
Economic Policy Institute

1660 L STREET, NW • SUITE 1200 • WASHINGTON, DC 20036 • 202/775-8810 • FAX 202/775-0819

FOR IMMEDIATE RELEASE: Friday, August 13, 2004

CONTACT: Nancy Coleman, Karen Conner or Stephaan Harris at 202-775-8810

STATUS UPDATE: Overtime Rule Changes

By Ross Eisenbrey, Vice President and Policy Director

On August 23, 2004, the Department of Labor's new regulations will take effect implementing the major exemptions from the Fair Labor Standards Act duty to pay for overtime. These regulations will change the rights of millions of employees and will inevitably lead many of them to work longer hours and to receive less pay. The Economic Policy Institute estimates that the new regulation will eliminate overtime rights for more than 6 million employees. We have prepared this update to help you understand how and when the regulations will go into effect and how to plan your coverage of this issue.

Can the regulations be blocked?

Yes, Congress has the power to block or repeal these regulations, which are supposed to implement the intent of Congress as expressed in the Fair Labor Standards Act. The Senate already took the first steps toward repeal when it voted three times to block all or most of the changes that would weaken or eliminate employees' right to be paid a premium for working more than 40 hours in a week. Most recently, the Senate passed two amendments to the corporate tax bill, one by Sen. Harkin and one by Sen. Gregg that would prevent most of the regulatory changes from taking effect. Both would, however, allow the Department to raise the income threshold below which most employees are guaranteed overtime pay.

The House of Representatives has yet to vote to block the new regulations. On the other hand, in a vote last year, the House instructed its conferees on the Omnibus Appropriations bill to agree to the Harkin amendment, which would have blocked most of the new regulation. Unfortunately, the House conferees ignored the instruction and, supported by the Bush administration, insisted that the Harkin amendment be rejected.

When will the changes occur?

The legal changes take effect on August 23. When any individual employee will lose her overtime pay depends on the will of her employer. Many employers are waiting to see whether Congress repeals the new rules before they make changes in their own compensation and personnel systems. No employer is compelled to cut overtime pay merely because its employees no longer have a right to be paid a premium for working overtime. It may be a year or two before most employers become aware of the new rules and decide to change the way they pay their

employees. On the other hand, some employers may opt to begin reaping their financial benefits from the new rules as soon as possible.

Are police officers protected against any loss of overtime rights?

No. Police officers are more likely to be exempt under the new regulations. Former Bush administration Wage and Hour Administrator Tammy McCutcheon admitted in Senate testimony that the overtime rights of police lieutenants and sergeants are not fully protected by the new regulations. Even though a specific provision appears to protect officers engaged in normal police activities such as patrolling streets and investigating crimes, the rule carefully exempts any officer whose primary duty is “executive.” And because the new regulations make it easier to define a duty that takes up only a small part of an employee’s time as the primary duty – even something that involves only 10% of an employee’s time can be considered his primary or “most important” duty – it is more likely that front line supervisors will be exempt. That is why three major police unions have opposed the new regulation and support the Harkin amendment.

What about unionized workplaces?

Some union contracts merely adopt the Fair Labor Standards Act as a reference. When overtime rights are lost under the new FLSA regulations, the union’s contract rights will be lost, too. Most union contracts specify that overtime hours must be compensated at a rate at least 150% of straight time pay. Under those contracts, employees will be protected from changes in the new regulations for the life of the contract. When the contract expires, however, all bets are off. The employer at that point can insist on negotiating new language because, for the first time, many workers who had a federal right to overtime pay will no longer have it. To maintain their current protection, unions might have to give up other benefits, or accept smaller pay increases.

The Department of Labor claims only those earning \$100,000 a year or more will be hurt. EPI claims that millions will be hurt. Who’s right?

The Labor Department is being dishonest. The three highest-ranking career officials in the Department’s Wage and Hour Division and Solicitor’s Office, who were responsible for administering and enforcing the overtime law during the Reagan, Bush I and Clinton administrations, have reviewed the new regulation and agree with EPI. According to these experts, except for the change raising the exemption floor, every other change in the XXX-page new regulations weakens or eliminates the right to overtime pay. These three Reagan appointees conclude that the new regulations are confusing and self-contradictory and will harm large numbers of U.S. workers and their families.

[W]e believe that the Department has systematically and effectively weakened virtually all of these exemptions, and thus substantially broadened the class of employees who will be exempt, without substantially clarifying the rules for exemption.

They conclude that as many as 53 million employees could lose the right to overtime pay.