

TIME AFTER TIME

Mandatory overtime in the U.S. economy

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Over the last two decades, American workers have been clocking more and more hours on the job, and they now work more hours than workers in any other industrialized country. Annual work hours are 4% higher than they were in 1980, amounting to an extra 1 hour and 30 minutes at work per week, on average (ILO 1999). The cumulative rise in time on the job is even higher, of course, for families. In 1998 the typical middle-income, married-couple family worked six more weeks a year than did a similar family in 1989 (Mishel et al. 2001). Workers are also clocking more overtime hours. Almost one-third of the workforce regularly works more than the standard 40-hour week; one-fifth work more than 50 hours. Hourly manufacturing workers, the only group tracked by government statisticians, are putting in 25% more overtime than they were a decade ago.¹ In virtually every industry within the bellweather manufacturing sector, overtime had reached a record by the end of the 1990s.

The growth in overtime work, while helping to drive the healthy growth in output in the U.S., has unhealthy social costs. It is taking its toll not only on workers, but on their families, communities, and, ultimately in many cases, patients, customers, and employers. Families burdened by longer work hours are more likely to find it difficult to balance the conflicting demands of work and family. More hours spent at work mean less time with the family, less time to help a child with homework, less time for play, less time for housework, and less time for sleep. These sacrifices can translate into increased risk for accidents and injuries; greater chronic fatigue, stress, and related diseases; reduced parenting and family time; and diminished quality of goods and services – a serious public concern particularly in the health care sector. The social costs associated with the growth in work hours and persistent overtime are particularly worrisome when the long hours are involuntary.

The tenuous balance between work, family, and other non-work activities is thrown off most when overtime is mandatory (also referred to as “compulsory” or “forced”). Mandatory overtime hours are those above the standard work week (usually 40) that the employer makes compulsory with the threat of job loss or the threat of other reprisals such as demotion or assignment to unattractive tasks or work shifts. Given that overtime can have detrimental effects on workers and their families, mandatory overtime is a serious public policy concern, yet current law does not address it. The Fair Labor Standards Act of 1938 (FLSA), which regulates overtime, currently imposes no limits on overtime hours, nor does it prohibit dismissal or any other sanction for declining overtime work. Rather, the FLSA merely requires that payroll employees (who are not “exempt” from the overtime requirements of the FLSA) be paid an overtime premium of at least one-half of regular rate of pay for each hour worked over 40 during a work week.

With the rise in household work hours and overtime, there is a growing need for limits on involuntary overtime. Labor laws such as the FLSA need to be amended to protect workers against excessive work hours and mandatory overtime and to protect the public from the dangers of an overburdened, stressed workforce. Employees should have the legal right to refuse overtime after having worked a certain number of hours – without fear of job loss or other sanctions. Furthermore, an employee should be asked to work beyond some legislated upper limit only during exceptional circumstances such as a temporary health or public safety emergency. Amendment of the FLSA can preserve the right of workers to work long hours if they choose to do so, but ensure workers the right to refuse mandatory overtime.

The need for limits on mandatory overtime

In the United States, unlike in most European countries, employment is “at will,” meaning that the employer can dismiss an employee for any reason or for no reason – except gender, race, age, or disability. Thus, employees who refuse to work overtime can lose their jobs or face other reprisals such as demotion or assignment to unattractive work or to less desirable shift times such as nights or weekends. Faced with the legal threat of these kinds of sanctions, many employees often work more hours than they would like and, in some cases, work an extreme number of hours well beyond the standard 40 a week.

The only disincentive to the unbridled use of overtime by employers is the FLSA requirement that payroll employees covered by the act be paid time-and-a-half for hours worked above 40 in a week. The Department of Labor estimates that about 74 million workers were covered under the FLSA overtime provision in 2000.² There is evidence that the required overtime pay premium for these “non-exempt” workers is effective – about 44% of “exempt” workers (i.e., most executives and supervisors, certain administrative and professional employees, and outside salespeople) work longer than 40 hours per week, compared to only about 20% of non-exempt workers. However, the share of the workforce exempted from the FLSA has been growing slightly (Hamermesh 2000) over time, despite recent court decisions reaffirming FLSA coverage over occupations such as journalists, paralegals, some computer technicians

(those positions that are not highly paid or highly skilled), and most on-call positions. Moreover, business interests continue to push Congress to broaden the exemptions to include “inside sales employees” and licensed funeral directors and embalmers. They also are lobbying to create a new classification of “knowledge workers,” such as computer and network systems analysts and degreed clerical personnel, who would be exempt from the overtime regulations (see U.S. GAO 1999; Labor Policy Association 2000).

