



## Economic Policy Institute

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# RAISING THE OVERTIME THRESHOLD WOULD DIRECTLY BENEFIT 13.5 MILLION WORKERS

Here is a breakdown of who they are

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**T**hese tables give a detailed breakdown of EPI's estimate 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. 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.

In other words, workers making at or above the current threshold can be excluded from overtime protection if their jobs are determined to be executive, administrative, or professional (EAP) jobs. 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 under the Fair Labor Standards Act (FLSA), those workers can be excluded from automatic overtime protection if they are classified, or incorrectly classified, as EAP employees.

FLSA overtime rules were established to make sure that all but higher-level workers with control over their time or tasks aren't working overtime but not getting paid for it. Unfortunately, rule changes in 2004 regarding the "duties tests" used to determine who does relatively high-level work made it a lot easier to deprive many lower-level workers of overtime protection by tweaking their job descriptions. Employer willingness to push the limits of the law have resulted in widespread noncompliance and misclassification. Raising the threshold would return overtime protection to the employees who need it by preempting these malleable duties tests for the workers under the new threshold.

These tables describe the demographic, geographic, industry, and occupational composition of the workers who would directly benefit from the proposed higher salary threshold. A new EPI issue brief, *The New Overtime Salary Threshold Would Directly Benefit 13.5 Million Workers: How EPI's Estimates Differ from the Department of Labor's*, explains why our estimate of the overtime rule's impact exceeds that of the Department of Labor (DOL): the DOL wrongly assumes that there has been no deterioration of overtime eligibility since the late 1990s despite court cases, changes in the overtime rule in 2004, and aggressive employer behavior that we believe have severely reduced overtime eligibility. An EPI technical paper, *Estimating the Number of Workers Directly Benefiting from the Proposed Increase in the Overtime Salary Threshold*, provides the detailed computational methodology for estimating the number of workers affected by raising the overtime threshold.

As the tables show, raising the overtime salary threshold would directly benefit a broad range of workers, including:

- 6.9 million women, or 51.3 percent of all directly benefiting workers
- 4.6 million parents and 9.2 million children (under age 18)
- 1.6 million blacks (who make up 8.8 percent of the salaried workforce but 11.5 percent of directly benefiting workers), and 2.1 million Hispanics (who make up 11.6 percent of the salaried workforce but 15.5 percent of directly benefiting workers)
- 3.8 million workers age 25 to 34 (who make up 22.8 percent of the salaried workforce but 28.3 percent of directly benefiting workers)
- 3.4 million workers with a high school degree but not more education (who make up 16.1 percent of the salaried workforce but 25.5 percent of directly benefiting workers)

Raising the threshold would affect workers in all states, with the biggest effects—in terms of states with the greatest share of salaried workers in that state who would directly benefit from raising the threshold—in Arkansas (35.5 percent), Hawaii (33.8 percent), North Carolina (32.1 percent), Oklahoma (31.9 percent), Louisiana (31.7 percent), Florida (31.4 percent), Nevada (31.0 percent), Tennessee (30.2 percent), and Alabama (30.0 percent).

Of the major industries, the new threshold would have the biggest impacts—in terms of the greatest share of salaried workers in the industry who would directly benefit from an increase in the overtime threshold—in leisure and hospitality (38.8 percent); other services (36.4 percent); construction (35.1 percent); agriculture, forestry, fishing, and hunting (34.9 percent); and public administration (34.7 percent).

