

# Fair Labor Standards Act (FLSA)

## Background

### *What is the difference between exempt and non-exempt employees?*

Employees are either exempt or non-exempt. Exempt means that they are generally salaried and their pay is the same whether they work 30 hours or 50 hours per week. Non-exempt, on the other hand, are generally paid an hourly rate so their pay for working 30 hours is less than what they are paid for working 50 hours.

Additionally, for non-exempt employees who have worked in excess of 40 hours, their overtime rate becomes 1.5 times their base hourly rate in accordance with the Department of Labor's Fair Labor Standards Act (FLSA). In theory, exempt employees enjoy higher salaries and other additional benefits that compensate for the lack of overtime pay.

### *Why did the FLSA raise the base gross pay for non-exempt employees?*

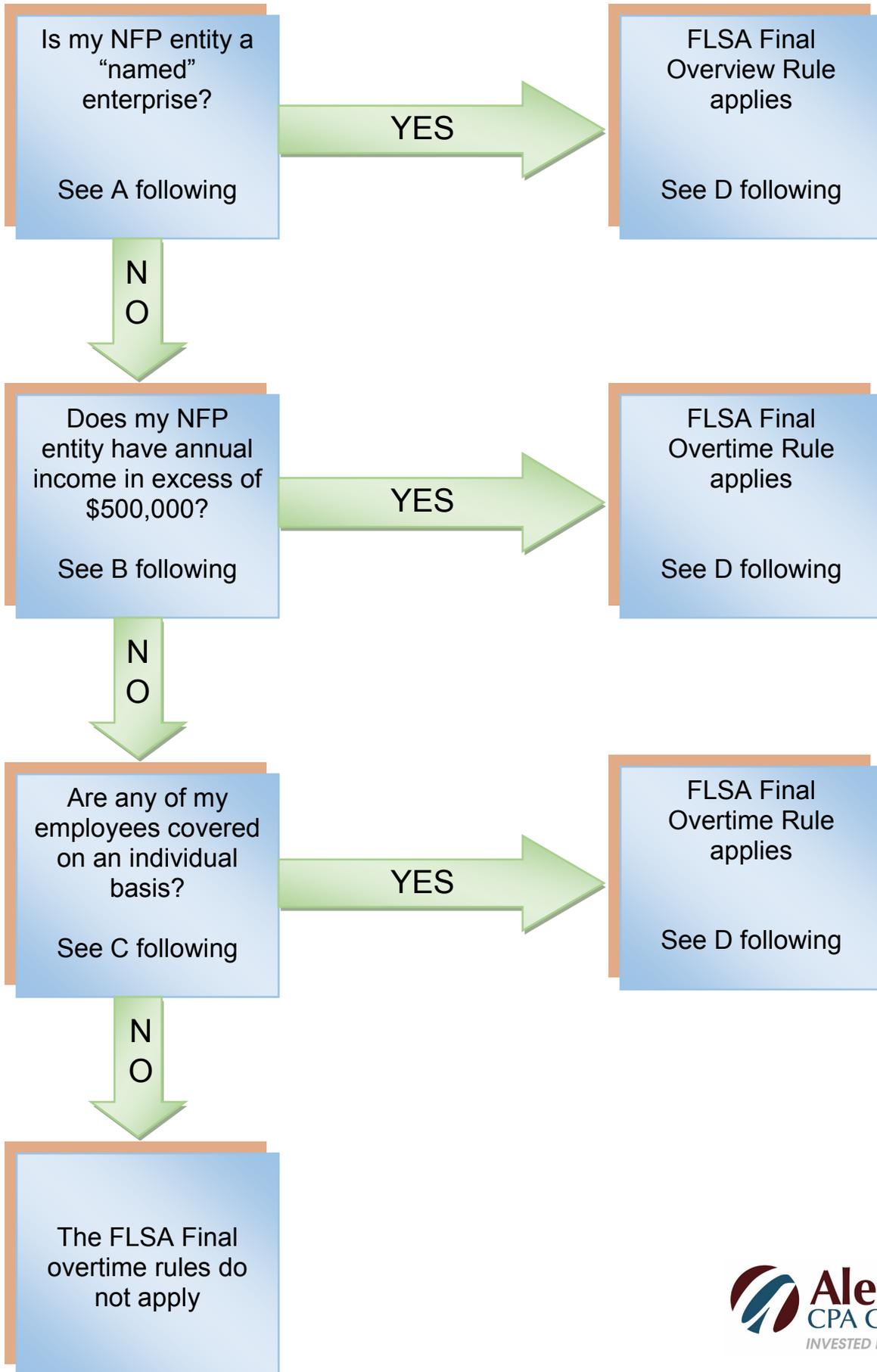
The FLSA established a base gross pay at which an employee could be considered exempt. Before the current change (effective December 1, 2016), the base amount was \$23,660, which was established in 2004. The rationale behind the update is the increasing number of employees making \$24,000 per year and working hours in excess of 40 for no additional overtime pay. While the threshold amounts have increased, the basic rules of application have not changed. The Department, however, has provided explanation and clarification of the provisions.