Long hours and risks to worker and public safety and health

Long hours can detrimentally affect workers, their co-workers, their families, consumers, and the public. Indeed, there is evidence that, despite the short-term benefits that make overtime attractive to employers (Easton and Rossin 1997), it may in the longer term create offsetting harm to an organization by decreasing quality, increasing mistakes (Babbar and Aspelin 1998; Hirschman 2000), and reducing productivity (Shepard and Clifton 2000). A study on the effects of overtime work on autoworkers found that overtime resulted in impaired performance in attention and executive functions. Workers also reported feeling more fatigued and depressed after working more than eight hours a day (Proctor et al. 1996). It is not surprising, then, that accident rates increase during overtime hours (Kogi 1991). For example, researchers have identified overtime as a factor contributing to safety incidents at nuclear power plants (Baker et al. 1994), confirming what researchers had previously found at manufacturing plants (Schuster 1985) and among anesthetists (Gander et al. 2000). Workers who work overtime face a greater risk of injury and illness (Aakerstedt 1994; Duchon et al. 1994; Rosa 1995; Smith 1996). For a typical example, a German study found that, after nine hours at work, the accident rate begins to rise; in the 12th hour the accident rate was twice as high as the rate for the first nine hours (Hanecke et al. 1998). Long work hours also multiply repetitive motions and exposure to harmful chemicals.

Further, frequent overtime and compressed work schedules that produce long workdays can be a major cause of the stress and chronic fatigue reported by many workers, as well as the ensuing occupational burnout or serious health conditions (Sparks et al. 1997; Spurgeon et al. 1997; Martens et al. 1999; Barnett et al. 1999; Shields 1999; Fenwick and Tausig 2001). Stress can result in increased blood pressure and cardiovascular diseases, which in some cases can have fatal consequences. The Japanese, known for long work hours, even have a word – *karoshi* – to describe death from overwork (Hayashi et al. 1996; and Sokejima and Kagamimori 1998).

In the U.S., job stress is estimated to cost industry \$150 billion per year in absenteeism, health insurance premiums, diminished productivity, compensation claims, and direct medical costs (Donatelle and Hawkins 1989). Longer work hours can only contribute further to this drain. A study by Northwestern National Life (1991), which investigated employee burnout, found that seven out of 10 employees experiencing job stress said they frequently suffered health ailments. Frequent mandatory overtime was one of the leading five factors that caused increased stress. Employees who worked overtime on a regular basis were twice as likely (62% vs. 34%) to report that they found their jobs to be highly stressful.

Overtime work and the crowding-out of non-work-time activities

While hours spent at work have increased, work responsibilities at home have not decreased much.

Therefore, working families more and more find themselves squeezed for time. Overtime, and in particular forced overtime without advanced notice, is a challenge to working families. Being told at the end of the workday to stay and finish a work assignment or work a second shift can leave working parents – especially single parents – scrambling to make arrangements for child care at the last minute. Some parents can rely on other family members to care for their children at these times, but of course not all parents have this option, and therefore must depend on child care centers or babysitters to watch their children, a costly option, or perhaps even have to leave children unattended or unsupervised. Further, overtime work can interfere with after-work classes in which workers have enrolled and with community volunteering and social activities that require advance planning.

Overtime often comes at the expense of sleep: three in four people say they suffer fatigue during the day (Atkinson 1999). A poll by the National Sleep Foundation found rampant sleep deprivation, with one-third of respondents reporting less than seven hours of sleep per night and 63% getting less than the eight hours recommended for superior health, performance, and safety. In the last five years, adults who spend more time at work than sleeping has just about caught up to those who spend the reverse. Those who work sleep significantly less than those who do not, particularly those who work over 40 hours (and 38% in this poll reported working 50 hours or more per week), and they report more sleepiness during awake time and insomnia. Job-related work ranked as the activity least likely to be given up among adults who reported a lack of time (National Sleep Foundation 2001).

When workers cut back on sleep, their work performance suffers. The National Commission on Sleep Disorders estimates that companies lose up to \$150 billion per year due to employee fatigue. A study conducted by the American Journal of Public Health in 1992 found that nurses in Massachusetts who work variable schedules (including mandated overtime shifts) were twice as likely to report an accident or error and two-and-one-half times as likely to report near-miss accidents (MassNurse News 2000). It concluded that these conditions were associated with “frequent lapses of attention and increased reaction time, leading to increased error rates on performance of tasks.” An Australian study found that sleep deprivation has the same effects as being drunk. As the number of hours increased without sleep, the study’s testers took a longer time completing a task, made more mistakes, and had problems with concentration and memorizing information. After 17-19 hours without sleep, the testers’ performance and alertness suffered notably, and “performance levels were low enough to be accepted in many countries as incompatible with safe driving” (Williamson and Feyer 2000, 653-4). Sleep deprivation poses a serious safety risk for workers not only at work, but also when driving home after a long day at work. And for workers who work late into the evening, commuting by car may be the only option, since carpools and public transportation are geared to workers on daytime schedules.

Since overtime can have detrimental effects on workers and their families, no worker should be forced to work overtime. Indeed, the public health considerations associated with long work hours suggest that excessive overtime hours should be legally capped.

Levels of overtime and trends

An analysis of the number of hours usually worked by wage and salary employees shows that overtime work is widespread in most industries.³ In the industries of agriculture, mining, manufacturing, transportation, communication, and some professional services, more than 25% of all employees reported that they worked more than 40 hours per week on a regular basis, and often considerably more. In fact, workers who clocked extra hours (both exempt and non-exempt workers) on average worked nearly 12 hours more than the standard work week of 40 hours in 2000 (see **Table 1**).

