

Presbyterian Church (U.S.A.)  
Mid-Council Financial Network  
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The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. These shapes are primarily located on the left and right sides of the frame, creating a modern, professional aesthetic. The central area is white, providing a clear space for the text.

# Department of Labor and Employment Law Update

# First Email of the Morning

“A Texas federal judge said he’ll decide by Nov. 22 whether to stop the U.S. Department of Labor’s new overtime rules from taking effect as scheduled on Dec. 1, as 21 states and dozens of business groups push for an end to what they say is an unlawful change.”

# Good morning, Cory.....

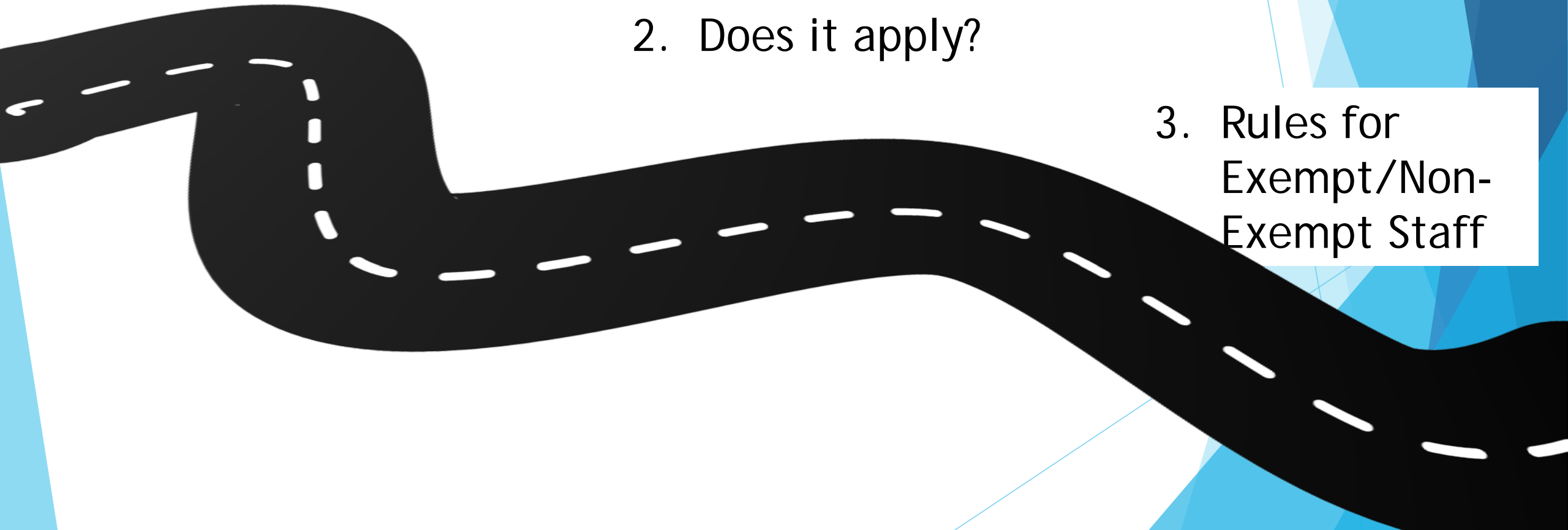
- ▶ Can we pay the same “hourly” employee a different hourly rate for different kinds of work?
- ▶ Can we pay the same employee an hourly rate for X work, plus a flat rate for a Y work, plus commission for Z work?
- ▶ If there are different “rates” of pay for non-commissioned work, which hourly rate would overtime be paid at for overtime?

# Roadmap

1. Historical Context

2. Does it apply?

3. Rules for  
Exempt/Non-  
Exempt Staff



# Brief History of the FLSA

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# Back to School

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Brief History of the Fair Labor Standards Act



