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New Overtime Final Rule & Iowa's Charitable Sector

by Paul Thelen, Assistant LAWINRC Director

On May 18, 2016, President Obama and Department of Labor (DOL) Secretary Perez announced the publication of the DOL's final rule updating the regulations governing overtime compensation under the Fair Labor Standards Act (FLSA). The effective date of the final rule is December 1, 2016.

The DOL's final rule raises the minimum salary level required for the executive, administrative, and professional ("white collar") employees exempt from overtime compensation from \$455 to \$913 per week (from \$23,660 to \$47,476 per year), as well as the salary level for highly compensated employees. See Table 1.

The overtime provisions generally apply to all employees—including employees of nonprofit organizations—who are covered by the FLSA. This means nonprofit employers are required to pay salaried white collar employees overtime pay if the employee is compensated below this new salary level and works more than 40 hours in a week.

Is Your Nonprofit Employee "Covered"?

There are two ways in which an employee may be covered by the FLSA: enterprise coverage and individual coverage. Enterprise coverage would apply to or "cover" all employees who work for nonprofits with annual revenue—that is,

volume of sales made or business done—of at least \$500,000.

Of crucial importance to nonprofit organizations is that "sales made" or "business done" does not include the organization's charitable, religious, educational, or similar activities. Instead, it refers to commercial activities that are in substantial competition with for-profit businesses.

Consequently, donations, dues (except for any part in which the payer receives a benefit), and membership fees used to further your charitable purpose are not included in the \$500,000 threshold. Thus, most of Iowa's charitable nonprofits are below this \$500,000 threshold and their employees are not subject to the FLSA under the enterprise coverage.

It is important to note that nonprofits that are "named enterprises" are covered by the FLSA regardless of their annual sales or business done, these include hospitals, schools, government agencies, and businesses providing medical or nursing care for residents.

A nonprofit employee who does not qualify under the enterprise coverage may qualify under the individual coverage. Individual coverage is based on the nature of a particular employee's work activi-

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ties. An employee who engages in interstate commerce or in the production of goods for interstate commerce is covered by the FLSA. This includes employees who communicate across state lines or whose work involves the movement of persons or things across state lines.

The DOL has released several publications for nonprofits with helpful examples. See the links at the end of this article.

Options for Compliance

More than 1 in 10 Iowans working in the private sector are employed by a nonprofit.

What possible changes can covered employees who do not meet the exemption test (See Table 2) expect from their employers in the following months? The DOL anticipates several scenarios:

Raised Salaries—Employees who meet the duties test, regularly work overtime, and whose salaries are close to the new salary level will likely see a raise in pay.

Paid Overtime Above Salary—Salaried employees who fall below the new levels are eligible for overtime for hours in excess of 40 per week. Accurate records of hours worked are required.

Adjusted Schedules, Reorganized Workloads—Hours may shift from employees who typically work more than 40 hours to employees who work fewer than 40. Employees with regular duties outside of normal 9-to-5 hours might adjust their schedules to accommodate these hours.

Adjusted Wages—Salaried employees may become hourly employees but may be paid largely the same based on hours and overtime hours worked each week. Hourly wages may not fall below minimum wage standards.

Volunteers—Nonprofits may rely more on volunteers to reduce the overtime hours of employees.

No Change—It is estimated that 60 percent of affected nonprofit employees do not work overtime. Thus, there will be no change.

The expectation is that nonprofits will conduct a great deal of internal research to accurately assess how many hours each employee is working. This will likely include some changes in recordkeeping systems and technology used to track employee hours. Some professionals are concerned that there may be cuts to benefits or an elimination of positions in order to meet these raised compensation obligations. Other professionals are optimistic that creative solutions—such as telecommuting—may be better utilized.

Further, there is an increasing sense among professionals that the “overhead” of paying compensatory salaries for quality employees will no longer be considered a sign of inefficiency but as an integral part of furthering the nonprofit’s mission. This requires nonprofits to make the case to donors and grantors that their contributions that go toward employee pay is vital to the organization’s charitable purpose.

