

Federal Court Strikes Down Minimum Salary Exemption Rule Affects How Hourly Versus Salary Matters Are Addressed

On November 15, 2024, a federal court invalidated the Department of Labor's rule that earlier this year aimed to increase the minimum salary threshold for overtime exemptions under the Fair Standards Labor Act. The court ruled that the DOL overstepped its authority by focusing on salaries instead of job duties to determine overtime eligibility. On November 26, the Department of Labor filed a notice of appeal, announcing its intention to contest the court's decision.

What Did the Rule Propose?

The overturned rule would have:

- **Increased Minimum Salary:** Increased the minimum salary for exempt employees to \$43,888 annually in July 2024 and \$58,656 in January 2025.
- **Escalated Salary Thresholds:** Automatically updated salary thresholds every three years, starting in 2027.

These changes would have required reclassifying employees earning below the thresholds as non-exempt and paying them overtime for hours worked over 40 per week.

How Does the Court Decision Impact Ministries?

- **Revert to Previous Threshold:** Ministries that raised salaries to meet the DOL's April 2024 thresholds have the option to return to the prior minimum of \$684 per week (\$35,568 annually).
- **No Need for Future Adjustments:** Ministries are not required to increase salaries to the proposed January 2025 threshold of \$1,128 per week (\$58,656 annually).
- **Continue to Monitor FLSA Changes:** The recent federal court ruling that overturned the DOL salary thresholds is currently under appeal, meaning the thresholds could still return in some form. The incoming administration could also have an impact on DOL matters, so be sure to keep an eye on developments affecting how your employees are paid.

***NOTE:** If you decide to revert to the previous threshold, evaluate how salary adjustments might affect daily operations, employee morale, and job satisfaction.*

How Do I Know if an Employee is Subject to the FLSA?

Many employees fall under the FLSA based on their pay structure and job duties. To qualify as an exempt (salaried) worker, employees must meet all three criteria:

- **Salary Basis:** Paid a fixed salary.
- **Salary Level:** Earn at least \$684 per week (\$35,568 annually).
- **Duties:** Perform executive, administrative, or professional roles.

If these criteria are not met, employees are considered **non-exempt** (hourly) and must be paid overtime for hours worked over 40 in a workweek. Ministries must also maintain accurate timekeeping for non-exempt employees to ensure compliance.

What About Religious Employees?

The FLSA does not explicitly address clergy, but courts recognize a **ministerial exception** for roles tied to advancing a ministry's mission. This typically applies to pastors, ministers, and other religious leaders whose primary function advances the organization's spiritual function. This exception is applied based on the employee's job duties, not their titles or ordination status. Each case requires an individual review to determine if an employee qualifies for the exception.

What Should Ministries Do Next?

- **Review Roles:** Ensure employees are properly classified as exempt or non-exempt under current FLSA requirements.
- **Seek Legal Counsel:** Consult a local attorney for advice before making salary or classification changes.
- **Stay Updated:** Continue to monitor for appeals or new regulations.

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Q. Does the Fair Labor Standards Act (FLSA) apply to our ministry?

A. Your ministry is subject to the FLSA if it qualifies as a covered enterprise or has individually covered employees.

The FLSA outlines how employers must pay workers who are subject to the act's requirements. If your ministry is considered a covered enterprise, all employees will be subject to the FLSA unless an exemption applies. Generally, the federal government doesn't classify churches as a covered enterprise.

FLSA requirements may still apply to employees individually, even when a church is not an "enterprise" under FLSA.

Even if your ministry is not a covered enterprise, individual employees may still be covered and entitled to protections if such individual employees fall under the individual coverage category. This implies that while the organization as a whole may not be considered a covered enterprise, certain employees within the organization could still be protected under the FLSA because they individually qualify for individual coverage.

Is Your Ministry Considered a Covered Enterprise?

