

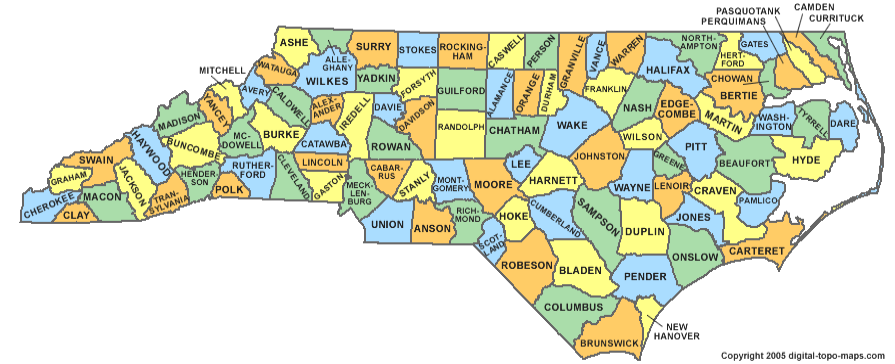
2024 FLSA Overtime Rule and North Carolina Nonprofits

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Connect Learn Advocate



Important Disclaimers

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The Fair Labor Standards Act (FLSA) is a federal law that provides that employees – except for those who are specifically exempt – are required to:

- Be paid at least the minimum wage (currently \$7.25 per hour); and
- Receive overtime pay at one-and-one-half times their regular rate of pay for all time worked in excess of 40 hours in any work week.

Many nonprofit employees are exempt from FLSA’s overtime pay requirement if they:

- Are paid at least the **minimum salary level** under the DOL regulations;
- Are paid on a **salary basis**; and
- Exercise **job duties** that are classified as exempt under FLSA.

Exempt employees include:

- **Executive** employees who are paid a salary of at least \$684 per week (\$35,568 per year), whose main duty is management of a large part of the nonprofit’s operations and who regularly supervise at least two other employees. Check out the [DOL fact sheet](#) for more details about the executive employee duties test.
- **Professional** employees who are paid a salary of at least \$684 per week (\$35,568 per year) and whose jobs are based on recognized professional knowledge (such as attorneys, CPAs, doctors, registered nurses, and some social workers). Check out the [DOL fact sheet](#) for more details about the professional employee duties test.
- **Administrative** employees who are paid a salary of at least \$684 per week (\$35,568 per year) and whose primary duties are non-manual work that include the exercise of discretion and independent judgment. Check out the [DOL fact sheet](#) for more details about the administrative employee duties test.
- **Highly compensated** employees with salaries of at least \$107,432 per year, who regularly perform at least some of the job duties of an executive, professional, or administrative employee.

The DOL regulations make several major changes to these rules. These include:

- **Salary level threshold:** The new regulations raise the standard minimum level for salaried, exempt workers from \$684 per week (\$35,568 per year) to \$1,059 per week (\$55,068 per year). The final rule also raises the compensation level for **highly compensated employees** (subject to less-detailed duties tests) from its previous amount of \$107,432 to \$143,988 annually. *Note that the salary threshold doesn’t apply to teachers, lawyers, and doctors who are exempt as professional employees.*
- **Duties test:** It is important to remember that white-collar employees can be exempt from the overtime requirements of the Fair Labor Standards Act (FLSA) only if their jobs meet the duties tests for executive, administrative, or professional employees. In addition to receiving a salary at or above the new thresholds, each exempted employee must still also exercise the **job duties** of those categories and be paid on a **salaried basis**. *The final DOL rule creates a process where DOL will automatically update the salary threshold every three years using the same methodology that DOL used to set the \$55,068 per year salary threshold. Practically, this means that nonprofits will need to continue to increase salaries of exempt employees to keep pace with the ever-increasing salary threshold.*



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Fair Labor Standards Act and the 2024 Overtime Rule

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Fair Labor Standards Act

- Minimum wage
- Overtime pay for non-exempt employees
- Equal pay for equal work