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);

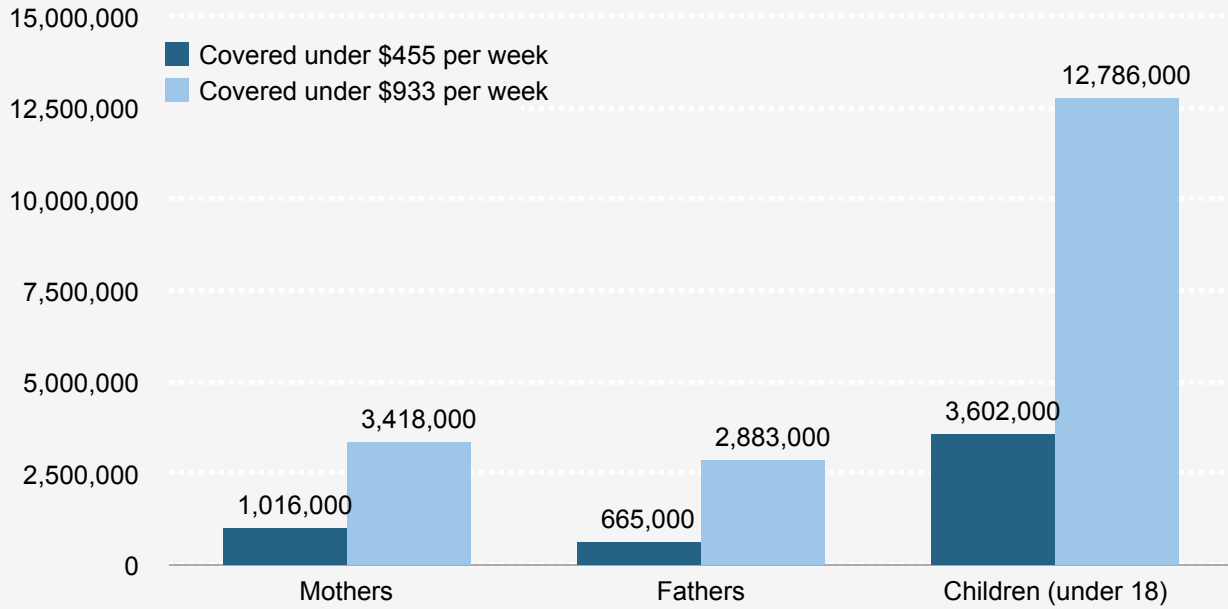
construction and extraction occupations (43.3 percent); installation, maintenance, and repair occupations (41.4 percent); and production occupations (38.6 percent).

—*Text of the NPRM can be found in U.S. Department of Labor, Wage and Hour Division, 29 CFR Part 541, “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees.”*

—*The authors would like to thank EPI research assistant Will Kimball for preparing these tables and figures.*

FIGURE A

## Number of fathers, mothers, and their children covered under current and proposed overtime salary thresholds, 2014



**Note:** The sample reflects salaried (nonhourly) workers who are subject to the Fair Labor Standards Act (FLSA). This excludes certain groups of workers such as the self-employed, most federal workers, religious workers, many agricultural workers, and many transportation workers.

**Source:** Economic Policy Institute analysis of Current Population Survey Outgoing Rotation Group microdata

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TABLE 1

Salaried workers directly benefiting from the proposed increase in the overtime salary threshold, by demographic, 2014

Group	Total salaried workers*	Directly benefiting salaried workers**	Share of group's salaried workers that are directly benefiting	Group's share of directly benefiting workers	Group's share of total salaried workforce
	(A)	(B)	(C)=(B/A)	(D)=(B <sub>x</sub> /B <sub>1</sub> )	(E)=(A <sub>x</sub> /A <sub>1</sub> )
<i>All (1)</i>	52,521,000	13,466,000	25.6%	100.0%	100.0%
<b>Gender</b>					
Male	27,592,000	6,558,000	23.8%	48.7%	52.5%
Female	24,930,000	6,908,000	27.7%	51.3%	47.5%
<b>Race/ethnicity***</b>					
White	37,097,000	8,740,000	23.6%	64.9%	70.6%
Black	4,621,000	1,555,000	33.6%	11.5%	8.8%
Hispanic	6,076,000	2,091,000	34.4%	15.5%	11.6%
Other	4,728,000	1,079,000	22.8%	8.0%	9.0%
<b>Age group</b>					
16-24	2,745,000	941,000	34.3%	7.0%	5.2%
25-34	11,962,000	3,805,000	31.8%	28.3%	22.8%
35-44	13,027,000	3,063,000	23.5%	22.7%	24.8%
45-54	12,883,000	3,052,000	23.7%	22.7%	24.5%
55-64	9,376,000	2,131,000	22.7%	15.8%	17.9%
65+	2,528,000	474,000	18.8%	3.5%	4.8%
<b>Educational attainment</b>					
Less than high school	1,862,000	719,000	38.6%	5.3%	3.5%
High school	8,467,000	3,440,000	40.6%	25.5%	16.1%
Some college	11,561,000	4,180,000	36.2%	31.0%	22.0%
College degree	18,153,000	3,930,000	21.6%	29.2%	34.6%

