

I. Wage/Hour Issues

a. Exempt vs. Non-Exempt Employees

i. Exempt:

1. Job Duties + Salary = Exempt employee – MUST HAVE BOTH

2. Recommend reviewing exempt job positions annually to ensure "safely" continued exempt

3. Job duties:

a. Administrative: primary duties is office/non-manual work related to management or general operations of the employer AND employee exercises discretion and independence judgment about significant matters

b. Professional: three criteria must ALL be met:

i. Primary duty must be work requiring advanced knowledge, predominantly intellectual in character and including work requiring consistent exercise of discretion and judgment;

ii. Advanced knowledge must be in a field of science or learning; and

iii. Advanced knowledge must be customarily acquired by prolonged course of specialized intellectual instruction.

c. Executive: three criteria must ALL be met:

i. primary duty must be managing the business or managing a customarily recognized department or subdivision of the business,

ii. customarily and regularly directing the work of at least two or more other full-time employees or their equivalent; and

iii. must have the authority to hire or fire other employees or the suggestions and recommendations as to hiring, firing, advancement, etc. of other employees must be given particular weight.

4. Salary –

a. Exempt employees must be paid regular salary, regardless of number of hours actually worked

b. Minimum salary:

i. Current law: \$455/week OR \$23,660/year

- ii. Implemented rule (was to be effective 12/1/16): increased that rate to \$913/week or \$47,476/year
 - 1. Rule was stayed in litigation before implementation and has not been reversed to date

- iii. Trump administration currently working on new proposed rule to "mediate" salary amounts, expected 10/2018

- 1. SHRM has recommended \$32,000/year

- c. Exceptions to salary requirements: Professionally exempt employees (TEACHERS, etc.)

- i. Requirement for exemption: "The requirements of [statute section relating to salary minimums] of this part do not apply to the teaching professional described in this section."

5. How to determine who is exempt:

- a. Job description
- b. Ensure ministerial/evangelizing duties are woven in description, if applicable
- c. Contact Finance Office/Diocesan Attorney
- d. Errors can create exposure up to 3 years back in time

ii. Non-Exempt:

- 1. Paid by the hour (generally)
- 2. Must keep track of hours
- 3. Must be paid for any hours over 40 within a week (regularly defined)
- 4. Potential pitfalls – aka trouble areas!

- a. Working offsite (e.g., working at home, work at "regular" job, etc.)
 - b. Working after normal business hours (unsupervised)
 - c. "Volunteering" services (29 CFR 553.101)

- i. An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, is considered to be a volunteer during such hours.

- ii. Congress did not intend to discourage or impede volunteer activities undertaken for civic, charitable, or humanitarian purposes, but expressed its wish to prevent any manipulation or abuse of minimum wage or overtime requirements through coercion or undue pressure upon individuals to "volunteer" their services.

- iii. Individuals shall be considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer.
 - iv. An individual shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.
 - d. Compensatory Time – NO!
 - e. Safety against pitfalls: supervision of work and payroll records
 - i. Should know average hours reported per pay period
 - ii. Should know average payroll per pay period
 - iii. Should know whether overtime is worked (ever, certain times of year, etc.)

II. Leases

- a. Residential vs. non-residential
- b. Residential = rectories that are unused, homes bequeathed to parishes, etc.
 - i. Diocesan form available
 - ii. Four main issues:
 - 1. Real estate tax:
 - a. If residence is vacant, property could be taxed by taxing authority anyway
 - b. Lease provision to account for tax to transfer to renter if imposed
 - 2. Unrelated Business Income Tax (federal government): if residential real estate property (not personal property), not a concern
 - 3. Insurance: renters should be required to carry renter's insurance for their property
 - 4. Liability: if property is in significant disrepair, renting creates risk
- c. Non-residential = parish halls, etc.
 - i. Diocesan form available
 - ii. Four main issues:
 - 1. Real estate tax: could be imposed if being used for enterprise rather than as part of non-profit activities
 - 2. Unrelated Business Income Tax: can be imposed if not related to non-profit activities, e.g., parking lot rental
 - 3. Cardinal's Clause: Tenant's activities must not be contrary to Roman Catholic teachings or doctrine (included in Diocesan form)

4. Public accommodation claims potential exposure, e.g. wedding receptions if parish hall use not limited to parishioners

III. Safe Environment

a. Website/Social Media

i. Safe Environment Committee

ii. Policy: almost finalized for distribution

iii. Common themes: discretion in use of technology/social media, multiple layers of supervision (or at least potential oversight)

iv. Passwords – centralized “ownership”

b. Contract Rider: for contractors whose personnel are placed in parishes/schools with regular proximity to children and young people, e.g., Manpower school secretary

IV. Cemeteries – still in the process of transferring ownership of cemetery property to parishes/necessary parties

****This outline is not a replacement for legal advice. Legal and employment-related matters are intensely fact-driven, and timely advice should be sought.**