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Fair Labor Standards Act

- Exemptions for executive, professional, and administrative staff
 1. Paid on salary basis
 2. Must be paid at least the minimum salary threshold – currently \$844/week or more (\$43,888 per year)
 3. Must meet duties test
- Exemption for highly-compensated employees
- Exemption for employees in computer-related occupations

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DOL regulations – recent history

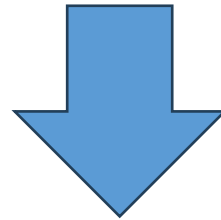


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2024 final overtime rule

Salary threshold – July 1, 2024

\$684/week (\$35,568 per year)

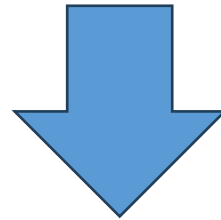


\$844/week (\$43,888 per year)

2024 final overtime rule

Salary threshold – January 1, 2025

\$844/week (\$43,888 per year)



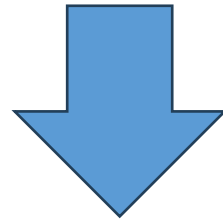
\$1,128/week (\$58,656 per year)



2024 final overtime rule

Highly compensated salary threshold – July 1, 2024

\$107,432 per year

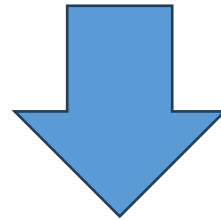


\$132,964 per year

2024 final overtime rule

Highly compensated salary threshold – January 1, 2025

\$132,964 per year



\$151,164 per year

2024 final overtime rule

Updating salary threshold

Every three years, starting July 1, 2027

2024 overtime rule - next steps



FLSA Exemption – Duties Tests

- Duties tests have not changed recently ...
 - ... but be certain that exempt employees meet one of these tests
 - **Warning: It appears that the regulations and fact sheets about the duties tests were written by lawyers!**
 - Further clarification on how these apply to nonprofit employees would be welcome

FLSA Exemption

- Administrative employees
 - Primary duty is non-manual work
 - Exercise discretion over work
 - Paid on a salary basis at a rate of at least the salary threshold

FLSA Exemption

- Administrative employees – some key quotes:
 - “Directly related to management or general business operations”
 - “Exercise of discretion and independent judgment with respect to matters of significance”

FLSA Exemption

- Executive employees
 - Primary duties are managerial duties of organization
 - Supervision of 2+ FTE
 - Authority to hire/fire
 - Paid on a salary basis at a rate of at least the salary threshold

FLSA Exemption

- Professional employees
 - Primary duty is related to a learned profession or creative profession
 - Paid on a salary basis at a rate of at least the salary threshold
 - With a few important exceptions, including teachers, doctors, and lawyers

FLSA Exemption

- Professional employees – some key quotes:
 - “**Learned professional**”
 1. Advanced knowledge that is predominantly intellectual in character ...
 2. ... in a field of science or learning
 3. ... customarily acquired by a prolonged course of specialized intellectual instruction

FLSA Exemption

- Professional employees – some key quotes:
 - “Creative professional”
 1. Performance of work requiring invention, imagination, originality, or talent
 2. In a recognized field of artistic or creative endeavor

FLSA Exemption

- Professional employees – some key quotes:
 - “Teacher”
 - Regular classroom teachers
 - Pre-K teachers
 - Some specialized instructors
 - Some academic administrative personnel

FLSA Exemption

- Important note for professional employees
 - Salary threshold does not apply to teachers, lawyers, or medical doctors

2024 final overtime rule

Duties tests

No proposed changes

Initial question:

**Are your nonprofit's
workers employees or
independent contractors?**

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Employees vs. independent contractors



