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BLOGS

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The New DOL Overtime Rule – Does it Apply to Nonprofits?

As we reported last month, the U.S. Department of Labor (DOL) released the long-awaited Final Rule on white collar exemptions to the Fair Labor Standards Act (FLSA), which will go into effect on [December 1, 2016](#). The Final Rule significantly increases the minimum weekly salary amounts required for the white collar exemptions. Many nonprofit employers are concerned about the impact the salary changes will have on their organizations.

Neither the FLSA nor the regulations provide an exemption from the overtime requirements for nonprofit organizations. However, some nonprofit organizations are not covered under the FLSA because they are not an enterprise under the law. Nonetheless, nonprofit organizations must be careful in determining coverage under the FLSA because individual employees may still be eligible for overtime pay.

There are two types of coverage under the FLSA: 1) enterprise coverage for businesses or similar entities (Enterprise Coverage); and 2) individual coverage for certain individuals (Individual Coverage).

Enterprise Coverage applies to businesses with annual sales or business of at least \$500,000. For nonprofit organizations, Enterprise Coverage applies only to the activities it performs for a business purpose such as running a gift shop. In addition, funds received from contributions, membership fees, many dues, and donations used for charitable purposes are not counted toward the \$500,000 threshold. However, certain entities are named enterprises under the FLSA and are covered by the FLSA regardless of the total of their annual sales or the type of business done or their nonprofit status. Those named entities are:

- Hospitals
- Schools and preschools
- Government agencies
- Businesses providing medical or nursing care for residents
- Institutions of higher education

Individual Coverage applies to specific employees if those employees are engaged in interstate commerce or in the production of goods for interstate commerce. As a result, even if the nonprofit organization itself is not covered by the FLSA, certain employees may be covered. Examples of employees engaging in interstate commerce include:

- Making out-of-state telephone calls
- Receiving or sending interstate mail or electronic communications



- Ordering or receiving goods from an out-of-state supplier
- Handling credit card transactions or performing the accounting or bookkeeping for such activities

As you see, the coverage under the FLSA is very broad. Nonprofit organizations should take steps to determine if they or their employees are covered under the FLSA; however, that analysis should be done on both an enterprise and individual level.