CAPLAW FAQ



A series of common legal questions and answers for the CAA network

Overview of FLSA Principles

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This FAQ addresses commonly asked questions about the federal Fair Labor Standards Act (FLSA), including its applicability to Community Action Agencies (CAAs). It provides an overview of key FLSA principles and discusses the exemptions CAAs most frequently use to classify employees as "exempt" from minimum wage and overtime pay, including specific exemption issues for Head Start teachers.

A new Overtime Rule (the "Overtime Rule") issued by the U.S. Department of Labor ("DOL") will initially take effect on July 1, 2024, and is estimated to make an additional 1 million employees eligible for overtime compensation. Another 3 million are estimated to become eligible for overtime after the Overtime Rule's second salary level increase occurs on January 1, 2025. See CAPLAW's FAQ, Complying with the New Overtime Rule Under the FLSA for more information about the impact of the Overtime Rule and strategies for implementing the changes.

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SECTION ONE: GENERAL FLSA PRINCIPLES

1. What is the Fair Labor Standards Act (FLSA) and what does it do?

The FLSA is a federal law originally passed in 1938. It establishes minimum wage, overtime pay, recordkeeping, and child labor standards for covered full-time and part-time workers in the private sector and in federal, state, and local governments. Employees covered by the FLSA must be paid at least the federal minimum wage and at least one and a half times their regular rate of pay for any hours they work over 40 in a workweek.[1]

2. Who is entitled to minimum wage and overtime pay under the FLSA?

Most job categories are covered by the FLSA unless excluded by law. Within these job categories, employees classified as "non-exempt" are entitled to receive the minimum wage and overtime guarantees of the FLSA. An employer must pay its covered employees minimum wage and overtime pay unless an employee meets one of the FLSA's exemptions.

3. Who is *not* entitled to minimum wage and overtime pay under the FLSA?

Employees classified as "exempt" from the FLSA requirements do not need to be paid a minimum wage or overtime pay for hours worked in a workweek in excess of 40. Exempt employees include certain executive, administrative, professional, computer, and outside sales employees (the "EAP exemptions").[2] To qualify for the most common exemptions under the FLSA, employees generally must meet all three of the following tests: 1) paid on a salary basis; 2) perform specific job duties, and 3) paid at least a certain salary level (not less than $844 per week from July 1, 2024 through December 31, 2024; thereafter, not less than $1,128 per week).[3] The three tests are called the salary basis test, the standard duties test, and the salary level test. See *Section Two: EAP Exemptions*.

4. What if an employee works over 40 hours in a workweek without authorization?

An employer cannot avoid paying overtime by claiming that the overtime work was unauthorized. If an employee works overtime, the employer must pay for that time. The employer may discipline the employee for working overtime without authorization, but it must pay for the work.[4]

5. Can employees agree to give up their right to overtime pay?

No, the overtime provisions of the FLSA are mandatory and cannot be waived. An employer may not refuse to pay overtime based on an established policy or practice. An employee may not agree to be classified as exempt despite not meeting the requirements of an applicable exemption, and may not volunteer to work overtime for less than one and a half times his or her regular rate of pay.

6. What are the potential penalties for violating the FLSA's minimum wage and overtime pay requirements?

The DOL may bring enforcement actions against employers to recover back wages on behalf of employees who are underpaid in violation of the FLSA.[5] Employers may be liable for civil monetary penalties of up to $2,074 for each willful or repeated violation of the minimum wage or overtime pay provisions of the law.[6] In addition, an employee may directly sue his or her employer for failure to pay overtime and claim back wages, as well as an equal amount in additional penalties.[7] Generally, a two-year statute of limitations applies to the recovery of back pay; in the case of willful violations, however, a three-year statute of limitations applies.[8]

7. What about state wage and hour laws?

The FLSA provides minimum wage and hour standards, but does not prevent a state from establishing more protective standards for employees. If state law establishes more protective standards than the FLSA, those higher standards apply in that state. For example, a state may apply the requirements of the FLSA to all employers in the state, even if an employer otherwise wouldn't be covered under the FLSA itself, or a state may adopt more stringent tests for exemption from the overtime pay requirements. States may also require employers to pay a higher minimum wage than the FLSA minimum wage.

