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Emerging Legal and Compliance Issues for Nonprofit Leaders

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Session CPE Requirements

- You need to attend 50 minutes to receive the full 1 CPE credit.
- There will be 4 knowledge check questions throughout the presentation. You must respond to a minimum of 3 to receive the full 1 CPE credit.
- ****Both requirements must be met to receive CPE credit****



Learning Objectives

1

Describe AI and its applications and benefits for nonprofit organizations.

2

Discuss recommended practices for implementing AI in nonprofit settings, including legal and ethical considerations.

3

Explain the new FLSA rules and how they affect the classification and compensation of exempt and nonexempt employees.

4

Identify how to assess the impact of the new FLSA rules on nonprofit budget and operations.

5

Identify how to comply with the federal and state labor laws and avoid common pitfalls and mistakes.



Today's Presenters

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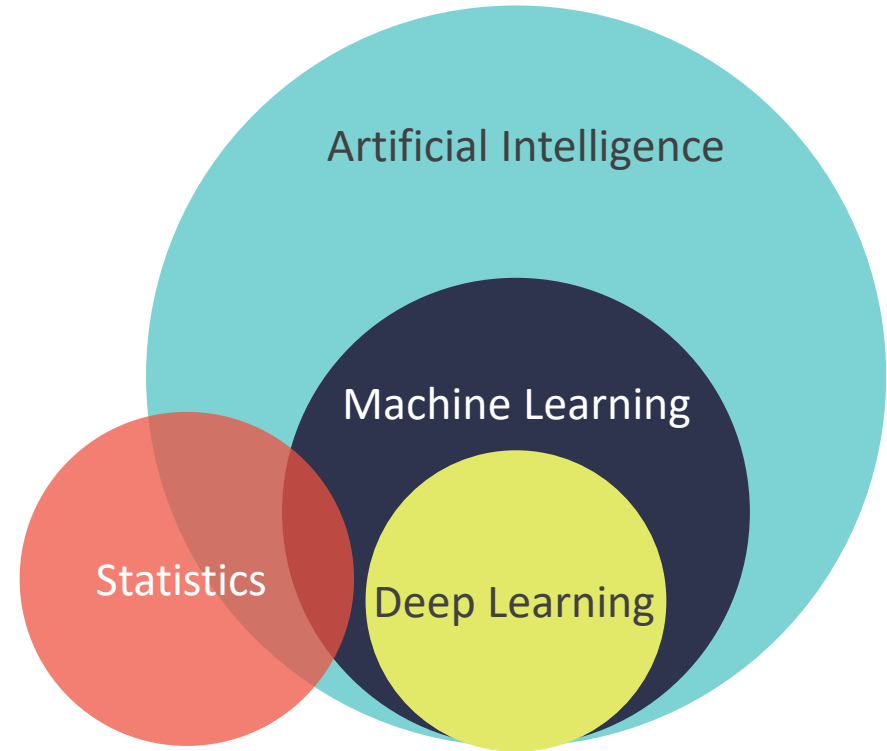


Artificial Intelligence



Defining Our Terms

- **Traditional Computing:** Set of explicit instructions for a specific task
- **Artificial Intelligence (AI):** Machines exhibiting intelligence as defined by humans
 - Complex tasks
 - Machine learning
 - Deep learning
 - Statistics
 - Mimic human cognition



AI Benefits

Developing technology is making it easier to quickly create content and analyze information.

- Efficiency
- Speed
- Easy Information
- On-Trend



AI Risks



1. Models Built on Incomplete, Inaccurate Datasets

Poor quality training data for AI models can result in biased or inaccurate outcomes, as the saying goes, "garbage in, garbage out."



2. Poorly Educated Employees Using AI Leading to Privacy & Security Risks

Without proper guardrails or training, using AI can result in significant consequences.



3. Intellectual Property and Legal Risks

The most effective models are constructed using vast amounts of data, which may sometimes be copyrighted. However, the legal implications of this are uncertain.



4. Privacy Concerns

Generative AI needs large datasets, some sourced from the internet, which may contain personal information. Managing individual rights related to this data is challenging.

Knowledge Check

Which of these is *not* an AI risk?

- a. Models built on incomplete, inaccurate datasets.
- b. Poorly educated employees using AI.
- c. Managing individual rights related to data sourced from the internet.
- d. All of these are AI risks.



The Cybersecurity Conundrum

Cybercriminals can Utilize Free/Cheap AI Services

Empowers criminals to quickly create sophisticated attacks.

AI tools that construct malicious code and convincing deep fakes.



AI Benefits Enterprises more than Criminals, however:

High cost and skill requirement to maintain these benefits.

82% of Data Breaches are still the result of human error.