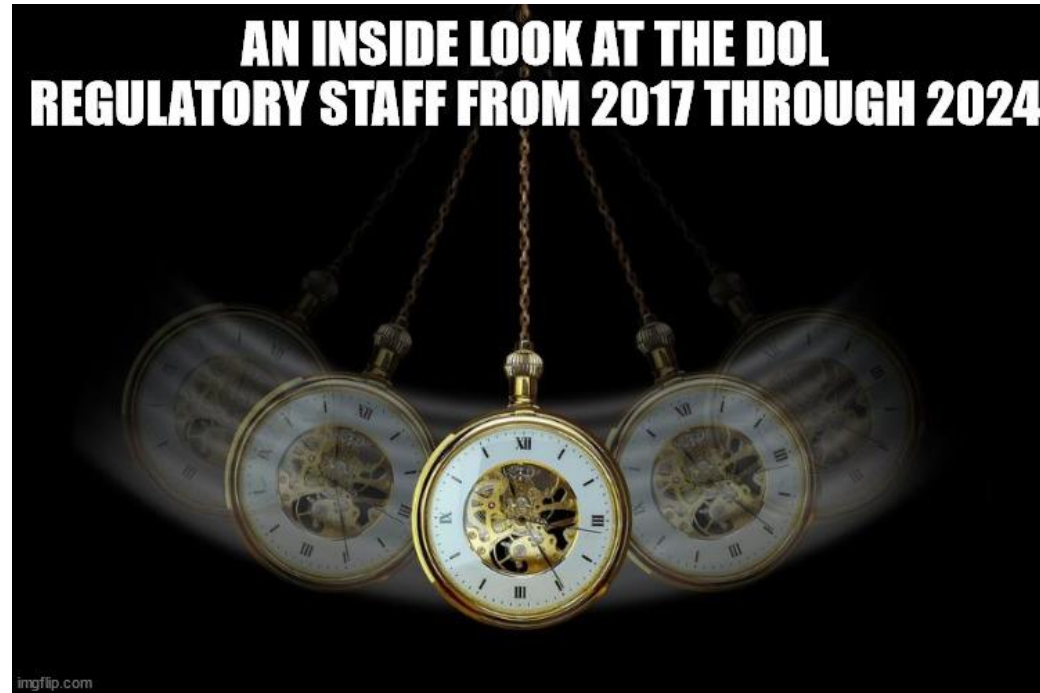
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DOL Regulations – Recent Changes



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New (old) worker classification factors

1. Opportunity for profit or loss depending on managerial skill
2. Investments by the worker and the employer

New (old) worker classification factors

3. Degree of permanence of the work relationship
4. Nature and degree of control by the employer

New (old) worker classification factors

5. Extent to which the work performed is an integral part of the employer's business
6. The worker's skill and initiative

Next question:

Does the Fair Labor Standards Act even apply to your organization and your employees?

Enterprise coverage

- Every employee of:
 - Nonprofit hospital, school, preschool, or residential medical or nursing care facility
 - Any nonprofit with \$500,000 or more in annual commercial sales

Individual coverage

- Individuals who regularly engage in interstate commerce
- Note: Interstate commerce is a fairly broad term



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Cases challenging the rule

- *Plano Chamber of Commerce et al. v. Su*
- *State of Texas v. U.S. Department of Labor*
- *Flint Avenue LLC v. Su*

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Cases on use of salary threshold

- *Helix Energy Solutions Group v. Hewitt*
2023 U.S. Supreme Court case (Justice Kavanaugh dissenting opinion)
- *Mayfield v. U.S. Department of Labor*
2024 U.S. Court of Appeals for the Fifth Circuit ruling

