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THE UNITED METHODIST CHURCH

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### MEMORANDUM

**TO:** Human Resources Directors, General Agencies Receiving  
General Church Funds

**FROM:** Mary Logan

**DATE:** March 18, 1999

**RE:** Wage and Overtime Laws

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Enclosed for your information is a booklet that we have published as a resource on wage and overtime laws. It is specifically geared toward church organizations. You may want to review your pay policies in light of this information, to be sure your agency is in compliance with the requirements set forth here.

Please feel free to call us if you have any questions.

Enclosures

cc: General Secretaries, General Agencies Receiving General Church Funds



# WAGES AND HOURS: A Guideline for Church Employers

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## I. An Overview of the Fair Labor Standards Act

- A. The Fair Labor Standards Act ("FLSA") requires covered employers to provide covered employees with a minimum wage rate and with overtime pay for time worked in excess of 40 hours during a workweek. The FLSA also provides for equal pay regardless of sex and restricts child labor.
- B. The FLSA requires employers to make, keep and preserve records concerning their employees, wages, hours worked and other conditions of employment. Records must be retained for up to three years.
- C. Employers must comply with state law or municipal ordinance if those sources provide for higher minimum wages or other greater protection than provided by the FLSA.

## II. Coverage of the FLSA

### A. Who is a covered employer?

- 1. Any employer that is engaged in "interstate commerce" or "the production of goods for interstate commerce," or that has "employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce" **and** that has an annual gross volume of sales made or business transacted of not less than \$500,000 is covered by the FLSA.
- 2. An employer is engaged in "interstate commerce" if its employees purchase or order goods from businesses in other states, if the employer's product is

sold in interstate commerce, or if it uses the telephone, mail and other forms of interstate communication.

3. There is no express exemption for religious or charitable organizations.

**FOR EXAMPLE:** *Local churches could be considered covered employers if they engage in activities such as:*

- ▶ *Making out-of-state telephone calls and using the mail systems;*
- ▶ *Maintaining a web-site or using or providing other Internet services;*
- ▶ *Ordering Sunday School materials or other supplies from out-of-state vendors;*
- ▶ *Sending bulletins, newsletters, sermon tapes or other materials to out-of-state members;*
- ▶ *Broadcasting radio or television programs;*

**B. Who is a covered employee?**

1. Generally, every employee of a covered employer is entitled to the protections of the FLSA. Specifically excluded from coverage are those who are not "employees" -- for example, volunteers, independent contractors, and unpaid trainees.
2. Additionally, where the employer's business may not satisfy the standards for coverage (e.g., where it does not meet the \$500,000 threshold), the individual employee may be covered if his/her duties involve interstate commerce or the production of goods for interstate commerce. The focus is on the duties of the individual and, as such, it is possible for one employee to be covered, while other employees are not.
3. For individual coverage, an employee is "engaged in commerce" where his/her work is "indispensable to the movement of persons or goods across state lines." For example, employees engaged in communications, employees who purchase or order goods from businesses in other states, those who unload or unpack goods received from out of state, employees who regularly use the telephone or mail for interstate communication.

**FOR EXAMPLE:** *A small church may not be a covered employer, but if it employs a church secretary who is responsible for regular communications with out-of-state church agencies and has duties such as ordering supplies and other materials from out-of-state agencies, that employee may be covered by the FLSA.*

4. The phrases "exempt" and "non-exempt" frequently are used to refer to the status of employees:
  - a. "Exempt" employees are those who are not entitled to the protections of the FLSA. The bases for their exemption are discussed more fully below in Section III.
  - b. "Non-Exempt" employees are those who are entitled to receive minimum wage and overtime as provided for by the FLSA.

### C. Commentary

The FLSA contains some fairly complex, but unhelpful, definitions of what constitutes being "engaged in interstate commerce" – the standard necessary to create a covered employer or employee. Although a single out-of-state telephone call should not subject a church to coverage, there is no clear guidance as to how many such calls will constitute involvement in interstate commerce. Arguably, the use of interstate communication or involvement in some other elements of interstate commerce should be more than marginal in order to trigger coverage.

The \$500,000 sales/business threshold is somewhat helpful in establishing coverage for the church. Although most churches do not report sales or business, because there is no express exemption for churches (and other not-for-profit organizations), in the church context this standard likely would involve an examination of the size of the church's annual budget.