AI Recommended Practices



- Generally, establish policies for AI use by members, contractors, employees, and other workers
- Stay abreast of data protection laws, and AI-specific legislation developments
- Avoid submitting confidential information or trade secrets to an AI platform
- Review the terms of use/FAQs of the AI platform used by the organization to understand the AI platform's views on ownership and any use restrictions for output
- Review rights associated with any input submitted to an AI platform, and rights that may be associated with any output received, before publishing the output
- “Fact-check” any content generated by AI platforms before publication
- When using artificial intelligence to generate content for another party, disclose that AI has been used in the creation of the content

Knowledge Check

How well do you believe your current tools and technologies support your efforts in leveraging and managing AI?

- a. Exceptionally well
- b. Adequately for most tasks
- c. Inadequately, we need better tools





Fair Labor Standards Act



What is the Fair Labor Standards Act (FLSA)?

Basic intent of the FLSA:

- Determine who must receive overtime pay (exempt/nonexempt)
- Establish minimum wage
- Define wage and hour record keeping
- Create federal-level child labor laws

What other laws may supersede the FLSA?

- State Laws
- Local Laws

What are we focused on today?

- Section of the law on minimum salary requirements to be exempt
- Common misclassification examples



Knowledge Check

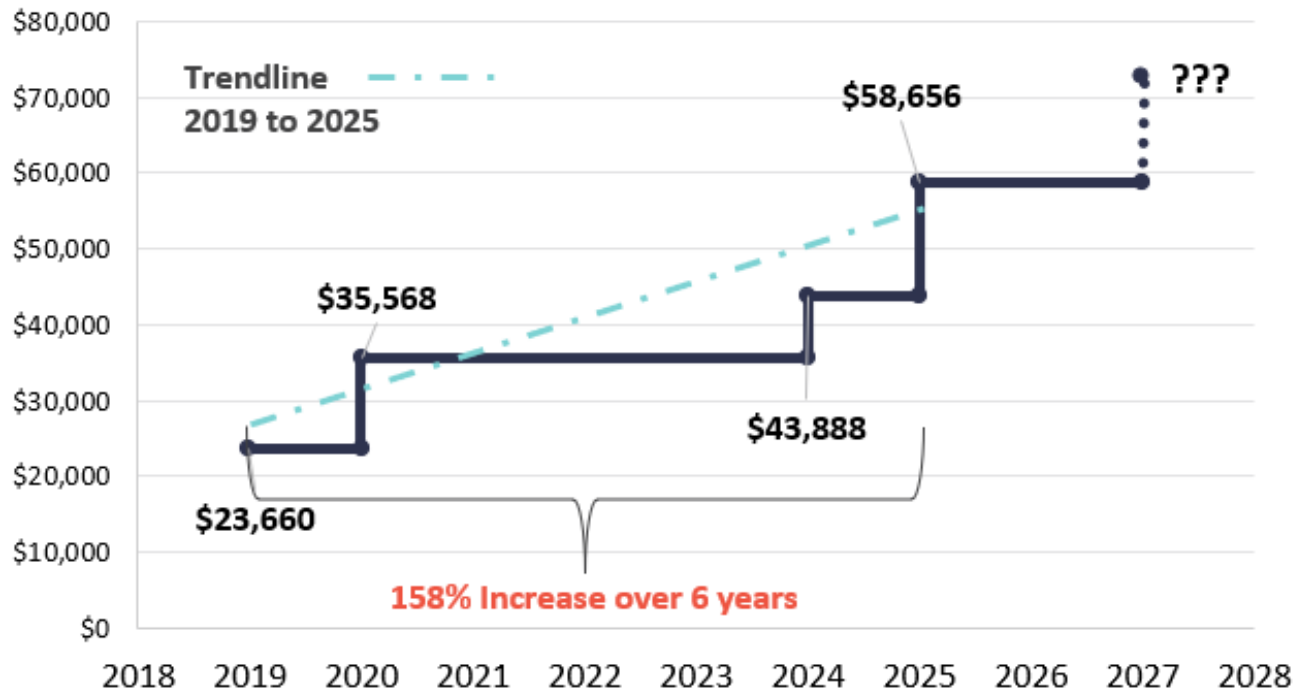
What is the current minimum salary most exempt employees must receive to remain exempt from the FLSA?