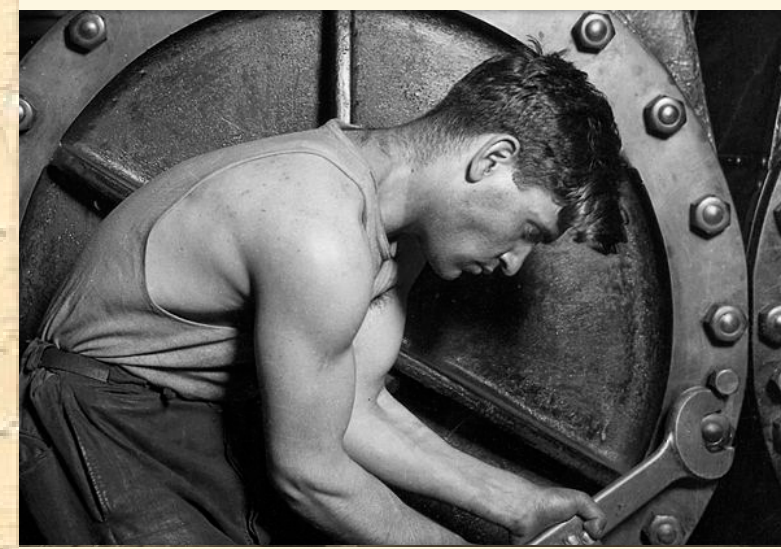
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"Little Lottie, a regular oyster shucker in Alabama Canning Co. - NARA - 523398" by Lewis Hine - U.S. National Archives and Records Administration - Commons - [https://commons.wikimedia.org/wiki/File:Little\\_Lottie,\\_a\\_regular\\_oyster\\_shucker\\_in\\_Alabama\\_Canning\\_Co.\\_-\\_NARA\\_-\\_523398.jpg#/media/File:Little\\_Lottie,\\_a\\_regular\\_oyster\\_shucker\\_in\\_Alabama\\_Canning\\_Co.\\_-\\_NARA\\_-\\_523398.jpg](https://commons.wikimedia.org/wiki/File:Little_Lottie,_a_regular_oyster_shucker_in_Alabama_Canning_Co._-_NARA_-_523398.jpg#/media/File:Little_Lottie,_a_regular_oyster_shucker_in_Alabama_Canning_Co._-_NARA_-_523398.jpg)



"Lewis Hine - Power house mechanic working on steam pump" by Lewis Hine - Commons - [https://commons.wikimedia.org/wiki/File:Lewis\\_Hine\\_Power\\_house\\_mechanic\\_working\\_on\\_steam\\_pump.jpg#/media/File:Lewis\\_Hine\\_Power\\_house\\_mechanic\\_working\\_on\\_steam\\_pump.jpg](https://commons.wikimedia.org/wiki/File:Lewis_Hine_Power_house_mechanic_working_on_steam_pump.jpg#/media/File:Lewis_Hine_Power_house_mechanic_working_on_steam_pump.jpg)



"Midnight at the glassworks2b" by Lewis Wickes Hine. Restored by Michel Vuijlsteke - Library of Congress - Commons - [https://commons.wikimedia.org/wiki/File:Midnight\\_at\\_the\\_glassworks2b.jpg#/media/File:Midnight\\_at\\_the\\_glassworks2b.jpg](https://commons.wikimedia.org/wiki/File:Midnight_at_the_glassworks2b.jpg#/media/File:Midnight_at_the_glassworks2b.jpg)



# Fair Labor Standards Act: A Brief History

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- Passed in 1938 under Franklin Delano Roosevelt
- Banned most child labor
- Set minimum wage to 25¢
- Established the 44 hour work week
  - Reduced to 40 hours in 1940
- Salary level test for exempt positions = \$100/week

# Fair Labor Standards Act: A Brief History

1938

Minimum Wage  
25 cents/hour

Salary Level Test  
\$2.72/hour



9 times more than  
minimum wage

2015 (and thru 11/30/2016...)

Minimum Wage  
\$7.25/hour

Salary Level Test  
\$11.38/hour



1.6 times more than  
minimum wage

# Fair Labor Standards Act: A Brief History

1938

Minimum Wage  
25 cents/hour

Salary Level Test  
\$2.72/hour



9 times more than  
minimum wage

LAW ON 12/1/2016

Minimum Wage  
\$7.25/hour

Salary Level Test  
~\$22.82/hour  
(\$913/wk)

