



*This article presents general guidelines for Ohio nonprofit organizations as of the date written and should not be construed as legal advice.*

*Always consult an attorney to address your particular situation.*

### **PROPOSED INCREASE IN MINIMUM SALARY REQUIREMENT FOR EMPLOYEES EXEMPT FROM OVERTIME PAY**

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The U.S. Department of Labor ("DOL") has proposed changes to regulations under the Fair Labor Standards Act ("FLSA") that could affect salary and overtime pay for non-profit organization employees. To determine the potential effect of the proposed changes, a non-profit should first figure out if the FLSA even applies to its organization.<sup>1</sup> Assuming the FLSA does apply, employees generally must receive overtime pay for each hour worked over 40 in a workweek, at a rate not less than time-and-one-half their regular rate of pay.

Currently, employees who meet the following three requirements do not need to be paid for overtime:

1. The employee is paid on a "salary basis," meaning that he or she regularly receives a predetermined, fixed amount of compensation each pay period that is not subject to reduction because of variations in the quality or quantity of work performed;
2. The employee's salary is at least a minimum specified amount (currently \$455 per week); and

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<sup>1</sup> The DOL's website contains a couple of helpful webpages discussing this issue: <http://webapps.dol.gov/elaws/whd/flsa/scope/screen10.asp> ("Am I Covered by the FLSA?") and <http://webapps.dol.gov/elaws/whd/flsa/scope/screen9.asp> ("Fair Labor Standards Act Advisor"). Generally, employees of any business (either for-profit or non-profit) that has an annual gross volume of sales made (or business done) of \$500,000 or more are covered. However, certain businesses are covered regardless of the amount. Notably, there is no "non-profit exemption" or "small business exemption" to the FLSA.

3. The employee primarily performs "executive," "administrative," or "professional" job duties, as those terms are defined in the DOL's regulations (29 CFR Part 541; 29 USC 213(a)(1)).

Employees who meet these three requirements are considered overtime-exempt, and they are also likely exempt from minimum wage requirements (sometimes called "white collar exemptions").

**However, the DOL's proposed changes would increase the minimum weekly salary requirement (item 2 above), from \$455 per week to about \$970 per week, i.e., from \$23,660 per year to about \$50,440 per year.** The DOL also proposed that this minimum weekly salary requirement be automatically adjusted each year to account for inflation.

Thus, if the proposed changes are adopted, an organization's payroll costs will likely increase. Although the DOL's proposal is not anticipated to go into effect until 2016 (and it is possible that the proposed \$970 weekly salary figure could be increased or decreased before the regulation is finalized), non-profits should plan for the significant likelihood that the required minimum annual salary for its "exempt" employees will be approximately \$50,000 in 2016.

If an FLSA-covered organization cannot afford to increase salaries to the exempt level, then it will need to pay those now non-exempt employees for overtime hours. Non-profits may want to forecast the workloads of their current exempt employees to determine whether the proposed changes would lead to significant overtime costs, adjust their forecasted budgets for 2016, and make sure they are not misidentifying an employee as overtime exempt (items 1 and 3 above). (The FLSA does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, unless overtime is worked on such days.)

The State of Ohio has its own counterpart to the FLSA: the Ohio Minimum Fair Wage Standards Act ("OMFWSA"). The OMFWSA follows the federal "white collar exemption" discussed above; therefore, the minimum salary requirement under Ohio law would be automatically increased if the proposed regulations are adopted. O.R.C. 4111.03(A).

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For more information, see the DOL's webpage regarding the proposal at <http://www.dol.gov/whd/overtime/NPRM2015/>. The webpage contains additional details about the proposal, frequently asked questions, a fact sheet on the proposed rule, and other overtime pay resources. For more information about the FLSA and wages generally, go to <http://www.dol.gov/whd/flsa/> or, for PBP-GC clients, contact our offices.

Sources: 29 U.S.C. 201, *et seq.* (FLSA); ORC 4111.01 *et seq.* ("OMFWSA");

[http://www.dol.gov/whd/overtime/fs17g\\_salary.pdf](http://www.dol.gov/whd/overtime/fs17g_salary.pdf)

[http://www.dol.gov/whd/overtime/fs17a\\_overview.pdf](http://www.dol.gov/whd/overtime/fs17a_overview.pdf)

<http://webapps.dol.gov/elaws/whd/flsa/screen75.asp>

[http://www.dol.gov/whd/overtime\\_pay.html](http://www.dol.gov/whd/overtime_pay.html)

<http://www.dol.gov/whd/overtime/NPRM2015/>

<http://www.dol.gov/whd/overtime/NPRM2015/faq.htm>

<http://www.dol.gov/whd/overtime/NPRM2015/factsheet.htm>

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