TABLE 1 (CONTINUED)

Group	Total salaried workers*	Directly benefiting salaried workers**	Share of group's salaried workers that are directly benefiting	Group's share of directly benefiting workers	Group's share of total salaried workforce
	(A)	(B)	(C)=(B/A)	(D)=(B <sub>x</sub> /B <sub>1</sub> )	(E)=(A <sub>x</sub> /A <sub>1</sub> )
Advanced degree	12,478,000	1,196,000	9.6%	8.9%	23.8%

\* The sample reflects salaried (nonhourly) workers who are subject to the Fair Labor Standards Act (FLSA). This excludes certain groups of workers such as the self-employed, most federal workers, religious workers, many agricultural workers, and many transportation workers.

\*\*Directly benefiting salaried workers are those who would newly be guaranteed overtime protection by virtue of their salary alone under the proposed higher overtime threshold, i.e., they make at least \$455 a week (the current threshold) but less than \$933 a week (the new threshold in 2014 dollars). This includes workers who are newly eligible (they are currently excluded from automatic overtime protection because they are classified, in some cases incorrectly, as executive, administrative, and professional or "EAP" employees); and workers whose rights are strengthened (they are currently at risk of being classified as EAP employees).

\*\*\* Race/ethnicity categories are mutually exclusive (i.e., white non-Hispanic, black non-Hispanic, and Hispanic any race).

**Note:** Subtotals may not add up to totals due to rounding.

**Source:** EPI analysis of the U.S. Department of Labor's Notice of Proposed Rulemaking (2015) and Current Population Survey Merged Outgoing Rotation Group microdata (CPS MORG)

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TABLE 2

### Number of mothers, fathers, and children newly covered by updated overtime salary threshold, by demographic, 2014

	Covered under \$455	Covered under \$933	Newly covered under \$933
Mothers	1,016,000	3,418,000	2,402,000
Fathers	665,000	2,883,000	2,218,000
Children (under 18)	3,602,000	12,786,000	9,184,000

**Note:** The sample reflects salaried (nonhourly) workers who are subject to the Fair Labor Standards Act (FLSA). This excludes certain groups of workers such as the self-employed, most federal workers, religious workers, many agricultural workers, and many transportation workers.

**Source:** EPI analysis of the U.S. Department of Labor's Notice of Proposed Rulemaking (2015) and Current Population Survey Merged Outgoing Rotation Group microdata (CPS MORG)

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TABLE 3

Salaried workers directly benefiting from the proposed increase in the overtime salary threshold, by state, 2014

