

# Archdiocese of Newark

## Fair Labor Standards Act

2024 Federal Wage and Hour Rule Changes and  
Considerations for Church Employees

July 1, 2024

# Agenda

- ▶ What is new with the Fair Labor Standards Act (FLSA)?
- ▶ Categories of Employees Exempted from FLSA Minimum Wage and Overtime
- ▶ Exempt from Overtime vs. Nonexempt from Overtime under the FLSA
- ▶ Other special categories and exemptions, including working minors
- ▶ Practical Considerations
- ▶ Penalties for violations

# Final Rule

Changes effective on July 1, 2024

- ▶ Raised “standard salary level” from \$684 per week (\$35,568/ per year) to \$844 per week (\$43,888 per year) for executive, administrative and professional employees (“EAP employees”).
- ▶ Total annual compensation for highly compensated employees (“HCE employees”) increased from \$107,432 per year to \$132,964.

Changes effective on January 1, 2025

- ▶ Raised “standard salary level” from \$844 per week (\$43,888/ per year) to \$1,128 per week (\$58,656 per year) for EAP employees.
- ▶ Total annual compensation for highly compensated employees increased from \$132,964 per year to \$151,164.

\*Additional changes to be made on July 1, 2027 and every 3 years thereafter.

# General Rule

- ▶ Unless an employee is exempt from the minimum wage and overtime pay requirements in the FLSA, the employee must be paid:
  - ▶ Minimum Wage - NJ minimum wage is \$15.13 per hour effective 1/1/2024; and
  - ▶ Overtime Pay - not less than 1.5 x the employee's regular hourly rate for all hours worked in excess of 40 hours per "workweek."
- ▶ A workweek is a period of 168-hours during a 7 consecutive 24-hour periods. It may begin on any day of the week and at any hour of the week designated by the employer.

# Definitions of Exempt & Nonexempt Employees

- EAP Exempt employees must meet three tests:
  - Paid on a salary basis;
  - Paid at least a specified weekly salary level; and
  - Primarily perform the EAP duties.
- Nonexempt employees: Employees who do not meet these tests (or fit in any other exempt categories/exceptions) must be paid minimum wage and receive overtime pay.

# Duties Tests

- ▶ The new rule did not change the duties tests for EAP employees.
- ▶ The duties tests look at actual job duties performed by the employee. An employee's job title is not determinative.

# Examples of jobs that may not have job duties that fit an exempt classification (non-exempt)

- ▶ Teacher Aide
- ▶ Lunchroom/Cafeteria Worker or Supervisor
- ▶ Playground Supervisor
- ▶ Janitor
- ▶ Custodian
- ▶ Some secretaries
- ▶ Bulletin Editor

\*The above list is exemplary only - each position needs to be evaluated based on job duties actually performed regarding exemption status.

# Executive Exemption (exempt)

- ▶ All of these must be met (in addition to salary basis requirement):
  - ▶ Primary duty - managing the enterprise or a customarily recognized department or division of the enterprise;
  - ▶ Customarily and regularly direct the work of at least 2 FTEs or their equivalent; and
  - ▶ Authority to hire, fire or recommendations on same or any other change in status must be given particular weight.



# Administrative Exemption (exempt)

- ▶ All of these must be met (in addition to salary basis requirement):
  - ▶ Primary duty - office or non-manual work directly related to management or general business operations or the employer's customers; and
  - ▶ Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

# Learned Professional Exemption (exempt)

- ▶ All of these must be met (in addition to salary basis requirement):
  - ▶ Primary duties requires advanced knowledge, i.e., work which is predominantly intellectual and includes work requiring consistent exercise of discretion & judgment;
    - ▶ Advanced knowledge in a field of science or learning; and
    - ▶ Advanced knowledge customarily acquired by a prolonged course of special intellectual instruction.

# Creative Professional Exemption (exempt)

- ▶ The primary duty requirement must be met (in addition to salary basis requirement):
  - ▶ Primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
    - ▶ Includes the music field, as well as writers, actors and the graphic arts.
    - ▶ Requirement generally is met by musicians, composers, conductors, and soloists.

# Exempt Computer Professionals (exempt)

- ▶ Must be compensated on either a salary fee basis (same as EAP employees) or if hourly, at a rate of not less than \$27.63 an hour; &
- ▶ Employee must be employed as a
  - ▶ computer systems analyst
  - ▶ computer programmer
  - ▶ software engineer or
  - ▶ other similarly skilled worker in the computer field
- ▶ Performing one or more designated primary duties.

# Exemption for HCE (exempt)

- ▶ An HCE is an employee who performs:
  - ▶ Office or non-manual labor; and
  - ▶ At least one of the duties of an EAP employee.
- ▶ Is paid a total annual compensation of \$132,964 or more per year as of July 1, 2024 (\$151,164 as of January 1, 2025)

# Salary Basis Test

- ▶ An exempt employee must
  - ▶ Be paid a guaranteed minimum amount of weekly salary, regardless of the number of hours worked (or quality of work), with limited exceptions, unless no hours are worked; and
  - ▶ The guaranteed salary must equal or exceed the federal Department of Labor minimum salary.

# Executive, Administrative, Professional (EAP) Salary

- ▶ Effective July 1, 2024, the minimum salary is \$844.00 per week (\$43,888)/year.

