



## CHURCHES OF GOD, GENERAL CONFERENCE

700 E. MELROSE AVE., P.O. BOX 926

FINDLAY, OH 45839

(419) 424-1961 (419) 424-3433 (FAX)

DATE: October, 2019

To: CGGC Churches and Conferences

From: Bob Stephenson  
CGGC Director of Finance & Treasurer

Re: **New Federal Overtime Rules and Regulations (5 Pages)**

On September 24, 2019, the U.S. Department of Labor announced new federal rules and regulations regarding the payment of overtime as required by the Fair Labor Standards Act. These new rules and regulations become effective January 1, 2020. Overtime is defined as hours worked in excess of 40 per work week and requires pay at a rate of not less than 1 and ½ times the normal wage rate. The overtime pay requirement does not apply if three tests are met, which are discussed below.

There are significant penalties for not being in compliance with the overtime rules. Guidance on administration and recordkeeping can be found on the U.S. Department of Labor website at <https://www.dol.gov/whd/regs/compliance/whdfs21.pdf>

### **Do the new rules and regulations apply to your church and/or local conference?**

The answer is yes for all non-clergy employees, unless one of the two criteria exemptions applies. Each local church and conference will need to consider its business activities and the duties each employee is expected to perform. Furthermore, each church and conference should review their policy manuals relating to the administration of its activities and employees. Position descriptions and responsibilities should be clearly defined. Calendar work weeks must be clearly defined in your operating policies. Hours worked must be tracked when necessary for non-exempt employees and the record keeping maintained for at least 3 years of history. All of these matters will be essential for payroll audits made by the U.S. Department of Labor, and likely for the department that governs compensation laws within your state.

These overtime rules and regulations apply to all non-profits unless an exemption applies, including churches. There are two main ways in which an employee can be entitled to overtime compensation. One way is if the employer is a covered enterprise. For non-profits, enterprise means activities performed for a business purpose, and does not include the organization's charitable activities. If a local church or local conference has gross revenue of \$500,000 or more from business activities with at least 2 employees, then all employees who

are not exempt will be entitled to overtime compensation. Enterprise coverage also includes hospitals, public and private schools and colleges, residential care facilities, and government entities without regard to dollar volume of business. So, if your church runs a pre-school, daycare center, etc. then it is likely a covered enterprise. Interest and dividends on investments are counted and perhaps rent income is as well.

The second way a church or conference may be required to compensate for overtime is if an employee is a covered individual because they are engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production. It is important to understand that the definition of "engaged in interstate commerce" is very broad. For instance, an employee would be considered to be engaged in interstate commerce if they: make and/or receive telephone calls from another state, if they ship materials to another state, if they travel or transport people from/to another state, if they send or receive interstate mail or e-mail, if they handle out of state credit card transactions, or perform bookkeeping or accounting for such transactions, etc. With this broad of a definition, you will want to consult an attorney when deciding to classify an employee as exempt from overtime when they are not clearly exempted via the formal exemptions provided within the law.

It is also important to consult your state overtime rules which may be more demanding than the federal rules.

## **Which church employees are exempt from federal overtime compensation rules?**

### Clergy & Other Religious Employees

The Fair Labor Standards Act does not list ministers as being exempt from overtime rules. However, there have been court cases which have maintained that ministers are not subject to overtime rules. Historically, the U.S. Department of Labor has treated ministers as being exempt from overtime due to this court created minister exception. Currently, it would seem safe to consider licensed clergy as being exempt from overtime rules under the Federal Labor Standard Act. Since this exemption hinges on court decisions, this exemption may change in the future.

If your church is going to classify persons other than licensed clergy as 'religious' employees, then you will want to make absolutely sure their positions are clearly considered ministers and serve as ministers in such documents as application materials, hiring process documents, job descriptions, employee handbooks, etc. A church should discuss with an attorney whether or not to classify an employee as a religious worker if they are not licensed clergy. For instance, an employee must be directly involved in religious activities of worship or religious education. Administration of such activities and education does not qualify. Activities such as sports director, etc. would not qualify.