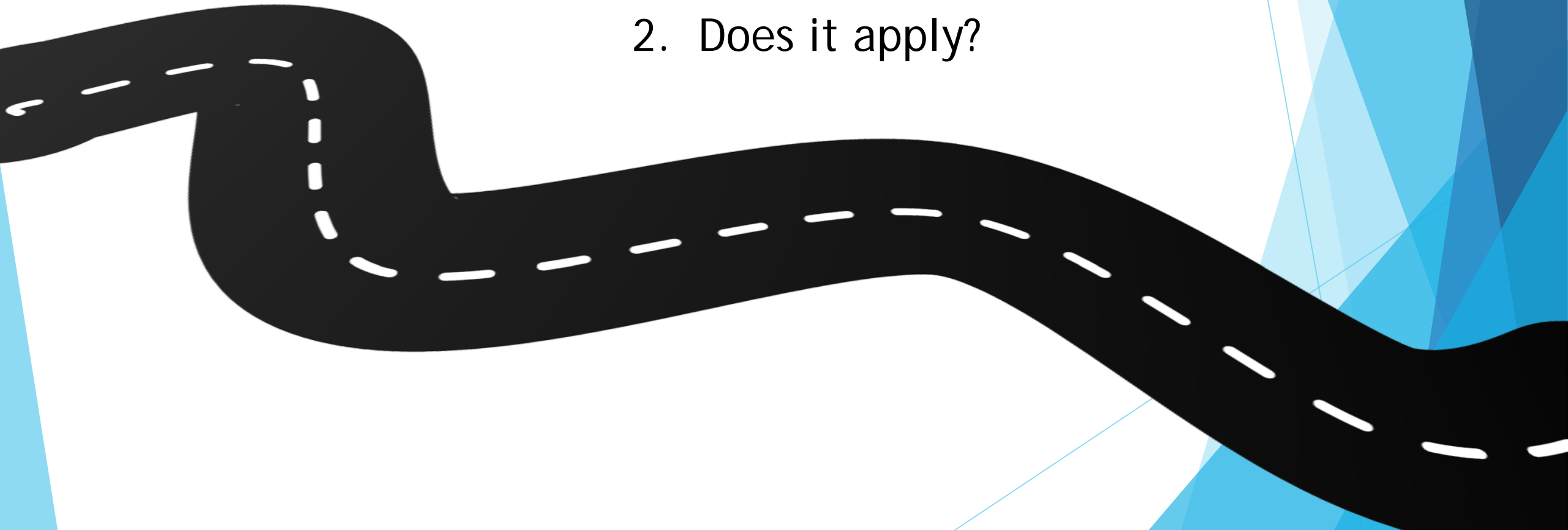


3.1 times more than  
minimum wage

# Roadmap

1. Historical Context

2. Does it apply?



## Does the FLSA Apply?

- ▶ Applies to *most* churches
- ▶ Substantial consequences of noncompliance
  - ▶ Penalties (state and federal)
  - ▶ private lawsuits by employees
  - ▶ possibly class action suits
  - ▶ Distrust. Loss of goodwill, efficiencies

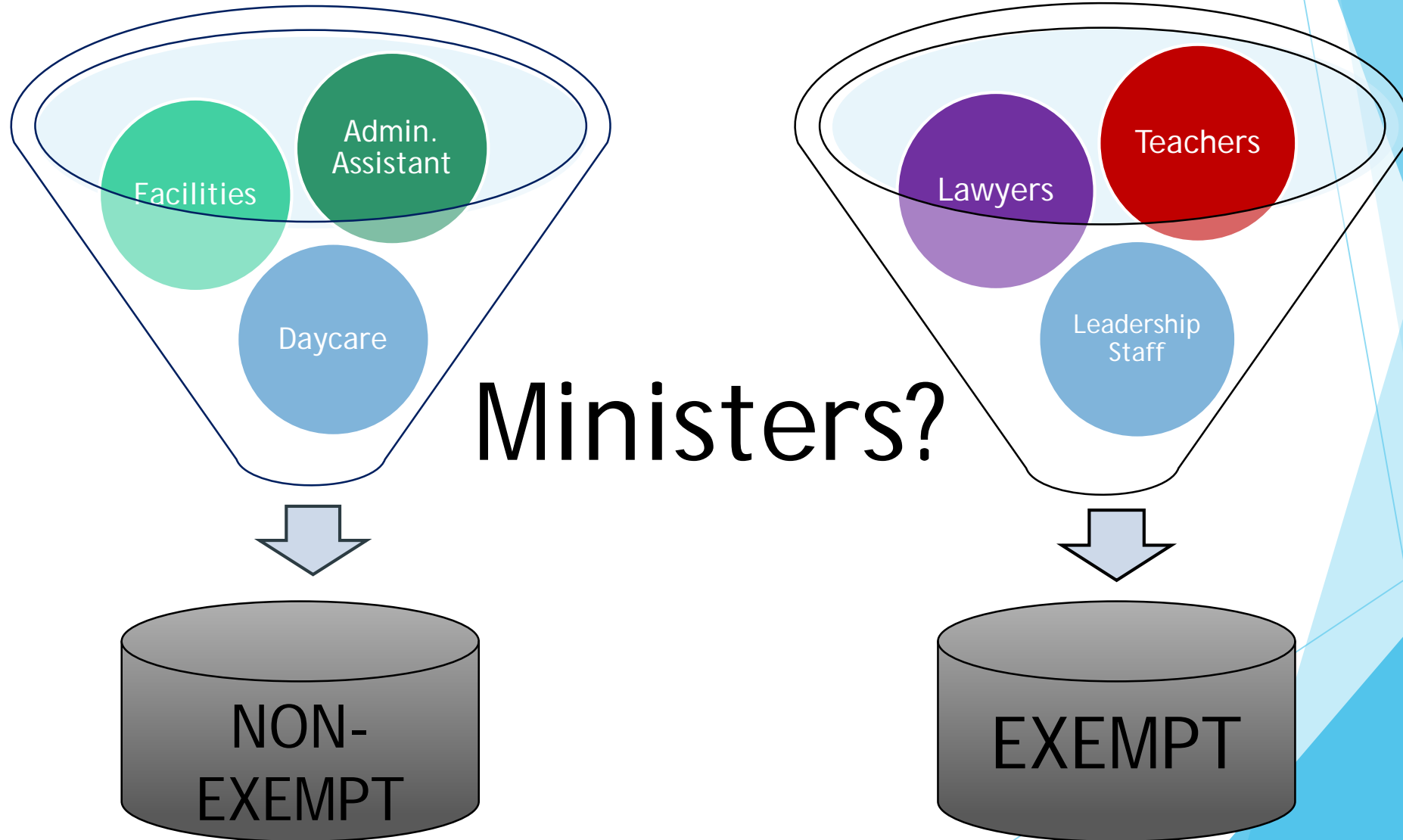
# Does the FLSA Apply?