8. What records must CAAs keep for non-exempt employees?

CAAs must keep certain records for each non-exempt employee.[9] The FLSA does not require any particular form of record, but the records must include certain identifying information about the employee and his or her hours worked and wages earned, including total daily or weekly straight-time earnings and total overtime earnings for the workweek.[10]

CAAs have options for accounting for employees' work hours, some of which are fairly low cost and minimally burdensome. For example, where an employee works a fixed schedule that rarely varies, the CAA can simply keep a record of the schedule and then indicate any changes to the schedule if the employee's actual work hours vary.[11] Non-exempt employees are not required to punch a clock, and CAAs do not need to record an employee's specific start and end times, just the total number of hours worked each day. CAAs may use any timekeeping plan (e.g., use a time clock, have a timekeeper keep track of employee work hours, or ask employees to fill out a timecard) so long as it is complete and accurate. For more information about recordkeeping, see DOL Fact Sheet #21: Recordkeeping Requirements under the Fair Labor Standards Act (FLSA).

9. Can non-exempt employees work a flexible schedule or work from home?

Yes. The FLSA neither requires that employees (either exempt or non-exempt) have a predetermined schedule nor restricts where or when the work is performed. Employees classified as non-exempt may continue to telecommute or work a flexible schedule; however, CAAs must compensate a non-exempt employee for all overtime hours worked and may want to consider monitoring the employee's work hours. For example, if an employee has a flexible schedule, a CAA does not need to require him/her to sign in each time s/he starts and stops work. The CAA just needs to keep an accurate record of the number of daily hours worked by the employee, and so could simply require the employee to provide the total number of hours worked each day as well as the number of overtime hours worked in a workweek.[12]

SECTION TWO: EAP EXEMPTIONS

10. What are the requirements of the EAP exemptions?

The EAP exemptions are the most commonly used FLSA minimum wage and overtime exemptions. The exemptions apply to certain executive, administrative, professional, computer, and outside sales employees who satisfy three tests: the salary basis test, the applicable standard duties test, and the salary level test.[13]

The Salary Basis Test

To satisfy this test, an employee must regularly receive a predetermined amount of compensation each pay period (on a weekly or less frequent basis). The compensation cannot be reduced because of variations in the quality or quantity of the work performed; however, the employee does not need to be paid for any workweek in which no work is performed.[14] Employers are permitted to make deductions from an exempt employee's salary only under limited circumstances.[15] This test is not applicable to lawyers, doctors, or certain teachers.[16]

The Standard Duties Test

To qualify for an EAP exemption, an employee's primary job duty must involve the kind of work associated with exempt executive, administrative, professional, computer, or outside sales employees.[17] Each EAP exemption has its own set of primary responsibilities that employees need to fulfill. See WHD Fact Sheet #17A for a description of exemption duties tests.

The Salary Level Test

Generally, an employee must receive at least the salary required by the salary level test to qualify for an EAP exemption. As of July 2024, the salary threshold is $844 per week ($43,888 per year for a full-year employee). On January 1, 2025, this threshold increases to $1,128 per week ($58,656 per year).

Note that professional exemptions for lawyers, doctors, and certain teachers who meet the requirements of the teacher exemption (discussed in Questions 15 through 17 below) do not require that such employees satisfy the salary level test.

11. Do an employer's contributions to employee benefit plans count towards the salary level test?

No. When calculating an employee's salary, an employer may not include payments for medical, disability, or life insurance, or contributions to retirement plans or other fringe benefits.[18]

12. What is the "highly compensated employee" (HCE) exemption?

Certain employees may be exempt from the minimum wage and overtime pay requirements of the FLSA if they are highly compensated.[19] To qualify for this exemption, an employee must primarily perform office or non-manual work, satisfy a more lenient EAP duties test, and earn at least the minimum HCE compensation threshold, which, as of July 2024, is $132,964 per year and at least $844 per week. On January 1, 2025, this threshold increases to $151,164 per year and at least $1,128 per week.[20]

Because the DOL deems high compensation to be a strong indicator of an employee's exempt status (i.e., high compensation is likely to correlate with job duties that include the exercise of independent judgment and/or supervision of others), an HCE employee will qualify for the exemption if s/he customarily and regularly performs any ***one*** of the duties or responsibilities of an exempt EAP employee.[21] For example, an employee may qualify as a highly compensated executive employee if s/he customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other duties required for the executive exemption.