State	Total salaried workers*	Directly benefiting salaried workers**	Share of state's salaried workers that are directly benefiting	State's share of directly benefiting workers	State's share of total salaried workforce
	(A)	(B)	(C)=(B/A)	(D)=(B <sub>x</sub> /B <sub>1</sub> )	(E)=(A <sub>x</sub> /A <sub>1</sub> )
<i>United States(1)</i>	52,521,000	13,466,000	25.6%	100.0%	100.0%
<i>Alabama</i>	687,000	206,000	30.0%	1.5%	1.3%
<i>Alaska</i>	94,000	18,000	19.6%	0.1%	0.2%
<i>Arizona</i>	985,000	230,000	23.3%	1.7%	1.9%
<i>Arkansas</i>	365,000	129,000	35.5%	1.0%	0.7%
<i>California</i>	5,948,000	1,231,000	20.7%	9.1%	11.3%
<i>Colorado</i>	1,072,000	256,000	23.9%	1.9%	2.0%
<i>Connecticut</i>	678,000	121,000	17.8%	0.9%	1.3%
<i>Delaware</i>	159,000	45,000	28.2%	0.3%	0.3%
<i>District of Columbia</i>	166,000	33,000	19.9%	0.2%	0.3%
<i>Florida</i>	3,616,000	1,136,000	31.4%	8.4%	6.9%
<i>Georgia</i>	1,699,000	470,000	27.7%	3.5%	3.2%
<i>Hawaii</i>	216,000	73,000	33.8%	0.5%	0.4%
<i>Idaho</i>	214,000	63,000	29.5%	0.5%	0.4%
<i>Illinois</i>	2,322,000	590,000	25.4%	4.4%	4.4%
<i>Indiana</i>	936,000	266,000	28.5%	2.0%	1.8%
<i>Iowa</i>	447,000	110,000	24.6%	0.8%	0.9%
<i>Kansas</i>	471,000	112,000	23.9%	0.8%	0.9%
<i>Kentucky</i>	563,000	164,000	29.0%	1.2%	1.1%
<i>Louisiana</i>	710,000	225,000	31.7%	1.7%	1.4%
<i>Maine</i>	182,000	45,000	24.7%	0.3%	0.3%
<i>Maryland</i>	1,140,000	249,000	21.9%	1.9%	2.2%
<i>Massachusetts</i>	1,399,000	264,000	18.9%	2.0%	2.7%
<i>Michigan</i>	1,376,000	345,000	25.0%	2.6%	2.6%
<i>Minnesota</i>	1,009,000	230,000	22.7%	1.7%	1.9%
<i>Mississippi</i>	362,000	99,000	27.3%	0.7%	0.7%

TABLE 3 (CONTINUED)

State	Total salaried workers*	Directly benefiting salaried workers**	Share of state's salaried workers that are directly benefiting	State's share of directly benefiting workers	State's share of total salaried workforce
	(A)	(B)	(C)=(B/A)	(D)=(B <sub>x</sub> /B <sub>1</sub> )	(E)=(A <sub>x</sub> /A <sub>1</sub> )
<i>Missouri</i>	954,000	263,000	27.6%	2.0%	1.8%
<i>Montana</i>	103,000	26,000	25.4%	0.2%	0.2%
<i>Nebraska</i>	321,000	88,000	27.4%	0.7%	0.6%
<i>Nevada</i>	398,000	123,000	31.0%	0.9%	0.8%
<i>New Hampshire</i>	241,000	54,000	22.2%	0.4%	0.5%
<i>New Jersey</i>	1,899,000	433,000	22.8%	3.2%	3.6%
<i>New Mexico</i>	247,000	61,000	24.6%	0.5%	0.5%
<i>New York</i>	4,132,000	1,066,000	25.8%	7.9%	7.9%
<i>North Carolina</i>	1,640,000	527,000	32.1%	3.9%	3.1%
<i>North Dakota</i>	118,000	34,000	28.7%	0.3%	0.2%
<i>Ohio</i>	1,604,000	411,000	25.6%	3.1%	3.1%
<i>Oklahoma</i>	526,000	168,000	31.9%	1.2%	1.0%
<i>Oregon</i>	558,000	131,000	23.5%	1.0%	1.1%
<i>Pennsylvania</i>	2,004,000	493,000	24.6%	3.7%	3.8%
<i>Rhode Island</i>	175,000	36,000	20.6%	0.3%	0.3%
<i>South Carolina</i>	734,000	211,000	28.7%	1.6%	1.4%
<i>South Dakota</i>	108,000	30,000	27.4%	0.2%	0.2%
<i>Tennessee</i>	840,000	254,000	30.2%	1.9%	1.6%
<i>Texas</i>	4,656,000	1,323,000	28.4%	9.8%	8.9%
<i>Utah</i>	499,000	130,000	26.0%	1.0%	1.0%
<i>Vermont</i>	104,000	25,000	24.1%	0.2%	0.2%
<i>Virginia</i>	1,553,000	357,000	23.0%	2.7%	3.0%
<i>Washington</i>	1,128,000	223,000	19.8%	1.7%	2.1%
<i>West Virginia</i>	230,000	68,000	29.7%	0.5%	0.4%
<i>Wisconsin</i>	850,000	198,000	23.3%	1.5%	1.6%
<i>Wyoming</i>	80,000	20,000	24.5%	0.1%	0.2%