Why Now?

The salary threshold has been a fixed amount, and it did not change with inflation. The DOL has updated the salary level only twice in the last 40 years: in 1975, the threshold was set at \$250 per week; in 2004, the threshold was set at \$455 per week.

Research by the Economic Policy Institute shows that the percentage of salaried workers

covered by the salary threshold in 1975 was 62 percent compared to only 8 percent of workers covered under the current threshold. It is estimated that over 4 million additional workers will be under the salary level of the new rule. Further, under the new rule, there will be automatic adjustments to the salary level. See Table 1.

Iowa nonprofit organizations with employees covered under this new rule will be working diligently these next few months to align their budgets with these requirements. The effective date of the final rule is December 1, 2016. Future automatic updates begin January 1, 2020.

For those nonprofits whose employees are not covered by this final rule, there is still tremendous value in accurately measuring work hours and exploring opportunities to make improvements to enhance the experience of your workers and advance your mission.

Please contact us if you have any questions.

Additional Information:

Guidance for Non-Profit Organizations on Paying Overtime under the FLSA: <https://www.dol.gov/whd/overtime/final2016/nonprofit-guidance.pdf>

Overtime Final Rule and the Non-Profit Sector: <https://www.dol.gov/sites/default/files/overtime-nonprofit.pdf>

Table 1. Department of Labor Overtime Final Rule

	CURRENT RULES	NEW RULES (Effective December 1, 2016)
Salary Level for Executive, Administrative, and Professional Employees	\$455 per week (\$23,660 per year)	\$913 per week (\$47,476 per year) Set to salary level at 40th percentile of earnings of full-time salaried workers in lowest-wage Census Region (currently the South).
Salary Level for Highly Compensated Employees (HCE)	\$100,000 per year	\$134,004 per year Set to annual equivalent of the 90th percentile of full-time salaried workers nationally.
Automatic Adjustments	None	Adjusted every three years to maintain levels at the above 40th and 90th percentiles. Future automatic updates begin January 1, 2020.
Bonuses/Incentive Payments	Do not count toward salary level.	Permits employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy 10% of new standard salary level.

Table 2. Qualifying for Exemption

	Executive	Administrative	Professional	Highly Compensated
Salary Basis Test	Employee paid on salary or fee basis.	Employee paid on salary or fee basis.	Employee paid on salary or fee basis.	Employee paid on salary or fee basis.
Salary Level Test	\$913 per week (\$47,476 per year)	\$913 per week (\$47,476 per year)	\$913 per week (\$47,476 per year)	\$134,004 per year
Duties Test	Primary duty must be managing the enterprise or managing a customarily recognized department or subdivision; must customarily and regularly direct work of at least two other full-time employees or their equivalent; and must have authority to hire/fire employees or make recommendations on an employee's change of status.	Primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.	Primary duty must be the performance of work requiring advanced knowledge, predominantly intellectual in character, and requiring consistent exercise of discretion and judgment; advanced knowledge must be in field of science or learning; and advanced knowledge must be customarily acquired by prolonged course of specialized instruction.	Primary duty performing office or non-manual work; and customarily and regularly perform at least one of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee.

See 29 Code of Federal Regulations Part 541 for further guidance.

Charity Navigator Rolls Out New Rating System

Charity Navigator recently implemented a new rating system that spokespersons say will give a more accurate financial picture of the approximately 8,000 charities listed on the organization's website. The new system has updated seven metrics used to assess financial health.

The major change encompasses the averaging of certain expenses from the last three fiscal years instead of using data from only the most recent fiscal year. These expense categories include those for program, administration, and fundraising. Data for fundraising efficiency will also be averaged over the last three years.

The Liabilities to Assets Ratio is a new metric calculated by using the data from the charity's most recent fiscal year which can indicate possible excessive debt.

