

POLICY FOCUS

Overtime Regulations

RECIPES FOR RATIONAL GOVERNMENT FROM THE INDEPENDENT WOMEN'S FORUM

By Carrie Lukas, Managing Director, Independent Women's Forum

September 2016

Volume 6, Number 9

IN THIS ISSUE

What You Need to Know 1

Why You Should Care2

More Information
The New Overtime Regulations.2

Less Flexibility, Less Guaranteed Income, More Clock-Punching3

Costs for Business, Costs for Workers.....4

Better Reforms to Help Workers.....4

Independent Contractors5

What You Can Do6

WHAT YOU NEED TO KNOW

The Department of Labor recently issued new rules governing how employers must compensate employees for hours worked in excess of 40 hours per week. The new rules dramatically increase the number of workers who must qualify for overtime, and therefore must have their hours tracked.

Supporters of the new rule claim that it will be a boon to workers, putting more money in their pockets. However, many workers will be worse off under the new overtime rules, which will discourage flexible work arrangements, create costly administrative requirements for businesses, and constrict opportunities for many workers. Workers currently guaranteed a set salary regardless of the number of hours worked will now face the prospect of lower pay if they are unable to work enough hours.

There are better ways to help ensure that workers are fairly compensated. Policymakers can help workers by cutting back on red tape so more employers will create jobs, giving people a better chance to find the arrangements they prefer, whether that's working in an hourly job with overtime potential or a salaried position.

Policymakers should also take a fresh look at the outdated, Depression-era Fair Labor and Standards Act, which is the foundation of these overtime regulations, and reform the law to give employers and workers greater flexibility to design mutually beneficial work arrangements.

WHY YOU SHOULD CARE

Everyone has an interest in a growing economy and a flexible job market. Unfortunately, these overtime regulations push in the wrong direction and would:

- **Force More Workers to Punch a Clock:** Many workers prefer receiving a set salary for the work they perform, rather than being paid solely for time spent on the job. Proponents focus solely on the upside for employees of earning more for additional hours worked, but hourly workers also face the risk of working too few hours and therefore having less compensation. Being forced to switch from a salaried to an hourly position also will be perceived by some as a demotion.
- **Discourage Flexible Work Arrangements:** Businesses have to carefully monitor workers' hours in order to comply with overtime laws. Employers are likely to be less willing to allow telecommuting or flexible work arrangements for overtime eligible employees because of the additional difficulty in tracking work hours.
- **Lead to Fewer Jobs and Higher Prices:** The new regulations are expected to cost employers more than \$9 billion per year. To make up for these additional expenses, businesses will have to make adjustments, which could include cutting base pay, consolidating jobs, and raising prices.

MORE INFORMATION

The New Overtime Regulations

The federal law governing how businesses must compensate employees, the Fair Labor Standards Act (FLSA), was enacted during the Great Depression. Unsurprisingly, it is woefully out of step with the modern era.

Back in the 1930s, most jobs could be easily categorized as management or production, and work typically was performed for certain hours during the day, at a specific place of employment. Today, our work world has transformed so that lines between management and labor are blurred. More employees do not work a fixed schedule and many want the flexibility to work from home at different times during the day and week. This makes it a challenge for businesses to apply many of the FLSA's outdated concepts.

The FLSA generally requires employers to pay employees the federal minimum wage (currently \$7.25 per hour) and time-and-a-half for hours worked in excess of 40 hours per week, unless the employee is "exempt" from overtime pay. The largest overtime exemption, which has been in the FLSA since it was originally passed in 1938, is for "white collar" employees.

New FLSA regulations and sub-regulatory guidance, which take effect this year, narrow the "white collar" overtime exemptions. Currently,

someone who makes a salary of \$23,660 or more can be exempt from the requirement that she receives overtime pay, if she also meets the criteria of having job duties that meet the DOL's definition of being primarily administrative, executive, professional, computer or outside sales employees. Under the **new rules**, the salary threshold for being exempt from overtime would more than double to \$50,440 — the estimated 2016 40th percentile of earnings for all non-hourly paid workers. The DOL has also proposed to keep the salary threshold at the 40th percentile level permanently through annual increases.

The DOL estimates the new rules would affect between 5 and 10 million workers. Presumably the regulators believe that this will be a boon to those workers, who would have to begin tracking hours and might become eligible for overtime pay. However, these new regulations would also do significant harm, especially to those in lower-income jobs and with more modest incomes.

Less Flexibility, Less Guaranteed Income, More Clock-Punching

Overtime pay is no doubt important to many workers. However, the overtime-eligible status has disadvantages. Proponents of this new rule focus solely on the upside of workers having the potential to earn overtime pay, ignoring the significant downside: hourly workers aren't guaranteed a set income, and how much they earn depends entirely on how many hours they work.

An employment policy expert, Tammy McCutchen, explained in **testimony** before the U.S. Senate:

Thus, while exempt employees do not receive overtime for working over 40 hours in a week, they also are not paid less if they work less than 40 hours in a week. If an exempt employee works as little as one hour in the week, and then takes the rest of the week off because of a family emergency, that employee will still be paid her entire weekly salary. A non-exempt employee need be paid only for the one hour she actually worked. A non-exempt employee who takes an afternoon off to attend a parent-teacher conference will not be paid for that time, but an exempt employee will be paid her full guaranteed salary.

In other words, an employee eligible for overtime must clock in and out every day, and is only paid for hours actually worked. They won't be paid if they leave work to spend time with family, and are likely to have fewer opportunities to work from home. This is a big loss of security and flexibility for these workers.

Even those employees who receive more income may not welcome this new regulatory regime and their reclassification as hourly workers eligible for overtime. While some employees may not mind tracking their time, others want to be on salary and feel that they are being compensated

for their contributions to the business, not just time logged on the job. Many workers do not want to have to tell their managers every time they work late or leave early.