▶ Two basic steps:

1. Classify the employee *properly*
2. Apply the rules
  - Compensation
  - Recordkeeping



# Step 1: Classifying Employees



# Who is a “Minister”?

Two definitions of “Minister” under federal law:

**Housing Allowance  
(Tax Code)**

Housing Allowance  
*AND*  
Employment Law

**Employment Law**

*Hosanna Tabor* case: Employee performs essential religious duties

Example:

- Director of Music
- Essential religious duties
- Not ordained, licensed, or commissioned

# Ministerial Exception

- ▶ FLSA does not specifically provide for a ministerial exception/exemption
- ▶ DOL W&H Field Operations Manual -- Persons such as nuns, monks, priests, lay brothers, ministers, deacons, and other 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 shall not be considered to be "employees."
- ▶ Courts have applied the ministerial exception to many employment law situations, including scenarios involving application of the FLSA.

# Ministerial Exception

“Lesser Known Exemptions: The ‘Ministerial’  
Exception to the FLSA”

April 7, 2015 Article

WKPZ War Stories from February 2008 and  
November 2016

# Ministerial Exception in the Courts

*Sterlinski v. Catholic Bishop of Chicago* (N.D. Ill. Aug. 23, 2016).

- ▶ Sterlinski was a minister because his job duties of selecting and supervising all music at liturgical celebrations reflected a role in conveying the Church's message.
- ▶ Music is "an integral part of many different religious traditions," including the Catholic tradition.

# Ministerial Exception in the Courts

*Curl v. Beltsville Adventist School* (D. Md. Aug. 15, 2016).

- ▶ 25-yr music teacher taught secular and sacred music; background in both
- ▶ Pupils performed at the church; teacher participated in morning prayer service for faculty.
- ▶ “Commissioned Ministry of Teaching License” and was evaluated for “spiritual leadership.”
- ▶ While at work, teacher fell, suffered a serious brain injury; school did not renew.
- ▶ Teacher sued for age discrimination, workers’ comp retaliation, ADA, and FMLA
- ▶ Court - teacher was a minister.
- ▶ The School required School personnel to consistently and enthusiastically practice the ideals of the church, demonstrate a high sense of loyalty to Adventist educational philosophy, and look upon Christian educational service as a holy vocation. “School clearly held Plaintiff out to be a minister[.]”

# Ministerial Exception in the Courts

*Collette v. Archdiocese of Chicago* (N.D. Ill. Jul. 29, 2016).

- ▶ Collette, a 17-year EE in Diocese and the Director of Worship/Music for the Parish, was engaged to and planned to marry his same-sex partner.
- ▶ Upon learning of the engagement, the Archdiocese asked for his resignation; and...
- ▶ Published in the Parish's weekly church bulletin that Collette "had been terminated due to his 'participation in a form of union that cannot be recognized as a sacrament by the Church.'"
- ▶ When Collette refused to resign, his employment was terminated.
- ▶ He filed suit, alleging sex and marital status discrimination.
- ▶ Archdiocese's motion to dismiss on ministerial exception denied.
- ▶ Archdiocese relied solely on the employee's title. A title, by itself, does not automatically assure coverage. "A factual record focused on Collette's functional role as Director of Worship and Music Director is therefore needed to determine whether that role was ministerial."

# Ministerial Exception in the Courts

*Fratello v. Roman Catholic Archdiocese of N. Y.* (S.D.N.Y. Mar. 29, 2016).

- ▶ The School required its principal to be a practicing Catholic, to achieve the “Catholic mission and purpose of the school,” and to be the “animator of the community of faith within the school.”
- ▶ The principal was further described as the religious liaison between the Archdiocese, the parish, the congregation, the students, and the parents, interacting with all entities and fostering a religious community.” The principal was evaluated by superiors in the Archdiocese, the Monsignor, and her faculty, based on, among other things, her effectiveness as a religious leader.
- ▶ The court placed emphasis on the Archdiocese website, mission, and employment manual. The court held that these factors demonstrated that the Archdiocese and the School held the principal out as a minister. The ministerial exception applied.



# Ministerial Exception in the Courts

*Penn v. N.Y. Methodist Hosp.* (S.D.N.Y. Jan. 20, 2016).

- ▶ Chaplin at a Methodist Hospital filed suit alleging race and religious discrimination as well as retaliation for a failure to promote.
- ▶ Hospital sought a summary dismissal of the complaint on grounds that the Chaplan was a minister, and the ministerial exception applied.
- ▶ The court considered whether the Hospital was a “religious institution” for purposes of the ministerial exception.
- ▶ The court, noting that both the employer and employee must be reviewed in this context, noted that “the more pervasively religious an institution, is, the less religious the employee’s role need be in order to risk first amendment infringement. On the other hand, where an employee’s role is extensively religious, a less religious employer may still create entanglement issues.”
- ▶ In light of the Chaplan’s “exceedingly ministerial role”, the exception applied and summary judgment was granted.