North Carolina Nonprofits and the 2024 Overtime Rule

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Typical nonprofit reaction





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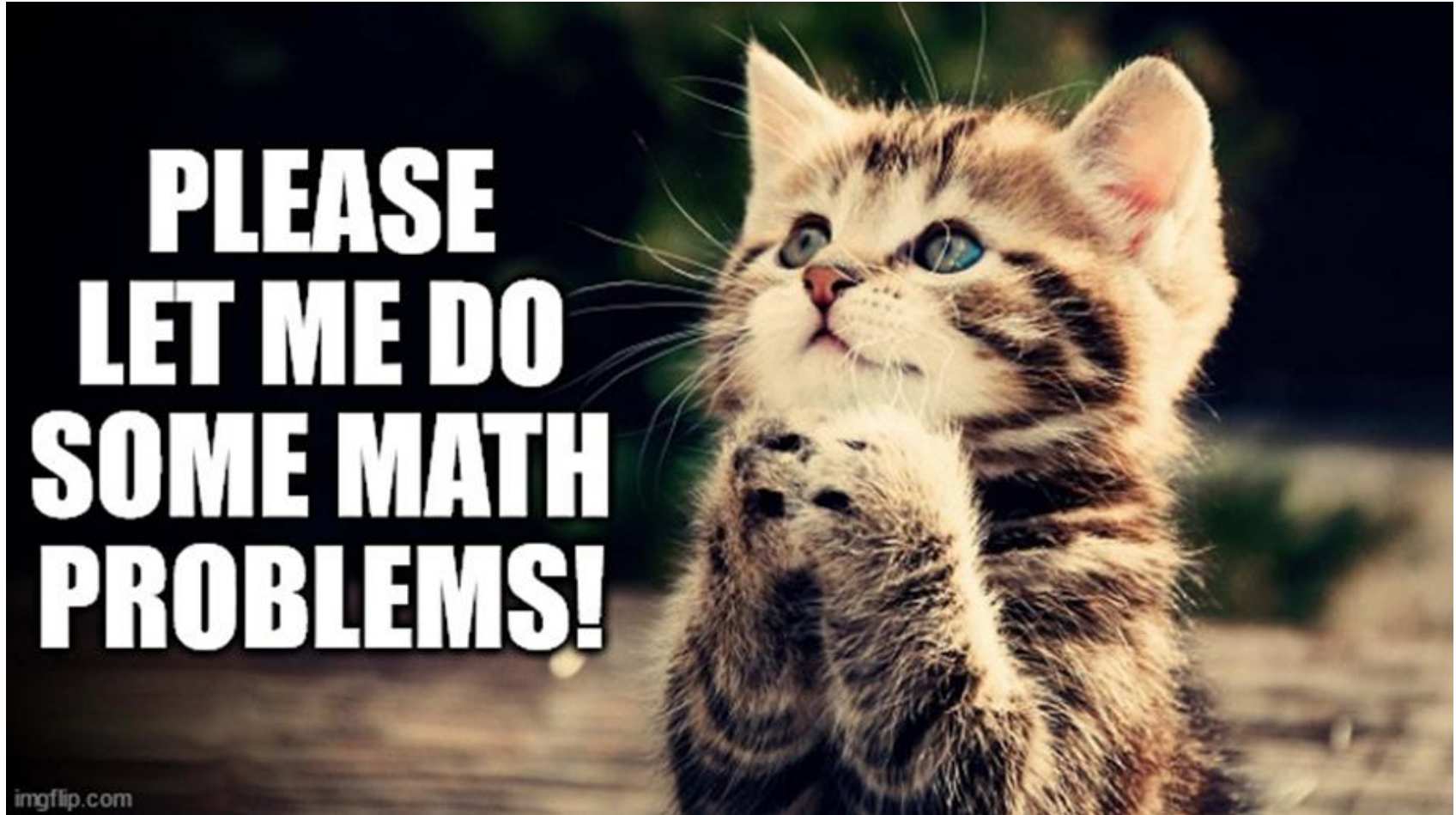
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Fluctuating workweek example

- Production staff at theatre paid a salary – same amount every week
- During production, hours are much longer than other times of year
- Overtime pay =
 $\frac{1}{2} * (\text{weekly salary}) * (\text{hours worked} - 40) / (\text{hours worked})$



