

Pay Compliance Resource



THE ARCHDIOCESE
OF KANSAS CITY IN KANSAS

Revised November 2019

This manual has been developed with the guidance of our Archdiocesan attorney to help ensure that your parish, school, or agency is in compliance with federal and state laws governing compensation. Please refer any questions to the Human Resources Office.

Difference between Exempt and Non-Exempt Positions

- For a position to be exempt from overtime (and usually paid on a salary basis), a two-part test must be met:
 1. The position must be paid a salary above the limit established by the Department of Labor, *AND*
 2. The duties of the position must fall into one of the categories established by the Department of Labor.
- Non-exempt positions must be paid overtime at a rate of 1 ½ times the hourly rate for all hours worked over 40 in a 7-day week. In the Archdiocese, the standard workweek is Sunday through Saturday.
- Non-exempt employees must be paid for all hours worked. Hours worked include activities such as taking phone calls over the lunch hour and checking voice mail or e-mail when away from work. Employees cannot “volunteer” to do their regular job or work off the clock.

Positions that are Always Non-Exempt

Secretaries, administrative assistants, receptionists, other administrative clerical positions, and nurses are examples of positions that are always non-exempt and must be paid on an hourly basis.

Exemption for Teachers

Teachers in elementary, middle, and high schools will continue to be exempt without regard to a minimum salary. They are exempt under the Fair Labor Standards Act (FLSA) from overtime and from the minimum wage.

Preschools and Day Care Ministries

A teacher in a preschool may be exempt from the required minimum salary so long as the teacher’s primary duties are teaching, tutoring, instructing or lecturing in order to impart knowledge as part of the curriculum for elementary education established under Kansas law AND the preschool meets the following requirements:

- Enrollment is limited to students 30 months of age to kindergarten eligible;
- Each preschool session is limited to no more than 3 hours;

- A student may enroll in only one session per day;
- The school does not serve a meal to the students.

Preschools under the supervision of an elementary school in the Archdiocese generally comply with these requirements. Some early education centers in the Archdiocese, in addition to their regular day care programs, may have preschools licensed by the Kansas Department of Health and Environment which may employ exempt preschool teachers. Licensed Montessori programs may have exempt teachers. If in doubt, contact the Director of Human Resources or the Archdiocesan Attorney.

Note: Workers in daycare centers and parish ministries such as Mother's Day Out who are not teachers in preschools that are part of an elementary school or that are not teaching in licensed preschools in early education centers are not exempt workers and must be paid on an hourly basis and are entitled to overtime pay.

Ministerial Exemption

Certain positions have been recognized by courts and the Department of Labor to be exempt under the FLSA. The DOL does not consider the following to be employees, and hence, they are exempt from FLSA requirements: "Persons such as nuns [sisters], monks, priests, lay brothers, ministers, deacons and members of religious orders who serve pursuant to their religious obligations in the schools, hospitals, and other institutions operated by their church or religious order..." *These positions are occupied by persons who are ordained or vowed.*

Some positions held by non-ordained and non-vowed persons have also been found to be exempt from FLSA by courts, including seminarians and administrators who preach, lead worship and singing, lead daily devotions, teach bible studies and the like.

There is also non-FLSA case law to suggest that lay persons may be ministers for FLSA purposes under certain circumstances. Courts have long recognized that a church has an "essential" right to choose who will preach and teach its message, interpret its doctrines and plan, perform and conduct its religious services and educational programs. Such positions might include DRE's, music and liturgy ministers and the like.

However, if a person's duties are primarily clerical, even if other parts of the duties may be ministerial, the position likely is not exempt. The primary duties are determinative.

In determining whether an employee is exempt under the ministerial exemption, courts will likely consider factors such as:

1) Does the employer hold the employee out as a minister?

Ask the employee to perform her duties according to church teachings? Evaluate how

well the employee is performing ministerial.

2) Is a course of study in theology or religious studies of the Catholic Church a requisite for the position? Is some other form of religious formation required?

3) Does the employee hold himself out as a minister of the gospel?

4) Do the actual duties performed by the employee reflect a role in spreading or teaching the gospel and carrying out the mission of the Church? Does the job description reflect a ministerial or religious role?

The fourth factor likely will be determinative or most influential to a court in determining whether the ministerial exemption applies. Certainly, however, not everyone who works for the Church will be considered a “minister” for FLSA purposes. Consult the Director of Human Resources or the Archdiocesan Attorney if you have questions as to whether a particular position is a ministerial position.

