

New Bush administration rules slash overtime pay for millions of workers

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The Department of Labor's "FairPay" rules came into effect August 23, taking away the right to overtime compensation for millions of workers. Congress allowed the rule changes to take effect in a vote July 10 in the House of Representatives, which defeated a measure to stop the new rules, by a margin of 213 to 210.

The rules will impact almost every workplace, dramatically reducing the scope of the Fair Labor Standards Act of 1938, one of the few social reforms remaining from the New Deal period. The Bush administration action highlights the impunity with which big business feels it can treat American workers, as long as the working class remains subordinated to the trade union bureaucracy and the Democratic Party.

The new rules make overtime pay mandatory for hours worked beyond 40 a week for any worker earning less than \$23,660 a year, or \$455 a week, regardless of job duties. This old cap of \$8,060 a year, or \$155 a week, set in the 1970s, had become ludicrously low because it was not indexed to inflation. Anyone working 40 hours a week at the minimum wage makes over \$200 a week and is thus not covered by the old guarantee. The new ceiling is likely to be equally meaningless in a few years, since it is also not indexed to inflation.

Aside from these lowest paid workers, barely above the official poverty line, the only workers guaranteed overtime pay under the new rules are those classified as law enforcement, firefighters, paramedics and blue-collar factory workers. These provisions were added in response to widespread concern that the new rules would strip these workers of their longstanding entitlement to overtime pay. They don't represent any expansion of eligibility.

The new rules bar overtime pay for the highest-paid sections of the working class and middle class, those making over \$100,000 a year.

The vast majority of workers fall in between these two benchmarks, making more than \$23,660 and less than \$100,000 a year. Whether they are entitled overtime pay after 40 hours a week depends on how their work is

categorized—traditionally foremen and other working supervisors have not been eligible for overtime pay. The Bush administration has changed the descriptive categories used to classify millions of jobs so as to exempt previously eligible workers from receiving overtime pay.

This has been accomplished by declaring five broad categories—executive, administrative, professional, computer, and outside sales—ineligible for overtime protection. Anyone paid on a salaried basis and falling into any of these categories, as vaguely defined by the Labor Department, will lose the legal right to their overtime pay. Their employers will have full discretion to eliminate time-and-a-half or other premium pay for work after 40 hours a week.

The Labor department defines the five categories on their web site. The administrative category, for instance, is defined as follows:

- * The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;

- * The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and

- * The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

These type of vague guidelines open the way for employers to take billions in wage payments and turn them into profits, simply by paying their workers on a salaried rather than hourly basis. The resulting slash in take-home pay will devastate families all over the United States.

A panel of three high-ranking officials from the Department of Labor from the Reagan, Bush Sr., and Clinton administrations released a report highly critical of the new rules. According to the report, other than the changed threshold for automatic eligibility, every provision will serve to deny more workers of overtime protection. "More classes of workers, and a greater proportion of the

workforce overall, will be exempt than we believe the Congress could have originally intended,” they wrote.

The Economic Policy Institute estimates that as many as 6 million workers could lose their right to overtime pay. EPI listed the following job-types that will likely see the greatest cuts: 1.4 million low-level salaried supervisors, 130,000 chefs and sous-chefs, 160,000 mortgage loan officers, and 900,000 workers with graduate or college degrees, as well as 90,000 computer employees, funeral directors, and licensed embalmers who will now be considered professional employees. Paralegals, nurses, cooks, secretaries, retail clerks, computer operators, health care contract workers, and non-unionized support workers could conceivably see their overtime pay cut.

Instead of receiving time and a half for overtime work, many will now receive their standard base pay, encouraging employers to keep their workers for many more hours. With overtime pay eliminated, why should bosses hire two workers for 40 hours each—and with corresponding benefits for two—when they can hire one and work him or her for 80 hours, with the benefit costs for a single worker?

Already millions of people in the US cannot subsist on a 40-hour week. A person working full-time earning minimum wage would earn \$10,712 a year, well below the 2003 federal poverty line of \$14,824 for a family of three. About 9.9 million workers earn less than \$7 per hour and millions more hover near that rate. The federal poverty line itself greatly underestimates the amount of money needed to raise a family, which would more accurately be placed at around three times the official poverty level.

Since real wages have been pushed down over the past three decades for a majority of workers, many are forced to compensate by working overtime and even working multiple jobs. Currently, time-and-a-half premium pay for overtime work accounts for 25 percent of the income of those who work overtime, averaging about \$161 every week. The amount of working hours put in by American families has risen 11 percent since 1975, and with this rule change those hours are set to skyrocket.

Employer organizations greeted the new regulations with a worrisome glee. “The new rules are much clearer, they are updated, and we hope that they will avoid the lawsuits that have been such a problem,” said J. Craig Shearman, a spokesman for the National Retail Federation in Washington.

Wendy Wunsh, employment regulation manager for the 185,000-member Society of Human Resource Management, said, “We’re excited. We’re thrilled with the fact that [human resources] professionals will now have a way to determine who’s exempt and who’s not exempt [from overtime protections] on a new, modern definition.”

“There will be a lot less litigation because both employers and employees will understand the better definitions about who is exempt for overtime and who is not,” she continued.

This claim is unintentionally revealing. There will be less litigation because the employers who earlier illegally denied their employees overtime pay—and accordingly were liable to lawsuits—can keep the money in their own pockets and rest assured they will not be held responsible, now that they enjoy the protection of the new rules.

Other supporters include the 600,000-member National Federation of Independent Business, the 14,000-member National Association of Manufacturers, and the 3 million-member United States Chamber of Commerce.

The Democratic politicians and trade unions have responded with public denunciations of the attack on overtime, but such protests are entirely rhetorical. The trade union bureaucrats refuse to lead any struggle of the working class to defend its own interests against the attacks by big business. Instead, they are using the overtime pay issue as yet another reason for politically subordinating workers to the corporate-controlled Democratic Party.

Democrats in the Senate voted to block the new rules in May by passing an amendment to a law to ban any reduction in overtime pay, but the measure was voted down in the Republican-controlled House, as the Democrats knew it would be. Even if it passed the House, the Democrats knew Bush could still have vetoed it. Their effort had little value except to allow them to posture as defenders of working people, and provide the occasion for a bit of campaign demagoguery from Democratic presidential nominee John Kerry. No one seriously expects a Kerry administration—or a new, Democratic-controlled Congress—to take any action on the issue.

The AFL-CIO has responded to the attacks on overtime pay and the 40-hour week by encouraging people to write letters to Bush and their congressmen. Union functionaries have handed out thousands of leaflets in this vein. This effort begs the question, however. If it took massive strikes in the 1930s to win the limited reforms of the New Deal, how can one take seriously the AFL-CIO’s strategy of defending these gains by writing emails to George W. Bush?



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