In most cases, the federal government does not consider nonprofit religious organizations, such as Christian churches or ministries, as a covered enterprise.

Covered enterprises consist of, but are not limited to, the following groups of employers:

- Employers with an annual sales volume or business of \$500,000 or more.
- *Named Enterprises* such as government agencies or most public and private schools.

According to the Wage & Hour Division of the United States Department of Labor (DOL), "charitable, religious, educational, or similar activities of organizations operated on a nonprofit basis where such activities are not in substantial competition with other businesses do not result in the organizations being considered covered enterprises."¹

This exemption means that a religious nonprofit that does not engage in competitive business activities would not be considered a covered enterprise. If, however, your ministry conducts operations that generate annual sales volumes or business of \$500,000 or more and compete with commercial entities—such as running a coffee shop or renting out space to non-members—it would likely be deemed a covered enterprise due to these commercial activities.

In contrast, Christian schools are more than likely considered covered enterprises under the *named enterprises* category, meaning all staff members will be subject to FLSA's wage and hour requirements unless they are considered exempt or meet some other exemption.² To learn more about Teachers, Daycare Centers, Preschools, and the FLSA, check out the DOL's [#17S: Educational Establishments](#) and [#46: Daycare Centers and Preschools](#) fact sheets.

Does Your Ministry Employ Individuals Who Qualify for Individual Coverage?

While most ministries are generally not subject to FLSA's wage and hour laws as they do not fall under the definition of enterprises, they may have employees who are individually covered by the FLSA's wage and hour requirements if they regularly engage in certain activities. These employees are entitled to earn the federal minimum wage, plus overtime pay, if they work more than 40 hours in a week.

The DOL evaluates individual coverage under FLSA on a case-by-case basis. In each case, regulators determine whether or not the individual employee is "engaged in interstate commerce" on a "regular and recurrent" basis. There's no clear definition of what "regular and recurrent" means. The Wage and Hour Division says it will investigate each situation individually, but "Interstate commerce" is defined broadly enough to include activities such as:

- Ordering teaching materials or other supplies from out-of-state.
- Mailing newsletters or other information to people out of state.
- Traveling to other states for work purposes.
- Maintaining a website from which people from out of state may order items.

To learn more about Enterprise and Individual Coverages, check out the DOL's [#14: Coverage Under the FLSA Fact Sheet](#).

How Should Your Ministry Classify Employees?

If you employ individuals who are covered by the FLSA—either because your ministry qualifies as a covered enterprise or because the specific duties of the employees meet the individual coverage criteria—you need to classify each of these employees as either exempt or non-exempt. Currently, an employee generally needs to pass the following three tests to be considered exempt from minimum wage and overtime regulations under the FLSA, pending any appeals from the DOL:

1. **The Salary Basis Test:** Paid on a salary basis without deductions for work quality or quantity.
2. **The Salary Level Test:** Earn at least \$684 per week (\$35,568 annually).
3. **The Duties Test:** Perform specific duties such as [executive, administrative, professional, computer professional, or creative professional](#).³

If these three tests are not met, your ministry's employee will likely be considered non-exempt and must be paid at least minimum wage and overtime. This means they should be compensated for all hours worked, including overtime for any hours beyond 40 hours in a workweek. In contrast, exempt employees are compensated based on the nature of their work rather than the number of hours they work, receiving a salary instead of hourly pay.

Even if your ministry is not classified as a covered enterprise or does not employ individuals under the individual coverage category, it is advisable to consult with a local attorney. State, city, and county labor laws may affect how your ministry classifies itself and its employees. Generally, if state laws offer greater protections—such as requiring higher salaries or imposing stricter duty tests—employers should comply with those state regulations.

What Does the FLSA Say About Ministerial and Clergical Roles?

The FLSA does not explicitly address ministerial and clerical roles in the statute or regulations itself. Often, ministers and clergy are categorized under the administrative, executive, and professional exemptions of the FLSA under the duties test. However, the interplay between the FLSA and its application to religious employees, particularly employees who aren't Senior or Associate Pastors, can be a complex issue.