13. Can employers use bonuses to satisfy the compensation level test for HCEs?

To claim the HCE exemption from July through December 2024, employers must pay employees at least the standard salary level amount of $844 per week on a salary or fee basis ($43,888 per year), and the remainder of compensation, which must be at least $89,076 to reach the minimum annual HCE compensation threshold of $132,964, may include commissions, nondiscretionary bonuses, and other nondiscretionary compensation.[22]

14. Is the salary level test prorated for employees who work part-time or seasonally?

An employee's exempt status is always determined on a workweek basis. Thus, from July 1, 2024, to December 31, 2024, an exempt employee generally must be paid at least $844 per week if s/he works any amount of time in the workweek (less any permissible deductions under the salary basis test[23]). The salary level test is not prorated for part-time employees who work less than 40 hours in a workweek.[24]

For example, a CAA employs supervisors in its youth job training program at a weekly salary rate of $1,200 ($30 per hour for a 40-hour workweek). Under the new rule, a supervisor who works part-time—nine hours a day, three days a week ($810 per workweek)—would no longer qualify for an EAP exemption because the supervisor does not meet the salary level test ($844 per week). However, a supervisor who works full-time but only works seasonally (e.g., during the 10-week summer job training program) could qualify for an EAP exemption, so long as the supervisor meets one of the standard duties tests and is paid on a salary basis of at least $844 for each workweek in which s/he performs any work. If this supervisor, for example, works 40 hours per week and is paid $1,200 per week on a salary basis, s/he could be treated as an exempt employee, even though the annual salary the supervisor receives from the CAA is only $12,000 (10 weeks at $1,200 per week).

SECTION THREE: HEAD START TEACHERS

15. What are the options for classifying Head Start teachers under the FLSA?

There are three options for classifying Head Start teachers under the FLSA:

(1) Exempt under the "teacher exemption" (see *Question 16*)
(2) Exempt under the "learned professional exemption" (see *Question 18*)
(3) Non-exempt

If a Head Start teacher does not meet the requirements for either the teacher or the learned professional exemptions, CAAs must reclassify the teacher as non-exempt. If some but not all of Head Start teachers qualify for one of the exemptions, the CAA will need to decide whether it makes sense from an administrative burden and employee morale standpoint to classify some teachers as exempt and other teachers as non-exempt.

16. What are the requirements of the teacher exemption?

Certain teachers may qualify for the teacher exemption, a subcategory of the professional exemption.[25] Unlike most of the other EAP exemptions (including the learned professional exemption), the teacher exemption does ***not*** require that qualifying teachers be paid a minimum salary or on a salary basis; to qualify, teachers only need to meet a duties test.[26]

To be eligible for the teacher exemption, an employee's primary duty must consist of the performance of "teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge" and s/he must be "employed and engaged in this activity as a teacher in [a] school system or educational establishment or institution."[27] Unlike the learned professional exemption, for which certain teachers may also qualify, the teacher exemption contains no minimum educational or academic degree requirements.[28] The FLSA regulations specifically mention nursery school teachers as an example of an exempt teacher.[29] Thus, eligibility for the exemption for Head Start teachers depends on two primary issues: (1) what the teacher's actual duties are and (2) whether the CAA's Head Start program is considered an "educational establishment."

First, a CAA must determine whether the primary duty of a particular Head Start teacher, or category of teachers within its Head Start program, consists of teaching or instructing in the activity of imparting knowledge, as opposed to taking care of the physical needs of the children, ensuring their physical safety, or as some might call it, "babysitting." The increased emphasis on literacy, school readiness, and educational qualifications of teachers found in the 2007 reauthorization of the Head Start Act[30] suggests that the primary duties of Head Start teachers (and, depending on the circumstances, teaching assistants) include "imparting knowledge." Early Head Start teaching staff who are involved in developing and implementing a formal curriculum designed around school readiness for infants and toddlers may also meet the duties test.