**TABLE 3 (CONTINUED)**

\* The sample reflects salaried (nonhourly) workers who are subject to the Fair Labor Standards Act (FLSA). This excludes certain groups of workers such as the self-employed, most federal workers, religious workers, many agricultural workers, and many transportation workers.

\*\* Directly benefiting salaried workers are those who would newly be guaranteed overtime protection by virtue of their salary alone under the proposed higher overtime threshold, i.e., they make at least \$455 a week (the current threshold) but less than \$933 a week (the new threshold in 2014 dollars). This includes workers who are newly eligible (they are currently excluded from automatic overtime protection because they are classified, in some cases incorrectly, as executive, administrative, and professional or "EAP" employees); and workers whose rights are strengthened (they are currently at risk of being classified as EAP employees).

**Note:** Subtotals may not add up to total due to rounding.

**Source:** EPI analysis of the U.S. Department of Labor's Notice of Proposed Rulemaking (2015) and Current Population Survey Merged Outgoing Rotation Group microdata (CPS MORG)

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TABLE 4

**Salaried workers directly benefiting from the proposed increase in the overtime salary threshold,  
by major industry, 2014**

	<b>Total salaried workers*</b>	<b>Directly benefiting salaried workers**</b>	<b>Share of industry's salaried workers that are directly benefiting</b>	<b>Industry's share of directly benefiting workers</b>	<b>Industry's share of total salaried workforce</b>
	<b>(A)</b>	<b>(B)</b>	<b>(C)=(B/A)</b>	<b>(D)=(B<sub>x</sub>/B<sub>1</sub>)</b>	<b>(E)=(A<sub>x</sub>/A<sub>1</sub>)</b>
<i>All (1)</i>	52,521,000	13,466,000	25.6%	100.0%	100.0%
<i>Agriculture, forestry, fishing, and hunting</i>	335,000	117,000	34.9%	0.9%	0.6%
<i>Mining</i>	438,000	99,000	22.6%	0.7%	0.8%
<i>Construction</i>	2,272,000	797,000	35.1%	5.9%	4.3%
<i>Manufacturing</i>	5,240,000	1,230,000	23.5%	9.1%	10.0%
<i>Wholesale and retail trade</i>	5,349,000	1,808,000	33.8%	13.4%	10.2%
<i>Transportation and utilities</i>	2,006,000	637,000	31.8%	4.7%	3.8%
<i>Information</i>	1,557,000	366,000	23.5%	2.7%	3.0%
<i>Financial activities</i>	5,225,000	1,451,000	27.8%	10.8%	9.9%
<i>Professional and business services</i>	7,210,000	1,716,000	23.8%	12.7%	13.7%
<i>Educational and health services</i>	15,828,000	2,655,000	16.8%	19.7%	30.1%
<i>Leisure and hospitality</i>	2,495,000	968,000	38.8%	7.2%	4.8%
<i>Other services</i>	2,138,000	778,000	36.4%	5.8%	4.1%
<i>Public administration</i>	2,427,000	843,000	34.7%	6.3%	4.6%

\* The sample reflects salaried (nonhourly) workers who are subject to the Fair Labor Standards Act (FLSA). This excludes certain groups of workers such as the self-employed, most federal workers, religious workers, many agricultural workers, and many transportation workers.

