

Testimony to the Maryland Senate Committee on Finance in support of SB 607

Testimony • By [Ross Eisenbrey](#) • March 2, 2017

EPI's Ross Eisenbrey delivered the following testimony before the Maryland Senate Committee on Finance on Thursday, March 2, 2017 at 1:00 p.m.

My name is Ross Eisenbrey. I am the Vice President of the Economic Policy Institute, a think tank that studies the economy and how government policies affect the lives and well-being of America's working families. I am here to support the enactment of SB 607, which would close a loophole in Maryland's wage and hour laws and limit the statutory exemption from overtime pay for professional, administrative, or professional employees to individuals paid at least \$913 per week. This threshold salary level will be adjusted every three years, based on regional salary growth, to correspond to the 40th percentile salary for full-time employees in the Census Bureau's South region. SB 607 will discourage excessive hours of work and ensure that low- or modestly paid salaried employees who do work long hours are fairly compensated for their time

Let me begin my testimony with a little history. The 40-hour work week is not God-given; it's the result of the federal Fair Labor Standards Act of 1938 (FLSA), which requires employers to pay a penalty (time-and-a-half overtime pay) when they make their employees work more than 40 hours in a week. Before the FLSA became law in 1938, factory workers and office clerks often worked 60 or more hours a week, sometimes at miserably low pay. Today, the 40-hour work week is the norm, and most of us expect to have our weekends free and to be able to spend time with our families or friends even during the week.

The idea that there is a "white collar" exemption from the law is misleading. Right from the beginning, the FLSA's overtime protections covered white collar workers, from shipping clerks and typists to bookkeepers and accountants. Congress recognized that white collar workers need time away from work just as much as blue collar workers do.

But the federal law (and the Maryland statute, too) does have an exception for higher-paid, higher-status, higher-responsibility positions that Congress and the Department of Labor thought did not need the law's protection. Bona fide executives, administrative employees, and professionals were made exempt from both the overtime rules and the minimum wage. The salary test for exemption was originally set at about 3 times the minimum wage. Annualized today, 3 times Maryland's \$8.75 minimum wage is \$54,600. When Maryland's minimum wage rises to \$9.25 an hour in July, 3 times the minimum wage will yield a threshold salary of \$57,720 for exemption from overtime.

SB 607 sets the threshold lower, in line with the Obama Labor Department's regulations. The U.S. Department of Labor finished a rulemaking last year to raise the salary threshold for exemption to \$913 per week or \$47,476 on an annualized basis, a level calculated to be the 40th percentile salary for full-time employees in the nation's poorest Census region, the South, which includes Maryland. A higher figure would be warranted for Maryland alone, since the 40th percentile salary in Maryland is \$1,154 per week or \$60,000 on an annualized basis. But the level chosen in SB 607 is a huge improvement over current law.

For 79 years, a salary threshold has been part of the definition of bona fide exempt executive, administrative, and professional employees. But from 1975 until last year, the

U.S. DOL let the value of the exemption threshold fall to a ridiculously low level, \$23,660, less than the poverty level for a family of four and in no way reflective of executive or professional compensation. Maryland law has tracked federal law and is just as obsolete. Unfortunately, after DOL finalized its rule last year to raise the exemption threshold to \$913 per week, a court in Texas blocked DOL from implementing it. No one knows whether DOL's rule will survive on appeal or whether the Trump administration will attempt to repeal it administratively.

That leaves millions of employees, including 80,000 salaried employees in Maryland who are paid more than the current exemption threshold but less than the \$47,476 set by DOL's rule, without the overtime protection they deserve. Without a clear and appropriate threshold, many low level employees such as assistant managers in retail stores, can legally be denied overtime pay by their employers. The DOL rulemaking record is full of stories of employees working 60 or 70 hours a week without any extra compensation for their long hours. The Department of Labor's rule says, in essence, that no one paid less than \$47,476 a year should work more than 40 hours a week without getting paid time-and-a-half for each extra hour.

Setting an appropriate threshold also makes the rights of employees who are already covered and the duties of their employers clearer. Many salaried employees paid above the current threshold are nevertheless entitled to overtime pay because their primary duty is not executive, administrative, or professional. They include scores of occupations, from paralegals and postdoctoral researchers to dental assistants and copy editors. Most bookkeepers are entitled to overtime pay, for example, but many do not know it, and neither do their bosses. The editors of Bloomberg News made clear in an editorial that they had no idea they had to pay their bookkeepers overtime. The National Retail Federation published a report that indicated the industry denies overtime pay to more than a million clerks, secretaries, bookkeepers, and other white collar employees who are absolutely entitled to overtime pay. With a \$47,000 salary threshold, at least the employees paid less could be sure of their rights. Altogether, there are about 220,000 salaried employees in Maryland who would have their right to overtime established or clarified by a higher threshold.

Employers will have several ways to adjust to the new overtime pay requirements:

1. They can raise employee salaries above the threshold if they want to continue working employees more than 40 hours a week without paying for or keeping track of overtime.
2. They can reduce the hours of overworked employees and share their workload with other employees. For example, an assistant manager who now helps stock shelves and clean floors, adding 20 extra hours to her work week without any extra compensation, can assign that work to part-time employees, who will benefit from the extra pay.
3. If the employee's salary is too low to raise above the threshold, the employer can pay overtime for the extra hours.

4. They can manage time more efficiently, avoiding late-in-the-day meetings, for example, and demand that employees complete their weekly tasks within 40 hours.

If Maryland enacts SB 607, it will not be alone in addressing this issue. Other states have for many years set their own salary thresholds, rather than rely on USDOL. California sets its threshold at twice the state minimum wage, which is set to go to \$15 an hour in 2022. The threshold is currently \$43,680, and will rise in steps to \$62,400 by 2022 (by 2023 for small employers). New York sets different thresholds for different parts of the state. The threshold is currently \$42,900 in New York City, \$37,830 upstate, and \$39,000 in the suburbs. The thresholds will rise in annual steps to \$58,500 in NYC by December 31, 2018 and in the suburbs by the end of 2020. The regulations raise the threshold upstate in annual steps to \$48,750 at the end of 2020.

The federal rule was opposed by certain non-profits and by a number of universities and colleges. They didn't argue that their employees didn't need or deserve protection against excessive work hours. They argued that they couldn't afford it. None of them offered to open their books, but it's clear that universities and colleges that pay their presidents and top administrators huge salaries – and their football coaches even more – can afford to treat their low-paid white collar employees fairly and don't need to work them long hours without any additional compensation. In my view, a non-profit that can only survive by denying overtime pay to its employees probably should give way to a better-managed competitor. If the legislature thinks a non-profit's mission is really valuable, it should provide more support for that mission rather than relying on its employees to subsidize it. Disability services providers, for example, struggle because the state refuses to properly fund adequate reimbursement for the services provided.

SB 607 is a good bill that will go part of the way to restoring the core labor standards we had in the years before the United States began experiencing the wage stagnation and growing inequality that plague our economy today. You can help make Maryland great again for working families by enacting SB 607.