# Ministerial Exception in the Courts

*Goodman v. Archbishop Curley High Sch., Inc.* (D. Md. Feb. 26, 2016).

- ▶ Goodman, the librarian, was informed by a student that another student “did it” with a faculty member in a car. Goodman dismissed the complaint as rumor, but soon met with the student who confirmed the inappropriate relationship.
- ▶ Then, a panic attack put her in the hospital. When she returned, she informed a VP about the report.
- ▶ VP: “If I don’t look surprised, it’s because, well, I’m a professional and I’ve heard all of this before.”
- ▶ VP informed the principal. Principal informed Father Benicewicz. All instructed Goodman to keep quiet.
- ▶ Police caught wind of the incident and began an investigation.
- ▶ Benicewicz, “I am VERY, VERY upset with you! Were you or were you not told not to speak to anybody?”
- ▶ Press release: “A number of weeks ago, Annette Goodman, the school’s librarian, learned about the allegation [that Lynette Trotta had ‘engaged in a sexual relationship with a current student during the current school year.’] . . . Maryland law and the policies of the Archdiocese . . . require that allegations of child abuse be reported to civil authorities and to the head of the school as soon as possible.”
- ▶ Goodman sued: retaliation Title IX, which prohibits sex discrimination by any education program receiving federal financial assistance and other related activity.
- ▶ The Archdiocese moved to dismiss on many grounds, including the ministerial exception.
- ▶ **Ministerial exception did not apply to librarian whose position did not include any religious function. “There is absolutely no suggestion in this case that the ministerial exception applies as the Plaintiff was employed as a school librarian, and her job position did not include any religious function.”**

# Ministerial Exception – Factors

- ▶ Religious training required for position?
- ▶ Title reflect spiritual or religious duties?
- ▶ Job duties must be performed according to teachings or beliefs of the religion?
- ▶ Job duties include conveying the message and teachings of the church?
- ▶ Job duties require selecting or creating of religious content?
- ▶ Job duties require leading others to maturity in their faith?
- ▶ Performance review uses ministerial performance standards?
- ▶ Does employer require continuing education related to religious duties?

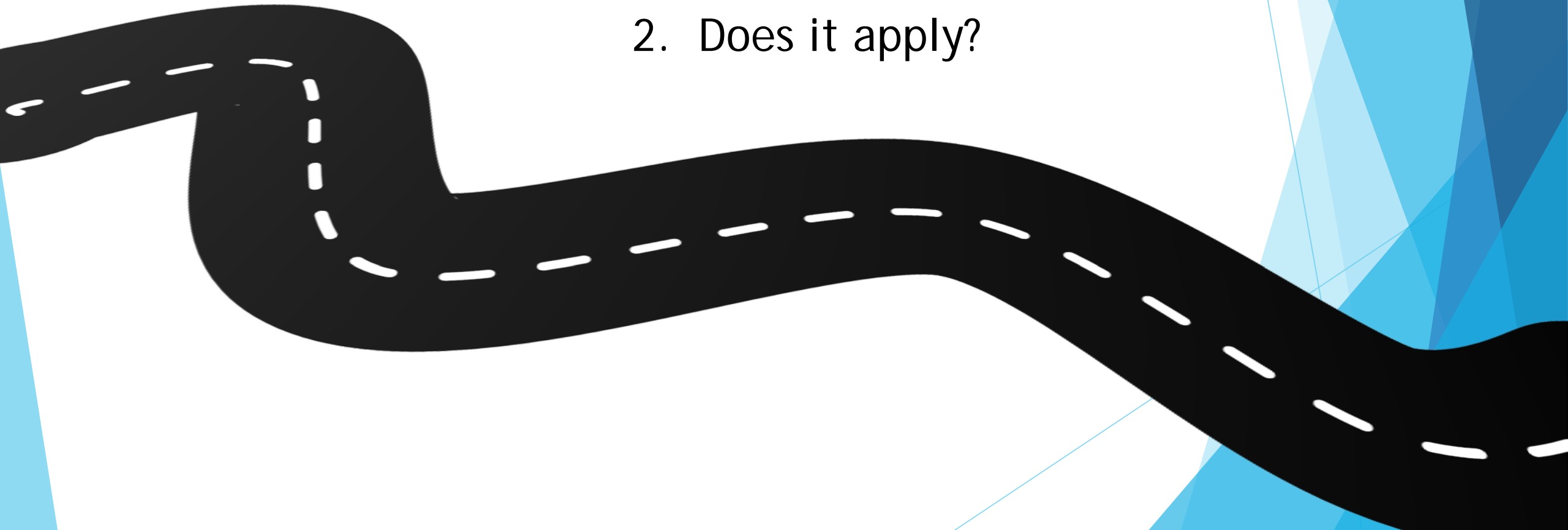
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# Roadmap