Refer to the following chart to determine if and/or how your nonprofit entity is affected by the updated Rule.

If you have additional questions, please contact Jean Patterson, CPA at [jpatterson@alderingcpagroup.com](mailto:jpatterson@alderingcpagroup.com) or call 317-569-4181.



# FLSA Flow Chart



## A. “Named” enterprises

Regardless of the dollar volume of business, the FLSA Rule applies to the following entities, commonly referred to as “named” enterprises:

- Hospitals
- Residential institutions primarily engaged in the care of older adults and people with disabilities
- Schools for children who are mentally or physically disabled or gifted
- Federal, state and local governments
- Preschools, elementary and secondary schools as well as institutions of higher education

## B. Annual income limitation

Annual business income includes commercial activities such as gift shops, online sales of merchandise and donations for which a donor receives a greater than token benefit, such as athletic tickets.

Not included in business income is income from activities that are charitable (generally provided free of charge) in nature and include contributions, donations (cash and non-cash), and membership fees except those conferring a benefit as noted above.

## C. Individually coverage

Certain individuals even though not covered on an enterprise basis, may be covered on an individual basis. This coverage eligibility is based on the nature of the employee’s work. If the employee is engaged in interstate commerce or in the production of the goods for interstate commerce, or whose work involves or relates to the movement of persons or things across state lines, the FLSA Rule provisions apply.

Examples include:

- Regularly making out-of-state phone calls
- Receiving/sending interstate mail or electronic communications
- Ordering/receiving goods from out-of-state suppliers
- Handling credit card transactions or performing the accounting or bookkeeping for such activities

Note that the above seems to cast a wide net over fairly routine activities. The Department of Labor, however, does not include isolated or incidental occurrences. Also, included in the Department guidance is the following sentence: “Additionally, even where an employee regularly engages in interstate commerce and is individually covered, the Department focuses its enforcement efforts on circumstances where it can have significant impact on compliance, generally where there is enterprise coverage.”

## D. Compliance and options available

Once the Rule applies, compliance requires:

Workers earning less than \$913 per week (\$47,476 annual equivalent) are entitled to overtime pay (1.5 times base) for work in excess of 40 hours per work week. Note that once the work week is set (for example Sunday – Saturday or Saturday – Friday) it cannot be changed.

The earnings threshold will be automatically updated every three years beginning 1/1/2020 based on wage changes. The new amount, if applicable will be published prior to its effective date.

The options available to maintain compliance are:

- Pay 1.5 times employees’ base rate for hours in excess of 40 hours
- Raise base pay above the \$913 per week threshold
- Limit work hours to 40 or less
- Any combination of the above

Sources: “Guidance for Non-Profit Organizations on Paying Overtime under the Fair Labor Standards Act”, US Department of Labor, Wage and Hour Division, May 18, 2016.

“Overtime Final Rule and the Non-Profit Sector”, US Department of Labor.