This loss of autonomy and potential for reduced income explains why many Americans appear skeptical about the new overtime regulations. One survey by WomanTrend found that 58 percent of respondents believe that the new rules may not result in higher pay for workers, and 43 percent will not support the rules knowing that workers will be moved from salaried to hourly employees.

Similarly a **survey** by the National Restaurant Association found that 85 percent of restaurant and retail managers believe changing employees from salaried to hourly workers will have a negative effect. Nearly half believe that the change would hurt morale, making people feel they were in a job rather than a career, and 86 percent think their perceptions of their own positions would deteriorate if they were moved to an hourly status.

Costs for Business, Costs for Workers

The National Retail Federation estimates the new regulations will cost employers more than \$9 billion per year. Businesses would not only have to allocate more for overtime pay as a result of the new rules, but, just as significantly, they would also face new compliance costs in tracking more workers' hours and monitoring overtime.

Those costs have to come from somewhere. Many employers will not be able to afford raising

salaries or paying overtime. Employers are not required to allow employees to work over 40 hours in a week and thus earn overtime. Therefore, most obviously, workers may find their hours are reduced and earnings lowered as businesses shift resources in response to the new costs associated with these rules. Other employees may see their positions refashioned or eliminated. Consumers may also see prices increase and quality decline.

Not all workers and businesses will be affected equally. The new threshold applies nationwide, which means that areas with lower costs of living will bear the highest costs. A \$50,000 salary is lower than the median household income in cities such as New York City and Washington, D.C., and in states like Connecticut, New Jersey, and Maryland. But in Mississippi, West Virginia, and Arkansas, the **median household income** is well below \$40,000. As a result, employers in these areas will face the biggest compliance challenges, and workers there will find the biggest changes to their compensation, and, possibly, to their economic opportunities.

Better Reforms to Help Workers

Americans ought to reject the very premise of these intrusive regulations. Government shouldn't set a one-size-fits-all system for compensating American workers. Rather, Americans should be free to negotiate arrangements that make the most sense for them and meet their needs and aspirations.

Congress should take a fresh look at Fair Labor Standards Act and roll back the unnecessary rules and classifications that hardly apply to our modern world. Specifically, policymakers should:

- **Pause the Overtime Regulations Pending More Study:** The Department of Labor should be required to **conduct a more in-depth economic analysis** before revising the regulations.
- **Pass Compensatory Time for the Private Sector:** Since 1986, employees in the public sector have the option of taking compensatory time off — 1.5 hours of paid time off for every hour of overtime worked — in lieu of cash overtime pay. This provides government employees with choice and flexibility to determine which they need more, cash or paid time off. However, the FLSA prohibits comp time for overtime-eligible workers in the private sector. It is past time to allow private sector employees the same choices and flexibility as government workers.
- **Allow Employees to Agree to an 80/14 Schedule:** Rather than requiring that overtime should be calculated based on a 40-hour work week, which prevents employees from being able to shift work from one week to the next, the FLSA should be amended to allow employees to voluntarily choose a flexible schedule in exchange for being paid overtime after 80 hours of work over 14 days, rather than the traditional overtime after 40 hours in 7 days.

INDEPENDENT CONTRACTORS

A growing number of Americans are working as independent contractors rather than seeking full-time, formal work arrangements with a single employer. In fact, the “on demand” or “gig” economy, a subset of independent contracting, is one of our fastest growing economic sectors. The number of independent contractors grew by 2.1 million workers from 2010 to 2014, representing 28.8 percent of all jobs added during that time. Independent contracting gives workers the right to decide when, where and how much to work — the ultimate in flexible work arrangements.

Unfortunately, the Department of Labor is threatening to destroy this type of flexible work arrangement by finding that “most workers are employees under the FLSA’s broad definitions.” This would mean that these workers would no longer be free to engage in mutually beneficial work contracts with a variety of customers, but instead must be considered standard employees. The result would be far fewer work opportunities for these entrepreneurs and a dramatic loss of flexibility. This is the wrong direction for our economy.

WHAT YOU CAN DO

● **Get Informed:** Learn more about the need for a more flexible work world. Visit:

- The Independent Women's Forum
- Working for Women
- Society for Human Resource Management

● **Talk to Your Friends:** Help your friends and family understand these important issues. Tell them about what's going on and encourage them to join you in getting involved.

● **Become a Leader in the Community:**

Get a group together each month to talk about a political/policy issue (it will be fun!). Write a letter to the editor. Show up at local government meetings and make your opinions known. Go to rallies. Better yet, organize rallies! A few motivated people can change the world.

● **Remain Engaged Politically:** Too many good citizens see election time as the only time they need to pay attention to politics. We need everyone to pay attention and hold elected officials accountable. Let your Representatives know your opinions. After all, they are supposed to work for you!

ABOUT THE INDEPENDENT WOMEN'S FORUM

The Independent Women's Forum (IWF) is dedicated to building support for free markets, limited government, and individual responsibility.

IWF, a non-partisan, 501(c)(3) research and educational institution, seeks to combat the too-common presumption that women want and benefit from big government, and build awareness of the ways that women are better served by greater economic freedom. By aggressively seeking earned media, providing easy-to-read, timely publications and commentary, and reaching out to the public, we seek to cultivate support for these important principles and encourage women to join us in working to return the country to limited, Constitutional government.

We rely on the support of people like you! Please visit us on our website www.iwf.org to get more information and consider making a donation to IWF.

OUR PARTNERS

Contact us if you would like to become a partner!



CONNECT WITH IWF!
FOLLOW US ON:



SUPPORT IWF NOW!