



STRENGTHEN YOUR PEOPLE.
ACHIEVE YOUR MISSION.

How The New FLSA Rules Impact Nonprofits: *What You Need To Know*

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Tuesday, June 28, 2016

ABOUT NONPROFIT HR



Since 2000, Nonprofit HR has worked with thousands of associations and nonprofits, partnering with them to maximize the potential of their people and increase their impact.

Our practice areas include:

- HR Outsourcing
- Audit & Compliance
- Education & Training
- Compensation & Benefits
- Learning & Development
- Performance Management
- Culture & Engagement
- Talent Acquisition
- Executive Search

ABOUT YOUR FACILITATORS



Sidney Abrams, SPHR, SHRM-SCP, sHRBP

- Heads Nonprofit HR's consulting practice
- Serves as the firm's Audit & Compliance practice leader
- Is an expert HR strategist who recognizes the importance of seamlessly executing tactics
- 20+ years of HR experience, 8 with Nonprofit HR



Alicia Schoshinski, SPHR, SHRM-SCP, sHRBP, SWP

- Senior HR Business Partner with Nonprofit HR
- Oversees complex long- and short-term client engagements
- 25+ years of HR experience, 6 with Nonprofit HR
- Is an expert at developing HR strategy and aligning it with organizational mission

TODAY'S AGENDA



- FLSA Basics
- FLSA Revisions
- Pitfalls to Avoid
- What Should We Do Now?
- Nonprofit Considerations and Implications
- Resources
- Q&A

FLSA BASICS

FAIR LABOR STANDARDS ACT



- Administered by the DOL's Wage and Hour Division
- FLSA sets standards for:
 - Minimum wage
 - Overtime pay
 - Child labor
 - Equal pay
- States have own wage laws – often more generous with minimum wage and broader definition of overtime

EXEMPT VS. NONEXEMPT

- **Nonexempt employees** – paid for actual hours worked; eligible for overtime pay unless position meets criteria of different exemption tests
- **Exempt employees** – paid regular wage (weekly, bi-weekly) that does not change regardless of number of hours worked; not eligible for overtime



OVERTIME PAY



- Federal law mandates pay at 1½ times the regular rate for all actual hours worked > 40 hours in a workweek
- The regular rate is defined as:

$$\frac{\text{total earnings in the workweek}}{\text{total number of hours worked in the workweek}}$$

WORKWEEK

- Workweeks may be defined by the employer as any 7 consecutive 24 hour periods (168 hours)
- Typical examples include Monday to Sunday or Sunday to Saturday



EXEMPTIONS

- In order to be considered exempt, the role must pass the below 3 tests *in this order*:
 1. Salary Basis Test
 2. Salary Level Test
 3. Duties Tests



SALARY BASIS TEST



- Employee receives predetermined compensation each pay period when work is performed that is not reduced for quality/quantity variations
- Does not apply to:
 - Outside sales employees
 - Doctors, lawyers, teachers
 - Certain computer-related jobs

SALARY LEVEL TEST



- Employees who are paid less than \$23,600 per year (\$455 per week) are non-exempt
- Employees who earn more than \$100,000 per year are almost always exempt

DUTIES TEST

- Employee's primary duties must involve work associated with executive, administrative or professional employees – commonly referred to as “white collar” exemptions



FLSA REVISIONS

WHO DOES IT IMPACT?

- All business treated the same – no special provisions for nonprofits
- Enterprise or individual coverage



WHAT ARE THE CHANGES?