Next, a CAA must determine whether it is considered an "educational establishment," since the teacher exemption requires that a teacher be employed by a "school system or educational establishment."[31] The FLSA regulations define the term "educational establishment" as a school system that provides elementary or secondary education, as determined by state law, or an "other educational institution."[32] In a 2008 opinion letter, the DOL stated that a child care center is not an "educational establishment" unless its state's laws include nursery school or kindergarten programs within the scope of elementary education.[33] According to the DOL opinion letter, the fact that a child care center is licensed by a state agency responsible for the state's educational system (as opposed to a different state agency, e.g., the Department of Public Welfare), serves as an indication that the state considers the child care center to be providing educational services.[34]

Thus, to determine whether a CAA's Head Start program is considered an "educational establishment," the CAA should first look at whether its state considers Head Start or other preschool or nursery school programs to be part of a school system that provides elementary education, including whether its Head Start sites are licensed by the state's education department. If the state's elementary education system does not include preschool, or if the Head Start program is licensed by a department other than the state's education department, the safest approach would be for the CAA to treat its Head Start teachers as non-exempt, unless the teachers meet the requirements of the learned professional exemption, including the requirement that they be paid at least $844 per week starting on July 1, 2024, and at least $1,128 beginning January 1, 2025.

17. What if a CAA has universal pre-kindergarten classes funded by the local public school system or directly from the state?

Universal pre-kindergarten (UPK) classrooms of a CAA that receives funding from the local public school system to run UPK classes would likely be considered an "educational establishment" for purposes of the teacher exemption, as those classrooms would seem to be an extension of the local public elementary school system. However, it is likely that only the CAA's UPK classrooms (and not its other Head Start classrooms) would qualify as an "educational establishment." If the CAA's Head Start program does not otherwise qualify as an "educational establishment," the CAA must consider whether it makes sense from an administrative and employee morale standpoint to classify teachers in the UPK classrooms as exempt under the teacher exemption, while treating its other Head Start teachers as non-exempt employees.

If the CAA receives UPK funding directly from the state and not through the local public school system, it needs to identify documentation that the state considers its UPK program part of an elementary school system.

18. What is the learned professional exemption and how does it differ from the teacher exemption?

The learned professional exemption is a specific subcategory of the professional exemption available for employees who are paid at least the minimum salary level and whose duties require an advanced educational background.[35] To qualify for the learned professional exemption, as of July 1, 2024, an employee must be paid at least $844 per week on a salary basis ($1,128 per week starting on January 1, 2025), and his or her primary duty must involve performing work that requires advanced knowledge that is "customarily acquired by a prolonged course of specialized intellectual instruction."[36] Thus, it is not enough that an individual possesses the advanced knowledge credentials; the job itself must require the credentials. The employee's work must also be "predominantly intellectual in character," as opposed to "routine mental, manual, mechanical or physical work."[37] Having a high school degree does not qualify as having advanced knowledge customarily acquired by a prolonged course of specialized intellectual instruction, and jobs that can be performed by either general knowledge acquired by an academic degree in any field or skills acquired by experience do not qualify for the exemption.[38] The DOL has also said that jobs that require only a four-year degree in any field or a two-year degree as a prerequisite for entrance into the field do not qualify for the learned professional exemption.[39]

While the FLSA regulations explicitly recognize teaching as a field that may qualify for the learned professional exemption,[40] CAAs will need to evaluate each individual Head Start and Early Head Start teacher's educational credentials to determine whether s/he qualifies for the exemption. Currently, the Head Start Act and Head Start Program Performance Standards require only that 50 percent of Head Start teachers nationwide have a bachelor's or advanced degree in early childhood education, and that all center-based teachers have at least an associate's or bachelor's degree in child development or early childhood education.[41] All Early Head Start teachers must have a child development associate (CDA) credential, be enrolled in a program that will lead to an associate or bachelor's degree, or be enrolled in a CDA credential program to be completed within two years of the time of hire.[42] Thus, many Head Start teachers and likely most Early Head Start teachers will not have the specialized academic training required for the learned professional exemption.[43]

19. How does the salary level test apply to Head Start teachers and other Head Start staff who are not paid during their annual summer breaks?