1. Historical Context

2. Does it apply?



# Educational Establishment

- ▶ FLSA exempts school teachers and academic administrators from the minimum salary test if the employee meets certain requirements
- ▶ “a day or residential school which provides elementary education, as determined under State law.”
- ▶ Regs: elementary or secondary school system, . . . such education includes the curriculums in grades 1 through 12; under many it includes also the introductory programs in kindergarten. Such education in some States may also include nursery school programs in elementary education . . . .
- ▶ No distinction is drawn between public and private schools, or between those operated for profit and those that are not for profit.
- ▶ While a preschool may engage in some educational activities, preschool employees whose primary duty is to care for the physical needs for the facility’s children ordinarily do not meet the requirements for exception as teachers

# Academic Administrators

- ▶ Must direct educational functions.
- ▶ Does not include employees performing non-educational functions such as building management, maintenance, or student health services.
- ▶ Head of a school / assistants responsible for the administration of education: selecting curriculum, evaluating the quality/methods of instruction, measuring performance, testing of students, establishing and maintaining grade standards.
- ▶ If the EE's primary duty is providing custodial care, then teacher exemption likely not applicable.

# Duties that Qualify for Exemption

## “EAP Exemptions”

- ▶ “Primary Duty” = 80%+ of employee’s time
  - ▶ Keep records and verify at least once per year
    - Accurate job descriptions for *every* position are key.
1. Executive Exemption
  2. Administrative Exemption
  3. Professional Exemption



# EAP Exemptions

## 1. Executive Exemption

- ▶ Manages the organization or a distinct department
- ▶ Supervises the work of at least two full-time employees (volunteer supervision does not count)
- ▶ Must have authority to hire/fire
  - ▶ Or their input carries significant weight

# EAP Exemptions

## 2. Administrative Exemption

- ▶ Office work or non-manual labor related to the management of the organization
- ▶ Exercises significant discretion and independent judgment on matters of significance
- ▶ Examples:
  - ▶ An officer or leadership staff member with no direct reports; key employee who supervises many volunteers
  - ▶ *Not* an administrative assistant

# EAP Exemptions

## 3. Professional Exemption

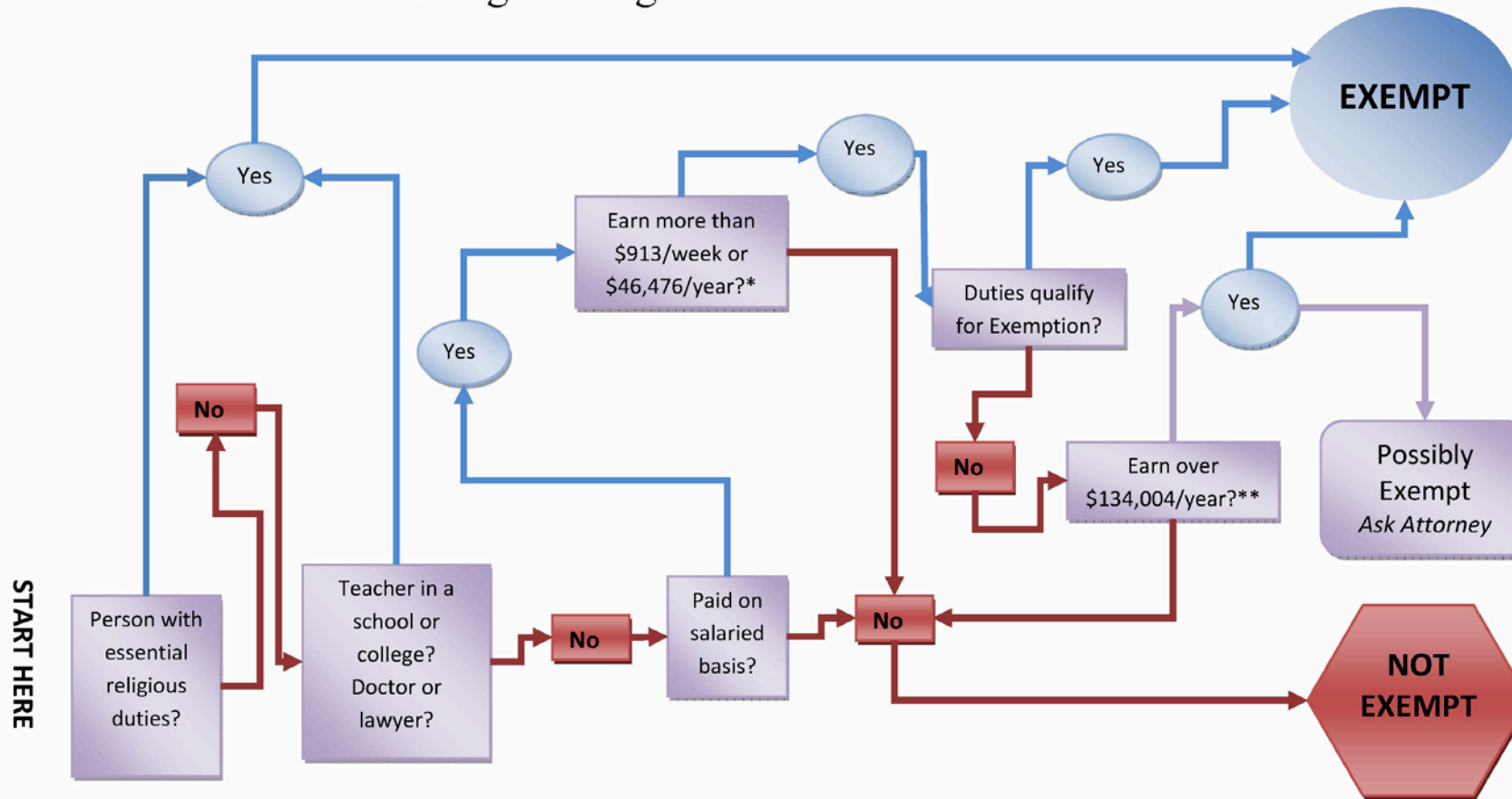
- ▶ Work requires advance knowledge acquired from extensive specialized intellectual instruction over a long period
- ▶ Work is primarily intellectual and requires consistent exercise of discretion and judgment
- ▶ Knowledge includes creative professions (music, art) when the work is characterized by imagination, creativity, originality, or exceptional talent
- ▶ Examples:
  - ▶ Preschool teachers with degrees in early childhood education and teaching credentials *but not* daycare workers with only state daycare license

