



November 30, 2016

Dear Pastor/Principal/Agency Director/Business Manager:

On November 22, 2016, a federal district court issued a preliminary injunction delaying, at least temporarily, the implementation of the United States Department of Labor's ("DOL") overtime rule scheduled to take effect on December 1, 2016.

These anticipated changes were detailed in recent meetings held in September 2016, via video on the Diocesan website, and through the Information Bulletin over the past several months explaining the new requirements on employee classification as exempt versus non-exempt for overtime coverage.

At this point in time, it is unclear when the DOL's overtime rule (an increase in salary level requirement from \$23,660 to \$47,476 annually to retain exempt status) might be implemented, if at all. It remains possible that the overtime rule, as written, may be implemented in the foreseeable future, but for now, the December 1, 2016 requirement has been placed on "hold". Meanwhile the former regulations will remain in force.

Next Steps

If you have completed an analysis of current exempt staff whose rate of pay falls below the proposed "new" threshold (\$47,476), and have planned changes to their status or compensation, it is within the purview and discretion of your organization to implement those changes, regardless of the injunction. **BECAUSE of the injunction, however, you are NOT REQUIRED to do so.** If your organization does not wish to implement these changes at this time, we recommend that you consider the following steps:

- Please continue to confirm proper classification of all employees based on current FLSA Guidelines.
- Please refrain from reclassifying employees to nonexempt, **ONLY IF** the employee meets the current salary threshold of \$23,660 (\$455 per week) **AND** the duties test for an exempt employee (attached). **Note: Make sure you don't simply return employees to exempt status for convenience sake. This is your opportunity to avoid stretching the duties test and avoid misclassification. These duties tests are not likely to change just because of the postponement of the December 1 deadline on salary thresholds.**
- Be aware that the salary exempt threshold could increase above the current \$23,660, necessitating another round of review depending on Court rulings.

- For those positions that you determined were misclassified because they were not performing duties that satisfied the duties test, proceed with the re-classification of any such positions from Exempt to Non-exempt as such changes are not impacted by the court's ruling referenced above.
- If you have already issued salary increases (or have already communicated salary increases) in order for employees to maintain exempt status, we recommend that you continue with these changes as planned. Although legally you may rescind a salary increase, we strongly advise against it for morale purposes.

If you decide to rescind a change that has already been made, please understand that the rescission may not be made retroactively. Pennsylvania law, as currently interpreted by the Pennsylvania Department of Labor and Industry, Wage and Hour Division, requires that employees be notified of any change in their compensation no later than the payday BEFORE the change becomes effective. 43 P.S. §260.4. In other words, if you advised an employee that they would receive a pay raise beginning with the pay period starting this past Sunday, you may tell them today (November 30, 2016) that you are rescinding the change. The employee, however, would still be entitled to the increased salary for the current pay period. Their pay would not revert to their original salary until the start of the NEXT pay period.

- Timesheets are still required for all positions that are ***non-exempt for overtime regardless of any delay to the December 1, 2016 postponement.***
- As a postscript, you might want to delay ordering Labor Law posters which show the December 1, 2016 revisions until the issue has made its way through the courts!

If you have any questions, please feel free to contact Deacon Bill Saborsky at St. Mark Center (814.824.1189 or wsaborsky@eriercd.org), or me. We will continue to keep you informed of the status of any changes as we are made aware of them. Thank you for your cooperation and diligence through all of this.

Sincerely in Christ,

Christopher J. Singer

The Reverend Christopher J. Singer, JCL
Chancellor