An employee's exempt status is always determined on a workweek basis. Thus, as long as Head Start employees meet the duties test for one of the exemptions and are paid at least $844 per week on a salary basis starting on July 1, 2024 ($1,128 per week on a salary basis, starting on January 1, 2025) for the weeks they work during the Head Start program year, they would be considered exempt. Remember that if a Head Start teacher qualifies for the teacher exemption discussed in Questions 15 through 17, the salary level requirement does not apply. See Question 14 for general information about employees who work seasonally or part-time.

SECTION FOUR: COVERAGE UNDER THE FLSA

20. Are nonprofit CAAs exempt from the FLSA?

No, nonprofit organizations are subject to the same "enterprise" or "individual employee" FLSA coverage rules as for-profit entities.[44] The coverage rules are fact-specific and broadly construed, so the safest approach for nonprofit CAAs is to assume that the FLSA applies to all of their employees, and accurately classify each employee as exempt or non-exempt for purposes of FLSA compliance.

21. What is the enterprise FLSA coverage rule and how might a nonprofit CAA be subject to it?

The FLSA covers employees who work for certain businesses or organizations (or "enterprises"). These enterprises must engage in commercial activities and have annual dollar volume of sales or business done of at least $500,000, or be certain businesses including hospitals, residential medical or nursing care providers, schools, preschools, or public agencies.[45]

Nonprofit organizations will be subject to enterprise coverage if they engage in ordinary commercial activities that result in annual sales made or business revenue of at least $500,000.[46] Grant funds, charitable donations, membership fees, and dues do not count towards the $500,000 threshold so long as the donor does not receive a benefit of more than token value in return. Further, activities that are charitable in nature and normally provided free of charge do not count as ordinary commercial activities.[47] Examples of such activities include: providing temporary shelter; providing clothing or food to homeless persons; providing sexual assault, domestic violence, or other hotline counseling services; and providing disaster relief provisions.

The DOL has indicated, however, that if a charity charges fees for its services, even if on a sliding scale based on income, it will likely be deemed to be engaging in commercial activities, especially if the services compete with other commercial enterprises.[48] Examples of charitable services that will likely be deemed to be commercial activities include: a nonprofit organization that provides mental health and counseling services to the local community, charging clients a fee on a sliding scale; and a homeless services organization that manages a job training program, which includes a catering business that teaches clients various skills.[49] Any revenue

generated from these activities would count towards the $500,000 threshold for enterprise coverage. For a nonprofit organization, enterprise coverage applies only to its commercial activities; it does not apply to the organization's charitable activities.[50]

Note that the following "named enterprises" listed in the FLSA are automatically subject to enterprise coverage: hospitals; institutions primarily engaged in the care of the sick, the aged, or the mentally ill who reside on the premises; schools for mentally or physically disabled or gifted children; preschools; elementary or secondary schools; or institutions of higher education (whether operated for profit or not for profit).[51] Thus, because preschools are a named enterprise, employees of CAA Head Start programs will be protected by the FLSA under enterprise coverage (see Question 22).

22. Are Head Start grantees subject to the FLSA?

Yes, as noted in Question 21, FLSA coverage applies to preschools as "named enterprises," regardless of whether they are operated by for-profit or nonprofit entities and whether they engage in commercial activities generating at least $500,000 in annual sales or business revenue.[52] Thus, employees of Head Start programs are covered by the FLSA under enterprise coverage.[53]

23. Could individual employees of a nonprofit CAA be covered under the FLSA even if the CAA itself is not subject to enterprise coverage?

