

# The Nonprofit Sector's Dirty Secret



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Friday, September 4th is the deadline to [submit written comments](#) on the Notice of Proposed Rulemaking (NPRM) regarding changes to the regulations defining which white-collar workers are protected by the minimum wage and overtime standards in the Fair Labor Standards Act. As of this writing, more than 145,000 comments have been received.

Many associations have urged their members to submit comments, and countless blog entries, articles, and statements have been published about the burdens on employers to implement the new regulations. The consensus among the leaders I've spoken with this summer is that increasing the salary threshold for calculating overtime eligibility will have negative consequences for their organizations. Yet not a single leader has acknowledged what I believe to be one of our sector's most shameful secrets: that it has become standard practice to misclassify white-collar workers as "exempt."

Did you know that in 1975, 62% of full-time salaried workers were eligible for overtime, but only 8% are today? "Non-exempt," not "Exempt" is intended as the default position in classifying staff. When the current three-pronged test is applied to the positions in most nonprofits, non-exempt positions will be the norm. Yet when I query members of an audience about the number of staff who are "exempt" at their organizations, I repeatedly hear that most, and sometimes ALL employees are exempt. While that may be a legitimate result at a small nonprofit with only professional staff members who each exercise authority and discretion, it is very rarely the correct result in a typical nonprofit.

The two most common reasons given for labeling most or all employees "exempt" is:

- We can't afford to pay overtime
- It's easier to pay people on a salaried basis rather than based on the number of hours they actually work

These two reasons are simply bad excuses for taking the wrong path. And sadly, even though the core value of the nonprofit sector is a commitment to do what's right, nonprofit leaders are very susceptible to falling into a mindset focused solely on the financial bottom line. Nonprofit missions make an extraordinary difference in the lives of individuals and communities throughout the world. When have we ever been a sector known for taking the path of least resistance, ignoring basic human needs, or discrediting the importance of work-life balance? Whether leading a social services organization, an educational foundation, or a membership association of professionals, nonprofit sector leaders lead with their values. Yet providing a livable wage or expecting

employees to work an 8-hour day is frequently not part of the equation.

## Classification Tips

- **Get a Head Start** - To double-check the accuracy of your current classification practices, read [Classification Conundrum](#) on the Center's website.
- **Be Strategic** - Educator Michael Porter writes, "The essence of strategy is choosing what *not* to do." Many nonprofit leaders lack the resolve needed to discontinue or abandon mission-draining activities or those that are no longer in demand or financially feasible. Though your first concern might be that the proposed regulations are not financially feasible, you must also consider the wellbeing of your employees. Isn't it more important to support the staff members who drive your mission? This apparent financial loss could actually result in cultural and fiscal gains, such as increased employee productivity and less frequent turnover.
- **Seek Help** - Still confused about current and proposed regulations about overtime eligibility? We welcome calls from our Affiliate Members and we are here to help you by answering your questions about classifications. If you're not already part of our membership program, [join today](#), or for general information, visit [www.dol.gov](http://www.dol.gov) or [www.dol.gov/whd/overtime\\_pay.htm](http://www.dol.gov/whd/overtime_pay.htm).

When the changes in overtime regulations are released, many nonprofit leaders may finally do something that is long overdue: properly classify their white-collar workers. This means making a decision between encouraging your employees to go home to their families and communities after an honest day's work, or paying them what's legally required for overtime work. When you look at it that way, maybe the new regulations are exactly what our sector needs to sync the values we enthusiastically extoll to our donors and external stakeholders, with the values our employees experience each and every day.

To read the *RISK* eNews on the topic of respect in the workplace, visit: [A Little Respect](#).

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