- a. \$43,888
- b. 35,568
- c. \$23,660
- d. \$58,656



Large Increases

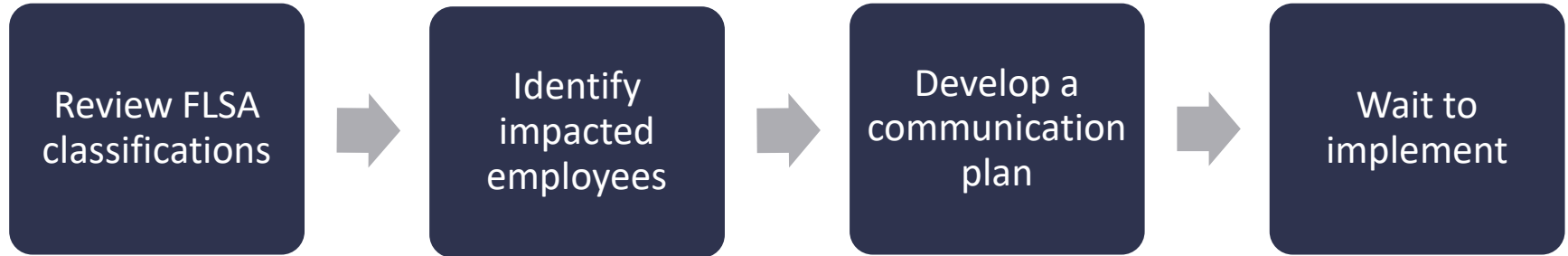
Salary Threshold Progression



Data source: Federal Register, 2024



Our Approach



Review FLSA Classifications

Prepare for an FLSA classification project to evaluate current compliance

- Update job descriptions
- Download current payroll file
- Pull employee city and state information

Determine if the employee is paid on a salary or fee basis and if that pay exceeds the minimum threshold

Determine if the employee passes one of the job duties tests

At this stage, it is *highly advised* to seek guidance from FLSA-focused professionals

- Executive
- Administrative
- Professional
- Computer
- Outside Sales



Executive Exemption

Duties:

- Primary duty (more than 50%) is managing the enterprise or a customarily-recognized department or unit.
- Customarily and regularly directs the work of two or more full time employees (or the equivalent).
- Authority to hire or fire, or suggestions and recommendations about hiring, firing, advancement, promotion, other status changes are given particular weight.

***Typically: Executive Director, Business Office Manager,
Bona Fide Supervisors***

Not: Executive Assistants, Managers or Directors in name only

Administrative Exemption

Duties:

- The employee's primary duty must be the performance of office or non-manual work directly related to management or general business operations.
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. Includes:
 - Authority to interpret policies
 - Authority to commit the school in matters of significant financial impact
 - Authority to deviate from established policies without prior approval
 - Authority to negotiate and bind the school

***Typically: Chief Financial Officer, Human Resources Director,
Communications Director***

Not: Office Personnel, Administrative Assistants, Controllers*, IT Employees

Professional Exemption



Duties:

- The employee's primary duty must be the performance of work which is predominantly intellectual in character and requires the consistent exercise of discretion and judgment.
- The advanced knowledge must be in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or
- Requiring invention, imagination, originality, or talent in a recognized artistic field or creative endeavor.

Typically: Lawyers, Physicians, CPAs, Accountants*, Engineers, Social Workers, Psychologists/Psychiatrists, RNs

Not: IT Employees (usually), Job positions requiring "a bachelor's degree"

Professional Exemption: Teaching Professionals

- Teaching Professional Exemption requires:
 - Primary duty is tutoring, instructing or lecturing (or related duties) and
 - Employed as a teacher in an “educational establishment”
- No pay requirements under FLSA – can be hourly, salary, etc. and no weekly minimum threshold
 - **DISCLAIMER:** This is not true in some states-need to know your state’s laws!
- Note, exemption does not apply to ALL teachers
 - Often: regular academic teachers, kindergarten, music
 - Often not: day care teachers, teaching assistants
- Combination positions-must be 50% or more to qualify for exemption

Computer Professionals Exemption

Duties:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- The design, documentation, testing, creation or modification of computer programs related to machine operating systems

Typically: Systems analyst, Computer programmer, Software engineer

***Not: IT Support Service Providers, IT Repair, Website/App
Content Creators***

Interaction with State Laws



- States laws may impose higher, stricter, or different wage and hour requirements.
- Many states have detailed wage and hour requirements and might even have different provisions for nonexempt versus exempt employees.
- You should be familiar with the laws in your state.

Identify Impacted Employees

Who is impacted: Right now, January 2025

Model scenarios for compliance

- Increase impacted salaries to/or above the new minimum threshold
- Make impacted employees nonexempt
- Reduce hours of impacted employees to below the OT payment threshold

Determine scenarios that align to the organization's needs





Legal Challenges



Time to Implement!

- Legal Challenges
 - On May 21st, in *State of Texas v. United States Dep't of Labor et al*, over a dozen businesses and industry lobbying groups filed a lawsuit in a federal court (Eastern District of Texas) to temporarily prevent the U.S. Department of Labor from enforcing the increased salary thresholds.
 - On June 28, the court granted the State's motion for preliminary injunction in part, ***only as to the State of Texas as an employer.***
- The July 1, 2024 salary basis increases are now in effect for ***all other employers!***
- Begin planning now for the salary basis increases going into effect on January 1, 2025



Knowledge Check

How confident are you in your ability to navigate the new FLSA rules?

- a. Very confident
- b. Somewhat confident
- c. I need help!



Questions?



Thank you!

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