Financial experts, academics, donors and others collaborated with Charity Navigator staff and task force members on devising the new system. A more detailed breakdown of the changes can be found on the Charity Navigator website at <http://www.charitynavigator.org/index.cfm?bay=content.view&cpid=2199&from=slideshow>

Also see the May 27, 2016 New York Times article Charity Navigator Tweaks Its Rating System at http://www.nytimes.com/2016/05/28/your-money/charity-navigator-tweaks-its-rating-system.html?_r=1

Giving USA 2016 Reports Record-Setting Year

Growth in giving was slower in 2015 than in 2014 yet set a record for the second year in a row according to this year's Giving USA report released June 14 by the Lilly Family School of Philanthropy at Indiana University.

Of the four giving sources tracked—corporations, foundations, bequests, and individuals—contributions from individuals led in total dollar amounts.

Organizations that saw the biggest increases in donations were international affairs organizations which researchers attribute to high-profile humanitarian disasters such as the Nepal earthquake and Syrian refugee crisis. Donations to this category increased 17.4 percent. Education was next with an 8.8 percent increase followed by arts, culture, and humanities which grew 6.8 percent. Following was environment or animal-welfare issues which grew 6.1 percent.

The Giving USA report is published by the Giving USA Foundation, a public-service initiative of The Giving Institute and is researched and written by the Indiana University Lilly Family School of Philanthropy.

For fuller analyses, see the News section of the Lilly Family School of Philanthropy website at <https://philanthropy.iupui.edu/index.html> and The Chronicle of Philanthropy at <https://philanthropy.com/>

Labor Department Offers Overtime Rule Webinars

The United States Department of Labor (DOL) has offered a series of webinars on the Overtime Final Rule that affects nonprofits and state and local governments. A session for nonprofit organizations was held on June 7.

Even though some of the DOL webinars have concluded, they were recorded and can be viewed by logging in at <https://www.dol.gov/whd/overtime/final2016/webinars.htm>

Worth Noting From techsoup

If your nonprofit would like to save money but is hesitant to purchase refurbished computer equipment, read Jim Lynch's May 10, 2016 blog post, *New Versus Refurbished: 6 Myths Busted* at <http://forums.techsoup.org/cs/community/b/tsblog/archive/2016/05/10/top-6-myths-about-refurbished-hardware.aspx?cg=tt>

Another worthwhile post from Lynch is from March 10. In *The Greatest Security Threat is Already Inside Your Office*, he summarizes a report on IT security put out by Kaspersky Labs. Organizations of all sizes are at risk, and the first line of defense is having trained and informed employees.

See the article and find a link to the Kaspersky Labs report at <http://forums.techsoup.org/cs/communnity/b/tsblog/archive/2016/03/10/the-greatest-security-threat-is-already-inside-your-office.aspx>

Volunteer and Training Opportunities

Nonprofit Association of the Midlands - Board Boot Camp

The six-part nonprofit Board Boot Camp was developed in partnership with Leadership Omaha, Omaha Community Foundation, Nonprofit Association of the Midlands, UNO's College of Public Affairs and Community Service, United Way of the Midlands, and the Women's Fund of Omaha. Workshops meet Wednesdays, 9-11 am.

More at <http://www.nonprofitam.org/>

Finances (Part 3 of 6)

Every board member shares fiscal responsibility for the organization. How do you determine whether you are staying in legal compliance? Learn how to read and prepare essential financial and governance documents and assume related financial duties.

Date: June 22

Presenter: Dave Pantos, Executive Director of Autism Action Partnership

Remaining Board Boot Camp workshops:

Part 4: Board Recruitment & Team Building, June 29

Part 5: Continuous Improvement & Evaluation, July 6

Part 6: Meaningful Engagement, July 13

The Greater Des Moines Community Foundation

For information on additional activities, see the Greater Des Moines Community Foundation website at <https://www.desmoinesfoundation.org/events.aspx>

Volunteer Opportunity: Raising Readers

An opportunity to volunteer and learn about how the community raises readers and prepares students for success by helping children achieve reading proficiency by third grade. Volunteers may invite children to attend with them.

