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September 2003

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**Keywords**

overtime pay, FLSA, workers, rules, labor

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## *IWS Issue Briefs*

2003-1

### **Proposed Changes in Overtime Rules**

When most American workers log more than 40 hours of work a week, the clock starts running on overtime pay. The time-and-a-half premium for these extra hours has been a celebrated feature of the American workplace since the [Fair Labor Standards Act](#) (FLSA) was passed in 1938. Written to protect hourly workers and low-level salaried employees from excessive employer demands, the overtime provision of the FLSA has been gradually extended to additional groups of workers. As a result, about four out of five workers are now entitled to time-and-a-half; a complex set of rules spells out who is covered and who is exempt.

That carefully calibrated distinction lies at the heart of a debate that is, once again, dividing labor and management and their supporters in Congress. On [March 31, 2003](#), the [Department of Labor](#) (DOL) issued proposed revisions to long-standing rules governing overtime pay for white-collar workers. Employers and their advocates support the proposed changes, asserting they reflect 21<sup>st</sup> century workplace practices (such as innovative compensation plans and flexibility in job assignments) and will keep America competitive in a global marketplace. Labor organizations and their advocates argue the changes would make it easier for employers to claim overtime exemptions for many white collar occupations and thus enable more work without added pay. Labor leaders and their allies view the proposal as yet another effort by political and economic conservatives to whittle away at protective labor regulations under the appealing guise of simplicity and modernization.

Indeed, DOL's stated goal is to simplify and modernize the application of a law that was conceived decades before service industries, high technology, and "knowledge workers" came to dominate the U.S. economy. DOL also contends the new rules will help small businesses grow and promote greater use of compensatory time off, an option that might appeal to working parents. DOL and other critics of the existing rules say they are vague, confusing, and anachronistic -- failings that have led to enforcement problems and a proliferation of costly lawsuits challenging the exempt/non-exempt classification of certain white-collar jobs. Although Congress has avoided dealing with the issue, the [Government Accounting Office](#), the federal government watchdog, encouraged DOL in a 1999 report to "determine whether a consensus could be achieved on how to amend the regulations to better suit the modern work place."

The rules, as they now stand, exempt workers from the overtime premium if they "pass" each of three tests: manner of pay, level of pay, and duties. Put simply, the manner of pay ("salary basis test") requires that workers earn a fixed annual salary rather than an hourly wage; the level of pay ("salary level test") stipulates that all workers earning less than \$155 a week, or \$8,060 a year, are automatically entitled to overtime pay; the "duties

test” exempts workers who perform tasks that are executive, administrative, or professional in nature.

The DOL proposal would primarily affect the salary level and the duties tests. The new regulations would raise the salary floor for exemptions to \$425 a week, the equivalent of \$21,100 a year. DOL figures this change would bring approximately 1.3 million workers, including many low-level supervisors, under the overtime umbrella. Labor advocates generally applaud this broader coverage but critically note that the new salary floor will not rise with inflation. At the other end of the salary scale, the proposed rules would impose a ceiling denying overtime pay to white-collar workers who earn more than \$65,000 a year even if their job duties match only one of the many pieces of the duties test for executives, administrators, or professionals. The [Economic Policy Institute \(EPI\)](#), a Washington-based think tank, estimates this new restriction would remove overtime protection for about 1.3 million people.

Not surprisingly, the greatest controversy swirls around proposed changes to the duties test. The revisions would redefine the meaning of executive, administrative, and professional work by eliminating the existing requirement that overtime exemptions are dependent on the exercise of discretion or independent judgment. For professional workers, DOL would additionally weaken the specialized education requirement and allow workers to qualify as exempt based on work experience. The new test for administrative workers would remove limits on the amount of time spent in non-administrative tasks. The duties test for executives would allow exemptions for employees who spend less than 50% of their time in supervisory or managerial functions. And finally, a revised “primary duties test” would shift the standard from quantity of time spent on exempt tasks to one based on the employer’s qualitative assessment of the exempt tasks. That is, where employees spend less than half their time on exempt responsibilities, the employer may classify employees as exempt if only one of their duties is considered “the most important.”

Exactly which employees, and how many, would be affected by these changes remains murky. Apart from the estimated 1.3 million salaried white-collar workers earning between \$8,060 and \$21,100 a year who would automatically qualify for overtime, as noted above, DOL figures some 644,000 workers earning an hourly wage and eligible for overtime under current rules would be shifted to exempt salary status because their duties satisfy the new tests for professional or administrative work. This reclassification would not be mandatory, but employers are likely to make the change if it reduces payroll costs.

EPI, on the other hand, says DOL significantly underestimates the number of workers who would lose their right to overtime pay under the proposed rules. Analysts at the think tank conservatively estimate that 5.5 million white-collar hourly workers will be switched to annual salaries and another 2.5 million salaried white-collar workers earning less than \$65,000 a year would become exempt because of the new duties tests. These workers could wind up earning less money while working longer hours.

The labor department accepted public comment on the proposals through June 30, by which time it had received more than 80,000 comments. DOL expects to issue a final set of rules by year end.

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September 2003

### **Sources and Links**

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