

Holding the Line

# Overtime pay

State solutions to the U.S. worker rights crisis

**Report** • By **Dave Kamper** and **Jennifer Sherer** • July 23, 2025

# What does current federal law say about overtime pay?

The **overtime provisions** of the **Fair Labor Standards Act (FLSA)** provide protections to most hourly workers and many low-salaried workers, guaranteeing time-and-a-half pay for hours worked in excess of 40 a week. FLSA overtime rules apply to all private businesses with annual revenue of at least \$500,000, as well as hospitals, care centers, schools, and public agencies. Because federal law otherwise sets no limits on the hours employers can require people to work (and no requirements for rest breaks or days off), overtime pay is an especially important policy to disincentivize overwork and encourage employers to share work across more employees, bolstering hiring.

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# What are the threats to federal overtime protections?

Current threats to overtime pay include:

- **Excluding workers from overtime by lowering the salary threshold for automatic eligibility:** The first Trump administration **took action** to lower the salary threshold at which workers become automatically eligible for overtime pay when they work more than 40 hours in a week, denying eligibility to millions of low-salaried workers. It is widely anticipated that the second Trump administration will likewise block a new proposed rule to raise the salary threshold, again denying coverage to millions of workers who earn between \$35,568 and \$58,656.
- **Stripping overtime coverage from direct care workers:** The Trump administration has **proposed rule changes** that would reverse a 2013 regulation expanding overtime coverage to include “direct care” workers, such as home health aides and certified

nursing assistants, employed by agencies.

- **Allowing employers to deny overtime pay:** Proposals laid out in [Project 2025](#) recommend altering the FLSA to allow employers broad new discretion to deny workers overtime pay by altering calculations of what counts as a workweek, substituting time off in place of overtime pay, and/or deeming remote employees ineligible for overtime pay.
- **Increasing likelihood of underpayment or nonpayment of overtime:** Failure to pay overtime is one of the most common forms of wage theft, and diminished U.S. Department of Labor (DOL) capacity to enforce wage and hour laws will exacerbate this problem.

## How can states maintain and strengthen overtime protections?

States have legal authority to establish their own overtime standards so long as they are at least as protective as those in the FLSA; federal overtime laws set a floor above which states can adopt and enforce their own stronger standards. Given the very real risk that aspects of FLSA overtime protections could be eliminated (or will go unenforced), it is important for states to at least lock in existing FLSA overtime protections. Additionally, states should seek to go beyond the current floor, as some FLSA provisions—such as those exempting certain categories of workers from overtime—are long overdue for an update.

### Step I: Update state statutes to lock in current federal protections

Because for decades most states have deferred to the FLSA's overtime standard and relied at least in part on federal enforcement of overtime laws, existing overtime language in state statutes is often outdated, incomplete, or inadequate. For example:

- [Minnesota state law](#) only requires overtime after 48 hours of work in a week; in [Kansas](#) it is 46. These laws are of no practical import right now, because the FLSA overrules them, but in the absence of FLSA protections, workers in these states would have to work more hours to qualify for overtime.
- In several states—including [Iowa](#), [Oklahoma](#), [Tennessee](#), and others—there is no state statutory right to overtime. At present, workers with unpaid overtime claims in these states can only go to the federal government for redress, meaning that if DOL lacks adequate enforcement capacity, workers' recourse may become limited. Moreover, while the FLSA currently covers workers in all states, if FLSA overtime protections disappear, workers would have no right to overtime pay at all in these and other states with no overtime language in state code.
- Some states, like [Hawaii](#) and [Michigan](#), do require overtime pay after 40 hours in a

workweek but currently exclude employment that is subject to the FLSA from state coverage. States with such exclusions should remove them to ensure consistent state coverage and enforcement jurisdiction, rather than expecting some workers to rely solely on tenuous federal overtime standards and enforcement.

Many states, such as [New Jersey](#), [New Mexico](#), and [Pennsylvania](#), already mirror the basic overtime provisions of the FLSA, guaranteeing overtime pay after 40 hours in a workweek. Lawmakers in other states should act quickly to ensure their state codes at a minimum follow suit. There is no harm in codifying overtime protections in state law even if federal standards don't change, whereas delaying updates to state law puts workers at risk of real harm if federal protections are diminished or left unenforced.

State overtime rules, if they exist, are typically part of state labor and employment or wage and hour statutes. Policymakers and advocates should review their state's laws to assess whether overtime language codifies at least the same level of protection currently provided under the FLSA and to ensure that the state has the power to enforce its own overtime laws without relying on the federal government.

### Getting started: Key questions for auditing state overtime laws

- Is there overtime language in state code?
- What employers are covered?
- Which workers are covered? Are some occupations excluded from coverage?
- If addressed in state code: At what salary threshold are executive, administrative, and professional workers excluded from overtime?
- Does state law require overtime after 40 hours in a workweek? And if so, how is the workweek defined? Is overtime required in any other circumstances under state law?

