

Senate Democratic Policy Committee Hearing

“Will the Bush Administration’s Overtime Proposals Mean Less Pay and Longer Hours for American Workers?”

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Thank you for the opportunity to testify on the issue of overtime regulations. I am the National Director of 9to5, National Association of Working Women. 9to5’s mission is to strengthen the ability of women to win economic justice. For nearly 30 years we have worked with women, mostly low-wage, non-management workers, on issues including family-friendly policies, fair pay, an end to discrimination, equity for part-time and temporary workers, and reforming TANF to have a goal of ending poverty rather than ending the safety net.

Our members, along with the thousands of women and men who call our toll-free hotline, are desperate for more time with their families and more control over their schedules. That’s why I’m here today to oppose the Department of Labor’s efforts to strip so many workers of overtime protections.

I am aware that Department spokespersons do not characterize their effort in this way. But the best proof of the Department’s true intentions really is the position the Department has taken in the Congressional debate over overtime. Congress is currently considering an amendment that would prohibit the Bush Administration from stripping workers of their overtime rights. The Administration is opposing this overtime guarantee and insisting on its ability to take these rights away. If the Labor Department wants to protect workers, then why is it vehemently opposing a provision that would do nothing more than make sure workers don’t lose their overtime rights?

At 9to5 we believe in plain talk. The Labor Department’s overtime proposal isn’t about modernization or streamlining – it’s about steamrolling workers, taking away hard-earned rights. The DOL says they want to simplify the procedures. But it should never be simpler to exploit people, to make them work longer hours for no extra money.

More than 50 years ago, after enormous struggle, workers won the Fair Labor Standards Act. Because workers had been burdened by inordinate work hours, the new law put a 40-hour-a-week limit on how much employers could require employees to work and a price on hours over that amount. The overtime provision was meant to make it more difficult, and therefore less likely, that employers would force workers to take extra time away from their families. It was a disincentive to excessive hours.

Today reform is urgently needed. Too many workers, like Cathy on Long Island, face mandatory overtime. Cathy’s employer has a child care center on site. When she resisted staying an extra

hour every day because her mother was dying, Cathy's manager reminded her that her child was in the center and that it stayed open until 6:00. Cathy explained about her mother's situation. "Well," said the manager, "how long is this thing with your mother going to last?"

The DOL's proposed overtime regulations do nothing about excessive overtime. In fact, by making it easier for employers to avoid paying overtime, approval of these regulations will lead to an explosion of overwork – extra work which goes unpaid.

The DOL's proposed new eligibility test would dramatically expand overtime exemptions within each White Collar category—executive management, administrative management, and independent professionals. We are especially concerned about proposed changes that would deny overtime protection to workers who spend only a small portion of their time performing supervisory, administrative, or professional duties.

We also object to the removal of the criterion that those exempt from overtime must "customarily and regularly exercise discretion and independent judgment" in their work. This criterion is critical to identifying employees who have sufficient decision-making responsibility with respect to matters of significance, to be exempt from overtime protections.

If these criteria are eliminated, many categories of executive, administrative, and professional employees who are now eligible for overtime protections could easily lose access to critical overtime compensation. Additionally, under the proposed rule, many professional employees would "age out" of overtime eligibility as they amass additional on-the-job training and automatically qualify as learned professionals.

Not only will the proposed eligibility tests deny overtime to millions of Americans otherwise eligible, but if implemented, these tests will make paid overtime work inaccessible for many additional non-exempt workers even if they do maintain their overtime eligibility. By creating a greatly expanded pool of exempt workers, the proposed rules would allow employers to shift their overtime work away from nonexempt employees who must receive overtime pay to exempt workers who must perform that work at no extra cost.

The proposed rule also provides employers further incentives to shift unpaid overtime to workers exempt as "highly compensated employees." While \$65,000 may appear to be a high salary, for many workers, the salary is simply the result of many years of hard work. Moreover, the \$65,000 threshold is not indexed for inflation, so each year more and more workers would lose their protection under this new exemption.

The Economic Policy Institute has done an excellent job uncovering the real numbers of people who will be affected. I would like to give you some faces behind those numbers. I'm going to use only first names, since the members I am describing are not in unions and fear repercussions.

Tina is a single mother who got hired into a low-level administrative job after being on welfare. It's hard for her to balance her schedule with caring for her child, especially when she has to rely on the bus or a "poverty special" car. Tina is afraid the new regulations will result in her being

reclassified as exempt administrative management, even though most of her work consists of routine tasks and she has no supervisory or confidential functions. In a nutshell, she'd be made to spend more time away from her daughter with no say in the hours and no additional pay.