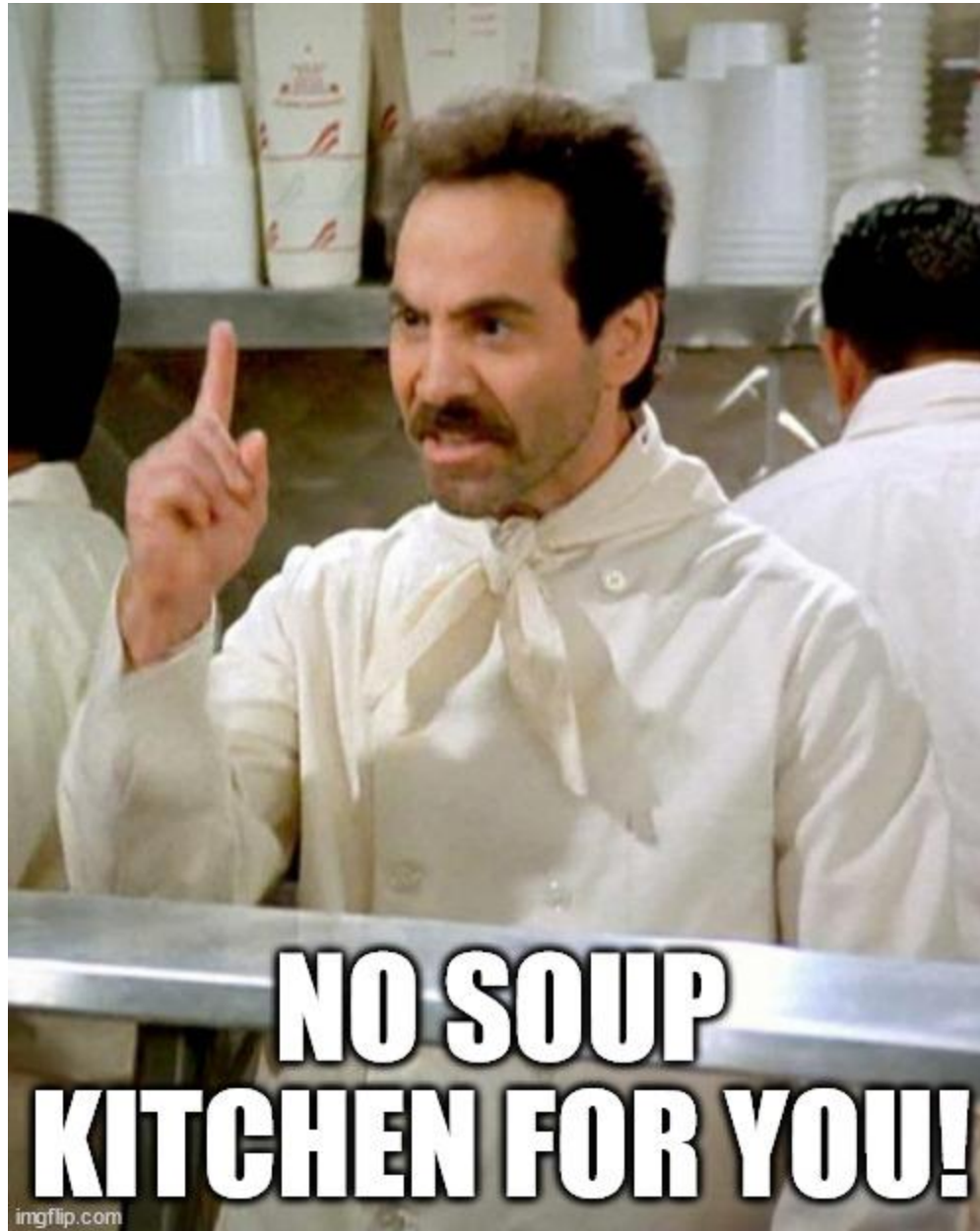


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Nonprofit-specific FLSA questions

(and answers!)

Answers to some common nonprofit questions

- If staff are non-exempt, do they need to be paid on an hourly basis?
- *No, it is permissible to pay salary to non-exempt staff (but you still need to track hours to pay overtime for hours worked over 40 per week)*

Answers to some common nonprofit questions

- Can we talk more about salaried non-exempt staff?
- *Yes, we can!*

Answers to some common nonprofit questions

- If our nonprofit's work week is 35 hours per week, do we need to pay overtime when non-exempt staff work 36+ hours in a week?
- *No, regardless of how you define your work week, you don't need to pay overtime until workers have exceeded 40 hours in a work week*

Answers to some common nonprofit questions

- Does our nonprofit's work week need to be Sunday through Saturday?
- *No, you can define your work week as any period of seven consecutive days.*
- *You just need to be consistent for all staff and all times of the year.*

