

## Federal Guidelines for Classifying Exempt & Non-Exempt Staff

by Valessa Caspers

**The Fair Labor Standards Act (FLSA) is a US Department of Labor law that applies to employers, even churches! The FLSA puts standards in place that may require an employer to pay overtime, depending on the job duties of the employee.**

It is not uncommon for an employer to state, “we pay all of our employees as salaried or a set rate for the year, it’s just easier that way”. If this sounds like your church and you don’t have a system for certain employees to record and report their hours to the leadership individual responsible for paying those who work for the church, we strongly encourage you to put a system in place.

Why should you be concerned about this? Over the last several years the US Department of Labor has increased its efforts to audit employers, including churches, for compliance with the Fair Labor Standards Act (FLSA). If your church was audited and found to be out of compliance, you could be subject to significant penalties and fines.

***The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.***

***However, the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional, and certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee’s specific job duties and salary must meet all the requirements of the Department of Labor’s regulations.***

The terminology of exempt or non-exempt may be a new concept for you. Some employers think or speak using the terms SALARIED or HOURLY instead of exempt or non-exempt. These terms are not necessarily interchangeable, but are often mistakenly viewed that way.

### *Examples*

Pastor Victor Johnson and Associate Pastor Peter Collins are classified as an exempt employees. This is a proper classification under the FLSA because both Pastor Vic and Pastor Pete satisfy all of the tests under the FLSA. Neither pastor must record their hours worked as they are considered exempt employees.

Emma Parks is the church’s part time Administrative assistant, working approximately 30 hours a week. Sue responsibilities include preparing the church’s weekly bulletin, answering the phone, scheduling nursery workers, preparing reports, sending emails and managing the church’s main calendar and other duties as assigned by the pastoral staff and church leadership. Emma works the hours needed each week to get the job done. Sometimes she can manage this at 27-28 hours a week, several weeks a year

she works 41-46 hours a week. Emma does not record her hours per week. The church pays her \$17,160 a year no matter how many hours per week she works. Effectively, the church is treating her as an exempt employee. However she does not satisfy the FLSA tests for an exempt employee. Sue should be considered Non-Exempt, however the church will need to begin to do one of the following:

1. Pay Emma an hourly wage of \$11.00, have Emma report her hours worked each week (Sunday through Saturday or however the church defines the work week for all employees) to the appropriate person. Paying her for hours worked rather than a straight annual salary. In this case she would be classified as a non-exempt employee. This is the preferable way to handle typical non-exempt employee pay, an hourly wage, pay per hour (and/or partial hours) worked.

2. Pay Emma her annual wage of \$17,160, but have her track her hours worked each week. If she does work more than 40 hours a week she would be paid overtime at a rate of \$16.50 for any hours worked over 40 hours per work week. In this case, Emma would be considered non-exempt salaried. This is allowable, but not preferable.

The important factor in this example is that Emma is recording her hours worked, she is paid at least minimum wage (the higher of the Federal or State minimum wage) AND Faith Church is paying her overtime for any hours worked greater than per work week.

Several important points to remember:

1. Churches are not exempt from federal or state employment law. This includes areas such as the FLSA, payroll, benefits (such as ACA-health care reform, retirement compliance), worker's compensation, etc.
2. The federal and state government can and does audit churches/non-profit organizations in a number of areas such as those mentioned above. An audit could begin with the church being randomly chosen or possibly as a result of an individual tax audit that could extent to the church if payroll or tax errors are traced back to the church.
3. Departments within the federal government communicate and relay audit suggestions to each other if non-compliance issues are found in an initial review of an employer or employee. This applies to churches/faith based non-profits as well as secular employers.
4. It could be said that small churches/faith based non-profits are especially at risk as they may have volunteers unfamiliar with payroll administration, employment law, etc.

If the previous paragraph has you overwhelmed already, you are not alone! FCMM can be a resource for you. While cannot give you legal advice, we can offer some guidance and be a sounding board for your church's situation. In addition, our new Payroll Service is designed to help churches administer best practices in their payroll function.