# EAP Salary

- ▶ An exempt employee does not have to be paid weekly. The salary can be paid on a less frequent basis, e.g.
  - ▶ \$1,688 bi-weekly
  - ▶ \$1,829 bi-monthly
  - ▶ \$3,657 monthly
- ▶ NJ W&H law requirements also apply such as pay periods
  - ▶ Only certain classifications such as executives and supervisors may be paid less than semi-monthly.
  - ▶ The end of the pay period may not be more than 10 working days before the regular payday.





# Non-Profit Organizations/FLSA coverage

- ▶ Neither the FLSA nor the DOL regulations provide an exemption from overtime requirements for non-profit organizations.
- ▶ The FLSA applies to, all employees of certain enterprises regardless of the duties they perform.
  - ▶ Traditional schools, including preschools, are typically covered enterprises under the FLSA.

# Guidance from the US DOL WHD regarding Religious Workers:

- ▶ “Persons such as nuns, monks, priests, lay brothers, ministers, deacons, and other members of religious orders who serve pursuant to their religious obligations in the schools, hospitals, and other institutions operated by their church or religious order shall not be considered to be ‘employees.’”

DOL, Field Operations Handbook (FOH) section 10b03(b).

# Special Exemption for Teachers

- Certain professionals, such as teachers, need to meet the duties test to qualify for an exemption from FLSA minimum wage and overtime requirements, not the salary basis test.
  - Primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge in an educational establishment.
  - Important to conduct a thorough assessment to ensure that teachers meet the criteria outlined by the exemption because there may be exceptions.

# Exempt Academic Administrative Personnel

- ▶ Per guidance issued by the US DOL, a special test applies to academic administrative employees.
- ▶ The administrative exemption applies to an employee who:
  - ▶ is employed by an educational establishment;
  - ▶ whose primary duty is performing administrative functions directly related to the academic instruction or training in an educational establishment; and
  - ▶ who is paid either:
    - ▶ a salary or fee basis at not less than the standard salary level; or
    - ▶ on a salary basis equal to “at least the entrance salary for teachers in the educational establishment”

# Exempt Academic Administrative Personnel (cont'd)

- ▶ Further, an exempt academic administrative personnel has administrative functions directly related to academic instruction or training if they relate to a school's academic operations and functions, rather than the general business function.
- ▶ Exempt school administrators may include:
  - ▶ Superintendent
  - ▶ Head of School
  - ▶ Principal
  - ▶ Vice Principal
  - ▶ Department Heads
  - ▶ Academic Counselors and Advisors
  - ▶ Intervention Specialists
  - ▶ Assistant administrators responsible for administering curriculum, quality, and methods of instructing, measuring learning potential and achievement, establishing and maintaining academic and grading standards; academic counselors.

FOH 22c03.

# Special Rules Apply to Minors

- ▶ FLSA and NJ wage and hour laws govern youth (under age 18) employment.
  - ▶ With a few exemptions, workers under the age of 18 are entitled to minimum wage at the same rate as adults.
  - ▶ With certain exceptions, minimum age to work is 14.
  - ▶ Special overtime rules govern whether a minor is permitted to work overtime and how much overtime is permitted.
  - ▶ All minors must be given a 30-minute meal break after 6 continuous hours of work. Breaks less than 30 minutes do not count as an interruption of continuous work.
  - ▶ Minors may not work more than 6 consecutive days in a week.
  - ▶ Special rules govern the number of hours a minor may be permitted to work based on age, industry and whether work is done during or outside the school time.
- ▶ All minors who work must have “working papers” (A 300 Employment Certification), parental consent and proof of age.

# Practical Considerations

- ▶ Evaluate employee's status as exempt or non-exempt to determine if properly classified.
- ▶ If the employee is currently exempt, but the increased salary thresholds would result in the employee becoming non-exempt, consider whether to:
  - ▶ increase compensation to maintain exempt status, or
  - ▶ reclassify as a non-exempt employee who will receive overtime.
- ▶ Consult HR with questions, including on specialized topics and issues, including state laws.
- ▶ Periodically review job postings and job descriptions to make sure duties listed are accurate, and actual duties performed/expected to be performed are listed.
- ▶ Consult HR with questions, including on specialized topics and issues.

# Practical Considerations (cont'd)

- ▶ Review timekeeping policies and practices:
  - ▶ Timekeeping records should be complete and accurate.
  - ▶ Records must be maintained for non-exempt employees.
  - ▶ Non-exempt employees are eligible for overtime pay at 1.5 times their regular hourly rate for all hours worked more than 40 hours worked in a week.
  - ▶ Training/re-training for employees on timekeeping methods whether computerized, punch clocks or on approved forms.
    - ▶ Reminder for remote workers and employee conducting work after regularly scheduled hours.
    - ▶ Procedures for correcting inaccurate records.
- ▶ Encourage a culture of compliance.
- ▶ Consult the employee handbook on timekeeping practices.



# Penalties for Violations

- ▶ There can be significant penalties and fines for wage and hour violations under federal and NJ laws, such as:
  - Back pay
  - Liquidated damages (in NJ update to 200% of back pay)
  - A civil monetary penalty of \$1,000 per violation for willful or repeated violations.
- In addition to penalties and fines, there could be criminal prosecution.
- Violations of child labor laws have separate penalties.

# Questions? Comments?

We will be able to address some questions immediately if you email them to:

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