# Another Exception

## Computer Professional

- ▶ Systems analysis, programmer, software engineer, or similar position
- ▶ Does not apply to staff who maintain the church's networks

# FLSA Classification Decision Tree For Churches and Other Religious Organizations



## **New Regulations effective December 1, 2016**

\*\$913/week or \$47,476/year (new minimum salary requirement)

\*\*\$134,004/year (new highly compensated minimum salary requirement)

Disclaimer:

This chart does not cover every permutation or consideration for classifying employees under the FLSA. It focuses only on the circumstances and decision points most commonly found at churches and religious organizations. This chart is legal information only, and cannot replace advice from your own qualified legal counsel.



# Roadmap



1. Historical Context

2. Does it apply?  
FLSA Decision Tree

3. Rules for Non-Exempt Staff

## Step 2: Apply Rules to Non-Exempt Staff

- ▶ Compensation: Minimum wage and overtime
- ▶ Recordkeeping
  - Most common mistakes:
    - Daily logs of hours worked (clock-in and clock out)
    - Official start and end of the church's work week
- ▶ *Remember*: Recordkeeping requirements for *exempt* staff as well



## Recordkeeping

- ▶ Name, Address, DOB (if under 19), Sex, Occupation employed
- ▶ Time of day and day of week EE's workweek begins.
- ▶ Regular hourly rate of pay for any workweek in which overtime is due
- ▶ Hours worked each workday and total hours
- ▶ Preserve: payroll 3yr; earnings records 2yr

# Common Mistakes with Non-Exempt Staff

- ▶ Poor recordkeeping
- ▶ Understanding what is “on the clock” and “off the clock” for computing overtime

# Computing Overtime - Am I On the Clock?

- ▶ No “comp time” (unless taken in *same work week*)
- ▶ Mandatory attendance to church service
- ▶ “Volunteering” for employer in the same department/area as paid duties
- ▶ Training time (if mandatory)

# Computing Overtime - Am I On the Clock?

- ▶ Breaks of 20 minutes or less
- ▶ Any period where the EE is not free to leave the area
  - Example: break that must be taken on church grounds
- ▶ Any time the EE works, including waiting time, after-hours phone calls, emails, and texts
  - Even if done on EE's own initiative

# Computing Overtime - On the Clock

- ▶ Travel time is compensable when:
  - During regular work hours
  - Over the weekend & travel includes part of normal week
  - Meals & sleep time if employee is restricted (e.g. over night camps)
  - If on duty for 24+ hours & gets 5 hours of uninterrupted sleep, sleep time is excludable