In reality, the Department of Labor usually takes the view that virtually any entity which employs individuals is a covered employer. Thus, despite their small size and relatively small impact on interstate commerce, local churches may be viewed by the Department of Labor as meeting the standards necessary to be considered as engaging in interstate commerce. This is not to say that all churches – particularly those with budgets below \$500,000 – should automatically consider themselves covered. They should, however, carefully consider the work that their employees perform in order to determine whether the employees are subject to individual coverage. Where there are doubts, legal counsel should be consulted.

### III. Exemptions From Coverage

Although FLSA coverage for the church as an employer generally means that all of its employees are covered, there are several exemptions from FLSA's minimum wage and overtime provisions. Although many of those exemptions apply to specific industries – retail sales, agriculture, transportation – and are not applicable to churches, there are three specific exemptions which may be applicable to churches. In order to qualify for any of

these exemptions, which are known as the "white collar" exemptions, the employee must meet all of the specific terms of the particular exemption.<sup>1/</sup>

**A. Executives**

1. Salaried at a rate of at least \$250.00 per week;<sup>2/</sup>
2. Primary duty consists of the management of the organization or of a customarily recognized department or subdivision;
  - a. "Primary" means the major part or more than 50 percent of the employee's time
  - b. Must also consider the relative importance of the duties, relative freedom from supervision and the relationship between the employee's salary and the wages paid to the employees whom he/she supervises
  - c. "Managing" includes duties such as:
    - 1) Directing the work of other employees
    - 2) Interviewing, selecting, training, evaluating, disciplining and terminating employees
    - 3) Handling employee complaints and grievances
    - 4) Planning and assigning work
    - 5) Establishing work schedules
3. Customarily and regularly directs the work of two or more employees;
  - a. Must be two full time employees or their equivalent -- for example, one full-time and two part-time employees. Shared responsibility for

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<sup>1/</sup> Those employees who qualify for an exemption are known as "exempt", while those employees who are entitled to overtime and minimum wage are referred to as "non-exempt".

<sup>2/</sup> Payment by salary is necessary to qualify for each of the recognized white collar exemptions, but payment by salary is not by itself sufficient to qualify for any exemption.

the supervision of two or more employees does not satisfy the requirement

b. An employee who merely assists the supervisor or who performs supervisory duties only in the supervisor's absence does not satisfy this requirement

4. Has the authority to hire or fire employees or whose suggestions and recommendations regarding hiring, firing, promotion or other employment action will be given particular weight;
5. Customarily and regularly exercises discretionary powers; and,
6. Does not devote more than 20 percent of his/her workweek to activities which are not directly and closely related to the work described in subparagraphs 2. - 5., above.

*FOR EXAMPLE: In the church setting, the Executive exemption likely would apply to Pastors, Operations Managers, School Principals, Preschool Directors, and Executive Directors of Homeless Shelters.*

**B. Administrators**

1. Salaried at a rate of at least \$250.00 per week;
2. Primary duty consists of the performance of office or non-manual work directly related to management policies or general business operations of the organization – the work must be of substantial importance to the management or operation of the organization and may not be of a routine or clerical nature
3. Customarily and regularly exercises discretion and independent judgment; and,
  - a. This includes comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered;
  - b. Implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision with respect to matters of significance.

4. Does not devote more than 20 percent of his/her hours to activities which are not directly and closely related to the performance of the work described in subparagraphs 2. and 3., above.

**FOR EXAMPLE:** *In the church setting, this exemption likely would apply to employees such as the Business or Financial Manager, Director of Youth and Children's Ministries, and Food Services Managers.*

**C. Professionals**

1. Salaried at a rate of at least \$250.00 per week;
2. Primary duty consists of work that requires knowledge of an advanced type in a field of science or learning customarily acquired through extended study, work that is original and creative in character, teaching or work requiring highly-specialized knowledge of computer systems, analysis, programming and software engineering;
3. Consistent exercise of discretion and judgment;
4. Predominately intellectual and varied work; **and**.
5. Not more than 20 percent of workweek is devoted to non-professional work or activities which are not an essential part of or necessarily incident to professional work.