There has been a slight, gradual, yet detectable upward trend in this percentage over the last decade. According to data from establishments by the Bureau of Labor Statistics (2000), average overtime in manufacturing escalated over the 1990s, from 3.3 hours to a peak of 4.9. More than half of the 20 industries within manufacturing had increases of at least 1 hour over the 1991-98 period (Hetrick 2000). In fact, many of these industries had set records for their overtime series by early 1997. The National Study of the Changing Workforce (NSCW) survey, in its sample of almost 3,000 individuals, found that the employed put in six hours more than they are scheduled to work (Galinsky and Bond 1998).⁴

Moreover, there is evidence of substantial non-compliance with the existing FLSA rules and regulations regarding overtime hours and pay or exemptions. By misclassifying workers or evading overtime pay rules, employers presumably have employees work longer hours than if the employer followed overtime rules regarding computation of hours and exemptions. Violations are higher in certain major industries (see **Table 2**). Non-compliance appears to be highest in the construction industry, where non-exempts dominate the workforce. While the rate of compliance in services is high, there has been a dramatic decline in two of the industry's components – nursing homes and residential living facilities – in the proportion of firms that are in compliance with the FLSA.⁵ The level of compliance in nursing homes dropped from 70% to 40% of surveyed firms, and is 57% in residential living facilities. The vast majority of violations (84% and 92%, respectively) were non-compliance with the industry's overtime pay rules. The most common violations in the nursing care and residential living industries are the failure of employers to pay for all the hours that an employee works and the misclassification of workers as exempt.⁶

Estimates of mandatory overtime

The last attempt to directly measure the extent of mandatory overtime with specific survey questions in a nationally representative sample was the 1977 Quality of Employment Survey (QES) of the University of Michigan. These estimates can form a baseline to estimate the current degree of mandatory overtime. The QES asked workers who worked overtime hours whether overtime was “mostly up to the worker” or “mostly up to the employer” and, separately, if they could refuse overtime without some kind of penalty. About 45% responded that overtime work was “mostly up to their employer” (vs. 44% who that said it was up to them; the rest said “both”). About 19% reported they would suffer a penalty. About one in six workers, 16%, said their overtime was both up to their employer and they would suffer a penalty if they refused it (Ehrenberg and Schumann 1984); this portion represents the most conservative estimate of the extent of mandatory overtime. In the entire QES sample, from the “merged” 1974-77 panels, 21% of men were subject to such mandatory overtime work, and 35% worked overtime voluntarily. Workers in blue-

TABLE 1
Hours worked, part-time and overtime, by industry, 2000 (employed individuals at their main jobs)

Industry	Number of workers	Average weekly hours	Percentage working part-time (less than 35 hours)	Percentage working more than 40 hrs/week	Percentage of workers with variable weekly hours*	Average hours worked if working more than 40	Average no. of overtime hours if working more than 40
Agriculture	1,862,667	40.3	15.0%	25.2%	15.0%	54.5	14.5
Mining	495,340	48.0	2.0	40.0	9.7	59.0	19.0
Construction	7,238,868	41.2	5.7	18.9	9.0	51.8	11.8
Manufacturing - durable	11,733,130	42.2	3.0	26.0	4.4	50.4	10.4
Manufacturing - non-durable	7,508,890	41.2	5.7	22.5	5.5	50.5	10.5
Transportation	5,729,608	41.6	10.6	25.1	10.3	53.6	13.6
Communications	1,978,388	41.9	4.7	25.3	4.0	50.8	10.8
Utilities and sanitation	1,430,693	41.3	3.1	17.3	4.1	50.8	10.8
Wholesale trade	4,838,551	42.2	6.9	30.1	5.6	51.4	11.4
Retail trade	20,595,385	35.3	30.7	15.4	8.9	51.4	11.4
Finance, Insurance, and Real Estate	7,685,257	40.4	9.6	20.8	5.1	51.1	11.1
Private households	922,179	29.7	42.7	8.7	18.3	56.7	16.7
Business and repair services	7,898,715	40.3	11.4	22.2	6.9	51.3	11.3
Personal services	2,799,577	37.3	22.2	13.2	8.7	53.6	13.6
Entertainment and recreation services	2,269,862	34.2	31.3	13.1	9.4	52.4	12.4
Hospitals	5,021,226	38.7	15.8	12.2	5.9	54.3	14.3
Medical services	5,961,670	37.0	22.5	11.5	6.2	52.0	12.0
Educational services	10,971,126	37.3	21.5	18.0	5.8	51.9	11.9
Social services	2,979,796	35.7	25.4	9.6	4.8	52.0	12.0
Other Service professions	5,334,002	40.0	15.4	27.4	6.7	52.4	12.4
Forestry and fisheries	98,284	42.6	8.4	17.6	12.0	61.8	21.8
Public administration	6,024,910	40.3	6.0	14.4	4.0	51.1	11.1
All workers							
Weighted averages across all industries	121,378,123	39.1	15.4%	19.4%	6.9%	51.8	11.8
Standard deviation among industries		3.7	11.0	7.6	3.7	2.9	2.9

* Workers with "variable hours" are those whose work week is so variable week to week that they cannot specify its usual length. A significant portion of these workers may, on average, actually work longer than a 40-hour week.