- Salary level test increased from \$455 per week to **\$913 per week** or from \$23,660 per year to **\$47,476 per year**
- Set at 40th percentile of weekly earnings of full-time salaried workers in the lowest-wage census region
- Minimum salary level will be updated every three years beginning January 1, 2020
- Effective December 1, 2016

HIGHLY COMPENSATED EMPLOYEES

- More simplified duties test
- Guaranteed a **minimum annual salary of \$134,004** (increased from \$100,000)
- Set at 90th percentile of weekly earnings of full-time salaried workers nationally
- Effective December 1, 2016



NONDISCRETIONARY BONUSES



- Non-discretionary bonuses and incentive payments/commissions may be used to satisfy up to 10% of the salary level test
 - Minimum of 90% (approx. \$821) of standard salary level must be paid as a weekly salary
- Payments must be made quarterly or on a more frequent basis to be counted

PITFALLS TO AVOID

PART-TIME EMPLOYEES

- Salary level not prorated for part-time employees
- Must pass the salary level test – regardless of duties or % of FTE – to be exempt



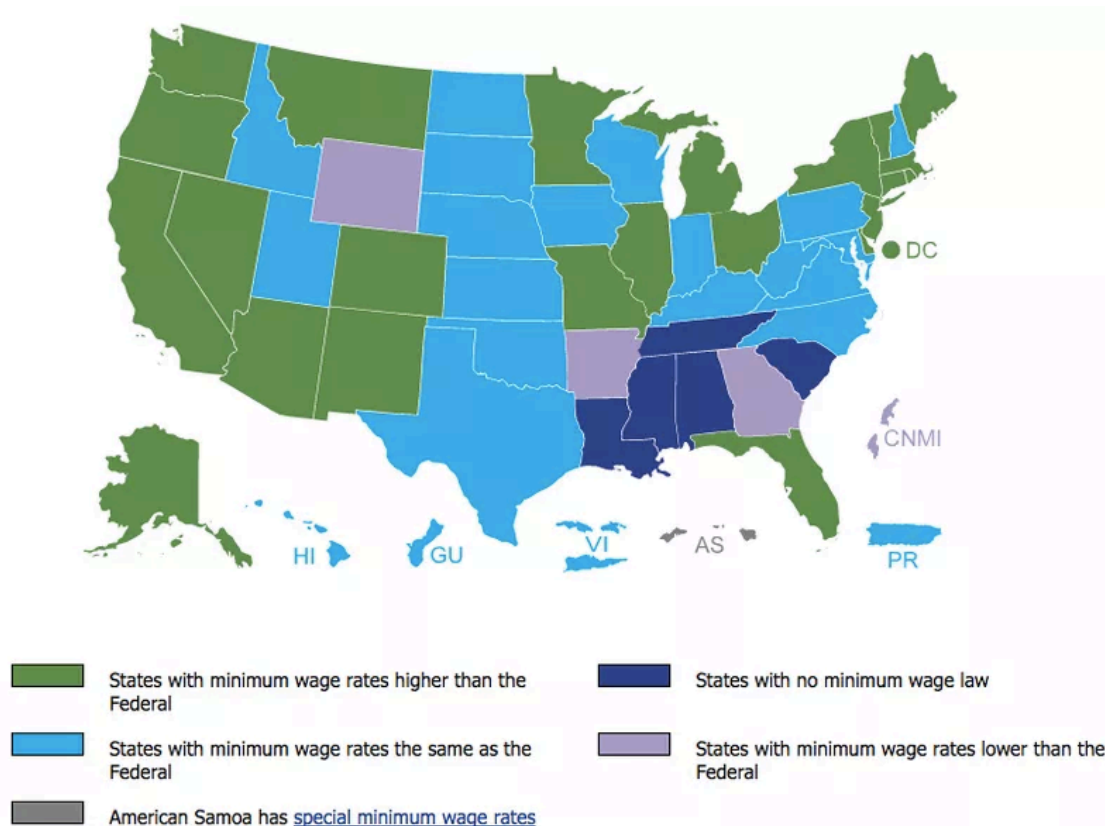
COMPENSABLE TIME



- Non-exempt employees to be paid for all hours "suffered or permitted" to work
- Special considerations for:
 - Waiting/on-call time
 - Rest and meal periods
 - Local and non-local travel
 - Lectures, meetings and training programs
 - Checking e-mail before or after hours

STATE LAWS

- Some states may have wage and hour laws that are more protective of workers



RECORDKEEPING



- Method of tracking and maintaining records not specified by FLSA, but time records must be kept for non-exempt employees
- Employers may prefer to have computerized timekeeping system and have employees record time daily
- Employers must post notice in conspicuous place and distribute to remote/virtual employees

TRACKING TIME



- Employers have flexibility in designing systems to track hours worked each day
- Can use “payroll by exception” – fixed schedule and only record hours that vary from regular schedule
- Not required to clock in and out – can provide only total number of hours worked each day
- Must be accurate

WHAT SHOULD WE DO NOW?

