

Federal Overtime Pay Rules and Nonprofit Organizations

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Issue

Explain whether federal overtime pay rules apply to nonprofit organizations.

Overtime and Nonprofit Employees

The federal [Fair Labor Standards Act](#) (FLSA) treats nonprofit employers the same as any other employer regarding overtime. Basically, employees who are paid by the hour must get overtime pay for any hours worked over 40 in a workweek. The overtime pay rate must be at least one-and-a-half times the employee's regular pay. The FLSA governs overtime, federal minimum wage, and child labor, among other workplace issues.

But, as with other employers, nonprofits must determine if the FLSA covers their employees, and this can vary depending upon specific facts related to their employment. Coverage is determined in one of two ways: (1) the organization is a covered enterprise or (2) a particular worker is individually covered. Thus, even if a nonprofit organization is not a covered enterprise, it may still have some workers who are individually covered and must be paid under the overtime (and minimum wage) rules.

Employers That Meet the Enterprise Coverage Condition

An employer meets the enterprise coverage test if it has annual volume of sales or business of at least \$500,000. Specifically, nonprofits are not covered enterprises under the FLSA unless they engage in commercial activities for a business purpose such as operating a retail shop or providing services for a fee. Charitable activities, such as providing free domestic violence counseling

services or shelter to the homeless, are not considered commercial activities. However, if a nonprofit also operates a side business and the revenue produced by the side business exceeds \$500,000, then the nonprofit's employees working in the side business are protected by the FLSA.

The U.S. Department of Labor, in a [fact sheet](#) on the FLSA and nonprofit organizations, uses an example of a nonprofit animal shelter that provides free veterinary care, adoptions services, and shelter for homeless animals, which are all charitable activities. If the shelter also provides veterinary care to customers a fee, then the question is whether the commercial activity exceeds the monetary threshold. If the veterinary care for a fee generates revenue of at least \$500,000 a year, then the FLSA's overtime rules and other protections apply to the employees involved in the commercial activity, but not to those involved in the charitable activities.

Employees that Meet the Individual Coverage Condition

Under the FLSA, whether an individual employee is covered depends on the individual's work activity. This means that an organization that the law generally does not cover may still have some employees who are covered.

The FLSA covers an employee if he or she engages in interstate commerce or in the production of goods for interstate commerce. It also covers those whose work involves the movement of people or things across state lines.

Again, the federal Labor Department included some examples in its [fact sheet](#). Activities that may result in individual employee coverage include making or receiving interstate telephone calls, shipping goods to another state, and transporting persons or property to another state. The FLSA covers these employees individually so they would be entitled to overtime unless another specific exemption applies (see below). However, the law does not cover an employee who only briefly performs this type of work on isolated occasions.

General Exemptions for All Employees Regardless of Employer

Nonprofit employers, just as any other employers, do not have to pay overtime to executive, administrative, or professional employees who meet certain wage and work [duty requirements](#). For example, a finance director of a nonprofit who oversees three staff people would be exempt from overtime under the executive exemption. In addition, if the nonprofit hires a lawyer for legal services, that person would probably be exempt under the professional exemption even if he or she did not oversee anyone. These white-collar duty descriptions are addressed [here](#).

JM:kl