



# Revising the White Collar Overtime Exemption Threshold

WHAT THE 2016 DEPARTMENT OF LABOR REGULATION  
UPDATES MEAN FOR YOUR NONPROFIT  
ORGANIZATION



# Presenters



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# The Fair Labor Standards Act

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## FAIR LABOR STANDARDS ACT (“FLSA”)

- **Minimum wage and overtime entitlement**
  - What is minimum wage?
  - How is overtime calculated?
- **Which employers are covered?**
  - Enterprise coverage
  - Individual coverage
- **White Collar Employees**
  - Executive
  - Administrative
  - Professional

# Employers Covered

- **Enterprise Coverage**
  - Annual Dollar Volume (“ADV”) threshold of \$500,000
    - Commercial activities
    - Two or more employees engaged in commerce
  - Named enterprises covered regardless of ADV
- **Individual Coverage**
  - Coverage even if enterprise not covered
  - Involvement in interstate commerce



# The Fair Labor Standards Act “White Collar” Exemption



# The exemption – 29 CFR 541

## STEP ONE: DUTIES TEST

- Executive, administrative, professional
- Exception for certain employees (doctors, lawyers, teachers)

## STEP TWO: SALARY BASIS TEST

- Predetermined and fixed salary

## STEP THREE: SALARY LEVEL TEST

- \$455 per week or about \$23,660 annually



# Why were the regulations updated?

DEPARTMENT OF LABOR (“DOL”) STATES THE NEW REGULATIONS:

## 1. UPDATE THE OVERTIME PAY PROTECTIONS

- Less than poverty threshold for a family of four
- Last updated in 2004

## 2. SIMPLIFY THE OVERTIME RULES

## 3. ASSIST IN BUILDING ECONOMIC SECURITY





# What changed?

## UPDATED SALARY LEVEL TEST

- \$455 to \$913/week
- \$23,660 to \$47,476 annual salary
- Annual indexing
- Highly compensated employees - \$100,000 to \$134,004 annual salary
- Include nondiscretionary bonuses paid quarterly or more frequently

## DUTIES TEST

- No changes
- Concurrent duties

EFFECTIVE DEC. 1, 2016



# Industries and positions most likely to be affected

- Non-profit organizations
- Small businesses
- Office and administrative support
- Construction
- Production
- Managers at food service
- Architecture
- Social workers
- Supervisors in retail
- Counselors



# How to apply the regulations to your organization

## 1. Identify coverage type

- Enterprise or individual coverage

## 2. If enterprise, separate hourly and salaried employees.

- Satisfies the salary basis test

## 3. Separate out those below salary threshold of \$47,476.

- Satisfies the salary level test

## 4. Look at the duties of those at or above the salary threshold of \$47,476 to ensure they apply to the white collar employee exemptions.

