



FAIR LABOR STANDARDS ACT (FLSA) FOR NONPROFITS: PROPOSED OVERTIME REFORMS

OVERVIEW

The U.S. Department of Labor (DOL) has proposed new regulations aimed at expanding overtime protections for millions of employees in the for-profit, nonprofit, and government sectors. While this regulation *will* impact all sectors, it is currently unclear exactly how individual Oregon nonprofits will be affected.

This resource was created in partnership with Mammoth HR and the National Council of Nonprofits to help Oregon nonprofits better understand the new FLSA rules. For more detailed information, please refer to the additional resources included at the end of this tip sheet or contact your employment lawyer.

The new salary level rule will impact each organization differently, and more clarification is still needed around which nonprofits may or may not be exempt. NAO is dedicated to bringing you the latest information on the FLSA changes and helping you understand how they might affect your organization.

The FLSA establishes laws pertaining to wage, pay, recordkeeping and youth employment standards.

- Employees whose jobs are covered by FLSA are either “exempt” or “non-exempt.” Non-exempt employees are entitled to overtime pay; exempt employees are not.¹
- Under the FLSA, non-exempt employees are entitled to wages at or above the federal minimum wage and must be paid time and one-half (1.5) for hours worked in excess of 40 in any workweek.¹
- Generally, to be exempt from overtime provisions, an employee must satisfy three tests: the duties test, the salary level test, and the salary basis test. The salary level test is the focus of the proposed regulations.¹
- The salary level test requires that an employee be paid at or above a minimum specified amount in order to be exempt. Federally, that amount is currently set at \$455 per week, or \$23,660 per year.¹

The proposed changes are to the salary level test, and would increase the minimum salary requirement for exempt employees to as much as \$50,440, which is more than double today’s salary level. However, the final rules do not have to match the proposed rules, so it’s very possible the salary level will be higher than it is now, but lower than \$50,440.

FREQUENTLY ASKED QUESTIONS

Q: When will the proposed changes take place?

While we initially did not expect changes to come until late 2016, the fact that the rules have been passed to the Office of Management and Budget (their final stop before publication) indicates that the final rules may be released as soon as late April or May of 2016. The acceleration of the process is a result of something called the Congressional Review Act, which allows Congress to pass a joint resolution overturning “major” rule changes; such a resolution would then require the signature of the president.²

President Obama would not sign such a resolution, but a future president might. It’s a complicated game of political chess, but the bottom line is that the rules need to be published by May 16, 2016 in order to guarantee that they will stick. It is expected that they will be effective, and employers will have to be in compliance, 60 days after publication.

Q: Will it impact my organization?

Many nonprofits are concerned about how these changes will affect their organization’s payroll. Whether a nonprofit is subject to the FLSA is dependent upon several factors, and each organization must evaluate its operations in light of the specifics of the law.

There are two ways in which an employee may be covered under FLSA: “enterprise coverage” and “individual coverage.” According to a DOL Fact Sheet, generally, employees of enterprises that have an

annual gross volume of sales made or business done of \$500,000 or more are covered by the FLSA.³ Even if a nonprofit does not meet this annual gross sales threshold, some employees may still be covered by the federal law through the “individual coverage” test. Individual employees are covered if they spend a considerable amount of time engaging in interstate commerce. Interstate Commerce has been interpreted to mean activities as simple as emailing or conducting phone calls, utilizing the US mail system or handling credit card transactions.⁴

Also, “in determining coverage, only activities performed for a business purpose are considered and not charitable, religious, educational, or similar activities of organizations operated on a non-profit basis where such activities are not in substantial competition with other businesses.”³ What remains unclear is what qualifies for “sales/business” operations versus “charitable, religious and educational” and what is considered “in substantial competition with other businesses.”³

Here is what is clear: nonprofit charitable organizations are covered under FLSA if they have income from commercial activities that meets or exceeds the annual gross volume of sales made or business done of \$500,000, or if employees qualify for “individual coverage” Employees of certain businesses are automatically covered regardless of sales. Those organizations include hospitals, businesses providing medical or nursing care for residents, schools, and public agencies.^{3 5}

Q: What can we do to prepare?

To get started, do the following:

1. Identify which employees will be affected and determine how many hours per week they are currently working – this will assist in the next step.
2. Calculate the cost of raising affected employees’ salaries to the new exempt level v. paying them overtime, if applicable (consider that the hourly wage of an employee could be set at a rate that results in the same yearly pay, even if overtime is worked; this is called a “cost-neutral rate”). If it appears that adjusting schedules would mitigate costs, include that plan as well when comparing your options.

3. Consider the impacts on overall pay scales, morale, and internal company policies, and prepare to make changes to deal with those impacts.
4. Evaluate the changes you’ve decided on in light of your overall financial strategy. Revising budgeting processes may help to compensate for any effects of the new regulations.

Q: Where can I get more help?

- Mammoth HR, our preferred HR Benefit Partner. For more information or try Mammoth for free contact Kym Whitten.
Phone: 503-332-0551
Email: KymW@MammothHR.com
- National Council of Nonprofits – DOL Proposed Overtime Reforms and the Impact on Nonprofits
Website: goo.gl/IH4cmk
- United States Department of Labor (DOL) – The Fair Labor Standards (FLSA):
Website: dol.gov/whd/flsa/
U.S DOL Toll-Free Line: 1-866-487-9243
Portland District Office: 503-326-3057
- Oregon Bureau of Labor and Industries (BOLI) – Technical Assistance for Employers:
Website: goo.gl/I9TMyC
Phone: 1-971-673-0824
Email: bolita@boli.state.or.us
Address: 800 NE Oregon Street, Ste 1045
Portland, OR 97232

FOOTNOTES SOURCES

- 1 www.dol.gov/whd/overtime/fs17a_overview.htm
- 2 www.dol.gov/whd/overtime/nprm2015/factsheet.htm
- 3 www.dol.gov/whd/regs/compliance/whdfs14a.pdf
- 4 <https://blog.dol.gov/2015/08/26/non-profits-and-the-proposed-overtime-rule/>
- 5 webapps.dol.gov/elaws/whd/flsa/scope/screen24.asp

LEARN MORE

Scan QR code or visit:
tinyurl.com/NAO-FLSA



For more copies of this Nonprofit Tip Sheet contact NAO's Helpline at helpline@nonprofitoregon.org

Information provided by NAO is for general purposes only and should not be construed as legal advice or a substitute for legal advice. If you wish to be certain about the proper course of action for your organization, please consult a licensed attorney.

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