Date: September 19

Times: 5:45 - 6:30 pm - Read, play and eat with CFUM children and families; 6:30 - 7 pm - Panel discussion about the importance of grade level reading.

Location: Children & Family Urban Movement

More training opportunities, page 6.

NW Illinois Volunteerism Conference Calls for Workshop Proposals

Persons interested in presenting workshops at the Northwest Illinois Volunteerism Conference in October are invited to submit proposals to conference planners.

The one-day conference is scheduled for Friday, October 14 at the Western Illinois University Riverfront Campus in Moline, Illinois.

Proposals are due July 12.

Those submitting proposals will be notified of acceptance by July 20.

The RFP is available at: <http://www.illinois.gov/serve/Pages/default.aspx>

Get Connected for Summer Volunteering

Summer is a great time to volunteer whether you are looking for opportunities as an individual or as a family. Volunteer Iowa's Volunteer Portal can help you find opportunities suited to your interests. Help is needed in a wide variety of areas this summer.

If you are with an organization that is looking for volunteers, you can post your opportunities on the portal, too. See <http://volunteeriowa.galaxydigital.com/>

Training Opportunities

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Lee County Extension: Nonprofit Management Academy

Workshops leading to a Certificate in Nonprofit Management are offered Tuesdays, 9 am-4 pm at the Baymont Inn and Suites, 325 Main St., Keokuk, IA. Courses are \$60 each with CEU credit an additional \$25. Information, registration, and brochure available at www.extension.iastate.edu/Lee

Board Development

Date: July 12, 2016

Presenter: Louis Riggs, J.D., Hannibal-LaGrange University, Assistant Professor of English; John Gulick, University of Missouri Extension, Community Development Specialist

Advocacy

Date: August 9, 2016

Presenter: Louis Riggs, J.D., Hannibal-LaGrange University, Assistant Professor of English

Marketing: Social Media and Digital Strategies

Date: September 13, 2016

Presenter: Sally Poole, CEO Poole Communications

Fundraising: Focusing on the Why

Date: October 11, 2016

Presenter: Wendy Harrington, PhD, Hannibal Regional Hospital Foundation

About Our Organization

The Larned A. Waterman Iowa Nonprofit Resource Center is a University of Iowa interdisciplinary collaboration created to make more accessible educational and service programs focused on strengthening the operational capacity of Iowa nonprofit organizations.

The LAWINRC works collaboratively with government agencies, nonprofit organizations and educational institutions to impart new knowledge through activities and provide

Johnson County Extension: Nonprofit Management Academy

Courses leading to a Certificate in Nonprofit Management offered Thursdays, 9 am-4 pm at the Johnson County Extension Office, 3109 Old Hwy 218 S., Iowa City, IA. Courses are \$70 each with CEU credit an additional \$25. Information and registration at <http://www.extension.iastate.edu/johnson/sites/www.extension.iastate.edu/files/johnson/NPMAbrochure%202016-FinalA.pdf>

Financial Management & Oversight for Nonprofit Organizations

Date: June 23, 2016

Presenter: Stan Miller, Stan Miller Consulting Services

Building and Retaining an Engaged Nonprofit Workforce

Date: August 18, 2016

Presenter: Don Broshar, Consultant, Retired ISU Extension & Outreach

No Whammies! Best Practices & Common Pitfalls During the Hiring, Onboarding, & Evaluating Processes

Date: September 8, 2016

Presenter: Maureen DeArmond, JD, Iowa State University Office of University Counsel

information and training resources to help nonprofit organizations and interested persons throughout Iowa. We seek to build the capacity and develop the effectiveness of community-based organizations and enhance the overall effectiveness of local organizations in building communities.

The LAWINRC also introduces students to the nonprofit sector and develops their sense of public and community service.