

# Bush attack on overtime pay passes House

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On July 10 the House of Representatives voted 213-210 for a measure, proposed by the Bush administration, that represents an historic attack on the 40-hour week and gives employers the power to extract overtime without compensation. The measure would overhaul rules for overtime pay adversely affecting millions of working people.

The House passed regulatory changes first proposed March 31 by the Department of Labor (DOL) that could make millions of white-collar employees ineligible for overtime pay. By revamping standards for the classification of salaried workers, employers will be able to transfer millions of hourly workers to salaried status, thereby exempting them from being legally eligible for overtime pay.

If the Bush plan becomes law, it would initiate the most far-reaching restructuring of the Fair Labor Standards Act (FLSA) since its adoption in 1938. FLSA currently guarantees an estimated 80 percent of the workforce or 120 million workers (DOL 1999 figures) the right to overtime pay, or pay at time and a half, for every hour worked beyond the normal workweek. Overtime pay is currently a major disincentive for employers to forcibly prolong the workweek.

Over 8 million white-collar workers making between \$22,101 and \$65,000 could become ineligible to receive overtime pay when they work more than 40 hours a week, according to a briefing paper released by the Economic Policy Institute (EPI), a liberal think tank with links to the trade unions.

“The administration’s proposal would create, in effect, a massive subsidy to employers paid for by their employees,” said EPI study author Ross Eisenbrey in an institute press release. “As more employers take advantage of the new rules, it will create a rush-to-the-bottom pressure that will eventually force even reluctant employers to participate in order to keep their labor costs competitive.” The report criticizes DOL estimates that minimize the effects of the proposed regulation which could be in place by the fall.

Although the DOL’s new proposal would raise the salary level under which all employees are protected from \$155 (\$170 for professionals) to \$425 per week, it will over time protect fewer and fewer workers because it is not indexed for inflation.

Drastic changes will also be made to three “salary basis” tests that determine whether white-collar workers are exempt, and therefore ineligible for overtime pay or nonexempt, thus eligible for overtime pay.

According to the EPI media release, the revised regulation “would dramatically increase the number of workers whose jobs are classified as professional, administrative, or executive and therefore ineligible for overtime pay. This blurring of the lines between managerial and hourly staff, coupled with a downgrading of the educational standards required to exempt employees from overtime pay, will give employers a powerful incentive to switch millions of workers from hourly to salaried status in order to reap the benefit of a newly created pool of unpaid overtime hours.”

The DOL’s proposed exemptions will also deny overtime pay to white-collar employees who earn more than \$65,000 a year, even if they do not qualify for the definition of executive, administrative or professional employee. The EPI estimates that this will exempt 1.3 million workers who are currently entitled to overtime pay.

The EPI studied 78 out of 257 white-collar occupational groups and determined that 2.5 million salaried employees and 5.5 million hourly workers will lose their right to overtime pay under the proposed regulation. “The total effect of the proposed rule on all occupations is undoubtedly much greater. Employers will not have to convert hourly workers to salaried, but the financial incentive—the option to require that employees work overtime without having to pay for it—combined with competitive pressure will ensure that most will do so,” the study opines.

The EPI asserts that the Bush DOL recognizes that this conversion from hourly to salaried will take place, but that the latter grossly underestimates how significant the impact will be.

In the preamble to the rule, the Department of Labor confirmed that it expects employers to convert hourly paid workers into salaried employees, thereby taking advantage of the overtime pay exemption: “Most employers affected by the proposed rule would be expected to choose the most cost-effective compensation adjustment method that maintains the stability of their workforce, pay structure and output levels.”

In addition to changes in the salary-level test, employers will be encouraged to convert workers from hourly to salaried status because of proposed declassifications:

\* The exemption for professional employees has been dramatically expanded to include occupations that only require a high school education and also stipulates that work experience or military training can substitute for academic

training. It also involves the abandonment of the longstanding requirement of the “exercise of discretion and independent judgment—the hallmark of the traditional professions (e.g., medicine, law, theology, architecture),” according to the EPI.

- \* The “executive” exemption is expanded to deny overtime eligibility to low-level supervisors, who essentially do the same work as the workers they supervise.

- \* The “administrative” exemption is expanded by removing the limits on the amount of time an employee may spend on non-administrative work and the new test—that an employee hold a “position of responsibility”—is vague enough to cover a multitude of job functions that are entitled to overtime pay under current law.

- \* The “job responsibility” test is diluted to exempt employees if only one of their several duties qualifies for exemption. “Employees who spend more than 50 percent of work time performing exempt tasks will be considered to have a primary duty of performing exempt work, but if less than 50 percent of their time is spent on exempt tasks, their primary duty can still be classified as exempt work,” explains the EPI report.

The EPI notes, “Our estimates [of the number of workers to be affected] are conservative. Depending on how broadly the Department of Labor applies these modified exemptions, the number of employees exempted could rise much higher.... The millions of employees who will see their pay reduced will, in all likelihood, see their hours of work increase at the same time. Once employers are not required to pay for overtime work, they will schedule more of it,” states the conclusion of the EPI report. The institute’s press release anticipates that not only will workers “**not** receive time-and-a-half after 40 hours of work, they won’t even receive any extra straight time pay for their overtime hours.”

In addition to the Bush administration’s attacks on overtime, bills H.R.1119 in the House and S.317 in the Senate would allow employers to offer compensated time off in place of overtime pay. The legislation also provides no real protection against employers requiring workers to take time off instead of receiving payment.

“Under H.R. 1119, employees who work overtime hours in a given week might not receive any pay or time off for that work until more than a year later, at the employer’s discretion. Without receiving any interest or security, the employees, in essence, lend their overtime pay to the employer in the hopes of getting it back some time later as paid time off. Employees overtime compensation is put at risk of loss in the event of business failure and closure, bankruptcy, or fraud. Furthermore, employees get no guarantee of time off when they want or need it.... [H.R.1119] is nothing more than a scheme to allow employers to avoid paying for overtime, a scheme that will result in longer hours, lower incomes, and less predictable workweeks for American workers,” according to another EPI report, “The Naked Truth About Comp Time.”

According to the AFL-CIO web site, the bill would also allow

employers under certain circumstances to pay overtime only after an employee has worked 80 hours over a two-week period.

The Bush administration is attempting to codify processes which have already long been under way in the workplace. According to the American Bar Association, class-action lawsuits seeking overtime pay in 2001 surpassed for the first time collective-action job discrimination suits against employers.

Recent figures compiled from agencies such as the United Nation’s International Labor Organization (ILO) reveal how the ever lengthening workweek has catapulted American workers into first place in the industrialized world for number of hours worked. The ILO points out that the average American worked 1,978 hours in 2002, up from 1,942 in 1990, an increase of almost a week of work. The average Australian, Canadian, Japanese or Mexican worker works 100 hours less than his or her US counterpart, the average German 500 hours less—or 12-and-a-half weeks.

It is this super-exploitation of workers that has permitted US companies to slash a massive number of jobs, as surviving employees are forced to work longer and longer hours.

After describing Bush’s proposed rules as “outrageous” and acknowledging that overtime pay makes up about one-fourth of the average weekly earnings of workers who receive it—an average of \$161 a week, according to the Communications Workers of America web site—the AFL-CIO appeals to both the Democrats and Republicans to block legislation that “has alarmed lawmakers from both sides of the aisle.” The AFL-CIO bureaucrats feebly urge their members to “send an e-mail to President Bush telling him to stop attacking overtime pay.” But it is the AFL-CIO that bears the chief responsibility, over decades of betrayals, for the increasing erosion in the rights and gains of the working class, including the achievement of the eight-hour day.



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