

Overtime Updates and Resources

By Ted R. Batson, Jr., Partner and Tax Counsel

With the recent changes to the overtime rule, it's essential for nonprofits to understand the requirements and maintain compliance. We have gathered some information and resources to help.

A Look at What Changed

One of the provisions of the federal [Fair Labor Standards Act \(FLSA\)](#) is that non-exempt employees must receive overtime pay for any hours worked beyond 40 in a workweek, calculated at a rate of at least one and a half times their regular pay rate. This rule applies to most private-sector employees and those in federal, state, and government positions. It takes precedence over state and local wage laws unless those laws provide greater employee protections.

Certain categories of employees are exempt from these overtime provisions. The most common exemptions apply to executive, administrative, and professional employees, although there are other exemptions that apply to specific categories of employees. The Evangelical Council for Financial Accountability (ECFA) provides a helpful e-book, [Answering Your Overtime Questions](#), that explains these exemptions and other compliance considerations for churches and ministries.

A U.S. Department of Labor (DOL) rule that went into effect on July 1, 2024, increased the salary threshold element of the tests that exempts a bona fide executive, administrative, or professional employee from federal overtime pay requirements.

Effective July 1, 2024, the salary threshold increased to the equivalent of an annual salary of \$43,888, based on the methodology used by the Trump administration in the 2019 overtime rule update. The rule's new

methodology will take effect on January 1, 2025, at which point the threshold will increase again, to \$58,656.

The new rule also adjusted the threshold for highly compensated employees.

Up to 10% of the salary amount may be satisfied by the payment of nondiscretionary bonuses, incentives, and commissions, as noted in [29 CFR § 541.602\(a\)\(3\)](#).

Starting July 1, 2027, salary thresholds will be updated every three years by applying up-to-date wage data to determine new salary levels.

The following chart shows the increases:

Effective Date	Amount per Week	Amount per Year
January 1, 2020 (previous threshold)	\$684	\$35,568
July 1, 2024	\$844	\$43,888
January 1, 2025	\$1,128	\$58,656

There are limited exceptions to the application of the new rules. For example, [29 CFR § 541.600\(e\)](#) states that academic administrative employees may be compensated "on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed."

In addition, the new rule does not change the long-standing rule that ministers are exempt from overtime. The ECFA e-book mentioned above includes information about the ministerial exemption.

Please also see [this DOL fact sheet](#) for additional information on the intricacies of overtime pay requirements.

Managing the Changes

Noncompliance with FLSA regulations can result in significant consequences for employers, so it's vital to review your organization's compensation practices, ensure compliance, and plan for the coming increases.

To effectively manage the salary threshold changes, we recommend that organizations:

- Increase salaries above the threshold on an employee-by-employee basis, ensuring proper classification as exempt.
- Conduct a "duties test" audit to verify that employees classified as exempt meet the required criteria as outlined in [this DOL fact sheet](#).
- Consider converting salaried employees to hourly status to guarantee proper compensation for hours worked beyond 40 per week, while carefully determining hourly rates and monitoring hours.
- Review or implement overtime policies, incorporating a timekeeping system to track hours worked and establish an approval process for overtime.
- Strengthen ministerial exemption defenses by:
 - Reviewing policies and documentation regarding employee classification for this exemption
 - Infusing "secular activity" with religious significance
 - Documenting employee involvement in exclusively religious activities like prayer, devotion, and worship
 - Fostering a culture that recognizes all roles as integral to the religious mission
 - Updating job descriptions to reflect ministry qualifications and duties
 - Incorporating ministerial elements in performance reviews

The ECFA e-book mentioned above also provides guidance on actions your organization may consider taking to remain in compliance with the FLSA.

What's Ahead

Several legal challenges to the salary threshold increases are pending. As we noted in [this email alert](#), in September 2024 the U.S. Fifth Circuit Court of Appeals ruled that, along with certain listed duties, the DOL can include a salary threshold in the definition of who qualifies for the executive, administrative, and professional (EAP) exemption from the minimum wage and overtime rules in the FLSA.

However, the Fifth Circuit did not address the question of when a salary threshold could be so large as to make the duties that otherwise define the EAP exemption irrelevant. It's possible that courts considering the pending challenges could find the size of the salary threshold increase — particularly the January 2025 increase — to be so large as to render the duties element of the EAP exemption meaningless. Since the duties element is a core component of the EAP exemption definition, such a determination would likely result in the court finding that the increase is an invalid regulatory overreach.

It's important to take steps now to comply with the new rule while monitoring any changes. Please [contact us](#) with any questions.

Additional Resources:

[ECFA E-book: Answering Your Overtime Questions](#)

[Department of Labor Fact Sheet #23: Overtime Pay Requirements of the FLSA](#)

[Department of Labor Website: Overtime Pay](#)

[CapinCrouse Article: Determining Worker Classifications](#)

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About the Author

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A certified public accountant and licensed attorney, Ted advises exempt organizations of all sizes on a wide range of tax matters, including representation before state and federal tax authorities and assistance with firm audit or advisory engagements to formulate advice and counsel on important operating and tax issues. In addition to tax advisory services, Ted leads the firm's tax preparation practice, including IRS Forms 990 and 990-T and related state forms. He also serves as an Advisor-at-Large for Church Law & Tax and as a member of the Missio Nexus Mission Finance and Administration Planning Committee.

Note: Although licensed to practice law in Indiana, Ted's services through CapinCrouse do not involve the practice of law and consequently do not result in the creation of an attorney-client relationship.

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