Several courts have referenced the *ministerial exception* exempting ministers and clergy from certain employment-related laws.⁴ In most of these court cases, the exception typically applies to pastors, ministers, and other ordained individuals, as well as those who perform similar religious roles. The DOL's Wage & Hour division, on the other hand, has referenced the ministerial exception in an opinion letter concerning its applicability to wage-and-hour requirements of the FLSA for employees who are not necessarily pastors, ministers, or other ordained individuals.⁵ The DOL's opinion letter emphasizes that there is no universal checklist for determining whether an employee qualifies for the ministerial exception.

If anything, some of these court decisions, along with the opinion letter from the DOL, do provide some clarity that ordination or specific job titles alone are not prerequisites for an employee to qualify for the ministerial exception. The determination is made individually, taking into account all relevant circumstances of each employee to assess whether each specific role fulfills the core purpose of the ministerial exception. Ultimately, whether an employee falls under the ministerial exception hinges on their role and duties in advancing the church's mission and communicating the church's message.

NOTE: DOL opinion letters can be used as a good faith defense against FLSA violation claims but are not binding interpretations in a court of law. Interpretations accompanying these opinion letters may change or be rejected with new administrations. Ultimately, a legal opinion from a locally licensed attorney on whether particular employees are exempt from the FLSA is highly encouraged to mitigate potential risks and classification issues.

¹ U.S. Department of Labor, Wage and Hour Division. "Fact Sheet #14A: Non-Profit Organizations and the Fair Labor Standards Act (FLSA)." Retrieved from: <https://www.dol.gov/agencies/whd/fact-sheets/14a-flsa-non-profits>. Accessed September 26, 2024.

² U.S. Department of Labor, Wage and Hour Division. (2020). Fair Labor Standards Act of 1938, as amended (WH1318 REV 01/20), 29 U.S.C. § 213(a). Retrieved from <https://www.dol.gov/sites/dolgov/files/WHD/publications/WH1318.pdf>. Accessed September 26, 2024.

³ State of Texas v. United States Department of Labor, No. 4:24-CV-499-SDJ, 2024 WL 1234567 (E.D. Tex. Nov. 15, 2024). Retrieved from <https://arkansasag.gov/wp-content/uploads/2024-11-15-Texas-v-DOL-Overtime-Rule-Vacate-Order.pdf>. Accessed 19 November 2024.

⁴ Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 565 U.S. 171 (2012). Retrieved from <https://tile.loc.gov/storage-services/service/ll/usrep/usrep565/usrep565171/usrep565171.pdf>; Our Lady of Guadalupe School v. Morrissey-Berru, 591 U.S. 1 (2020). Retrieved from https://www.supremecourt.gov/opinions/19pdf/19-267_1an2.pdf; Alcazar v. Corp. of the Catholic Archbishop of Seattle, 627 F.3d 1288, 1290 (9th Cir. 2010). Retrieved from <https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:698fd131-90b4-44ca-8e4c-0e5e4a502b08>. Accessed 19 November 2024.

⁵ Opinion Letter FLSA2021-2." U.S. Department of Labor Wage and Hour Division, 8 January 2021. Retrieved from https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2021_01_08_02_FLSA.pdf. Accessed on 19 November 2024.

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FLSA Risk Assessment Chart

While no concrete test exists to determine whether an exemption is met, this tool can help you assess the risk involved when classifying an employee as exempt. To weigh the risk, answer the statements in each column as true or false. Count the number of "true" statements in the column and compare to the meter near the bottom of the column.

