



FACT SHEET

Why It's Time to Update Overtime Pay Rules

Americans are working longer hours and are more productive—yet **wages are largely flat**. Indeed, the median worker saw a real (inflation-adjusted) hourly wage increase of just 6.1 percent between 1979 and 2013, despite overall productivity growth of 64.9 percent. One reason Americans' paychecks are not keeping pace with their productivity is that millions of lower-middle-class and even middle-class workers are working overtime and not getting paid for it.

Overtime provisions are important for covered workers, including 75 million hourly wage workers, who value having a 40-hour workweek and earning extra pay when they work overtime. The right to a limited workweek is important because it provides time for leisure, civic participation, commuting, self-improvement, and tending to family and friends.

Preserving the right to overtime pay is particularly crucial at a time when lower- and middle-income families' wages are stagnant. However, the regulations that govern eligibility for overtime are severely outdated, and thus exclude workers who deserve and would strongly benefit from overtime pay.

In March 2014, President Obama instructed the Department of Labor to revise the rules governing overtime. Following a comment period giving the public a chance to weigh in on the issue and time for the Department of Labor to consider the comments, new regulations will be issued. On June 30, 2015, the department issued a **proposed rule** to raise the overtime threshold to a "standard salary level equal to the 40th percentile of earnings for full-time salaried workers," estimated at \$50,440 in 2016. In an effort to inform this process, this FAQ explains who is eligible for overtime pay, why the current rules are outdated, how they can be updated, who would benefit from these changes, and what economic effects these changes could have.

What exactly is overtime pay?

Workers covered by Fair Labor Standards Act (FLSA) overtime provisions must be paid at least "time-and-a-half," or 1.5 times their regular pay rate, for each hour of work per week beyond 40 hours.

Which workers are guaranteed the right to overtime pay?

Hourly workers in most service and blue-collar occupations are guaranteed the right to overtime pay, while salaried workers' eligibility is determined by their pay and the nature of their duties.

Salaried workers who earn below \$455 per week, or \$23,660 per year, are automatically eligible for overtime pay, regardless of the nature of their job or the duties they perform.

Salaried workers whose earnings are \$455 per week or more can be exempted from the right to receive overtime if they fall into one of three categories: executives, administrators, and professionals (EAP). Each of these exempt categories is defined by a set of duties showing that the exempt employee is skilled and exercises independent judgment, or is a boss with a department and employees to supervise. Collectively, these workers are referred to as EAP-exempt, and the duties used to determine who are EAP-exempt are referred to as the “duties tests.”

The salary threshold and duties tests aim to exclude from overtime protections those workers who have enough individual bargaining power that they do not need the protections, namely, professional and managerial employees who do relatively high-level work, have a relatively high degree of control over their time and tasks, and who earn a salary that reflects this.

What’s the problem with these rules?

The overtime salary threshold of \$455 per week (\$23,660 per year) is **far too low**; indeed, it is less than the poverty threshold for a family of four. In other words, the overtime threshold is nowhere near a reasonable benchmark for determining which workers have enough individual bargaining power vis-à-vis their employer that they do not need overtime protections.

This means that many white-collar workers with very low salaries (sometimes just above the overtime threshold) can be classified by their employers as professionals, administrators, or executives—and thus exempted from overtime pay. For example, an assistant manager at a fast-food restaurant with a salary of \$24,000 and who spends 95 percent of his (or her) time cooking fries, running a cash register, and sweeping floors can be required to work 60 or 70 hours a week and yet be denied any overtime pay, simply because he’s classified as a manager. On the weeks he works more than 64 hours, his effective hourly wage is below the federal minimum wage of \$7.25; workers who are exempt from overtime regulations are also exempt from minimum-wage regulations.

Similarly, a recent college graduate with a salary of just \$35,000 might be regularly required to work 70 hours per week as a junior accountant with no prospect of additional pay, simply because her employer deems her a “professional” who is exempt from overtime regulations.

How can we fix this?

If the overtime salary threshold were raised to \$50,440 per year, millions of lower-paid white-collar employees would be guaranteed the right to overtime pay if they work more than 40 hours a week, regardless of the nature of their job. Indexing this threshold to inflation going forward would ensure that it maintains its real value.

It is **within the power of the Department of Labor to make this change**, as Congress granted the Department of Labor the authority and the responsibility to periodically redefine this salary level. In the 1930s through the 1970s, the Department of Labor did in fact raise the salary threshold to levels it thought more appropriate to show that the exempt employee truly was important and valued by the employer—someone who did not need the overtime law to be protected against exploitation. In 1975, the Ford administration raised the salary threshold (though not enough to fully account for inflation), but for 29 years after, no further adjustments were made, even though inflation rendered the

salary threshold obsolete. The last adjustment, made 10 years ago by the Bush administration, raised the threshold to its current, insufficient level.

Who would benefit from raising the salary threshold?

EPI estimates that 13.5 million salaried workers would directly benefit from the Department of Labor's proposal to raise the salary threshold below which salaried workers are automatically eligible for overtime pay. The proposal would raise the threshold from \$455 per week to \$933 per week (in 2014 dollars). There are 13.5 million salaried workers making at least \$455 but less than \$933 per week, and according to our assessment, most of these 13.5 million workers will be newly eligible for overtime protections: they are currently ineligible for overtime pay because they are classified, or wrongly classified, as having job duties that preclude receiving overtime. The rest would have their rights strengthened; they are currently at risk of being classified or misclassified as ineligible for overtime. (There is inherent uncertainty in these estimates because no data are available documenting who is currently eligible for or receiving overtime. Our estimates differ from the Department of Labor's because the department assumes, incorrectly in our view, that OT eligibility was not eroded by changes to the OT rules introduced in 2004 by the George W. Bush administration.)

