

Lutheran Church—Missouri Synod
FAQ Sheet Regarding FLSA and 2024 Overtime Rules

Q: What is the Fair Labor Standards Act (FLSA)?

A: The FLSA is a federal law that governs how employees are paid. The FLSA establishes a federal minimum wage and requires that certain (non-exempt) employees be paid an overtime rate of 1 ½ times hourly rate for hours worked over 40 hours in a week.

Q: Do individual states have a minimum wage/overtime rule that differs from FLSA?

A: Many states, and some cities have established a minimum wage that is higher than the federal minimum wage. In 2024, the federal minimum wage is \$7.25 per hour. In Missouri, the current minimum wage is \$12.30 per hour. In Illinois, the current minimum wage is \$14.00 per hour. In California, the minimum wage is \$16.00 per hour. California also requires employers to pay overtime for work in excess of 8 hours in a single day, as well as other overtime rules that differ from the FLSA.

Q: Are all employees subject to the FLSA’s minimum wage/overtime rules?

A: No. Several groups of employees are excluded from FLSA coverage. Those employees are typically referred to as “exempt” employees. Generally, exempt employees must meet a duties test and a salary test. Some of the common exemptions are:

Executive Exemption: <https://www.dol.gov/agencies/whd/fact-sheets/17b-overtime-executive>

Professional Exemption: <https://www.dol.gov/agencies/whd/fact-sheets/17d-overtime-professional>

NOTE: Teachers fall within the Professional Exemption if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. Teachers are not subject to the salary or salary basis requirements.

NOTE: Preschool teachers do not fall within this exemption if their primary duty is caring for the physical needs of the children under their charge.

Administrative Exemption: <https://www.dol.gov/agencies/whd/fact-sheets/17c-overtime-administrative>

NOTE: Several positions within school and educational establishments fall within the Administrative Exemption provided they meet the salary basis test **or** are paid on a salary basis equivalent to the entrance salary for teachers employed in the same establishment. Academic administrative functions include operations directly in the field of education, and do not include jobs relating to areas outside the educational field. Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any vice-principals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the various subject matter departments; academic counselors and other employees with similar responsibilities.

Outside Sales Exemption: <https://www.dol.gov/agencies/whd/fact-sheets/17f-overtime-outside-sales>

Computer-related Occupation Exemption: <https://www.dol.gov/agencies/whd/fact-sheets/17e-overtime-computer>

Highly Compensated Employee Exemption: <https://www.dol.gov/agencies/whd/fact-sheets/17h-overtime-highly-compensated>

Q: Are there any other exceptions under the FLSA?

A; Yes. The statute specifically excludes several other employees. Additionally, while the FLSA does not expressly exclude clergy, the Department of Labor Field Operations Manual indicates that the Department of Labor does not consider members of clergy, such as priests, nuns, ministers and other members of religious orders who serve pursuant to religious obligations to be “employees.” It is important to understand that this is only the Department of Labor’s position, not an actual law or regulation, so a court/judge is not obligated to agree with the DOL’s position should a matter reach a courtroom.

Courts have, however, recognized a “**ministerial exception**” under the First Amendment of the U.S. Constitution, which prevents a court from reviewing a church’s employment decision regarding clergy and other closely-related positions. The title “minister” is not dispositive of who fits within this exception; however the courts will look to see what role an individual plays in the religious teaching or purpose of church doctrine. While commissioned teachers will most likely fall within the exception, contract teachers and pre-school teachers may also fall within the exception.

Q: Does the FLSA apply to all employers?

A: The FLSA applies to most employers. There are some exceptions. For example, employees of an organized camp, or religious or non-profit education conference center are not subject to the FLSA if they operate less than 7 months per year or if the average receipts for any 6 month period was not more than 1/3 of its average receipts for the other 6 months.

Q: What does the term Salary Basis mean?

A: In general terms, the term “salary basis” means an employee is paid a fixed salary each week that is not subject to reductions due to the quality or quantity of work performed. While there are some exceptions, an employee paid on a salary basis must be paid the full salary if they perform any work during the particular work week.

Q: I’ve heard that the Department of Labor has issued a new rule affecting exempt employees. What is the new rule?

A: The new rule increased the salary thresholds for the salary basis test and for highly compensated employees. For employees who are subject to the salary basis requirements (this does not include teachers), on July 1, 2024, the minimum weekly salary will increase from \$684 (\$35,568 annually) to \$844 (\$43,888 annually). On January 1, 2025, the minimum weekly salary increases again to \$1,128 (\$58,656 annually).

On July 1, 2024, the annual salary threshold for highly compensated employees increases from \$107,432 to \$132,964. It increases again on January 1, 2025 to \$151,164.

Additionally, the new rule requires these minimum salary thresholds to be updated every 3 years starting on July 1, 2027.

Q: Does the Department of Labor’s new rule affect the duties tests applicable to the exemptions?

A: No. The duties tests were unchanged by the DOL’s recent rule.

Q: Are there any obstacles to the DOL’s new rule becoming effective?

A: The Department of Labor took similar action in 2016 and it was met with a court challenge. Eventually, the DOL reduced the amount of salary increase it sought in 2016. Similar court action may occur in 2024; however, the July 1, 2024 increase is consistent with the 2016 increase and is likely to survive a court challenge. However, the January 1,

2025 increase may be a bit of an overreach by the DOL. A challenge to the January 1, 2025 increase is much more likely to be successful. Stay tuned.

Q: What impact does this rule change have on our organization?

A: Employees who are classified as exempt, but who are making less than \$43,888 annually (not including teachers or educational administrators) will need to have their salary increased or be reclassified as non-exempt. These employees may need to have their salary increased again by January 1, 2025 unless the rule is blocked by a court challenge.

If you have any questions about the proposed regulations and their applicability to your church, school, or daycare center, please contact your district business manager who will seek an answer from legal or human resources experts.