Does the position qualify for the ministerial exception?	Is the position specifically exempted from FLSA requirements?	Does the position fail to require regular and recurrent participation in interstate commerce?	Does this position meet both the Salary Basis and Salary Level* tests AND:
<p>The individual was hired based "largely on religious criteria."</p> <p style="text-align: right;">T F</p>	<p>The individual is a teacher, academic advisor, or admissions counselor employed by an elementary school, secondary school, or institution of higher education.</p> <p style="text-align: right;">T F</p>	<p>The position does not require the employee to make interstate phone calls on at least a weekly basis.</p> <p style="text-align: right;">T F</p>	<p>The position meets the "executive" exemption qualifications under FLSA regulations.</p> <p style="text-align: right;">T F</p>
<p>The ministry authorizes the individual to perform ceremonies (baptism, weddings, communion) of the church.</p> <p style="text-align: right;">T F</p>	<p>The individual is a preschool or kindergarten teacher whose primary duty is teaching, not caring for the physical needs of children.</p> <p style="text-align: right;">T F</p>	<p>The position does not require regular travel outside of the state.</p> <p style="text-align: right;">T F</p>	<p>The position meets the "administrative" exemption qualifications under FLSA regulations.</p> <p style="text-align: right;">T F</p>
<p>The ministry holds the individual out as a member of clergy (more than just title).</p> <p style="text-align: right;">T F</p>	<p>The employee serves in a medical position requiring a valid medical license or certificate.</p> <p style="text-align: right;">T F</p>	<p>The position does not require the employee to send or receive interstate mail at least weekly.</p> <p style="text-align: right;">T F</p>	<p>The position meets the "professional" exemption qualifications under FLSA regulations.</p> <p style="text-align: right;">T F</p>
<p>The individual regularly engages in religious or ecclesiastical activities and "attends to the religious needs of the faithful" as part of their job function.</p> <p style="text-align: right;">T F</p>	<p>The position's primary duty involves exempt-level work and meets the highly compensated employee threshold.*</p> <p style="text-align: right;">T F</p>	<p>The position does not require the employee to order materials from another state regularly.</p> <p style="text-align: right;">T F</p>	<p>The position meets the "computer employee" exemption qualifications under FLSA regulations.</p> <p style="text-align: right;">T F</p>
<p>The position requires the individual complete a formal process such as ordination, licensure, divinity degree, etc. in order to perform the position.</p> <p style="text-align: right;">T F</p>	<p>The position is seasonal at a recreational establishment that doesn't operate more than 7 months in any calendar year.</p> <p style="text-align: right;">T F</p>	<p>The position does not require the employee to interact with people in other states via the internet on at least a weekly basis.</p> <p style="text-align: right;">T F</p>	<p>The position meets the "combination" exemption because primary duties involve more than one exemption qualification mentioned above.</p> <p style="text-align: right;">T F</p>
<p>SCORE RISK</p> <p>0-1 True = Higher 2-3 True = Moderate 4-5 True = Lower</p>	<p>SCORE RISK</p> <p>0 True = Higher 1-5 True = Lower</p>	<p>SCORE RISK</p> <p>0-1 True = Higher 2-3 True = Moderate 4-5 True = Lower</p>	<p>SCORE RISK</p> <p>0 True = Higher 1-5 True = Lower</p>
<p>If you determine the position meets the ministerial exception, the FLSA would not apply.</p> <p style="text-align: right;">T F</p>	<p>If you determine that the position qualifies under at least one of the above tests, the FLSA likely would not apply.</p> <p style="text-align: right;">T F</p>	<p>If you determine that the position does not require regular and recurrent participation in commerce, the FLSA likely would not apply.</p> <p style="text-align: right;">T F</p>	<p>If you determine that the position qualifies for one of the white-collar exemptions, and the employee exceeds the salary level, the FLSA likely would not apply.</p> <p style="text-align: right;">T F</p>

If a position does not pass any of the above assessments, it likely should be classified as non-exempt and the FLSA rules should be applied. When in doubt, it's best to err on the side of non-exempt. Consult a locally licensed attorney before classifying an employee as exempt.