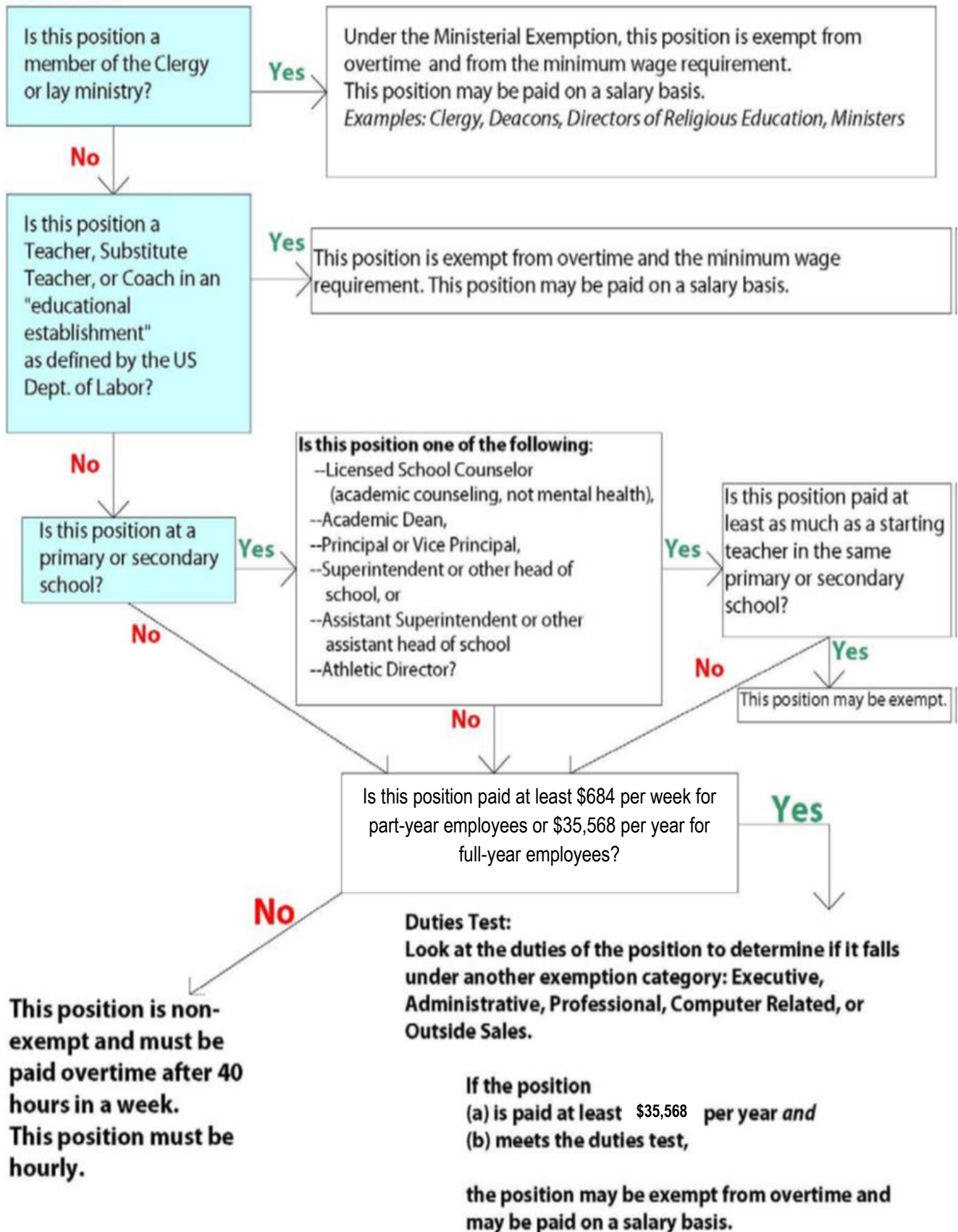
Possible job titles that MAY fit into the ministerial exemption:

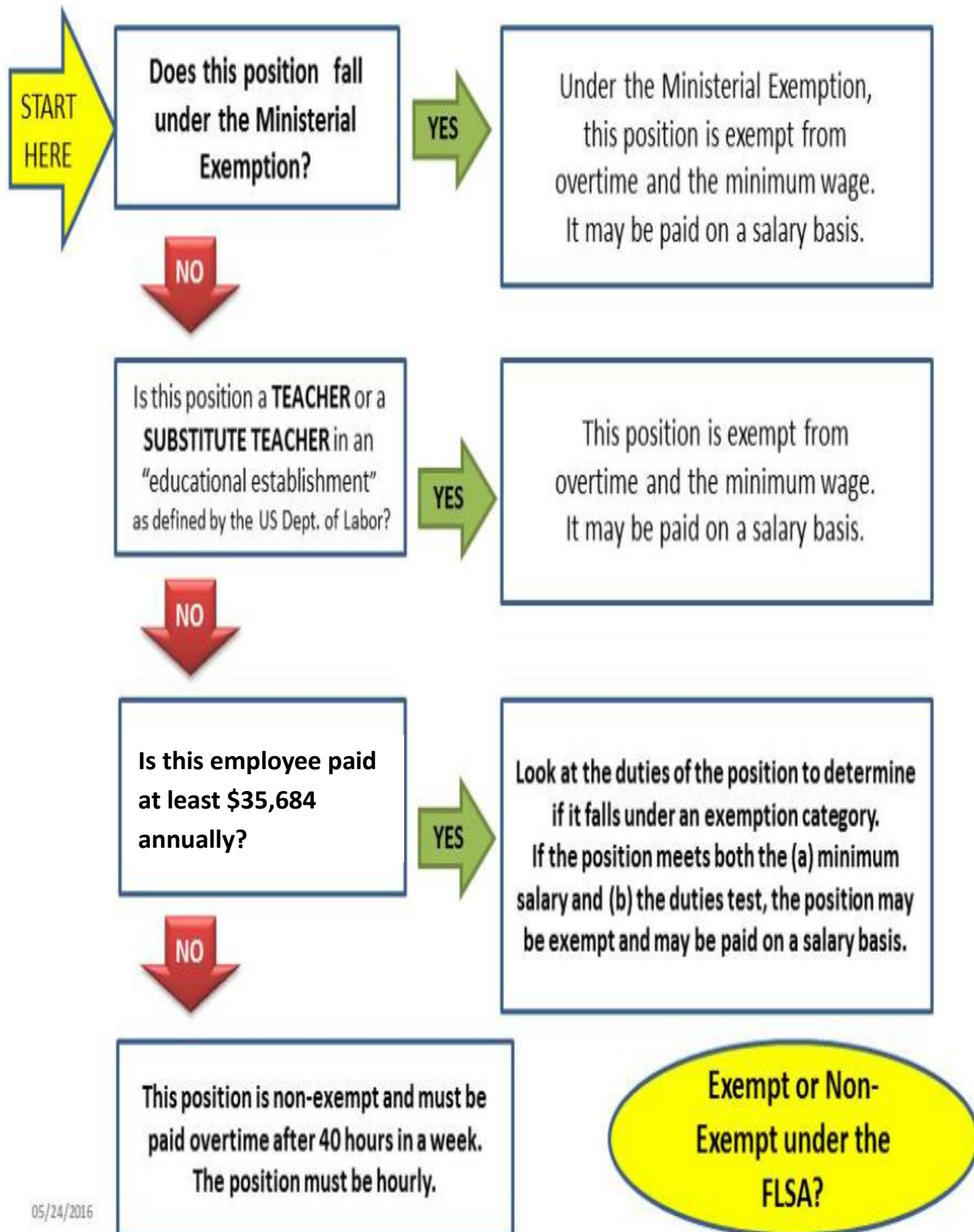
- Adult Faith Formation/RCIA Director
- Parochial Vicar
- Campus Minister
- Cantor
- Catechist
- Chancellor
- Deacon
- Director of Music
- Director of Religious Education
- Liturgical Minister
- Pastor/Parochial Administrator
- Pastoral Minister
- Priest
- Religious Education Assistant
- Seminarian
- Youth Minister
- Youth Ministry Assistant

Exempt or Non-Exempt under the FLSA

To determine if a position is exempt or non-exempt under the Fair Labor Standards Act (1938), look at the salary level and the job description. The duties, not the job title, determine the FLSA status.

Start Here:





Helpful Links

Department of Labor

<https://www.dol.gov/>

DOL Questions and Answers of Overtime Pay

https://www.dol.gov/whd/overtime_pay.htm

<https://www.dol.gov/whd/overtime2019/index.htm>

DOL Fact Sheet #17A: Exemptions for Executive, Administrative, Professional, Computer Etc.

https://www.dol.gov/whd/overtime/fs17a_overview.htm

DOL Fact Sheet #13: Employment Relationship (Independent Contractor v. Employee)

<https://www.dol.gov/whd/regs/compliance/whdfs13.htm>

Kansas Department of Labor

<http://www.dol.ks.gov/>

Department of Labor- Wage and Hour Division: Final Rule- Overtime Update

<https://www.dol.gov/whd/overtime2019/index.htm>

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