## Step II: Close critical gaps in overtime coverage

While the FLSA sets an important floor for overtime pay, it is an 80-year-old statute with notable gaps in coverage that state policymakers should try to close. Priority steps states can take to update overtime coverage include:

1. **Eliminate occupational exemptions:** Agricultural workers are not covered by the FLSA, a [racist holdover](#) from when the act was initially passed in 1938. And while some domestic service workers such as nannies and house cleaners were covered in 1974, certain home care workers providing care for seniors and persons with disabilities (those that are not employed by agencies) remain excluded. A 2013 Obama-era rule that covers those care workers employed by agencies is [at risk](#) of being rolled back by the Trump DOL. Other exceptions apply to [smaller categories](#) of

workers. States have it in their power to eliminate these exemptions. For example, several states—including California, Washington, and Colorado—cover agricultural workers under [state minimum wage](#) and [overtime laws](#).

2. **Raise and automatically update the salary threshold for exemption of workers in executive, administrative, and professional (EAP) jobs:** Currently, workers in EAP roles are exempt from FLSA overtime requirements if they earn more than \$684 per week. The Biden administration issued a [rule](#) to update that threshold to \$844 per week in 2024, \$1,128 per week in 2025, and to automatically adjust for inflation thereafter. This rule was blocked by the courts and there is every expectation that the Trump administration will not defend the new rule. States can move to lock in the new threshold and assure regular future updates. [Six](#) states—Alaska, California, Colorado, Maine, New York, and Washington—already have an EAP salary threshold above the federal level. For example, Washington will [by 2028](#) remove the exemption for any employee making the equivalent of 2.5 times the state minimum wage or less. Because the state minimum wage is indexed to inflation, the state’s salary threshold will continue to rise with the state minimum wage.

## Step III: Modernize overtime policies to fit today’s economy, improve safety and productivity, and promote work-life balance

In addition to codifying FLSA overtime rules and closing coverage gaps, there are many steps states can take to serve priority policy goals like preventing overwork, stabilizing work schedules, and increasing work-life balance. Indeed, overtime pay was incorporated into the 1938 FLSA as a compromise, following decades of international worker struggles for the eight-hour day and during a period of intense debate over whether public policy should place some limits on the often near-absolute control many employers exerted over workers’ time. These are questions worth revisiting in the context of state policymaking today, when overtime pay alone has failed to curb excessive use of forced overtime or scheduling practices that in some industries include dangerously long shifts or months of consecutive shifts with no days off, both of which are closely correlated with declining [productivity](#) and adverse [health and safety](#) impacts.

1. **Add overtime pay to discourage excessively long shifts, encourage periodic days off, and promote fair scheduling.** Many state laws include useful [examples](#) of overtime policies targeted at discouraging excessive consecutive hours of work or days of work without time off:
  - California mandates that workers receive double time (not just time-and-a-half) after 12 hours of work in a day.
  - In Alaska, overtime pay applies to all eligible employees working more than eight hours in a day. Other states have more limited expansions; for example, Oregon requires manufacturing employers to begin paying overtime after 10 straight hours.

- A number of states, including Alaska, Florida, Nevada, and Oregon, make some employees eligible for overtime pay after a certain shift length, regardless of the number of hours worked in the week.
  - **Kentucky** requires overtime pay for all work done on a seventh straight day of work. California requires overtime pay for all work done beyond eight hours on a seventh straight day of work.
  - Fair scheduling laws, which **Oregon** and a number of cities have adopted, similarly require employers to provide advance notice of schedules and extra pay for schedule changes. Some laws **also crack down on “clopenings”**—the practice of requiring an employee to work late in the evening and start again early the next morning—by requiring extra pay for shifts within 12 hours of each other.
2. **Guarantee rights to refuse excessive forced overtime:** States could also ensure that hourly workers have the right to decline excessive overtime hours without fear of retaliation. For example, **Maine** proposed legislation to protect overworked paper industry workers—who were sometimes forced to work 24-hour shifts—guaranteeing a right to refuse more than two hours of overtime in a day, and requiring seven days advance notice of schedules.
  3. **Expand overtime laws to incentivize transitions to shorter work weeks:** Well before passage of the FLSA and up to the present day, workers and advocates have proposed that productivity gains should result in shorter work hours (with no loss of pay). Numerous versions of proposals to move to a four-day or 32-hour standard work week have been introduced in several states, including pilot and study bills. State expansions of overtime pay to hours worked beyond 32 in a week (or other numbers less than 40) could help incentivize shifts toward shorter work weeks.
  4. **Look to tested overtime language in collective bargaining agreements for policy models:** Collective bargaining agreements negotiated between unions and employers often contain more expansive overtime and scheduling provisions that can serve as models for more ambitious policy ideas. For example, language in such agreements may list additional circumstances when overtime or other forms of premium pay are required for work on weekends, holidays, on-call hours, or following scheduling changes. These agreements may also set out processes for workers to accept or decline additional work hours or new shift assignments, timelines for employers to provide notice of work schedules, fair procedures for assigning overtime, and more.