**FOR EXAMPLE:** *This may include Director of Music, Organists, Choir Directors, Sunday School Superintendents, Preschool Teachers, Pastoral Counselors, and Associate Pastors who may not meet the supervisory standards for the Executive exemption.*

**D. Loss of Exemption**

1. A valid exemption for an executive, administrator or professional may be lost if the employer takes deductions from the employee's salary based on the quantity or quality of the work performed. Thus, a disciplinary suspension without pay could cause the exemption to be lost and require that the employee be treated as a non-exempt employee.
2. Certain deductions are permitted and will not cause the loss of the exemption:
  - a. Federal, state and local taxes;



- b. Employee-authorized deductions for insurance, savings plan, retirement contribution, etc.
- c. Deductions made for absence of a day or more for personal reasons other than sickness or accident;

*FOR EXAMPLE: If the Business Manager, an exempt employee, requests a day off to drive a son to college, his/her salary can be reduced by a day's wages. If, however, he/she requests a half-day off for the same purpose, the salary cannot be reduced – only a full day or more can be deducted.*

- d. Deductions due to the employee's absence from work for a day or more caused by sickness, disability or workplace accident if the deduction is made under a plan or policy for paid sick or disability leave that provides compensation for loss of salary due to sickness or disability.

*FOR EXAMPLE: If the church has a policy which allows for 5 paid sick days per year, after which all sick time is unpaid, and the Associate Pastor, an exempt employee, has exhausted his/her paid sick days, any additional time off for sickness which is one day or more in length can be deducted from his/her pay. A half day absence cannot be deducted from his/her pay, nor can a series of half day or smaller absences be added together in order to equal a whole day for purposes of deduction.*

- e. Deductions imposed for the employee's violation of safety rules that are of major significance.

#### **E. Religious Camps and Conference Centers**

The FLSA contains a special exemption applicable to employees of religious camps and conference centers, which provides that such employees are not entitled to minimum wage and overtime if:

1. The camp or conference center does not operate for more than seven months in any calendar year; and
2. The average receipts of the camp or conference center in any six month period during the preceding year were not more than one-third of its average receipts for the other six months of the year.

#### IV. Calculating "Hours Worked"

A. Non-exempt employees must be paid a minimum wage for all hours worked (\$5.15 per hour as of September 1, 1997) and overtime for all hours worked in excess of 40 hours per week. It is essential, then, to determine what conduct and activities constitute hours worked. In general, time during which an employee is required to be on duty on the church's premises or at a prescribed workplace constitutes working time and is compensable.

#### B. Waiting Time

1. An employee who arrives at work at the required time and has to wait for work should be compensated for the time he/she waited. An employee who has to wait for work because he/she arrived before the required time does not have to be compensated for the waiting time.

#### *FOR EXAMPLE:*

*A non-exempt clerical employee responsible for printing church bulletins cannot perform his/her duties due to the fact that the printer breaks down. If the employee has no other responsibilities and must wait while the printer is repaired, he/she must be compensated for that time.*

*A non-exempt preschool worker who uses public transportation and regularly arrives at work a half hour before his/her scheduled starting time does not have to be paid for the time he/she waits for the work day to begin. However, if that employee is asked to perform work before the normal shift begins, he/she is entitled to compensation for the time worked.*

2. An employee who has to wait for work while on duty must be compensated for that time unless:
  - a. The employee is completely relieved from duty and is allowed to leave the job; or
  - b. The employee is relieved until a definite, specified time and the relief time is long enough for the employee to use the time as he/she sees fit.

#### *FOR EXAMPLE:*

*Using the example of the clerical employee, above: if that employee is allowed to leave while the printer is being repaired and instructed to return to the church at a later time or is given the opportunity to remain on church premises but is relieved of any duties and allowed to use the time as he/she sees fit, no compensation is due for the time he/she is relieved of duty.*

C. On-Call Time

1. If the employee may leave the work premises and use the time freely, the employee does not have to be compensated for that time, even if required to leave a phone number where he/she can be reached. Where the employee can use the time freely is determined by considering factors such as whether the employee can wear a pager, if he/she must respond to the call in a short time period of time, if the on-call duty places excessive geographic limits on the employee's movements, or whether the frequency of calls is unduly restrictive.