Source: Authors' analysis of the monthly Current Population Survey of households, 2000.

TABLE 2
FLSA coverage and overtime compensation by industry, FY 1996

Industry	Employees under executive, administrative, professional	Non-exempt employees	Estimated percent exempt from overtime	Rate of employer compliance with FLSA overtime regulations
All	31,729	74,044	39.5	90%
Private	25,495	61,899	39.9	88
Agriculture	252	12	99.4	90
Mining	95	3	17.2	92
Contract construction	736	4,584	15.1	73
Manufacturing	3,230	166	19.2	91
Transportation and public utilities	1,413	2,777	55.6	83
Wholesale trade	1,580	4,069	37.2	96
Retail trade	3,049	15,445	28.6	91
Finance, insurance, and real estate	2,706	3,493	49.4	86
Services (not including private households)	12,434	6,154	54.4	93
Private households	0	459	50.6	96
Public sector	6,234	12,144	37.5	
Federal government	1,233	1,472	46.6	
State and local government	5,002	10,672	36.1	100
Nonclassified				
<i>Correlation coefficient: percent exempt with percent compliance</i>				0.133

Source: U.S. Department of Labor, Wage and Hour Division, 1998.

collar positions had a greater likelihood of facing mandatory overtime, as did workers who had medical or pension plans, while unionized workers had a lower likelihood (Idson and Robbins 1991).

More recent attempts to infer the extent of mandatory overtime are far from satisfactory. Given the long-term rise in average weekly overtime hours (at least in manufacturing), however, one might suspect that the incidence of *mandatory* overtime has risen more or less commensurately (Smith 1996). A particularly informative study by Cornell University's Institute for Workplace Studies (1999) surveyed 4,278 unionized hourly workers, concentrated mainly in the Northeast and consisting of six industries, primarily construction (craft workers), manufacturing (auto workers), and services (emergency medical technicians; mail handlers; and workers in utilities, transportation, nursing homes, and retail). In this sample, 60% worked some overtime in the previous month, with about a third of these workers putting in 11 or more hours of overtime per week. About a third of the overtime workers reported being compelled by their employer to work overtime (a proportion the authors concluded was surprisingly low). Workers employed in the transportation and emergency health services faced more employer pressure than workers in other industries.

Almost one in five workers, 18%, reported working more overtime hours than they preferred. This amounted to half the proportion satisfied with their number of overtime hours and even less than half of

the proportion actually wanting more overtime. Thus, there appears to be a maldistribution; if hours could be redistributed within all industries away from those who work overtime involuntarily and toward those who wanted more overtime (presumably to build their incomes) this would reduce the latter group by up to 40% of its current size.

Involuntarily scheduled overtime work may further worsen the negative well-being, safety, and health outcomes of overtime per se. The Institute for Workplace Studies (1999) survey found that the proportion of workers who reported high levels of work/family conflict jumped dramatically for those who put in more than 50 hours a week. In addition, respondents who faced supervisory pressure to work overtime reported negative effects. For example, 19% of all workers reported feeling depressed more than “once in a while,” but among the 8% of workers who reported high levels of supervisory pressure to work overtime, the percentage jumped up to 23%. Similarly, as supervisory pressure to work overtime increased, workers reported significantly higher levels of somatic stress, higher levels of job-escape drinking, and higher absenteeism due to illness. Supervisory pressure to work overtime was also significantly associated with injuries at work. Among the 66% of workers who reported no supervisory pressure to work overtime, 9% experienced multiple injuries at work during the prior year; among workers reporting low, moderate, or some levels of supervisory pressure, the share was 14%; for workers reporting high levels of supervisory pressure to work overtime, the share was 16%. Yet, financial demands and feelings of job insecurity were cited more frequently than employer pressure as the ultimate motivator of extra work time.

It is important to keep in mind that employees who are not subject to mandatory overtime may still end up working more overtime hours than they would prefer. Many workers have overtime scheduled by their employer, and “choose” overtime because their base wage or salary is insufficient to support their family; some may feel that their chances for a promotion or pay increase improve if they put in extra hours.

Sources of mandatory overtime

The need for mandatory overtime is in part an outcome of the prolonged economic expansion of the 1990s. Low unemployment rates led to labor shortages in certain industries such as health care and telecommunications and in occupations such as nursing. Rather than raising wages to attract new employees, employers opted to have their current workforce work more hours – even if it meant paying an overtime premium. In addition, adjusting hours to the seasonality of demand may be more common, tending to intensify the use of mandatory overtime. Half of all surveyed accounting firms, particularly the larger ones, used mandatory staff overtime for this purpose (Pfau, Quint, and Huttlinger 1997). Further, employers appear to be less willing to invest in training of new employees, and instead prefer to have their current workforce put in more hours; this has been the case in the high tech industry. Overtime continues to be appealing, despite its apparent longer-term harms and risks, because employers can enjoy non-wage cost savings (Cutler and Madrian 1998), while employees gain greater access to higher wage rates (Bell 2000; Hecker 1998) and more flexible daily work schedules (Golden 2000, 2001).

