

Webinar Q & A Follow-Up

New Final DOL Overtime Rule | Oct. 2019

1. Are churches required to follow the FLSA guidelines?

The FLSA is riddled with exceptions and exemptions. Firefighters, managers, seamen and farmers, for example, have special rules. Ministers and religious organizations do as well.

As a general rule, religious organizations and churches are exempt from the FLSA. For example, a priest or nun who takes a vow of poverty can't later sue for unpaid overtime or wage theft.

In passing the Fair Labor Standards Act, Congress relied on the Commerce Clause of the U.S. Constitution for the power to regulate the pay of workers. Theoretically, any business or organization that relies on telephones, U.S. mail or the Internet has some nexus to interstate commerce. Courts, however, look to see if the employer has a business purpose. Churches typically exist to serve spiritual needs, not commerce. When a church or religious organization operates a school, nursing home or rental hall, however, there may be sufficient nexus to require compliance with the FLSA's minimum wage and overtime rules.

2. I have a part-time salaried employee. Is the January 1, 2020 threshold the same minimum salary or 1/2 of the weekly minimum salary requirement?

The same as it is for full time employees – \$684.00 per week. The exemption threshold is not prorated for people working less than full time.

3. In Minnesota, is an Employer required to pay overtime for hours worked in excess of 40 or 48?

This depends on the employer. The overtime requirement under the federal Fair Labor Standards Act (FLSA) is that employers must pay non-exempt employees one and a half times their regular hourly rate of pay for all hours worked over 40 hours in a workweek. In Minnesota, an employer may pay an employee overtime compensation at

a rate of one and one-half times the employee's regular rate of pay for all hours worked over 48 hours in a workweek.

The federal FLSA does not preempt the overtime rule under the Minnesota Fair Labor Standards Act (MFLSA), but if a Minnesota employer is covered by the FLSA, then the employer must pay one and a half times their regular hourly rate of pay for all hours worked over 40 hours in a workweek (rather than over 48 hours in a workweek).

Employers required to follow the federal Fair Labor Standards Act and pay overtime for all hours worked in excess of 40 per workweek include:

- employers that produce or handle goods for interstate commerce;
- businesses with gross annual sales of more than \$500,000; and
- hospitals and nursing homes, private and public schools, federal, state and local government agencies.

4. How does the DOL Salary Basis test and Overtime Rule apply to Outside Sales personnel?

To qualify for exemption, employees generally must be paid at not less than \$684 per week on a salary basis. These salary requirements of the regulation do not apply to outside sales employees.

For an employee to qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.
- The employee makes sales at the customer's place of business, or, if selling door-to-door, at the customer's home. Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls.

An employee who does not satisfy the requirements of the outside sales exemption may still qualify as an exempt employee under one of the other exemptions allowed by Section 13(a)(1) of the FLSA and the Part 541 regulations if all the criteria for the exemption is met.