Answers to some common nonprofit questions

- Can we offer comp time instead of overtime to our non-exempt employees?
- **No.**

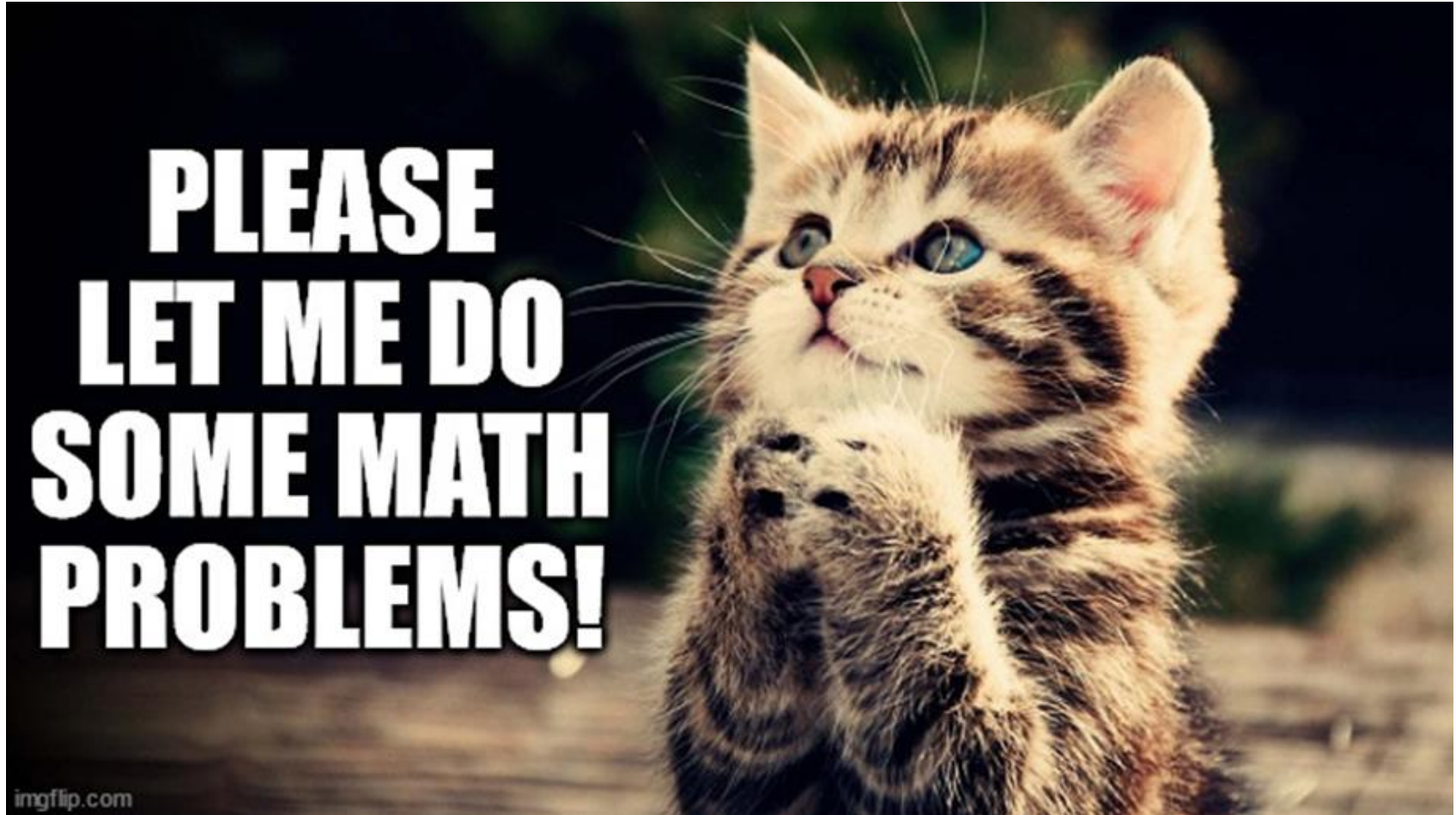
Answers to some common nonprofit questions

