

the Deacon's Bench

ON THE WEB

Learn more by visiting
www.BrotherhoodMutual.com.



Fall 2016 | For America's Churches and Related Ministries from Brotherhood Mutual and Its Agents

Earnings	
Regular	15.00
Overtime	22.50/hr
Bonus	--
Commission	--
Deductions	
Statutory	
Federal Income Tax	
Social Security Tax	
Medicare Tax	
State Income Tax	
Local Tax / SDI	
Other	
401(k)	
Medical	
Dental	
Life	



Jean, the church administrator at Prairie View Community Church, faced a dilemma. Al, the head custodian, was preparing to retire, so Jean was updating the job description for the upcoming hiring process.

When she got to the "FLSA" heading in the job description, Jean hesitated. The job had been listed as "non-exempt" in the past, but she wanted to be sure this classification was still correct. She had never actually had to apply the Fair Labor Standards Act, though she'd studied it years ago. Did this law even apply to her church?

"The FLSA was created primarily for businesses, but it does apply to many ministries," says Kathleen Turpin, vice president, human resources, at Brotherhood Mutual. "The law covers minimum wage, overtime, paying minors, and other issues."

OVERTIME PAY

FOLLOW THE RULES WHEN
MINISTRY GOES OVERTIME

Misapplying the FLSA could lead to costly consequences. To help reduce your ministry's liability, take steps to understand and follow the law's requirements. These five questions can help you along the way:

1. Does the FLSA apply to my ministry?

Many ministries employ at least one person who may be subject to the FLSA. To find out if the law applies to your ministry, evaluate based on two tests:

The Enterprise Test. Organizations that meet the enterprise test are required to follow the FLSA for all of their employees, unless exemptions apply to individual employees. Several types of organizations are always subject to enterprise coverage—these organizations include hospitals, medical and nursing facilities, schools, and preschools.

Other organizations meet the enterprise test if they:

- Have at least two employees engaging in interstate commerce, and
- Generate at least \$500,000 per year in sales or receipts.

Generally, the federal government doesn't consider churches to be enterprises. Church employees usually aren't performing a "business purpose" within the law's meaning. In most cases, non-profit organizations' income



"The FLSA was created primarily for businesses, but it does apply to many ministries."

**—Kathleen Turpin
VP-Human Resources
Brotherhood Mutual**

from contributions, membership fees, dues, and donations used for charitable activities don't count toward the \$500,000 threshold. However, some churches can qualify as enterprises if they operate a "named enterprise," such as a school or preschool.

Even if a ministry does not qualify as an enterprise, FLSA requirements may still apply to employees individually.

The Individual Test. Courts evaluate individual coverage on a case-by-case basis. Regulators determine whether or not the individual employee is "engaged in interstate commerce" on a "regular and recurrent" basis. Courts interpret the phrase "interstate commerce" very broadly. If ministry employees participate in any of the following activities regularly, they probably engage in interstate commerce:

- Ordering teaching materials or other supplies from out of state.
- Mailing newsletters or other information to people out of state.
- Traveling to other states for work purposes.
- Maintaining a website from which people from out of state may order items.

There's no clear definition of what "regular and recurrent" means. The U.S. Department of Labor Wage and Hour Division indicates that it will investigate each situation individually. To protect your ministry against FLSA-related lawsuits, it's best to assume that individuals are covered by the FLSA unless an exemption applies.

2. Are there individual exemptions?

Yes. Clergy members are not specifically exempted from the FLSA, but many courts have recognized a “ministerial exception” from wage and hour laws. The FLSA explicitly exempts school teachers. For more information on who qualifies as ministers and teachers, see the article on page 6.

In addition, the FLSA exempts other types of employees. Many of these exemptions are referred to as white-collar exemptions.

To qualify for a white-collar exemption, an individual generally must pass all three of the following tests. If an employee fails any one of them, the person likely is a non-exempt worker who is entitled to earn the minimum wage and overtime pay. The three tests are:



The Salary Basis Test. Employees must earn a salary—a guaranteed minimum amount of money that will be paid in any week that the person performs any work, regardless of the quality or quantity.

The Salary Level Test. As of December 1, 2016, employees must earn at least \$913 per week (\$47,476 for a full-year worker). The federal government will adjust this salary level every three years.

The Duties Test. Employees must perform certain job duties to qualify for an exemption. Job titles are irrelevant to the duties test.

Several types of duties can qualify an employee for a white-collar exemption. For ministries, common exempt duties include executive, administrative, learned professional, creative professional, and computer professional.

To qualify as an executive employee, the position must require the employee to:

- Primarily perform management duties.
- Regularly supervise at least two full-time equivalent employees (not volunteers).