\*\* Directly benefiting salaried workers are those who would newly be guaranteed overtime protection by virtue of their salary alone under the proposed higher overtime threshold, i.e., they make at least \$455 a week (the current threshold) but less than \$933 a week (the new threshold in 2014 dollars). This includes workers who are newly eligible (they are currently excluded from automatic overtime protection because they are classified, in some cases incorrectly, as executive, administrative, and professional or "EAP" employees); and workers whose rights are strengthened (they are currently at risk of being classified as EAP employees).

**Note:** Subtotals may not add up to total due to rounding.

TABLE 4 (CONTINUED)

**Source:** EPI analysis of the U.S. Department of Labor's Notice of Proposed Rulemaking (2015) and Current Population Survey Merged Outgoing Rotation Group microdata (CPS MORG)

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TABLE 5

**Salaried workers directly benefiting from the proposed increase in the overtime salary threshold,  
by major occupation, 2014**

	<b>Total salaried workers*</b>	<b>Directly benefiting salaried workers**</b>	<b>Share of industry's salaried workers that are directly benefiting</b>	<b>Industry's share of directly benefiting workers</b>	<b>Industry's share of total salaried workforce</b>
	<b>(A)</b>	<b>(B)</b>	<b>(C)=(B/A)</b>	<b>(D)=(B<sub>x</sub>/B<sub>1</sub>)</b>	<b>(E)=(A<sub>x</sub>/A<sub>1</sub>)</b>
<i>All (1)</i>	52,521,000	13,466,000	25.6%	100.0%	100.0%
<i>Management, business, and financial occupations</i>	13,559,000	2,777,000	20.5%	20.6%	25.8%
<i>Professional and related occupations</i>	19,160,000	2,703,000	14.1%	20.1%	36.5%
<i>Services occupations</i>	4,323,000	1,639,000	37.9%	12.2%	8.2%
<i>Sales and related occupations</i>	5,207,000	1,709,000	32.8%	12.7%	9.9%
<i>Office and administrative support occupations</i>	4,966,000	2,426,000	48.8%	18.0%	9.5%
<i>Farming, fishing, and forestry occupations</i>	245,000	84,000	34.2%	0.6%	0.5%
<i>Construction and extraction occupations</i>	1,373,000	594,000	43.3%	4.4%	2.6%
<i>Installation, maintenance, and repair occupations</i>	1,086,000	449,000	41.4%	3.3%	2.1%
<i>Production occupations</i>	1,198,000	462,000	38.6%	3.4%	2.3%
<i>Transportation and material moving occupations</i>	1,404,000	622,000	44.3%	4.6%	2.7%

\* The sample reflects salaried (nonhourly) workers who are subject to the Fair Labor Standards Act (FLSA). This excludes certain groups of workers such as the self-employed, most federal workers, religious workers, many agricultural workers, and many transportation workers.

\*\* Directly benefiting salaried workers are those who would newly be guaranteed overtime protection by virtue of their salary alone under the proposed higher overtime threshold, i.e., they make at least \$455 a week (the current threshold) but less than \$933 a week (the new threshold in 2014 dollars). This includes workers who are newly eligible (they are currently excluded from automatic overtime protection because they are classified, in some cases incorrectly, as executive, administrative, and professional or "EAP" employees); and workers whose rights are strengthened (they are currently at risk of being classified as EAP employees).

**TABLE 5 (CONTINUED)**

**Note:** Subtotals may not add up to total due to rounding.

**Source:** EPI analysis of the U.S. Department of Labor's Notice of Proposed Rulemaking (2015) and Current Population Survey Merged Outgoing Rotation Group microdata (CPS MORG)

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