*FOR EXAMPLE: If a janitor or groundskeeper is required to wear a beeper for emergencies when off duty, is required to check in within 30 minutes of being paged, and has only been called in on infrequent occasions, he/she does not have to be compensated for the on-call time.*

2. If the employee must remain on the premises and cannot use his/her time freely, the employee must be compensated for that time.
3. If the church provides a rest period, the employee must be compensated for that period as long as it is less than twenty minutes. If the rest period exceeds twenty minutes, then the employee must be able to use the time freely before the time may be excluded.

D. Meal Periods

1. Meal periods are compensable unless:
  - a. The period is thirty or more minutes;
  - b. The employee is completely relieved of all duties; and
  - c. The employee is free to leave the duty post.

*FOR EXAMPLE: If the non-exempt church secretary is instructed to eat his/her lunch at the desk and to answer phone calls and handle other matters which may arise, he/she must be compensated for the time, even if there are no calls or other business during the lunch period.*

2. Some courts have rejected the requirement that the employee be "completely relieved of duty" in order for the meal period to be excluded from compensation. Instead, those courts have applied the "predominately for the

benefit of the employer" test to determine whether the meal period is excluded from compensation.

E. Training and Meetings

Training programs, meetings, and other similar activities are compensable unless:

1. The activity occurs outside of the employee's working hours;
2. Attendance at the activity is voluntary;
3. The employee does not engage in any productive work while attending; and,
4. The activity does not directly relate to the employee's job.

**FOR EXAMPLE:** *If a non-exempt member of the staff attends a conference at the direction of the church, he/she must be compensated for the time, regardless of whether it replaces his/her regular work hours or occurs during non-working hours. Travel to and from the conference is compensable only to the extent it exceeds the employee's normal travel time.*

*If that same member of the staff decides to attend a weekend conference and attendance is not directed by the church, no compensation is due, even if the program relates directly to the employee's work at the church.*

F. Travel Time

1. An employee's time traveling to and from home and work is not compensable. If the employee must report to a site to obtain items or instructions prior to traveling to the workplace, the employee's compensable time begins to run once the employee reaches the first site.
2. If an employee is required to travel from one job site to another during the work day, the travel time is compensable.

**FOR EXAMPLE:** *If the church is holding "backyard" Vacation Bible School at the homes of various church members and a non-exempt staff member is required to visit each of the locations, the travel time is compensable.*

*If that same staff member is asked to run errands on the way to the church -- for example, to pick up mail at the post office, stop at the store to buy envelopes or coffee, etc. -- the time spent traveling to the various locations -- is compensable.*

3. If the employee is called back to work for an emergency after the employee already has left for the work day, the travel time to and from the workplace is compensable.

*FOR EXAMPLE: Where a maintenance emergency arises after the custodian, a non-exempt employee, has left for the day and he/she is called back to handle the situation, travel time to and from the church is compensable.*

4. Travel away from home for an overnight trip qualifies as hours worked when it occurs during the employee's regular working hours or the corresponding hours on a non-work day. Time spent traveling outside of working hours is not compensable unless the employee actually is working.

*FOR EXAMPLE: If a non-exempt staff member is required to attend a meeting of the Annual Conference and has a Tuesday flight that leaves at 2:00 p.m. and arrives at 4:30 p.m., that travel time is compensable – the same would be true even if the flight occurred at the same time on Saturday or Sunday. On the other hand, if the flight was from 7:00 p.m. to 9:30 p.m., it would be compensable only if the employee is actually performing work during the travel time and then only for the period that he/she works.*

#### G. Voluntary Work

1. If an employee continues to work voluntarily after his/her regular hours, the time is compensable if the church allows the employee to work or knows that the employee is working.

*FOR EXAMPLE: The pastor observes that his/her secretary continues working on some assigned work after the usual quitting time of 5:00 p.m. There has been no request that the secretary stay late to finish the work. If no effort is made to stop the secretary, all time after 5:00 p.m. that is worked will be compensable time.*

2. To avoid paying for voluntary work, the church must not only prohibit such work but also verify that such work is in fact not performed.

#### V. Calculating Overtime Compensation

- A. The church must pay non-exempt employees overtime pay at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in excess of 40 hours in a work week.