- Have authority or significant influence in hiring, firing, discipline, and promotion decisions affecting employees.

To qualify as an administrative employee, the position must require the employee to:

- Primarily perform office or non-manual work related to the ministry’s management or business operations. Examples may include business administrators, daycare directors, and bookstore managers.
- Use “discretion and independent judgment” in making decisions regarding significant matters. Most support staff and clerical workers don’t meet this standard.

To qualify as a learned professional, the position must require the employee to:

- Do work requiring advanced knowledge in a field of science or learning, such as theology, teaching, accounting, or law.

To qualify as a creative professional, the position must require the employee to:

- Do work involving invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor. Examples may include musicians, writers, and actors.

There is also an exemption for computer employees. See the article on page 5 to learn more about this exemption.

Employees who pass all three tests—salary basis, salary level, and duties—can be classified as “exempt” and do not need to be paid overtime rates for working more than 40 hours in a week.

As a general rule, consult a locally licensed attorney before concluding that your organization and its employees need not comply with wage and hour rules.

3. What does the FLSA require?

To help your ministry follow FLSA requirements, classify employees into one of two categories and pay them accordingly:

- **Non-exempt.** These employees must be paid at least the minimum wage for normal working hours. They also must be paid overtime rates worth at least 1 ½ times their regular hourly wage if they work more than 40 hours in a week.
- **Exempt.** These employees fit the legal criteria for an exemption. They don't need to be paid overtime, regardless of how many hours they work.

Some states and communities have even stricter minimum wage and overtime rules. For example, many states have a higher minimum wage than the one required by the federal government. Your state labor office can provide information about these rules.

4. What are the consequences for violations?

Employers who violate the FLSA could be ordered to pay overtime that would have been due for the past few years,

as well as civil and criminal penalties. If a court concludes that an employer skirted the law intentionally, penalties could include fines of up to \$10,000 for each violation.

Most wage and hour claims are excluded from insurance coverage, so employers could be responsible for paying not only a judgment, but also legal expenses.

5. How can I reduce my liability?

It's a good idea to seek assistance from a local attorney before making a final determination about applying any exemptions to workers in your ministry. When in doubt, it's safer to classify employees as non-exempt.

Also, if someone brings a compensation-related lawsuit against your ministry, accurate records can help confirm what happened. To learn more about which records to keep, see the article on page 7. 📖



**THE NEW
OVERTIME
RULES COULD
COST YOU**

WANT MORE INFORMATION?
Download our FLSA Risk Assessment Worksheet at www.BrotherhoodMutual.com/FLSA



THE COMPUTER EMPLOYEE EXEMPTION

This exemption is unique among the FLSA's white-collar exemptions. To qualify, an employee must meet the following three tests:

1. Hourly Wage or Salary Basis Test. A skilled computer employee can earn either an hourly wage or a salary. If salaried, the employee must receive a predetermined amount of pay for any week in which work is performed, regardless of the quality or quantity of the work.

2. Hourly Wage or Salary Level Test. Beginning December 1, 2016, a skilled computer worker must earn an hourly wage of at least \$27.63 or a weekly salary of at least \$913 to qualify for the exemption. Compensation may be paid biweekly, semimonthly, or monthly. Check with your state's labor office to see if your state has rules that govern pay frequency.

3. Duties Test. To qualify for this exemption, the employee's primary duty must consist of:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.
- The design, development, documentation, analysis, creation, testing, or modification of computer

systems or programs, including prototypes, based on and related to user or system design specifications.

- The design, documentation, testing, creation, or modification of computer programs related to machine operating systems.

Computer systems analysts, computer programmers, software engineers, or similarly skilled workers in information technology may qualify for this exemption.

Employees who manufacture or repair computer hardware and related equipment don't qualify for this exemption. Nor do those whose work is highly dependent upon, or facilitated by, computers or software programs.

An employee must pass all three tests to qualify for the computer employee exemption. The consequences of misapplying this exemption can be costly. Seek a local attorney's assistance when considering these questions and before making a final determination. 🏠



EXCEPTIONS AND EXEMPTIONS: MINISTERS AND TEACHERS

When it comes to wage and hour laws, classifying workers as ministers or teachers may not be as simple as it seems. Here's what your ministry should know.

Ministers

Several courts have created a "ministerial exception" that exempts clergy from wage and hour laws, including minimum wage and overtime pay requirements. Generally, the ministerial exception is intended to apply to pastors, ministers, or other employees who are ordained or who function in a similar religious capacity.