Mandatory overtime in health care: accident risks and compromising of quality

Overtime work is widespread among nurses, medical residents, and doctors, and this pattern of work can lead to situations that jeopardize the health of patients. Understaffing of nurses at hospitals means that nurses sometimes are forced to work a second shift after their first shift ends. High patient load and fatigue from long hours can result in inadequate compliance with procedures and less monitoring of patients. As a result, overtime can compromise patients' health or safety. Medical residents cited fatigue as a cause for their serious mistakes in four out of 10 cases (Boodman 2001), and two studies linked infection outbreaks at hospitals to overtime work (Arnow et al. 1982; and Russell et al. 1983). Indeed, the California Nurses Association reports that more nurses are refusing to work in hospitals with unsafe conditions, in which they include being forced to work unplanned overtime. The American Nurses Association (ANA), in a national survey of 7,300 of its members, found, disturbingly, that 56% of nurses believe that the time they have available for care for each patient has decreased, and 75% feel that the quality of patient care at their own facility has decreased in the last two years. The cited inadequate staffing as the chief reason.

Mandatory overtime in health professions generally is likely high, although no reliable data regarding its extent are available. In the Institute for Workplace Studies (1999) report, health sector workers averaged a little over three hours of overtime per week – not particularly high. In a survey on mandatory overtime, the journal *Nursing2000* reported that 36% said they never worked mandatory overtime. One quarter of the respondents worked mandatory overtime once or twice a month, while another quarter worked it once or twice a week. However, about 14% worked additional mandatory hours every day (*Nursing2000*). Respondents to a poll (2,125 total) administered by the American Association of Critical Care Nurses in May-June 2000 found that 43% of their members' hospitals have a mandatory overtime policy. The same poll found that responding members attributed mandatory overtime mainly (three-quarters of the reasons designated) to both routine short-staffing policies and a nursing shortage. Perhaps it is no coincidence that nurse's aides were second only to truck drivers in the total number of cases of disabling injuries and illness. And not surprisingly, the ANA delegates voted almost unanimously to declare that refusing overtime does not constitute patient abandonment, from which nurses are legally prohibited.

Mandatory overtime provisions in collective bargaining agreements

Generally, union workers are better protected from mandatory overtime than are nonunion workers, since union contracts can specify upper limits on overtime, establish a scheme to make overtime more orderly or voluntary, or establish a system of compensatory leave. In 1977, over one in five union members had collective bargaining agreements that restricted mandatory overtime, according to the QES. But as many unions have lost membership, in particular those in manufacturing and communication industries, workers' bargaining power to obtain such contract provisions may have diminished.⁷ Unions may find it increasingly difficult to both oppose mandatory overtime measures in workplaces and negotiate better premiums for overtime work. In addition, unions whose members have experienced declining wage rates are under pressure to preserve overtime work as a way to allow members to prop up their earnings.

In recent years, several unions have successfully negotiated contract language that places limits on mandatory overtime or requires steps to make such arrangements more voluntary in nature.⁸ For example, in the health services sector, Tenet Health Care and St. Vincent's Hospital in Worcester, Mass., signed an agreement with 600 nurses that allowed the hospital to mandate overtime but for no more than for a four-hour period twice every three months. (The hospital has the right to assign up to two hours of mandatory overtime, and the nurse can work an additional two hours if she felt capable of doing so safely.) Tenet management had initially demanded that the nurses agree to work mandatory 16-hour shifts with one hour's advance notice.⁹ Limits to forced overtime have been implemented in telecommunications and other industries as well. The Communications Workers of America (CWA) strike at Verizon in 2000 resulted in reduced mandatory overtime limits, in some instances cutting them in half, from 15 to 7.5 hours a week; the company is also now required to give at least 2.5 hours notice if overtime work is required, and it must give consideration to those employees requesting to be excused from overtime.¹⁰ Northwest Airlines permits employees to refuse overtime if they provide reasons such as child care responsibilities that cannot be altered on short notice. The American Postal Workers Union and the National Association of Letter Carriers agreed with the U.S. Postal Service to restrict excessive mandatory overtime. The agreement protects those members who sign up on a list of "overtime desired" but want to work only limited overtime, plus those members who are not on the overtime list at all.¹¹ In the manufacturing sector, the United Steelworkers of America negotiated a cap on mandatory overtime at FMC, a Baltimore, Md., pesticide plant. Newspaper Guild Local 35 (covering Washington-Baltimore) and the Bureau of National Affairs negotiated a voluntary overtime arrangement in which members can be excused from working compulsory overtime unless no other appropriate employee is available.

Policy solutions: legislated mandatory overtime limits, bans, and other remedies

Legislative initiatives at both the federal and state levels would regulate mandatory overtime. Bills have been introduced in the 107th U.S. Congress that would limit the amount of forced overtime that nurses and other licensed health care providers could work. The Safe Nursing and Patient Care Act of 2001 was introduced in the Senate (S-1686) and House (HR 3238). It aims to amend the Social Security Act by limiting the number of mandatory overtime hours a nurse may be required to work among providers of services to which payments are made under the Medicare program Under the Registered Nurses and Patients Protection Act (H.R. 1289, also referred to as the Lantos-McGovern Bill, and a very similar bill with different sponsors, H.R. 1902), licensed health care professionals could not be required to work more than eight hours in a day or 80 hours within a two-week period, unless a written agreement between the employer and the employee specifies otherwise. Nurses associations across the country have endorsed such bills, arguing that it would reduce overtime and improve both patient safety and quality of care. While the latter bill refers only to registered nurses, it would cover all other licensed health care workers in the country (except medical doctors). To date, House leaders have taken no action on it.