1. Overtime must be calculated on the basis of the workweek, not the pay period. Thus, if the pay period is two weeks in length and the employee works 50 hours the first week and 30 hours the second week, overtime must be paid for the 10 hours of overtime worked in the first week.
  2. If the workweek is less than 40 hours, overtime need be paid only for those hours worked in excess of 40. For example, if the employee is scheduled to work 35 hours per week, but stays late on several occasions and works a total of 39 hours for the week, no overtime is due.<sup>2/</sup>
- B. The FLSA defines a work week as a fixed period of 168 hours, which is seven consecutive twenty-four hour periods. The church may determine on which day and at what hour this period will begin.

*FOR EXAMPLE      The church may define its work week to cover from 12:00 a.m. on Sunday to 11:59 p.m. the following Saturday. All hours worked during that fixed period are considered part of the work week.*

- C. An employee's "regular rate of pay" generally includes all remuneration for employment paid to or on behalf of the employee. Specific items which are excluded from the regular rate of pay are:
1. Discretionary bonuses
  2. Payments to pension funds or insurance plans
  3. Reasonable uniform allowances
  4. Payments made for periods during which no work is performed (e.g., vacation, sick leave, holidays, call-back time)
- D. Calculating Overtime for Salaried Employees
1. A non-exempt salaried employee is entitled to overtime for all hours worked in excess of 40. In order to determine the employee's overtime pay, first it is necessary to calculate his/her hourly rate. There are two ways of calculating that rate, depending upon the church's understanding with the employee:

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<sup>2/</sup> If the employee is paid on an hourly basis, he/she would be entitled to pay for the additional 4 hours worked. If the employee is paid a salary, payment for those hours will depend on whether the salary is understood to cover only the usual 35 hours per week or whether it is understood to cover all hours worked. See further discussion at Section V.D.1.

- a. If it is understood that the employee will work a fixed workweek (for example, 37.5 hours), the hourly rate is determined by dividing the weekly salary by that fixed number of hours.
  1. If the employee is paid bi-weekly, his/her weekly rate is calculated by multiplying the salary by 26 (the number of pay periods in the year) and dividing by 52 (the number of weeks in a year). The hourly rate then can be calculated as shown in subpart a., above.
  2. If the employee is paid on a semi-monthly basis, the weekly rate of pay is calculated by multiplying the salary by 24 (the number of pay periods in a year) and dividing by 52 (the number of weeks in a year). Once the weekly rate is determined, the hourly rate of pay can be calculated as shown in subpart a., above.
  3. The regular rate for an employee who is paid on a monthly basis is calculated by multiplying the monthly salary by 12 (the number of payperiods in the year) and dividing by 52 (the number of weeks in a year). The hourly rate is then computed as shown in subpart a., above.
- b. If it is understood that the employee's hours will vary, the hourly rate is determined by dividing the weekly salary by the number of hours actually worked during that week.

*FOR EXAMPLE: Assume that a maintenance worker is paid \$250.00 per week and that amount is intended to cover a workweek of 35 hours. His/her hourly rate would be \$7.14.*

*On the other hand, if that salary were intended to cover all straight time work performed, regardless of the actual number of hours, the hourly rate would vary depending upon the actual hours worked: if he/she works 42 hours, the hourly rate of pay for that week is \$5.95; but in a week where he/she worked only 37 hours, the hourly rate would be \$6.75.*

2. Where it is understood that the employee's hours may vary, that employee's salary covers straight time for all hours worked, regardless of whether the employee works more or less than 40 hours. Overtime is calculated by paying  $\frac{1}{2}$  the hourly rate for all hours worked in excess of 40 hours.

**FOR EXAMPLE:** *Where the maintenance worker's weekly rate of \$250.00 translates to an hourly rate of pay of \$5.95 for 42 hours, he/she must be paid the additional half time for the two hours worked, for a total of \$5.95 in overtime. No additional amount is due for the straight time, because it is understood to be covered by the employee's salary.*

3. No offset against overtime can be taken in those weeks where the salaried employee works less than 40 hours.

**FOR EXAMPLE:** *The van driver is paid a salary of \$300.00 week and is expected to work 40 hours per week. In week one he/she works only 36 hours, but in week two works 44 hours. The overtime in week two cannot be used as an offset to the time which was short in week one.*

4. Time for which the employee is compensated, but no work is performed is not included in determining "hours worked"

**FOR EXAMPLE:** *If the employee receives a paid holiday (8 hours) on Monday, takes a paid vacation day (8 hours) on Tuesday, and works 10 hours on Wednesday, Thursday and Friday, he/she will be entitled to compensation for 46 hours for the week (unless he/she is salaried and that salary is understood to cover all hours worked). No overtime is due, however, because he/she actually worked only 30 hours.*

#### E. Compensatory Time

The church may not give employees time off in lieu of paying overtime. This practice, known as compensatory (or "comp") time, is available only to public sector and certain healthcare employers.