Janice, an administrative assistant in a medical facility, works overtime because she needs the money and it's easier than trying to manage a second job. Janice is afraid other workers will be reclassified and the overtime will be given to them – since the owner would not have to pay them for their extra time. Or she herself might be declared exempt. Either way, she loses the additional income.

Denise's husband is a firefighter who's required to work overtime from time to time. As a 30 year veteran on the job, he now earns more than \$65,000. The new regulations will mean he'll have to work these extra hours but with no pay to compensate for the added time away from home. And because the adjustment is not indexed for inflation, many people earning below near that amount will be swept into the exempt category during the coming years.

I want to go back to what the FLSA was meant to accomplish. By penalizing employers who required excessive hours from their employees at exploitative wages, the FLSA sought to take away the advantage of producing goods "under conditions detrimental to the maintenance of the minimum standards of living necessary for health and general well-being." As President Roosevelt said, these objectives are designed to "protect workers unable to protect themselves from excessively low wages and excessively long hours."

The overtime provisions of the Act were intended to promote a national "hours of work" rule. Despite the fact that Americans already work longer hours than their counterparts in most industrialized nations, Section 7 of the Act acts as an effective brake on further increases in the length of the workweek for covered workers today. According to a recent study, those workers exempt from the FLSA's overtime protections work over twice as many overtime hours as those who are non-exempt. A full 44% of workers exempt from the premium pay requirement (most executives and supervisors, certain administrative and professional employees, and outside salespeople) work in excess of 40 hours per week, while only 20% of those employees who are covered by the statute's mandatory overtime pay provisions work longer than 40 hours.

Not only will this proposed change result in excessive overtime – it will hinder the growth of new jobs. Rather than hiring new workers, employers will be encouraged to overwork their current employees and to save money.

The DOL has tried to sell this change on overtime by focusing on the increase in the minimum salary threshold, the wage below which workers automatically qualify for overtime, from \$8,060 to \$22,100. This is a long overdue adjustment, and one that would be perfectly allowable under the overtime guarantee currently being debated in Congress. Even so, it's not without problems:

- It doesn't go far enough. At this pay rate, many workers are still eligible for food stamps and the Earned Income Tax Credit. Eighty percent of U.S. workers earn above that amount. Proper adjustment for inflation would put the number at \$27,560, covering an additional 30

million workers. Using the same methodology the DOL relied on in the past would call for increasing the threshold to \$31,700.

- The threshold isn't indexed to inflation. Low-wage workers who will be helped this year may soon find themselves excluded, without experiencing any real increase in income.
- The DOL provides a blueprint for how employers can raise workers' salaries to \$22,100 - not to increase living standards but to decrease overall payroll costs. Get workers over the threshold and then exclude them from overtime protections -- longer hours free of charge.

This isn't the first time DOL has updated the minimum salary threshold. But never before has the department used inflation adjustment as an excuse to weaken overtime protections for workers earning more than that amount. Furthermore, nobody is proposing to stop DOL from updating the minimum salary threshold, so DOL's proposed adjustment cannot be used to divert attention away from the real issue: whether DOL should be allowed to strip workers of their overtime rights.

Our focus on stopping this take-away shouldn't make us forget the changes that workers do need. We urge support for the following efforts:

- Impose limits on mandatory overtime.
- Enact a higher minimum wage, indexed to inflation, so workers don't have to put in extra hours just to pay their bills.
- Allow more flexibility for family care. This means expanding the FMLA to cover more workers, in more situations, and in more affordable ways. It also means requiring a minimum number of paid sick days for routine illness, which workers may use to care for a personal illness or a sick family member.
- Pass the Fair Pay Act and Paycheck Fairness Act, which would remove gender and race discrimination as criteria in compensation.

When I testified before the Subcommittee on Worker Protection of the House Committee on Education and the Workforce on a related bill dealing with so-called "comp time" or "compensatory time off," I was told by the subcommittee chairman that employers need to cut back on costs because of losses to overseas corporations. At one time in this country, "cost savings" was used as justification to pay less to women, people of color, immigrants. Laws were passed to prohibit these forms of discrimination.

The DOL's proposed overtime regulations will simply create a new category of discrimination, one based on income. We call on all elected officials who care about low-wage workers to join us in opposing the overtime cuts and supporting an immediate inflation adjustment to the changes beyond the increase in the minimum salary threshold. We also urge you to support the variety of policies I've listed that would give workers the genuine flexibility they urgently need.