

NEW Overtime and Minimum Wage Rules effective December 1st, 2016

Please read the information below.

Summary –

EXEMPT employees must earn at least \$ 913.00 per week or \$ 47,476.00 per year

NON-EXEMPT employees must earn at least \$ 7.25 per hour and one and one-half times that rate for all hours worked over forty hours in a workweek

Because we receive mail from General Assembly in Louisville, KY (interstate mail) all church employees are “covered” under the Fair Labor Standards Act.

The Fair Labor Standards Act (“FLSA”) **Individual Coverage** applies to (“covers”) employees employed in interstate commerce.

Examples of activities that may result in **Individual Coverage** under the FLSA include making / receiving interstate phone calls, receiving / sending electronic communications or materials to another state, handling credit card transactions or performing the accounting or bookkeeping for such activities, and transporting persons or property to another state. Individual Coverage also extends to those doing work in building where interstate commerce is taking place.

Employee vs Independent Contractor

In order for the FLSA’s minimum wages and overtime provisions to apply, the worker must be an “employee” of the employer. Factors to consider when determining whether an employment relationship exists:

- a. The extent to which the work performed is an integral part of the employer’s business. The more important to the business the more likely there is an employee / employer relationship.
- b. The relative investments in facilities and equipment by the work and the employer. If the church is providing the equipment necessary for the job (e.g. the piano/organ, the mops and other cleaning supplies, the lawn equipment) the individual is most likely an employee.
- c. The worker’s skill and initiative. To indicate possible independent contractor status, the worker’s skills should demonstrate that she or he exercises independent business judgement. For example – the organist/choir director is given a list of songs for Sunday service – he/she is an employee, the accountant does the work required under their own schedule and also provides similar services to other organization – he/she can be an independent contractor.

- d. The permanency of the worker's relationship with the employer. Permanency or indefiniteness in the worker's relationship with the employer suggests that the work is an employee.
- e. The nature and degree of control by the employer. An independent contractor generally works free from control by the employer. For example – an individual is given a job to do and the employer only cares about the end result – the individual would be considered an independent contractor.
- f. Miscellaneous
 - i. A worker must control MEANINGFUL aspects of the working relationship to indicate independent contractor status.
 - ii. The mere fact that a worker works from home or offsite is not indicative of independent contractor status.
 - iii. The fact that a worker has signed an agreement stating that he or she is an independent contractor is not controlling because the reality of the working relationship – and not the label given to the relationship in an agreement – is determinative.
 - iv. The fact that the worker has incorporated a business and/or licensed by a State/local government agency has little bearing on determining the existence of an employment relationship.
 - v. The Supreme Court has held that employment status is not determined by the time or mode of pay.

Classification of Employees

Exempt / Non Exempt
 Full / Part Time
 Salary / Hourly

An employee can be any combination of the above categories. For example, an employee can be Exempt, Part Time and Salary.

Minimum Wage

a. Non-Exempt Employees

- i. Non-Exempt employees can be full or part time and salary or hourly.
- ii. Covered, Non-Exempt employees must be paid not less than the federal minimum wage for all hours worked.
- iii. Covered, Non-Exempt employees must be paid one and one-half time the regular rate of pay for all hours worked over forty hours in a workweek.
- iv. A workweek is 7 consecutive 24 hour periods (168 hours).
- v. The minimum gross wage rate is \$ 7.25 per hour.
- vi. The employer cannot provide "time off in lieu" instead of overtime pay.

b. Exempt Employees

- i. Exempt employees can be full or part time and salary or hourly.

- ii. Covered, Exempt employees must be paid not less than the federal minimum wage for all weeks worked.
- iii. The minimum salary is \$ 913.00 per week or \$ 47,476 per year.
- iv. The minimum salary cannot be prorated for part-time employees.
- v. The minimum salary cannot be reduced for partial-day absences.
- vi. The minimum salary cannot be reduced for absences from work due to sickness or disability unless the employer maintains a plan that provides compensation for loss of salary caused by sickness or disability.

- vii. **“White Collar” Exemptions** applies to certain Executive Employees, Administrative Employees and Professional Employees. All employees who meet the following three tests are EXEMPT employees (i.e. they cannot be categorized as non-exempt). The three tests:
 - 1) **Salary Basis**
 - ✓ Regularly received a predetermined amount of compensation each pay period
 - ✓ Compensation cannot be reduced because of variations in quality or quantity of the work performed.
 - ✓ Need not be paid for any workweek when no work is performed.
 - ✓ Must be paid the full salary for any week in which the employee performs any work.
 - 2) **Salary Level**
 - ✓ Employees must be paid on a salary basis at not less than \$913.00 per week.
 - 3) **Job Duties**
 - ✓ An employee’s primary job duty must involve the kind of work associated with exempt executive, administrative, or professional employees.
 - ✓ An employee must perform exempt duties on a customary and regular basis.
 - ✓ Executive – must manage the company, manage or direct the work of at least two full-time employees and must have the authority to hire or fire other employees
 - ✓ Administrative – primary duties must be non-manual duties related to the management or general operations and must include the exercise of discretion and independent judgement with respect to matters of significance.
 - ✓ Professional (Learned Professional) – primary duties must be the performance of work requiring advanced knowledge customarily acquired by a prolonged course of specialized instruction.

This needs to be done by December 1st, 2016

What you need to do –

- a. Review the status of every person you pay for services and determine if they are employee or independent contractor.
- b. Review the classification of each employee
- c. Review the pay of each employee.
- d. Adjust either the classification or pay for each employee to meet the new minimum pay requirements.

E.g. Your choir director works 8 hours a week. He does not decide the music and is therefore an employee. You have always paid him \$ 400 per week irrespective of the number of hours worked. This rate of pay is now unlawful. An exempt employee (one who does not get paid for extra hours worked) must earn \$ 913 per week irrespective of the number of hours worked. This employee now must report hours worked and be paid for all hours worked. This employee will be Non-Exempt, Part-time, and either Hourly or Salary.