These federal proposals as well as a number of similar state initiatives have been important first

attempts to address the issues of long working hours and mandatory overtime. But generally, these legislative proposals do not go very far. Hour limits in many of the proposals are not strict, and they often cover workers only in specific occupations or geographical areas. Legislation such as Maine's new overtime law, the first passed in the nation, still leaves the employer with much discretion in setting hours to accomplish a meaningful reduction in or limit on overtime work. For example, an employer who requires an employee to work 80 overtime hours in one week and zero hours the next week would still meet the requirement of this law, even though the employee could end up working 20-hour days. Nonetheless, legislation to ban or limit mandatory overtime is in the works across the nation's state houses, assemblies, and senates. The following states are considering bills curbing mandatory overtime:

California

Legislation has passed the state assembly, and is being reconciled with a bill passed previously (Senate Bill 1027), prohibiting mandatory overtime beyond eight hours in a workday or 40 hours in a work week, except in the event of a declaration of emergency by federal, state, or local government officials or in case of a natural disaster. Voluntary overtime is exempted. The bill adds protections on lunch and rest breaks. It would reinstate rules (dispensed with by the previous governor) requiring a daily overtime pay premium, but it also exempts nursing professionals, such as nurse anesthetists and nurse midwives (and any worker making \$41 per hour), and allow the health care industry to return to alternative work week schedules with up to 12-hour shifts, despite the 10-hour limit in other industries. While hospitals can require nurses and other health care workers to put in a 13th hour if someone fails to show up for work, an emergency must be called before employers require more overtime. Even then, workers can't be required to put in more than 16 hours per shift, and can volunteer for a shift up to 24 hours in length. Employers must pay a penalty equal to one hour's pay if a health care worker is deprived of a state-mandated rest break or meal period.

Connecticut

A proposed bill (H.B. 5698, Hours of Health Care Facility Employees) would prohibit mandatory overtime for hourly health care workers.

Hawaii

A proposed bill (S.B.62) would ban employers from requiring nurses to work "longer than the number of hours regularly scheduled for a particular workday" or from working more than 40 hours per week, except in cases of a declared federal, state, or county emergency, and the employer has made reasonable efforts to fulfill its staffing needs through other means, including requesting on-duty nurses to voluntarily work overtime, requesting off-duty registered nurses to voluntarily report to work, and recruiting per diem nurses to report to work. Further, if a registered nurse refuses to work longer than the standard workday/work week, the employer shall not have grounds to suspend, discharge, penalize, or take any other adverse employment-related action against the nurse.

Maine

The enacted law limits the total amount of mandatory overtime that employees can be required to work to no more than 80 hours of overtime in any consecutive two-week period. The limit will not apply to work performed in response to an emergency declared by the governor; to an employee who performs essential services for the public such as utility service or road maintenance; to an employee whose work is necessary to protect the public health or safety; to an individual exempt from the state minimum wage law; to a salaried employee who works in a bona fide executive capacity and whose regular compensation, when converted to an annual rate, exceeds 3,000 times the state's minimum hourly wage; to an employee of a seasonal employer; to a medical intern or resident engaged in an approved graduate educational program; or to certain employees who work for an employer who shuts down an operation for annual maintenance or work performed in the construction, rebuilding, maintenance, or repair of production machinery and equipment (see Nelson 2001).

In addition, Maine has enacted a law (Ch. 401) allowing nurses to refuse working more than 12 consecutive hours without the threat of disciplinary action, except in cases of last resort to ensure patient safety or unforeseen emergencies. In the event a shift exceeds 12 hours, the nurse must be given no fewer than 10 hours off before her next shift assignment.

New Jersey

The State Assembly Health Committee overwhelmingly passed S-2093, which prohibits any licensed health care facility from requiring employees to work in excess of an eight-hour day or 40-hour week, except in the case of unforeseen emergency. Acceptance of hours beyond these must be strictly voluntary, and refusal a protected right, since it cannot be used as grounds for dismissal, discrimination, or any penalty or adverse employment decision. A similar version of the bill was vetoed by the previous governor, Christine Todd Whitman.

New York

Proposed bills (A.2025/S.1380) provide that no hospital will permit or require a registered nurse or licensed practical nurse to remain on duty for longer than 16 hours except in an emergency, nor be permitted or required to be on duty for more than 60 hours in a seven-day period. Additional bills in the state Senate (S 3515) would restrict consecutive hours of work by nurses and prohibit any health care employer from requiring a nurse to remain on duty for a period longer than eight consecutive hours or 40 hours in a seven-day work week except as consistent with the nurse's regularly scheduled work hours. The bills do not prohibit a nurse from voluntarily working overtime, and they provide that the refusal of a nurse to work beyond regularly scheduled hours shall not constitute professional misconduct if the nurse notified her supervisor of her unavailability under such provisions. Another bill (S160) provides that an employer may not authorize more than 10 hours of overtime per week without the written consent of the employee; it excludes certain railroad or subway, farm, and domestic employees. Indeed, a separate bill goes so far as to propose reducing the number of hours that constitute a work day from eight to seven for all (except certain railroad, farm, or domestic) employees and requires that overtime work be compen-

sated at the usual time-and-a-half for work in excess of a legal day's work or in excess of 35 hours in any calendar week.

