

The Fair Labor Standards Act

AN EXCEPTIONAL CHALLENGE



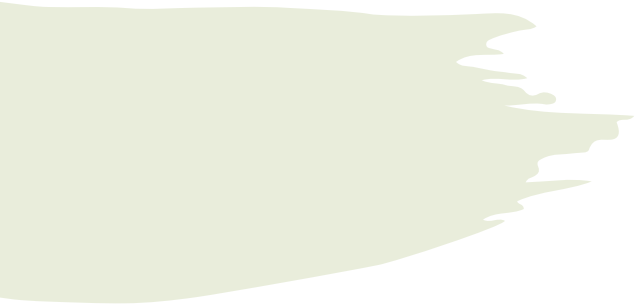
At least **4 million workers** are expected to be impacted by 2025.

\$1.5 billion in wealth from employers to employees in the first year



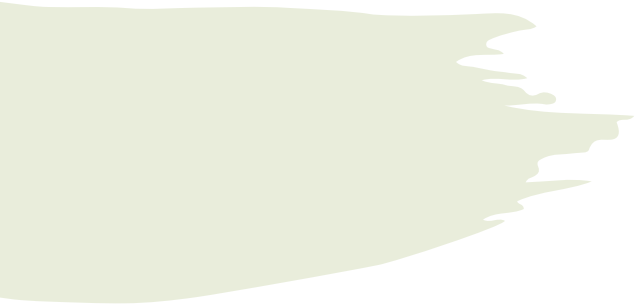
Is my organization covered by FLSA

- [Breaking down your nonprofit's obligation to pay overtime | National Council of Nonprofits](#)



A nonprofit is subject to enterprise coverage under the FLSA if it engages in “ordinary commercial activities” that generate at least \$500,000 in annual gross sales or revenue.

This test does not count revenue from contributions, donations, and membership fees or dues (except to the extent the membership fees or dues represent payment for a benefit of more than token value).



Employees of a nonprofit will have individual coverage under the FLSA “if they are individually engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production.”

“For example, if an employee regularly calls an out-of-state store and uses a credit card to purchase food for a non-profit that provides free meals for the homeless, that employee is protected by the FLSA on an individual basis, even though the non-profit may not be covered as an enterprise.”

Department of
Labor seems more
inclined to protect
workers than not.





FLSA Definitions

- Minimum wage (\$7.25)
- Overtime pay to employees who work more than **40 hours** at a rate of at least **1.5 times** of regular pay rate
- Exemptions



Exempt Employees
No overtime and minimum
weekly salary

Non-Exempt Employees
Overtime and minimum
hourly wage
“Suffered and Permitted”

3 Part Test



Salary



Minimum Salary –
\$35,568



Duties

Executive:

manage people or tasks, have authority to hire and fire, and use discretion in their decision-making.

Administrative:

perform office or non-manual work related to management/general business operations, exercise independent judgment, and use discretion.

Professional:

primary duty requires advanced knowledge in a field of science or learning, and who consistently exercise discretion and judgment.

Outside Sales:

primary duty is making sales or securing orders for services or products while they are away from the employer's worksite.

Computer Employees:

perform computer work like system analysis, programming, or operation.

Messy Example: Managerial Employees:

- A fast-food restaurant manager spends **90%** of their day running a cash register and making hamburgers is **not** an exempt employee.
- A fast-food manager who spends **60%** of their day handling employee issues, scheduling, hiring and firing, and other managerial tasks and **40%** of her time running a cash register and making hamburgers **is** an exempt employee.

A decorative graphic on the left side of the slide, consisting of a solid green rectangular area at the top left, which transitions into a jagged, leaf-like or feather-like shape extending downwards and to the right. The shape is filled with a lighter shade of green, creating a layered effect.

Bonuses

Employers can use bonuses and incentive pay (including commissions) to satisfy up to 10% of the standard salary level.

Highly- Compensated Workers

- Normally, high salary automatically exempt.
- The Department is increasing the HCE total annual compensation threshold to the annualized weekly earnings amount of the 85th percentile of full-time salaried workers nationally from \$107,432 to \$151,164.
- Not our focus today

TIMELINE

23 Apr. 2024

New Rules Announced

1 Jan. 2025

The level automatically increase to \$1,128 per week/ \$58,656 per year

1 July 2024

The minimum exempt employees set at \$844 per week/ \$43,888 per year

1 July 2027

Salary thresholds automatically adjusted every three years to reflect changes in worker pay

Possible Delays

Political

Litigation

The Basic Plan

1

Compile a list of all exempt employees

2

Identify what employees are above and below the new thresholds

3

Determine how many hours employees below the threshold are working

4

Consider your options



Option 1: Compliance

- Raise pay for all exempt employees
 - Can your organization afford this?
 - Raise Revenue or cut other expenses
 - How will this make other employees feel?



Option 2: Transition

- Evaluate employees who are under-threshold to determine whether it is better to transition to non-exempt (hourly employee)
 - Can your organization afford this?
 - Raise Revenue or cut other expenses
 - How will this make the employee feel?
 - How will the other employees feel?
 - How accurate is our estimate of hours worked?

Math Example for Status Quo

- Employee makes \$43,000 and works an average of 45 hours as exempt employee.
- Could pay the employee \$18 per hour resulting into a total compensation of \$42,750 but requires 5 hours overtime each week.

Option 3: Transition with twist

- Transition employee to hourly but keep pay at equivalent with no authorized overtime
- Use volunteers and other employees to make up work
 - How will employee feel?
 - Can task really be delegated?
 - Will employee work uncompensated hours? Does this create litigation exposure?
 - Will new leaders emerge?
 - What happens if employee works overtime anyway?



Math Example

- Employee makes \$43,000 and works an average of 45 hours as exempt employee.
- Could pay the employee \$21.50 per hour resulting into a total compensation of \$43,000. Prohibit overtime.
- Require that any overtime must be receive written approval

Common Challenges

Labor Market is changing

Organization culture is at risk

Need to do more with less

Donors may not to see additional value

Increasing compensation and resetting expectations

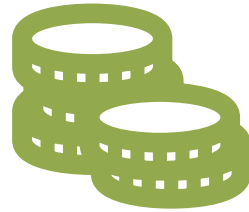
Employee may not want raise

Non-compliance can result in fines (\$1000 per violation for not paying overtime)

Myths



Employees can
choose lower salary



Employees can
choose to not get
paid overtime



Employees can
volunteer to do their
job after hours

New Opportunities

Increased emphasis on volunteers can promote long-term health

Identify underutilized exempt (and non-exempt) staff

Better salary may attract more qualified applicants

Develop employee gift programs

Communicate, Communicate, Communicate

- Begin the dialogue now
- Communicate the what and the why
- Emphasize positives – overtime earnings, better work/life balance
- Be flexible
- Obtain legal counsel review



Independent Contractor

The nature and degree of the worker's control over the work;

The worker's opportunity for profit or loss;

Investments by the worker and the potential employer;

The degree of permanence of the work relationship;

The extent to which the work performed is an integral part of the potential employer's business; and

The worker's skill and initiative.