Overall, 8 percent of salaried workers are currently automatically covered by the overtime protections of the Fair Labor Standards Act by virtue of their low salary and without respect to the nature of the duties they perform. That share would increase substantially, if the threshold were raised to \$50,440 per year.

Raising the threshold even higher—in order to achieve approximately the same percentage share of overtime coverage for salaried employees as existed in 1975 (after taking into account that the workforce today is better educated)—would benefit millions of additional employees.

Under the proposed increase to \$50,440 by 2016, the newly covered workers would be those at the low end of the salary scale who have limited individual bargaining power and would therefore benefit from the overtime protections of the FLSA.

Prior research indicates that an increase in the overtime threshold would disproportionately help women, blacks, Hispanics, workers under age 35, and workers with lower levels of education because these workers are more likely than other subgroups to have lower salaries that put them below the proposed new threshold. The conclusions are confirmed by new **EPI data tables** providing demographic, geographic, and occupational breakdowns of 13.5 million workers directly benefiting from the Department of Labor's proposed increase.

Which occupations would be most affected by increasing the threshold?

EPI's data tables also show that of the 10 major occupation categories, occupations with the greatest share of salaried workers in the occupation who would directly benefit would be office and administrative support occupations (48.8 percent); transportation and material moving occupations (44.3 percent); construction and extraction occupations (43.3 percent); installation, maintenance, and repair occupations (41.4 percent); and production occupations (38.6 percent). According to an earlier EPI report, **specific occupations affected much more than others** by an increase in the overtime salary threshold include first-line supervisors of food preparation and serving workers, insurance claims and

policy processing clerks, customer service representatives, food service managers, miscellaneous legal support workers, first-line supervisors of office and administrative support workers, social workers, first-line supervisors of retail sales workers, insurance sales agents, and counselors.

Is it possible that this change could harm the very workers it intends to help?

Some of the debate over raising the threshold hinges on the idea that making salaried workers newly eligible for overtime pay would decrease their work flexibility. According to this argument, the change would make these salaried workers more like hourly workers because their employers would need to track their hours. However, at the pay levels that would be affected by an increase in the overtime threshold (broadly speaking, less than \$50,000), **salaried workers generally do not have greater levels of work flexibility** that they would “lose” if they became more like their hourly counterparts.

Far from harming affected workers, there is compelling evidence that such policies would **make workers happier**. A study examining the effects of overtime regulations that reduced workers’ hours in Japan and Korea found that affected workers reported improved life satisfaction—and their spouses were happier as well. It stands to reason that increasing the overtime threshold to \$50,440 would also improve American workers’ happiness. Because it would make overtime less appealing to some employers, many workers currently required to put in excessive hours would enjoy a 40-hour workweek for the same amount of pay.

Beyond raising wages for low- and middle-income workers, what economic effects would raising the overtime threshold have?

A higher threshold could lead employers to hire more employees or increase the hours of part-time workers. Some worry that raising the overtime salary threshold would dampen hiring by creating higher labor costs, but there are good reasons not to expect this outcome. **Research suggests** that employers have a rough idea of how much overtime they will need from a given hire and will, over time, at least partly adjust the base wage down accordingly. But more important, if employers want to avoid paying overtime, they have an easy way to do so: Hire new workers to do the extra work at the standard wage or increase the hours of those who are involuntarily working part-time. To the extent that the policy leads employers to curb overtime, this could create work hours for the underemployed workers who need them.

Resources

This FAQ draws from the following EPI resources:

Jared Bernstein and Ross Eisenbrey, *New Inflation-Adjusted Salary Test Would Bring Needed Clarity to FLSA Overtime Rules*, EPI report, March 13, 2014.

Ross Eisenbrey, *Updating Overtime Rules Is One Important Step in Giving Americans a Raise*, EPI Policy Memo #201, January 27, 2014.

Ross Eisenbrey and Lawrence Mishel, *The New Overtime Salary Threshold Would Directly Benefit 13.5 Million Workers: How EPI’s Estimates Differ from the Department of Labor’s*, Economic Policy Institute Issue Brief #401, August 3, 2015.

Ross Eisenbrey and Lawrence Mishel, *Raising the Overtime Threshold Would Directly Benefit 13.5 Million Workers: Here is a Breakdown of Who They Are*, Economic Policy Institute, August 3, 2015.

Lonnie Golden, *Flexibility and Overtime Among Hourly and Salaried Workers: When You Have Little Flexibility, You Have Little To Lose*, EPI Briefing Paper #385, September 30, 2014.

Will Kimball and Lawrence Mishel, *Estimating the Number of Workers Directly Benefiting from the Proposed Increase in the Overtime Salary Threshold*, Economic Policy Institute Technical Paper, August 3, 2015.

Heidi Shierholz, *It's Time to Update Overtime Pay Rules*, EPI Issue Brief #381, July 9, 2014.

Heidi Shierholz, *Increasing the Overtime Salary Threshold Is Family-Friendly Policy: Women, Minorities, and Younger and Less-Educated Workers Would Be Most Helped*, EPI Issue Brief #382, August 20, 2014.

Heidi Shierholz, *Workers in Lower-Paid White-Collar Occupations Need Overtime Protections*, EPI Issue Brief #383, September 2, 2014.