Ohio

A bill in the Ohio House (H.B. 78) would prohibit health care facilities from mandating nurses to work overtime.

Oregon

A bill passed with bipartisan support in both the state House and Senate that restricts the number of mandatory overtime hours that can be required of registered nurses. Nurses cannot be required to work more than two hours of mandatory overtime beyond their regularly scheduled shift and may not work more than 16 hours in any 24-hour period, with some exceptions for emergencies and rural hospitals. Nurses can take actions to civil court for violations. Hospitals are now obliged to develop a list of qualified on-call nurses to prevent staffing shortages.

Pennsylvania

One bill (H.B. 1253) would give employees who have worked a 40-hour week the right to refuse overtime work in excess of eight hours without fear of being fired. H.B. 1254 would increase the wage for overtime in excess of eight hours during a week from time-and-a-half to double time. Another bill (H.B. 1252) would require employers to provide employees with a 30-minute rest or lunch period after five hours of work, and another would ban mandatory overtime practices for health care workers. Another bill (H.B. 428) would insure an employee the right to refuse to work in excess of eight hours of overtime in a given week, with the exception of employees of police and fire departments, public ambulance, or emergency medical services. (For purposes of expediency, the bill was attached to a crime measure, which labeled it a misdemeanor to require mandatory overtime as a condition for employment or continuation of employment.)

Rhode Island

A proposed bill would establish a maximum workday and work week length at health care facilities. It would limit mandatory overtime in hospitals and nursing homes by prohibiting nurses and other employees from working more than 12-hour shifts per day, and would allow such workers to work predetermined eight-, 10-, or 12-hour days. (Health care workers could still be forced to put in up to 60 hours per week, however.) While employees could voluntarily agree to work longer hours, any refusal to do so could not be grounds for discrimination, dismissal, discharge, or any other action adverse to the employee. The bill specifies penalties for violations.

Washington

A bill to eliminate mandatory overtime (SB-6120) was drafted initially with the concerns of hourly Boeing production workers in mind. The bill's intent is to eliminate mandatory overtime for all hourly workers, but not limit the hours of workers who volunteer to work more hours, nor the hours of salaried

workers, such as software industry employees. No employer may require an employee to work more than eight hours in any workday or 40 hours in any work week. An employee is not prohibited from working more if the “employee has critical skills and expertise” required for the next work shift and the employer has helped the employee “to acquire safe transportation to his or her residence following the succeeding shift, and has assisted the employee to address child care or other family obligations successfully.” The bill exempts fire and emergency workers, agricultural or fishing industry workers processing perishable goods, and workers affected by unanticipated events such as emergency repairs of production equipment. If an employer wishes to be granted an exception, 80% of the employees in an affected unit would need to approve, in a secret ballot election, an employer-written proposal asking for work weeks of more than 40 hours. However, the proposal could not require employees to work more than 12 hours in a day, or more than an average of 42 hours per week in four consecutive weeks. The bill has provisions for employees to file complaints with the state Labor and Industries Department if they have been “discharged or otherwise discriminated against.”

West Virginia

A House bill (H.B. 2018) would prohibit employers from forcing overtime on hourly wage workers, and contains a provision for employees to decline overtime work.

Wisconsin

Senate bill 211 would limit the number of mandatory overtime hours worked by health care workers employed by health care facilities. The bill provides for penalties for violations.

Conclusions

The recent economic slowdown has led to a slight curbing of overtime hours, yet cases abound of workers continuing to face mandatory overtime work and successfully stemming its use through some high-profile strikes in hospitals and telecommunications companies. Proposals are spreading through the states to cap the number of overtime hours that can be forced in a given time period of a week or two, or to make overtime more of a voluntary choice. While a uniform, one-size-fits-all solution may not be feasible nor desirable, some action at the federal level, such as that focused on nurses and hospitals as well as reform of the FLSA overtime provisions, is needed to set minimum standards.

Mandatory overtime forces many working parents to work long hours and spend more time away from their families than they would prefer. The FLSA needs to be updated to ensure that workers, their families, and the public are not exposed to the risks to health, safety, and well-being of excessive overtime. Amendment of the FLSA should ensure that mandatory overtime work be more rare and infrequent, that extended work schedules be of employees’ own choosing, that some minimum advance notice be given if possible, and that those workers refusing overtime work be legally protected from the threat of job and income loss.

Recognizing that different workers have different preferences for work hours, and that much overtime work is voluntary, one sensible solution to the problem of mandatory overtime would include:

- upper limits on overtime hours per week, unless there is an agreement, such as in a union contract, between the employer and employee on overtime beyond the established limits;
- the right of employees to refuse mandatory overtime, with the exception of certain essential personnel, such as firefighters, police officers, and doctors, and except in cases of natural disasters or other emergencies;
- sanctions under employment discrimination law against employers who take any actions against or otherwise discriminate against employees who refuse to work more than the maximum number of hours per day or week.¹² Refusal by any employee to accept such overtime work should not be a grounds for employment discrimination, dismissal, or discharge or any other penalty.