### Other Employees

Employees who meet all three of the following tests are exempt from overtime compensation: salary level test, salary basis test, and duties test.

The salary level test is met when an employee is regularly paid a salary of at least \$684 per week (which is equal to \$35,568 per year). NOTE: Make sure your state does not have a higher threshold.

The salary basis test is met when an employee is paid on a regular pre-determined "salary" amount that does not fluctuate based on the employee's quality or quantity of work. Up to 10%

of this salary compensation can be for non-discretionary bonuses, incentives and commissions.

The duties test include specific duties/responsibilities of particular categories of employees:

Executives – All of the following tests must be met:

- Primary duty must be managing the organization, or managing a department or division of the organization.
- Must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent.
- Must have the authority to hire or fire other employees, or have significant influence on hiring, firing, promoting, etc. of employees.

Administrators – All of the following tests must be met:

- Primary duty must be the performance of office or non-manual work directly related to the management of the organization.
- Primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.

Note: Seldom does an administrative secretary qualify under these duty tests. The exemption does not apply based upon job title alone.

Professionals – All of the following tests must be met:

Learned Professional

- Primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment.
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Note: Examples may include teachers, doctors, lawyers, accountants, clergy, etc.

Creative Professional

- Primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Note: Examples may include musicians, worship ministers.

Computer Employee – Duties must meet the following tests:

- Must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- Primary duty must consist of:
  - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

- 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.
- 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

### Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$107,432 are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

### Suggested steps to take:

- Evaluate each employee and categorize them as to whether they are exempt from overtime compensation or are non-exempt.
- Consider your state's employment laws regarding overtime pay requirements.
- Decide which non-exempt employees will be paid for overtime or if their compensation will be raised to a level that satisfies at least the minimum compensation level of \$684 per week. Remember, this can only be done for those employees who qualify for an exemption from overtime.
- Update and/or establish policy manuals and documents that define the church's work week, provide job descriptions and expectations, etc.
- Maintain clear and concise recordkeeping (at least a 3 year history):

#### Exempt Employees (Recommended):

- 1) Employee's full name and social security number.
- 2) Address, including zip code.
- 3) Birth date, if younger than 19.
- 4) Gender and occupation.
- 5) Time and day of week when the employee's workweek begins.
- 6) Total wages paid each pay period.
- 7) Date of payment and the pay period covered by each payment.

#### Non-Exempt Employees:

- 1) Employee's full name and social security number.
- 2) Address, including zip code.
- 3) Birth date, if younger than 19.
- 4) Gender and occupation.
- 5) Time and day of week when the employee's workweek begins.

- 6) Hours worked each day.
- 7) Total hours worked each workweek.
- 8) Basis on which employee's wages are paid (e.g., "\$10 per hour", "\$750 per week", etc.).
- 9) Regular hourly pay rate.
- 10) Total daily or weekly straight-time earnings.
- 11) Total overtime earnings for the workweek.
- 12) All additions to or deductions from the employee's wages.
- 13) Total wages paid each pay period.
- 14) Date of payment and the pay period covered by each payment.

Note: No particular form for these records is required.

### **What hours are considered work hours by non-exempt employees?**

Hours an employee spends on the task/assignment requirements of the job (volunteer or otherwise) are compensable time. Depending upon the circumstances, other compensable hours may include working through lunches, waiting time, on-call time, sleeping time, lectures/meetings/training programs, travel time, etc. For guidance on these matters, refer to the U.S. Department of Labor's Wage & Hour Division website for "Fact Sheets # 22". The link is <https://www.dol.gov/whd/fact-sheets-index-htm>. Click on the Numeric Fact Sheet Index option and select Fact Sheet #22.

Can "comp time" be used? An employee's hours can be adjusted, or flexed, during a work week so that no overtime is worked during the week, but an employee may not be compensated by given time off during another time period.

Please note: This information is provided for educational purposes. This information is not to be considered as legal advice.