- Satisfies the duties test

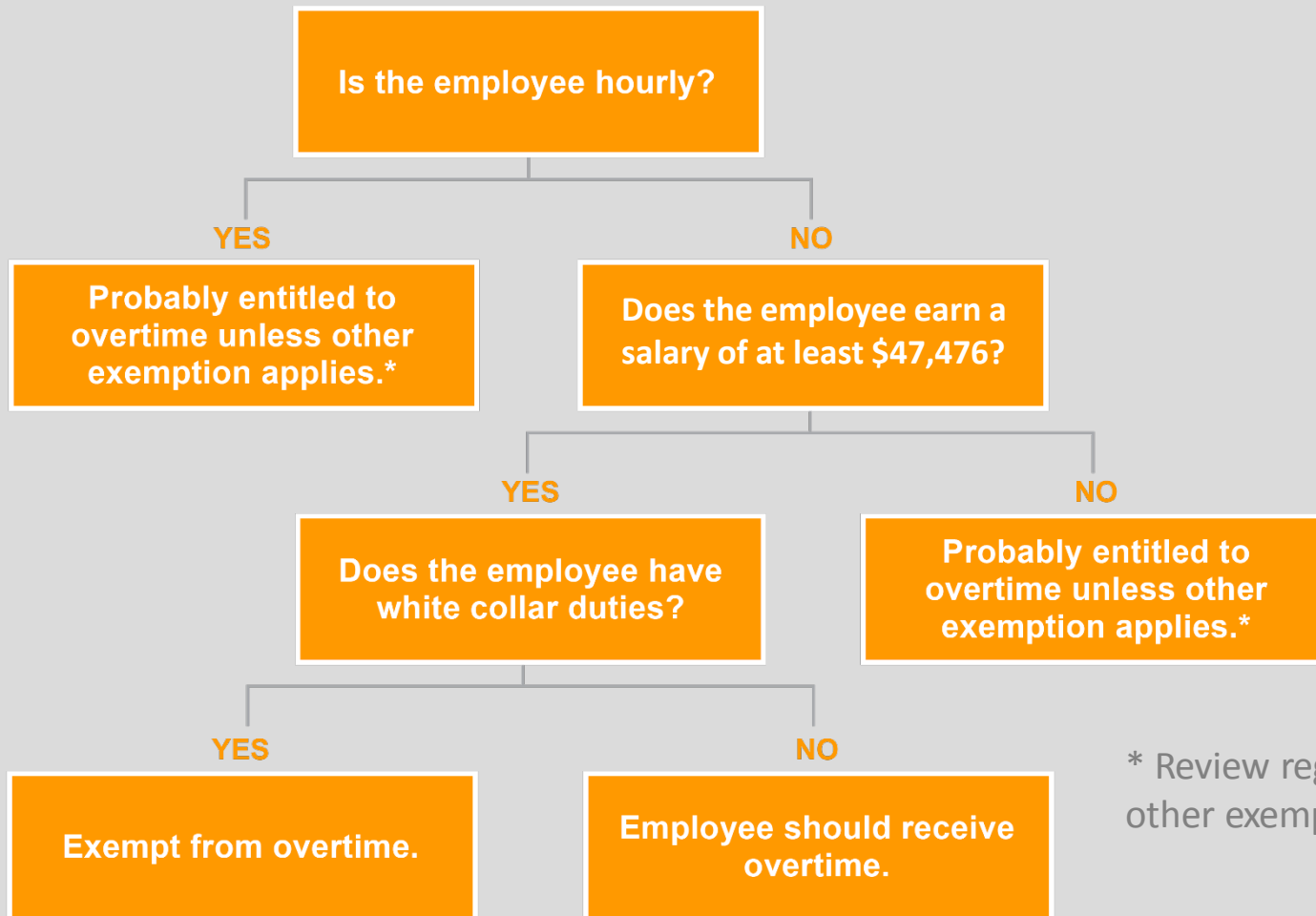


# How to apply the regulations to your organization

5. If enterprise not satisfied, are any individuals covered?
  - Identify these individuals
6. Identify if these individuals are covered continuously or on week by week basis.
7. Follow steps 3 and 4 (on previous slide).



# How to apply the regulations to your organization



\* Review regulations for other exemptions available.



# Case Study- Enterprise Coverage

A non-profit provides health services to the local community, charging clients a fee on a sliding scale.

Are the employees that work at the nonprofit covered by the FLSA on an enterprise basis?



# Case Study- Enterprise Coverage

A private non-profit museum that primarily engages in charitable activities also has a gift shop that employees take turns staffing.

Are the employees staffing the gift shop protected by FLSA on an enterprise basis?



# Case Study- Individual Coverage

A food bank receives food donations from corporations in other states. Staff members are involved in unloading, stocking, and accounting of the food donations.

Are the employees individually covered?





# How can employers prepare?

1. Review job descriptions
2. Identify positions likely to change (now and in the future)
3. Identify cost to employer for compliance under various options
  - Salary increase
  - Overtime payments to current pay
  - Readjusting hourly wage to include overtime



# How can employers prepare?

4. Consider other impacts for employees
5. Establish a communication plan for reclassified employees
6. Plan training for newly reclassified employees
7. Plan how to approach future increase to allow for annual budgets



# Thank you for attending



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