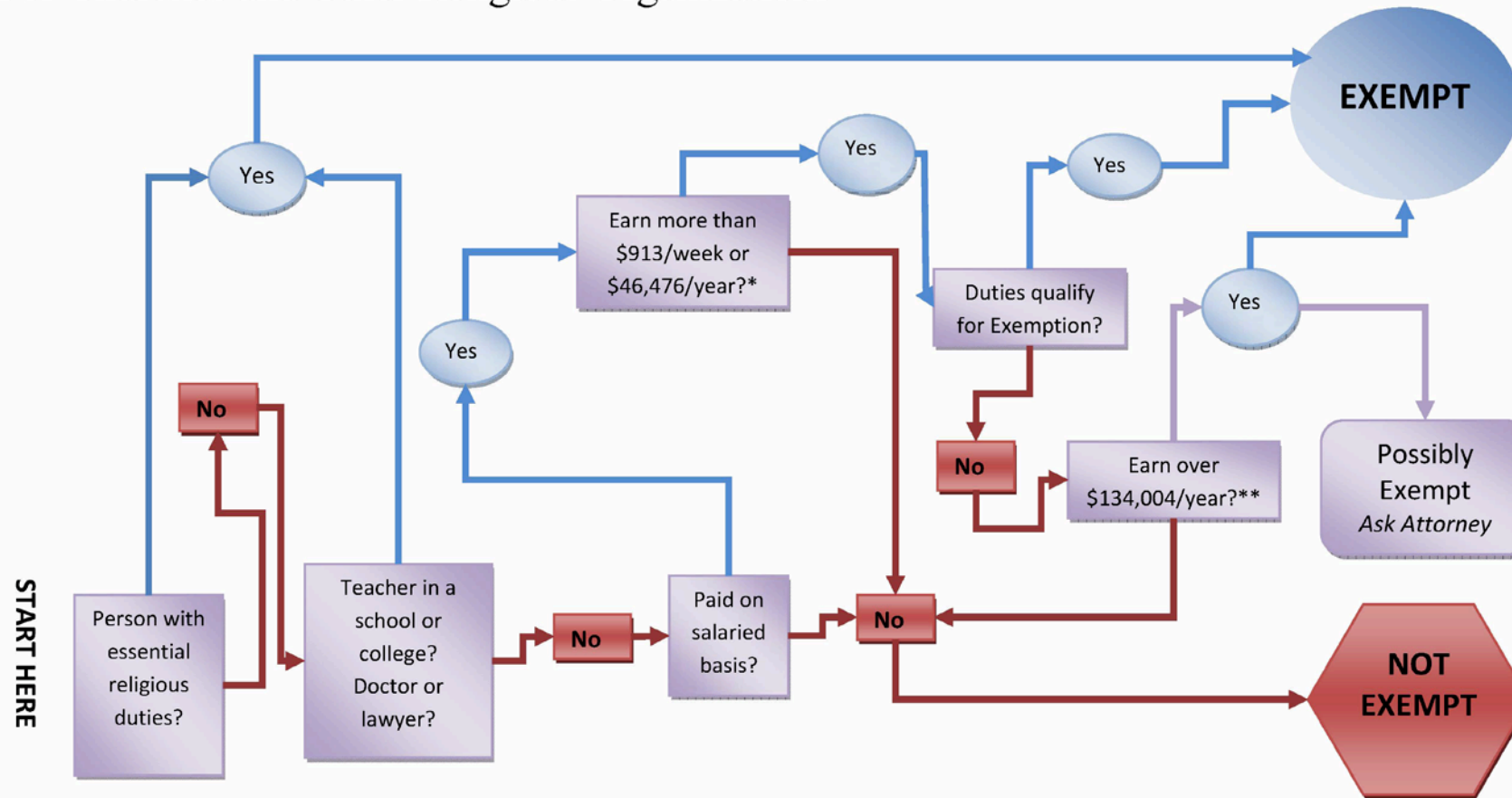
# Travel Time Example

- ▶ EER's workweek: 8:30am-5:00pm M-F, 1hr lunch. EE will attend a conference in DC for PD Wed.-Friday.
- ▶ EE shows up for work at 8:30am on Tues, but then stops and leaves the office at 12:30pm to take a 30-min lunch, and at 1pm begins travel to the conference.
- ▶ EE travels to DFW airport from 1-3pm for a 4:30pm flight. Flight lands at 8:30pm EST (3hrs later); EE then spends an additional 2.5hrs collecting baggage, securing a rental car, and driving to and checking into the hotel at 11pm EST.
- ▶ What is compensable?

# Deductions for Exempt Staff

- ▶ **Absence for Personal Reasons.** other than sickness or disability, unless such personal days are otherwise compensable according to policy.
- ▶ **Absence for Sickness/Disability.** if deduction is made per a bona fide plan, policy or practice that provides compensation for loss of salary occasioned by such sickness or disability.
- ▶ **Jury Duty.** offset only.
- ▶ **Safety Rules Infractions.** penalties imposed for infractions of safety rules of major significance.
- ▶ **Disciplinary Suspensions.** deductions for unpaid disciplinary suspensions of one or more full days imposed for infractions of workplace conduct rules.
- ▶ **Beginning/End of Employment.** not required to pay the full salary in the initial or terminal week of employment.
- ▶ **FMLA Leave.** proportionate part of the full salary for time actually worked.

# FLSA Classification Decision Tree For Churches and Other Religious Organizations



## New Regulations effective December 1, 2016

\*\$913/week or \$47,476/year (new minimum salary requirement)

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# Thank You

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