This proposal attempts to strike a balance between the needs of both employers and employees. It recognizes that employers' demand for labor may fluctuate from day to day and week to week. Unexpected labor shortages may arise due to an increase in business activity, sick leave, or other unexpected circumstances, and employers surely need to have some discretion to vary employees' hours. On the other hand, under this proposal, employers cannot place or shift the entire burden on employees when labor shortages arise. For example, an employer should no longer be permitted to require an employee to work an entire second shift without some reasonable minimum advance notice before the first shift is finished. Further, employers who face continuous labor shortages should be induced to hire and train additional employees rather than require current employees to put in more hours. In the meantime, employees who refuse to work long hours should be able to exercise their decision as a basic right of employment without fear of reprisal or loss of their jobs. For workers and the community at large, this right will mean greater control over working hours, ability of working families to balance the conflicting demands of work and family, and access to the highest possible quality of work and care in services.

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Endnotes

1. Hetrick 2000. Note that there has been a precipitous drop in average weekly overtime hours in manufacturing from mid-2000 through 2001. This decline may be due to the abrupt cyclical slowdown perceived or anticipated by employers.
2. The Wage and Hour Division of the Department of Labor estimates that, in 1999, 79,458,000 workers were covered by the overtime provisions of the FLSA. This amounts to 66.8% of the total employed, down slightly from the previous estimate of 67.6% in 1996.
3. Authors' analysis of the Current Population Survey, monthly data files, 2000.
4. Over the last two decades, among employees working 20 or more hours in the NSCW, all hours worked at all jobs have risen markedly, from 43.6 hours in 1977 to 47.1 hours in 1997 (Galinsky and Bond 1998).
5. Health care services ranked second in the top 10 (in number of employees) of violating industries in 1995 (Hansen 1996).
6. U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, *Residential Living Facilities Compliance Baseline Fact Sheet* and *Nursing Care Facilities Under the Fair Labor Standards Act Fact Sheet*. In these health industries, facilities can opt for an "8 and 80" system, paying employees overtime more than eight hours in a day and 80 hours in a 14-day period. However, these more flexible guidelines appear to contribute to a greater volume of employer violations.
7. In Canada, the percentage of major collective agreements that provide a right to refuse overtime has held steady at about a third of all contracts over the last 10 years; agreements containing an unconditional right to refuse overtime have increased slightly, to over 10% of all contracts. Manitoba, Ontario, and Saskatchewan grant workers a right to refuse overtime work beyond a set number of hours, such as 48 and 44 in the latter two provinces (Human Resources Development Canada 2001).
8. See Smith (1996) for a thorough survey of collective bargaining provisions and court cases.
9. *MassNurse News* (2000). At Boston University Medical Center, hospital administrators cannot mandate overtime for nurses for more than four hours beyond their normal shifts. The contract at St. John Hospital in Washington, D.C. allows nurses to refuse mandatory overtime in the 72 hours following any overtime assignment. Striking nurses at the Washington Hospital Center in Washington, D.C. won a limitation of a maximum 16-hour shift in a day, limits on the number of times a nurse can be required to work overtime, and a bonus pay system for working less-desirable weekend and night shifts. Some nurses' association contracts have outright bans on mandatory overtime with the exception of government-declared emergencies or in circumstances in which there is an usually high census or high proportion of acute cases (Labor Project for Working Families 2001). Officials at Putnam General Hospital in Charleston, W.Va., faced with a nursing shortage, have nurses work overtime only on a rotating basis. New York's Mount Sinai Hospital and Lima Memorial Hospital in Ohio have banned mandatory overtime outright, and Ohio State University has instituted a pilot program aimed at reducing mandatory overtime. Other hospitals across the country have personnel policies that may entitle workers to "pass" on one occurrence of mandatory overtime or being on-call for a non-traditional shift time.
10. Similarly, CWA Local 777 won an agreement with U.S. West initially limiting overtime hours to 16 a week. In 2001, that maximum was lowered to eight. CWA also bargained for limits on the number of weeks in a month members could be expected to work overtime; they are guaranteed two weeks per month without overtime and at least two five-day work weeks. The International Brotherhood of Electrical Workers (IBEW) Local 2000 and AT&T negotiated for double time for weekly overtime hours above nine (Labor Project for Working Families 2001).
11. For example, the Philadelphia Postal Workers Local agreement states that, "In an effort to avoid excessive mandatory overtime, qualified employees on an Overtime Desired List may volunteer to work overtime in other sections by signing a Supplemental Overtime Desired List. Qualified employees will be permitted to sign a Supplemental Overtime Desired List to work overtime on their non-scheduled day and/or before and after tour in other sections."
12. This non-discrimination provision is an essential part of establishing a legal right for workers to choose more hours of free time over raises, should they prefer this option, and to file suit if denied, as proposed in Schor (1994). Businesses would be prohibited from penalizing workers, in the form of disparate treatment in promotion, retention, or hiring decisions, who express a desire for limiting their work hours.

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