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## Department of Labor Applies Ministerial Exception Under the Fair Labor Standards Act

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The United States Department of Labor's Wage and Hour Division (WHD) issued an opinion letter, [FLSA2018-29](#), on December 21, 2018, concluding that members of a religious organization were not subject to the Fair Labor Standards Act (FLSA) based on the ministerial exception and, as an additional reason, because the members did not expect compensation for the work performed.

The FLSA, as a general matter, requires employers to pay employees for their work. 29 U.S.C. § 206(a). The FLSA does not apply to religious ministers serving in that capacity. "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.'" Field Operations Handbook Chapter 10b03(b). An entity may invoke the ministerial exception if its "mission is marked by clear or obvious religious characteristics." *Shaliesabou v. Hebrew Home of Greater Washington, Inc.*, 363 F.3d 299 (4th Cir. 2004).

The religious organization described in the opinion letter aims to emulate the early Christian communities described in the Book of Acts. "[T]he members work to sustain themselves, their children, and those who cannot work," and the members share "in a community of goods." "Members hold as a religious tenet that work is 'indivisible from prayer' and a 'form of worship' that cannot be reduced to 'contractual obligations' or 'relationships based on control, as between a master and servant.' Members "do not expect to receive compensation in exchange for their services" to the organization.

According to the WHD, the members "fall squarely within the ministerial exception." Recognizing there is "no rigid formula for determining who qualifies for the ministerial exception," the "members' way of life resembles that of a monastic community." The WHD compared the members to nuns, monks, and "others who believe themselves called to lead lives of service." In reaching this conclusion, the WHD considered the impact of applying the FLSA to the religious community. "Imposing the FLSA on these members and their community would force them to recognize private property, wages, and hierarchical economic relationships among members—vitiating their central religious tenets."

The WHD's opinion remained the same for members who worked at two nonprofit, "income-generating ventures of the community": "a venture that manufactures devices that help children and adults with disabilities become more mobile, and a venture that makes wood furniture for children and schools." Even though "the income-generating ventures of the community might be enterprises," as that term is defined by the FLSA, the WHD explained that "it does not transform the community members into employees under the FLSA."

As another reason the FLSA did not apply to the members, the WHD noted the members "do not expect to receive compensation in exchange for their services." "[R]egardless of whether the members' motivation to live in this manner is based on religious conviction, as here, or on a secular ideology, as might be true in other cases,



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as long they have chosen to donate their services free of coercion by the community,” the members are not covered employees under the FLSA.

## **Key Takeaways**

This WHD opinion letter reaffirms the ministerial exception’s application to “[p]ersons such as nuns, monks, priests, lay brothers, ministers, deacons, and other members of religious orders.” The difficulty in applying the ministerial exception is drawing the line between exempt “ministers,” for example, and related staff of the religious organization. The WHD Field Operations Handbook recognizes this distinction in explaining that “a church or religious order may operate an establishment to print books, magazines, or other publications and employ a regular staff who does this work as a means of livelihood. In such cases, there is an employer-employee relationship for purposes of the [FLSA].” In applying the ministerial exception, religious organizations may want to consider not only this opinion letter and the WHD Field Operations Handbook but also federal case law defining the limits of the exception. Many of the applicable cases are cited within the WHD’s opinion letter.

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