



THE NONPROFIT
ASSOCIATION OF
OREGON

FLSA Fact Sheet for Nonprofits: DOL Proposed Overtime Reforms

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 legislation *will* impact all sectors, it is currently unclear exactly how Oregon nonprofits will be affected.

This fact sheet was created by NAO to help Oregon nonprofits better understand the new FLSA standards, and if/how it might affect their organization. For more detailed information refer to the additional resources included at the end or contact your employment lawyer. For clarifications to any of the information contained in the overview below, please feel free to contact NAO's Helpline at helpline@nonprofitoregon.org.

What is FLSA?

The Fair Labor Standards Act (FLSA) establishes labor laws pertaining to wage, pay, record keeping and youth employment standards.

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

What are the proposed changes and when will they take place?

The salary level test referred to above is the significant change that would more than double the minimum salary level that qualifies an employee as exempt. It would change it from \$23,660 to \$50,400 per year.²

We were anticipating changes to come in late 2015 or early 2016, but the latest information says the DOL's final regulations are not expected before late 2016.³

Will it impact my organization?

Many nonprofits are concerned about how these changes will affect their organization's pay roll. Currently, it is unclear which nonprofits qualify under FLSA. Current language says, “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.”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.”⁴ 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.”

- Here is what is clear: nonprofit charitable organizations are covered under FLSA if they have unrelated business income related to commercial activities that meet or are above the annual gross

volume of sales made or business done of \$500,000. Employees of certain businesses are automatically covered regardless. Those organizations include: hospitals, businesses providing medical or nursing care for residents, schools, and public agencies.⁴

How will it impact my organization and what can we do to prepare?

Legislation will impact organizations differently, and more clarification is needed around qualifications. NAO is dedicated to bringing you the latest information on FLSA changes and helping you understand how it might impact your organization.

- If your organization is affected, it will need to assess employee classifications and may consider adjustments such as scheduling changes to limit overtime costs.⁵
- Organizations will not be required to raise salaries, unless trying to maintain exemption for employees.⁶
- It is always important to have a strong financial strategy in place. Revising budgeting processes may help to compensate for any effects of the new regulations.

Where to go for more info/help?

- National Council of Nonprofits – DOL Proposed Overtime Reforms and the Impact on Nonprofits: <https://www.councilofnonprofits.org/trends-policy-issues/dol-proposed-overtime-reforms-and-the-impact-nonprofits>
- United States Department of Labor – The Fair Labor Standards (FLSA): <http://www.dol.gov/compliance/laws/comp-flsa.htm>
U.S. DOL Wage and Hour Division toll-free help line: 1-866-487-9243
Portland District Office Wage and Hour Division: 503-326-3057
- Oregon Bureau of Labor and Industries (BOLI) – Technical Assistance for Employers: http://www.oregon.gov/boli/TA/pages/t_faq_taclass.aspx
800 NE Oregon Street, Suite 1045 Portland, OR 97232
971-673-0824
bolita@boli.state.or.u
- Cascade Employers Association: <http://www.cascadeemployers.com/>

Sources

1. Coverage Under the FLSA by *Chamberlain, Kaufman and Jones, Attorneys at Law*: <http://www.flsa.com/coverage.html>
2. Policy Alert, Fair Labor Standards Act by *Georgia Center for Nonprofits*: <http://www.gcn.org/events/Policy-Alert-Fair-Labor-Standards-Act>
3. New Rule for Overtime Pay Coming Later Than Anticipated by *The Wall Street Journal*: <http://www.wsj.com/articles/new-rule-for-overtime-pay-coming-later-than-anticipated-1447284341>
4. Frequently Asked Questions: Overtime NPRM by *United States Department of Labor*: <http://www.dol.gov/whd/overtime/NPRM2015/faq.htm>
5. U.S. Department of Labor Proposes Sweeping Changes to FLSA Overtime Exemption Criteria: The Implications for Nonprofit Employers by *Venable Law Firm*: https://www.venable.com/SnapshotFiles/2310d60e-6fc4-4081-957d-6646166827bb/Subscriber_snapshot?clid=c2d1036d-648d-4bf6-9ef1-4e6f4e391844&cid=c8ac5907-3276-423c-8a7c-ffffd636ecf9&ce=ft%2fSFG0hpZnq3cdauVWjLPLDag6UcNU7MxnBeyxYps4bpi7BFP2sLQ%3d%3d
6. FLSA Exemptions & Oregon Sick Leave: Two Major Changes That Will Affect Your Organization by *Ryan Orr, JD, HR, and Compliance Consultant, Cascade Employers Association*. Training Handout. September 24, 2015

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