WHAT NOW?

1. Update position descriptions for all employees

If impractical, focus on those roles whose status may change or those who may be improperly classified

2. Identify employees impacted by salary threshold changes (exempt employees making less than \$47,476 annually)



WHAT NOW?



3. Consider two options for identified group
 - A. Increase base salary above \$47,476 to maintain exempt status, so long as the role passes the 2 other exemption tests (salary basis and duties)
or
 - B. Reclassify employees to non-exempt status
4. Calculate cost impact of options A and B
 - Predicted overtime vs. salary increase
 - Consider contingent labor costs

WHAT NOW?

5. Determine how non-exempt employees will be paid (salary vs. hourly)
6. Communicate, communicate, communicate
 - Begin the dialogue now
 - Communicate *the what* and *the why*
 - Emphasize positives – overtime earnings, better work/life balance
 - Be flexible
 - Obtain legal counsel review



WHAT NOW?



7. Train supervisors and staff on how to comply with tracking time (rest/meal periods, checking e-mail, travel time, etc.)
8. Document changes for employee file
 - Letter describing new classification
 - Signed position description
9. Update policies and processes to reflect changes
 - Authorization to work overtime
 - Timekeeping
 - Limiting before- or after-hours work

NONPROFIT CONSIDERATIONS AND IMPLICATIONS

MISSION IMPLICATIONS

- Lack of funding resources to cover the expected costs associated with the regulatory changes
- Services may need to be reduced or eliminated due to higher costs, particularly in 24/7 operations.
- Will likely place increased pressure on fundraising efforts



EMPLOYEE IMPLICATIONS



- Employees who have willingly worked long hours, and who want to do so, may no longer be able to
- May have some jobs with incumbents' salaries spanning exempt/non-exempt boundary
- May have supervisors whose salaries are too low to be exempt

EMPLOYEE IMPLICATIONS

- Reduced hiring and workload imbalances
- Less opportunity for career progression
- Morale concerns from perception of being undervalued, loss of status or lack of flexibility



STAFFING STRATEGIES



- Hire additional staff to cover workload created by limiting overtime
- Supplement workforce with flexible staffing resources – contingent labor and volunteers (with caution)
- Spread workload among existing exempt-level staff

ADDITIONAL IMPLICATIONS



- Raising salaries above threshold could lead to compensation compression between jobs
- Review benefits eligibility, as sometimes this is tied to FLSA status
- Considerations for remote work policies
- Consideration for adding non-discretionary bonuses (with caution)

IN SUMMARY

THE ROAD AHEAD...

- ☐ Review exempt vs. non-exempt for those positions near new salary level threshold
- ☐ Analyze costs associated with salary increases or anticipated overtime
- ☐ Assess impact on your organization and employees
- ☐ Communicate, communicate, communicate



RESOURCES

WHERE TO GET ADDITIONAL INFORMATION



- <https://www.dol.gov/sites/default/files/overtime-nonprofit.pdf> (DOL Overtime Final Rule and the Non-Profit Sector)
- <https://www.dol.gov/whd/regs/compliance/whdfs22.htm> (Wage and Hour Fact Sheet: Hours Worked Under the FLSA)
- <http://www.nonprofithr.com/audit-compliance/> (Nonprofit HR's audit and compliance services)
- <http://www.nonprofithr.com/blog/> (Nonprofit HR's blog with timely articles and information on all things related to nonprofit human resources)

QUESTIONS