Yes, even if the enterprise coverage rules described above do not apply, nonprofit CAAs must analyze each employee to determine if "individual coverage" applies. Individual coverage applies to any employee engaged in interstate commerce or the production of interstate commerce.[54] CAA employees who would likely be considered to be engaging in interstate commerce include those who: work in communications or transportation; order supplies from out-of-state vendors (e.g., Amazon or other online or chain retail stores); communicate with out-of-state individuals or entities via telephone or email (e.g., federal funding sources, CAPLAW, or other regional or national Community Action partner organizations); keep records of transactions that cross state lines; handle, ship, or receive goods moving in interstate commerce; or, travel across state lines for work purposes. Given how broadly "interstate commerce" has been interpreted and the ease with which employees may communicate with people and/or engage in transactions that cross state lines, nonprofit CAAs should generally assume that the FLSA covers all of their employees.

24. What if a nonprofit CAA is unsure of whether it is covered by the FLSA?

The safest approach for a nonprofit CAA is to assume that the FLSA applies to all of its employees. The tests around enterprise coverage are not always clear about the types of revenue and funding that count towards the $500,000 threshold. Even if it seems fairly safe to say that a CAA does not meet the enterprise coverage test and is not a "covered" enterprise, it is highly likely that many (if not most) of the CAA's employees will be subject to individual coverage. Practically speaking, it may not be administratively feasible for a CAA to have certain employees covered under the FLSA and others not covered. It is safer, and easier from an administrative standpoint, to assume the CAA and employees are covered and that non-exempt employees should be compensated for all overtime work. If the DOL or current or former employees bring legal claims against the CAA for FLSA violations, the CAA can attempt to use lack of coverage as a defense.

25. Are public CAAs subject to the FLSA?

Yes, the FLSA has long applied to employees of federal, state, and local governments.[55] However, the FLSA contains several provisions unique to public sector employees, including the ability of state and local government employers to grant compensatory time (comp time) in lieu of paying overtime in certain circumstances.[56] Under the FLSA, state or local government agencies, including public CAAs, may enter into an agreement with employees (prior to the employees performing the work) to earn comp time instead of receiving a cash payment for overtime hours.[57] This agreement may take the form of a notice to the employee that compensatory time off will be given in lieu of overtime pay—a public CAA, for example, could provide its employees a copy of its personnel policies on granting comp time. The comp time must be provided at a rate of one and a half hours for each overtime hour worked.[58] For example, if a public CAA employee works 44 hours in a single workweek (4 hours of overtime), the employee would be entitled to 6 hours (1.5 x 4 hours) of comp time off. When used, the comp time is paid at the employee's regular rate of pay. Most state and local government employees may accrue up to 240 hours of comp time.[59] Public CAAs should check with an attorney familiar with their state's wage and hour law to determine whether comp time permitted under the FLSA is also allowed under state law.

26. Are volunteers covered by the FLSA?

Generally speaking, individuals may freely volunteer for charitable and public purposes without being covered by the FLSA. Volunteers must provide their time freely for public service, religious, or humanitarian objectives; they generally may not, however, volunteer in commercial activities run by a nonprofit organization (e.g., a thrift shop). Volunteers may not receive compensation other than expenses, reasonable benefits, or nominal fees, and they cannot displace or perform the work that is ordinarily performed by regular employees.[60]

27. Can a CAA's employees volunteer for the CAA?

Exempt CAA employees may volunteer for the CAA. However, since all non-exempt employees must be paid for every "hour worked," including time and a half for hours worked over 40 in a workweek, a CAA must be careful about having its non-exempt employees volunteer their time for the CAA. The FLSA regulations state that time spent working for charitable purposes "at the employer's request, or under his direction or control, or while the employee is required to be on the premises," counts as hours worked.[61] For information about using staff volunteers, see the CAPLAW article, "May Employees Lend a Helping Hand?"

ENDNOTES

[1] 29 U.S.C. §§ 206(a), 207(a).
[2] 29 C.F.R. Part 541.
[3] 29 C.F.R. Part 541.
[4] See DOL Fact Sheet #23: Overtime Pay Requirements of the FLSA.
[5] 29 C.F.R. Part 578.
[6] 29 C.F.R. § 578.3.
[7] 29 U.S.C. § 216.
[8] 29 U.S.C. § 255(a).
[9] 29 C.F.R. § 516.2.
[10] 29 C.F.R. § 516.2(a).
[11] 29 C.F.R. § 516.2(c).
[12] 29 C.F.R. § 516.2.
[13] 29 C.F.R. Part 541.
[14] 29 C.F.R. § 541.602.
[15] 29 C.F.R. § 541.602(b).

