

Will new overtime rules help or hurt?



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[Explore overtime rules as to who should be involved and what is the right thing to do.]

Enlightenment

Will new overtime rules help or hurt?

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BY JOHN TAYLOR

House approves overhaul of overtime

Mark Smith, president of the Iowa Federation of Labor, thinks the U.S. Department of Labor's proposal on overtime pay is more evidence of Bush administration policies "that hurt working people."

The labor department and employer groups disagree, saying that the plan ultimately will help employees, especially low-income workers. The changes, they said, are aimed at clarifying murky rules that courts are increasingly called on to interpret.

What has prompted these widely divergent opinions is a **labor department proposal to rewrite parts of the Fair Labor Standards Act, enacted in 1938, to redefine who is exempt from overtime pay.**

The department said the changes would result in an **additional 1.3 million low-wage workers becoming eligible for overtime pay.** At the same time it said that an **estimated 644,000 workers could become ineligible for overtime.**

[Did you realize overtime pay is based upon rules coming out of Washington?
In a free country with businesses owned by private business and employees able to pick and choose where they wish to work and labor unions, did you expect there to be National Regulations on who gets overtime pay and who does not?
Do you believe National Regulation on Over time is
desirable?
the right thing to do?
Intrusive?
Necessary?
Something else?]

Organized labor and other opponents say those numbers are low. The Economic Policy Institute, a pro-labor research organization in Washington, D.C., said the proposal could make as many as 8 million white-collar workers ineligible for overtime.

Even a pro-business think tank, the Employment Policy Foundation, also based in

Washington, said that 1.2 million workers could lose overtime if the regulations are adopted, but "that represents 0.8 percent of the overall American work force of 138 million."

The proposals were debated last week in Congress as House Democrats tried to block the plan. The move was narrowly defeated by the Republican-controlled House. That paved the way for the labor department to proceed with its plan to rewrite the exemption rules, which were last changed in 1954.

Under **current regulations, employees who aren't considered exempt must be paid time and a half for every hour they work beyond the normal 40-hour workweek.** According to the Economic Policy Institute, nearly 80 percent of workers are eligible for overtime pay.

Employees are considered exempt - not eligible for overtime pay - if they are employed in "a bona fide executive, administrative or professional capacity."

Anyone now making less than \$8,060 a year, or \$155 a week, is guaranteed overtime pay.

The problem, according to the labor department and Employment Policy Foundation, is that determining who falls under the white-collar exemption is complex and has become more difficult as occupations have changed.

Current law requires that an employer must use **three tests to classify an employee as exempt and thus ineligible for overtime:**

- One is that employees **earning less than a certain level each week - \$155 or \$170** for professionals - can't be exempt.
- The second is that an employee must be **paid a set salary, not an hourly wage**, to be exempt.
- The third states that a worker **can't be denied overtime pay unless his or her jobs are mainly "administrative," "professional," or "executive."**

[The third test seems odd to me. How about you? It's an area seldom unionized. Is there a connection?]

Among other things, the labor department's **proposal would raise the weekly pay level to \$425**, or \$22,100 a year. That would guarantee overtime pay to an additional 1.3 million workers, the department said.

[Does this sound like a good change so far (presuming we agree the Fed. should be setting Overtime rules.)?

Would you have chosen a different weekly wage amount?

Why is the wage amount set at all?]

Another proposal would **deny overtime pay to white-collar employees earning \$65,000**, according to the department.

[Why set white-collar employees limit to \$65,000?

Who are the white-collar people?

Does this sound reasonable?

Is it possible that overtime rules should be set for some areas, say the low wage earner, and not at all for white-collar employees or other groups?]

The proposals also would change the defined responsibilities of executive, administrative and professional employees.

The department said the revisions are needed to reflect a workplace far different from the one that existed when the old regulations were written.

The original regulations, the department said, mention jobs that no longer exist, such as keypunch operators, straw bosses and gang leaders.

According to the Employment Policy Foundation, many of the new jobs created over the last 30 years were in management, professional or technical occupations. Between 1970 and 2002, 45 percent of the jobs were in those areas.

The uncertainties about who should be paid overtime has led to rising number of lawsuits.

"The problem that a lot of businesses have right now is that the **current regulations are so out of date and so confusing that they are faced with a lot of lawsuits on back overtime pay,**" said Ed Frank, a labor department spokesman.

"**Back overtime pay lawsuits have actually outnumbered the number of discrimination lawsuits in the workplace, the first time ever.**"

The Employment Policy Foundation said it found that between 1950 and 2001 there were 68 federal court judicial opinions published that referred to the labor department's white-collar exemption regulations.

Frank said the department proposed the changes because of the confusion. "This isn't mainly about who is eligible (*for overtime*) or making more or fewer people eligible," he said. "**It's about clarity.**"

Brian McGrath, an Omaha attorney who represents businesses on such employment issues, said that, "initially, once the changes come through, the number of lawsuits will increase because we're still going to feel our way around."

After that, he said, the **new regulations "would help our understanding" of what employers should do.**

McGrath said that under current overtime rules, employers are losing an increasing number of lawsuits. "The trend has been to find more and more of these folks as being nonexempt," he said.

Many of the lawsuits are class actions brought on behalf of large numbers of employees,

and companies have had to pay millions of dollars, he said.

"Employers are willing to trade off possibly having to pay more overtime to certain individuals that they didn't have to in order (to get) that certainty they are looking for," McGrath said.

Smith, head of the Iowa union organization, said that's likely to happen. *"If (a fast food restaurant) has an \$18,000-a-year assistant manager who is working 60 hours a week, (the company) is smart enough to say, 'Let's give him a raise to \$22,200 to get him just above the (new level), and we won't have to pay him overtime,'" Smith said.*

[Take the above scenario apart. Look at the
Ethics,
Probability,
Mandate (*who is responsible for action*),
Jurisdiction (*who this concerns and who does it not concern*),
Economics
Consequences
Anyone's rights violated?]

To employees working under union contracts the proposals wouldn't have much immediate impact, but union officials worry that any changes in federal wage laws could work their way into future negotiations.

Union officials like Ken Mass, president of the Nebraska AFL-CIO, said the proposals would erode a worker's standard of living. "When people work overtime they bank on that money for their way of life," he said. "It's important to them for their living standard."

Frank, of the labor department, disputes the finding of the Economic Policy Institute, calling it "a political document" that mischaracterizes the current law and proposed changes.

"This is not a new idea," he said. "The Fair Labor Standards Act says that the Department of Labor has a responsibility to update this regulation from time to time. That's what we are attempting to do."



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