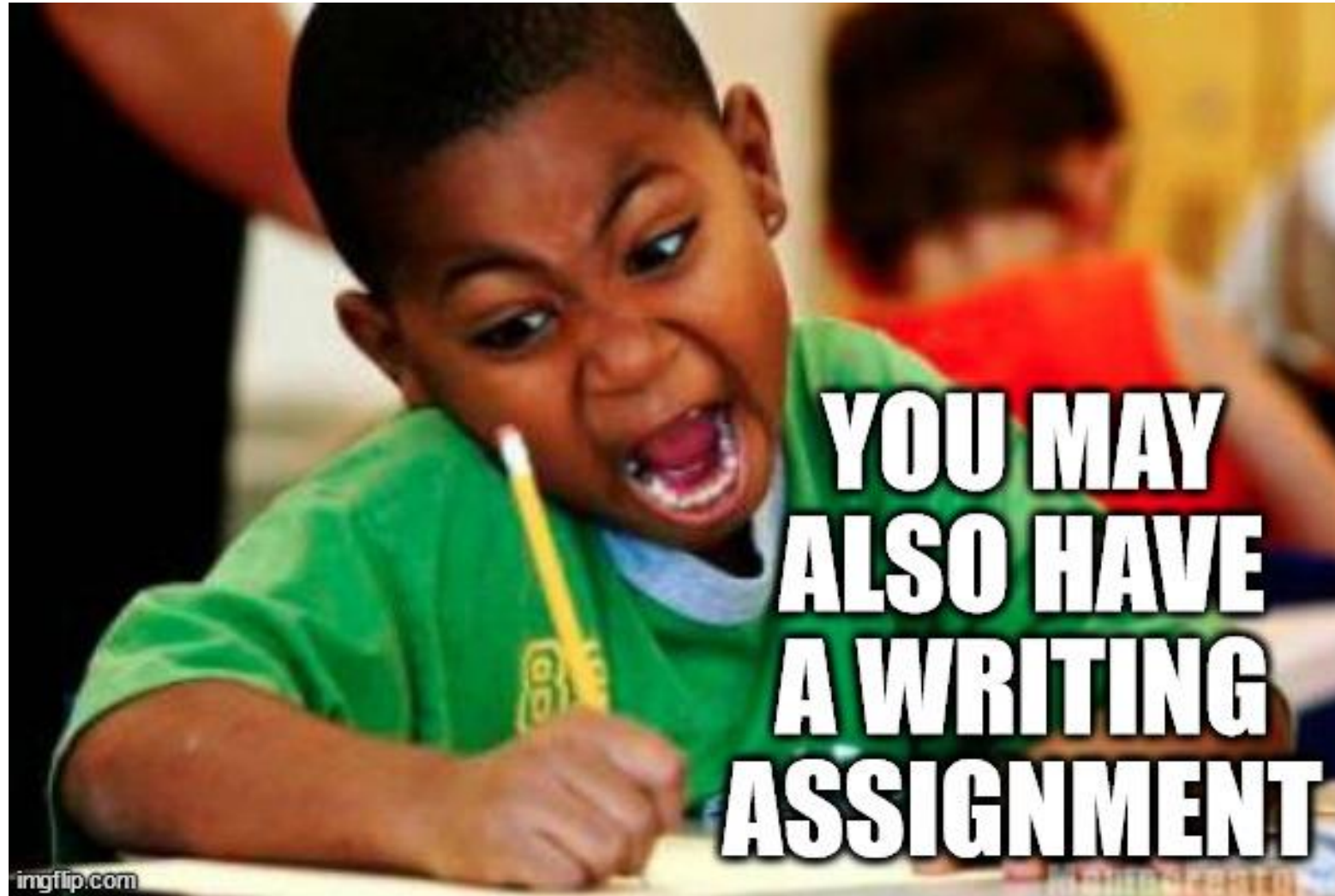
- What if we call it recovery time instead of comp time?
- *The answer is still no!*
- *(But good try!)*
- *And it might be worth thinking about how your nonprofit defines your work week.*

Next steps for nonprofits









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**I'M LISTENING
TO YOUR QUESTIONS!**



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