[16] 29 C.F.R. § 541.303(d); 29 C.F.R. § 541.304(d).
[17] 29 C.F.R. § 541.700.
[18] 29 C.F.R. § 541.601(b)(1)
[19] 29 U.S.C. § 213(a)(1); 29 C.F.R. § 541.601.
[20] 29 C.F.R. § 541.601(a).
[21] 29 C.F.R. § 541.601(c).
[22] 29 C.F.R. § 541.601(b)(1).
[23] 29 C.F.R. § 541.602(b).
[24] See DOL Opinion Letter FLSA2008-1NA.
[25] 29 C.F.R. § 541.303.
[26] 29 C.F.R. § 541.303(d).
[27] 29 C.F.R. § 541.303(a).
[28] DOL Opinion Letter FLSA2005-39 (stating that as "there is no minimum educational or academic degree requirement for bonafide teaching professionals in educational establishments," the exemption is not dependent on possessing an advanced academic degree).
[29] 29 C.F.R. § 541.303(b).
[30] 42 U.S.C. §§ 9835, 9843(a).
[31] 29 C.F.R. § 541.303(a).
[32] 29 C.F.R. § 204(b).
[33] DOL Opinion Letter FLSA2008-13NA.
[34] DOL Opinion Letter FLSA2008-13NA.
[35] 29 C.F.R. § 541.301.
[36] 29 C.F.R. § 541.301(a); (d).
[37] 29 C.F.R. § 541.301(a).
[38] 29 C.F.R. § 541.301(b); (d).
[39] DOL Field Operations Handbook 22d02(d); DOL Opinion Letter FLSA2005-35NA.
[40] 29 C.F.R. § 541.301(c).
[41] 42 U.S.C. § 9843(a)(2)(A); 45 C.F.R. § 1302.91(e)(2).
[42] 42 U.S.C. § 9840A(h); 45 C.F.R. § 1302.91(e)(3).
[43] When the Office of Head Start issued a Notice of Proposed Rulemaking to update the Head Start Program Performanc Standards in June 2015, it noted that 71% of Head Start teachers had a bachelor's degree, but only 27% of Early Head Start teachers had theirbachelor's degrees. 80 FR 35429, 35487 (June 19, 2015).
[44] The DOL noted that the FLSA does not have special rules for nonprofit organizations or nonprofit employees. The final rule explicitly declined to establish separate exemption-related rules for nonprofit organizations. 84 FR 52130, 51234-51235.
[45] 29 U.S.C. § 203(s)(1). [46] 29 U.S.C. § 203(s)(1).
[47] DOL Guidance for Non-Profit Organizations on Paying Overtime under the Fair Labor Standards Act (May 2016).
[48] DOL Wage and Hour Division, Fair Labor Standards Act Non-Profits Presentation (June 7, 2016).
[49] DOL Wage and Hour Division, Fair Labor Standards Act Non-Profits Presentation (June 7, 2016).
[50] 29 C.F.R. § 779.214
[51] 29 U.S.C. § 203(s)(1)(B).
[52] 29 U.S.C. § 203(s)(1)(B).
[53] DOL Field Operations Handbook § 12g07.
[54] 29 U.S.C. § 203(s)(1); 29 U.S.C. §§ 206(a), 207(a).
[55] 29 U.S.C. § 203(s)(1)(C).
[56] 29 U.S.C. § 207(o); 29 C.F.R. Part 553; DOL Fact Sheet #7: State and Local Governments Under the Fair Labor Standards Act.
[57] 29 U.S.C. § 207(o)(2)(A); 29 C.F.R. § 553.23.
[58] 29 U.S.C. § 207(o)(1); 29 C.F.R. § 553.23.
[59] 29 U.S.C. § 207(o)(3)(A); 29 C.F.R. § 553.24.
[60] See "Volunteers," ELAWS Home: Fair Labor Standards Act Advisor, Department of Labor, https://webapps.dol.gov/elaws/whd/flsa/docs/volunteers.asp.
[61] 29 C.F.R. § 785.44

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