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



WHO IS A VOLUNTEER?



- 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



- Teachers under contract receiving a salary are exempt from this rule.
- Teacher's assistants are not normally exempt.



WHAT THINGS 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



OPTIONS FOR COMPLIANCE



What are an employer's options for compliance?

Raise salaries to maintain exemption (Salary 'bump')

Pay non-exempt employees hourly

Pay current salaries, with overtime after 40 hours

Reorganize workloads, adjust schedules or spread work hours

Combination of actions

****The method for compliance is entirely within each employer's discretion. The Department of Labor does not dictate or recommend any method.****



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EVALUATING CURRENT EXEMPT JOBS



- Pull compensation information
 - Identify all exempt employees paid below \$913/week (\$47,476 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.



STEPS TO TAKE TOWARD IMPLEMENTING THESE CHANGES

1. Classify all employees

- Salary basis test
- Salary level test
- Duties test

2. Communicate to employees

- 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



PLANNING THE LOGISTICS OF IMPLEMENTATION:

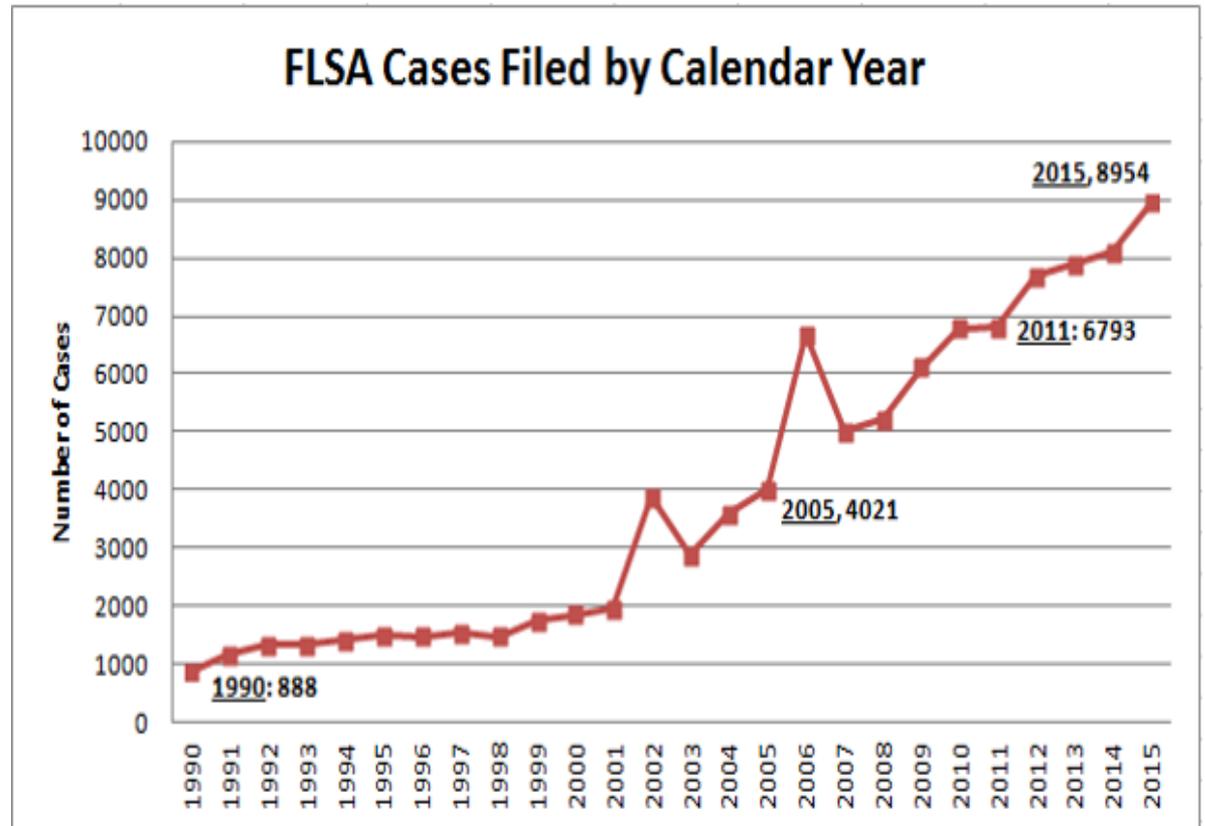


- How will employees track time?
- How will employer monitor employee's time and control overtime?
- Determine whether it makes sense to bump someone's pay.
- Communicate BEFORE implementation.
- Designate someone to handle all questions by employees. Keep lines of communication open.
- Remind employees 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.





WHY IT'S IMPORTANT TO *COMMUNICATE* TO EMPLOYEES



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.



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PRACTICAL GUIDANCE



- “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



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 \$1,000 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.



GOOD TIME TO HEED OTHER REQUIREMENTS



Reminder of related issues:

- Paying employees at least current minimum wage of \$7.25/hour (established in 2009 law)
 - Louisiana legislature contemplating establishing and raising minimum wage to \$8.00/hour. We will keep you advised on this matter as it progresses.
- Displaying of posters as requires 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 and http://www.laworks.net/downloads/downloads_posters.asp.
- Updating handbooks to include new and relevant information.



QUESTIONS



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.