Courts have used different criteria to evaluate who should be considered a minister for purposes of the exception. Criteria that courts have considered include:

- Whether the religious institution made its decision to hire the individual based largely on religious criteria.
- Whether the individual is authorized to perform ceremonies of the church.
- Whether the ministry recognizes the individual as a clergy member.
- Whether the person engages in ecclesiastical or religious activities and attends to the religious needs of the faithful as part of the job function.
- Whether the position requires the individual to complete a formal process such as ordination, licensure, divinity degree, etc., in order to perform the position.

This is not an exhaustive list. Courts have considered additional criteria when evaluating whether a person should be considered a minister for the purposes of the exception.

Based on the above criteria, custodial staff, secretarial staff, and others whose jobs primarily support ministry work (as opposed to performing the ministry work itself) likely won't be considered ministers for purposes of the exception. Employees who don't qualify for the ministerial exception should be classified as exempt or non-exempt, according to FLSA rules.

Teachers

Teachers are exempt from the FLSA minimum wage and overtime requirements if their primary duty is teaching, tutoring, instructing, or lecturing as an employee at an educational establishment. According to the U.S. Department of Labor (DOL), teachers include, but are not limited to:

- Regular academic teachers.
- Kindergarten or nursery school teachers.
- Teachers of gifted or disabled children.
- Professors.
- Adjunct instructors.
- Teachers of skilled and semi-skilled trades and occupations.
- Home economics teachers.
- Vocal or instrument music teachers.

- Athletic coaches and assistant coaches (under certain circumstances).

Classifying preschool employees may be more difficult, but the employee's duties are the deciding factor. According to the DOL, "Although a preschool may engage in some educational activities, preschool employees whose primary duty is to care for the physical needs of the facility's children would not meet the requirements for the exemption as a bona fide teacher."

Remember, the FLSA salary level and salary basis requirements do not apply to teachers. However, some states have their own salary requirements that do apply to teachers.

Consult a locally licensed attorney for help in understanding and following the laws that apply to your ministry, and which ministry employees qualify for the ministerial exception. 🏛️

FLSA CHANGES ARE COMING

MAKE SURE YOU'RE READY

Keeping up with payroll tax laws can be a full-time job. Let us help. We work exclusively with churches and related ministries like yours, so you can spend less time buried in paperwork and more time focusing on ministry.

Call 866.215.5540
or visit
ministryworks.com

MinistryWorks®
by Brotherhood Mutual



WHAT ABOUT RECORDKEEPING?

While it's a good idea to keep records for all employees, the FLSA requires employers to maintain at least the following information for all non-exempt employees:

- Employee's full name, Social Security number, and address.
- Birth date (if younger than 19), gender, and occupation.
- Time and day of week when employee's work week begins.
- Hours worked each day.
- Total hours worked each work week.
- Basis on which employee's wages are paid (e.g., hourly, weekly, etc.)
- Regular hourly pay rate.
- Total daily or weekly straight-time earnings.
- Total overtime earnings for the work week.
- All additions to, or deductions from, the employee's wages.
- Total wages paid each pay period.
- Date of payment and the pay period covered by the payment.

There's no government-mandated form for these records, but the law requires that the data be accurate.

In addition, certain records must be kept for specific amounts of time. For example, employers must retain payroll records, collective bargaining agreements, and sales and purchase records for at least three years. A longer retention period could be required by state or local laws, so ask a locally licensed attorney for guidance. Be sure to store these records in a secure location to protect employees' personal information.



6400 Brotherhood Way
P.O. Box 2227
Fort Wayne, IN 46801-2227

Presorted Standard
U.S. Postage
PAID
Fort Wayne, IN
Permit No. 760

the Deacon's Bench

On the Web

Download our sample
Document Retention Schedule
to help you tame overflowing
file cabinets.

In this issue



cover



p5



p6



p7

The Deacon's Bench is a quarterly newsletter created for churches and related ministries. It's published by the Corporate Communications Department of Brotherhood Mutual Insurance Company. Copyright © 2016

Writer: Dan Watson
Design: Tim Baron
Editor: Dan Watson
Managing Editor: Lacy Cripe

The Deacon's Bench, Vol. 28, Issue 3
Brotherhood Mutual Insurance Company
6400 Brotherhood Way, P.O. Box 2227,
Fort Wayne, IN 46801-2227. 800.333.3735

OVERTIME PAY
Decipher and follow employment rules.

COMPUTER EXEMPTION
Learn about a unique FLSA exemption.

MINISTERS AND TEACHERS
Who fits the law's description?

KEEPING RECORDS
Paperwork can verify pay practices.

Feeling social? Find us:

