

## Classifying Church Employees as Exempt or Non-Exempt

The Department of Labor has established criteria to determine whether or not an employee is Exempt from the Fair Labor Standards Act (i.e. Federal minimum wage and overtime regulations). Why is this important for churches? First, there is no blanket exemption from this law for churches. Second, failing to properly review, classify, and document decisions about Exempt or Non-Exempt could open the church up to a time-consuming and expensive battle with the Department of Labor. Lastly, the rules do provide some guidance on how to justly compensate our church workers so that we don't take advantage of their good will towards the mission.

Below is some guidance to help church leaders review all church positions to ensure that they are properly classified as Exempt or Non-Exempt. **Exempt positions** are paid a salary and are not entitled to overtime when working over 40 hours in a week. **Non-Exempt positions** must maintain accurate record of time worked, must be paid overtime (time and a half), and are usually paid an hourly wage. It is permissible to pay these positions a salary, but that does not relieve the church of the duties of tracking work time, paying at least the minimum wage, and paying overtime.

### What does the church need to do?

1. Make sure written job descriptions exist and have been updated.
2. Review the job description and salary of each salaried employee. A flow chart has been provided to help with this review.
  1. For Interstate Commerce, does the position email, mail, or call people out of state such as snow birds or former members that have moved out of state but still want to keep touch with the church. Does the position from out-of-state companies through the internet, by phone, or from catalogues?
  2. For the Ministerial Exemption, the law states that "clergy and other religious workers" are exempt, but there is no definition in the law for what this means. Here is some guidance:
    1. For clergy, this means licensed or ordained clergy that are appointed to the church AND are regularly engaged in the spiritual work of the church. A pastor appointed as an Executive Pastor who rarely preaches or teaches or plays a role in worship services would likely not be considered clergy under this law.
    2. For Other Religious Workers, their primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship. Youth pastors, worship directors, children's ministers, and the like would likely qualify as Other Religious Workers.
  3. For the Salary Test, the \$35,568 cannot be reduced for part-time salaried positions.

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4. Guidance for Executive, Administrative, and Professional Exemptions can be found at: [https://www.dol.gov/whd/overtime/fs17a\\_overview.pdf](https://www.dol.gov/whd/overtime/fs17a_overview.pdf)
3. **If a position is determined to be Exempt:**
  1. Agree in writing that this is an exempt position. This may be stated in the job description.
  2. Ensure that the position and related compensation meets state minimum wage laws.
4. **If a position is determined to be Non-Exempt:**
  1. Properly notify employees in a respectful and educating manner.
  2. Pay the worker at least the minimum wage for the first 40 hours worked and then time and a half for all hours worked over 40 hours in the work week. (This includes time worked at home or away from the usual place of employment.)
  3. Maintain a time system that shows the hours actually worked and have the employee sign the time sheet/card. Guidance can be found at: <https://www.dol.gov/whd/regs/compliance/whdfs21.pdf>
  4. Time cannot be donated or comp time provided. Both of these are not legal in determining fair pay. Employees can volunteer, but the volunteer work has to be different from the regular duties of their position (e.g. bookkeeper can volunteer to teach Sunday School, but not volunteer to attend the Finance Committee meeting).

### Final Thoughts and a Legal Disclaimer

For those full-time positions transitioning from Exempt to Non-Exempt, do the homework. Ask questions such as:

- How many hours does the employee currently work?
- If the position regularly works 40+ hours, can the church afford overtime or should we find a part-time employee or volunteers to help reduce the hours?
- If we continue to pay the position a salary, what is the overtime rate?
- For part-time positions that we continue to pay a salary, what is the limit on work hours before the position is paid less than the minimum wage?
- Who does the employee report their hours to?

I hope this was helpful. For questions, you can contact the Finance Office at 605-996-6552 or email [finance@dakotasumc.org](mailto:finance@dakotasumc.org).

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