### VI. Recordkeeping Requirements

- A. The church must maintain records concerning wages paid, hours worked and other personal information concerning all of its employees -- regardless of whether they are exempt or non-exempt employees.
- B. The following information must be maintained concerning each employee:
  1. Employee's full name and employee number (if any);
  2. Employee's home address;
  3. — Employee's date of birth, if he/she is under 19 years of age;



4. Employee's sex and job title;
5. Time and date on which the workweek begins;
6. Regular rate of pay;
7. Hours worked for each day and total hours for each workday;
8. Total daily or weekly straight time earnings;
9. Total overtime compensation for the workweek;
10. Total additions to or deductions from wages paid in each pay period;
11. Total wages paid in each pay period; and,
12. Date of wage payment and period covered by the payment.

C. The church also is required to preserve the following records:

1. For 3 years:
  - a. All payroll records or other records containing the information detailed in subpart B., above; and,
  - b. All individual written employment contracts or written summaries of oral agreements.
2. For 2 years:
  - a. All work schedules, time cards or sheets, or any other records which form the basis for an employee's wages; and,
  - b. All records concerning additions to or deductions from employee wages.

## **VII. Employment of Minors**

- A. The FLSA restricts the number of hours which may be worked by a minor under the age of 16. Additionally, before the minor can be hired, the church must obtain and keep on file a certificate confirming that the employee meets the minimum age standards for employment as a minor. Such certificates are issued by the Wage and

Hour division of the Department of Labor or, in most states, from a designated state agency.

B. For non-farming work, the following are the permissible hours of work for a minor:

1. Age 18: Any job, for unlimited hours.
2. Ages 16 and 17: Any job, for unlimited hours, except those jobs identified by the Secretary of Labor as hazardous.<sup>4/</sup>
3. Ages 14 and 15: Non-hazardous jobs such as office, clerical, sales, retail, or food service during the following hours:
  - a. 3 hours on a school day, 18 hours in a school week, 8 hours on a non-school day, 40 hours during a non-school week
  - b. Work is limited to the hours of 7:00 a.m. to 7:00 p.m., except during vacations lasting 5 or more days from June 1 through Labor Day, when evening hours are extended to 9:00 p.m.
  - c. If the minor is enrolled in an approved Work Experience and Career Exploration Program, up to 23 hours during school weeks and 3 hours on school days, including during school hours.
  - d. In addition to the hazardous jobs identified in footnote 4/, minors under age 16 are prohibited from working in occupations such as manufacturing, construction, warehousing, transportation, food processing, and food preparation (except operations such as snack bars), and communications and public utility work.

### VIII. Enforcement

1. The Wage and Hour Division of the U.S. Department of Labor administers and enforces the FLSA.
2. In order to investigate a complaint, the Department of Labor may enter and inspect an employer's place of business in order to review the books, payroll or other records relating to wages and hours. The employer must allow this inspection. As part of

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<sup>4/</sup> Such hazardous jobs include: roofing, wrecking and demolition, excavation, logging and sawmill work, mining, operating of dangerous machinery, manufacture, storage of or exposure to explosives or radioactive substances.

its investigation, the Department may interview employees in order to learn whether the employer is complying with the FLSA.

3. While some compliance reviews are conducted without notice, usually the employer receives some advance notice of its selection for review. In the event the church receives such a notice, it should seek legal counsel immediately.
4. If the Department of Labor concludes that the church has failed to comply with the FLSA, it may seek back wages on behalf of the employees in question. Generally, it may seek wages for the two year period preceding the violation. However, where it concludes that the employer's failure to comply with the FLSA was "willful," it may seek wages for a three year period. A violation is considered "willful" if the employer knew its actions were illegal or it acted recklessly in determining (or failing to determine) legality.
5. If the Department brings a lawsuit to recover back wages, it may also recover "liquidated damages" – that is, if the Department is successful, in addition to the actual amount of wages due, the employer may be required to pay an amount equal to past due wages, plus interest, attorney's fees and costs.