

# Federal judge blocks new Obama administration overtime rules

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A federal judge in Texas has issued an injunction blocking the implementation of changes to overtime rules that were originally set to go into effect on December 1. The decision impacts some four million workers who under current rules are not eligible for overtime pay.

US District Judge Amos Mazzant of Texas granted a preliminary injunction November 22 based on a suit filed by a consortium of more than 50 employer groups as well as 21 state attorneys general who sought to overturn rules proposed by the Obama administration last May. The changes impact the so called “white collar exemption” that allows employers to avoid overtime payments to salaried, administrative or professional workers who earn more than \$23,660 per year. Under the terms of the amended rules set by the Obama administration, that threshold would be increased to \$47,476 a year.

The business interests challenging the ruling chose to put the case before a judge in Texas, which is home to the Fifth US Circuit Court of Appeals, the most conservative in the country. The rule change is now blocked from going into effect unless the administration can win on appeal to the appellate court, an unlikely scenario given that it blocked earlier attempts by the White House to provide semi-legal status to millions of undocumented immigrants.

The new rule would also automatically update the pay threshold every three years by indexing it to salary growth in the lowest income region in the US. The rule change, however, allows bonus and incentive payments to apply toward up to 10 percent of the new threshold.

In its ruling, the court asserted that the Obama administration exceeded its authority by substantially raising the threshold and strongly implied that the Labor Department doesn’t have the ability to raise the

salary cap at all, upsetting decades of precedent.

In Alice in Wonderland logic, the court found that the business entities and states impacted by the new rules would suffer “irreparable harm” merely because they would have to fulfill their obligation to pay overtime to legally eligible employees. At the same time, it rejected the claim that there was any “irreparable harm” to struggling workers denied their lawful overtime money.

Calling the decision in the “public interest,” the court in effect defined the legal system as little more than a tool of powerful business interests seeking to squeeze every last dime of profits off the backs of workers.

Rob Green, executive director of the National Council of Chain Restaurants, was one of those who hailed the ruling. “Judge Mazzant agreed with what NCCR and our coalition allies have been saying all along: that the Labor Department’s ill-conceived overtime regulation is a dramatic government overreach causing significant harm to small businesses and their employees around the country,” Green said.

The claim that the president doesn’t have the power to raise the salary threshold is patently absurd. Presidents going all the way back to Franklin Roosevelt have raised the threshold under provisions of the Fair Labor Standards Act, first enacted in 1938. The law banned child labor, set a federal minimum wage and established a maximum workweek. It mandated that employers pay time and a half to hourly workers who worked in excess of 40 hours.

Reacting to the ruling, one prominent labor attorney, Gerald T. Hathaway, wrote, “Judge Mazzant’s ruling turns 65 plus years of how the law has been interpreted on its head.”

The Fair Labor Standards Act does not include a salary cap, but the US Department of Labor later imposed one to prevent employers from classifying

lower paid employees as managers to avoid paying overtime. However, inflation eroded the salary cap over time, until by 2016 it applied to just 7 percent of full-time US salaried workers. By contrast, in 1975 the cap covered 62 percent of salaried workers.

The actual impact of the rule changes, if they were to take effect, would in fact be fairly minimal. They were conceived of by the Obama administration as little more than an election year maneuver, designed to give a slight “progressive” gloss to an administration that has presided over a massive and unprecedented rise in social inequality.

Millions of farm workers were excluded from the new policy. Some 60 percent of the 4.2 million workers covered by the rule change do not currently work any overtime hours. The remaining 1.7 million workers would get a pay increase of about \$718 a year. The pay increase would boost overall earnings of US workers by only a fraction of a percent and affect only about one percent of the workforce.

Further, employers could find loopholes to circumvent the rule change. They could, for example, cut back work hours or lower workers’ base pay or, conversely, raise base pay in order to come in over the higher threshold.

Nevertheless, the ruling reflects the ferocious hostility of the ruling class, represented by both Democrats and Republicans, to any measures, even if minor, that address social inequality or improve the lives of workers. Indeed, Obama nominated Mazzant in 2014 for his current District Court judgeship.

The incoming Trump administration has pledged to reverse regulations enacted during the Obama years. The Republican-controlled Congress has indicated opposition to any expansion of overtime eligibility. It is expected to permanently scrap the new overtime rules and impose regressive changes to the Fair Labor Standards Act to prevent future administrations from expanding overtime protections.

American workers already labor more hours and take fewer vacations than workers in any industrial nation. A recent study found that Europeans work about 19 percent fewer hours per year than Americans, about 258 hours annually. US workers also work about 137 more hours per year than Japanese workers.

The United States is the only country without paid parental leave, and there is no law mandating paid sick

time. It is the only country without federally mandated annual leave.

In the US, 85.8 percent of males and 66.5 percent of females work more than 40 hours per week. Some 140 countries have a legally mandated maximum workweek. The US does not. According to the Bureau of Labor Statistics, the average productivity per American worker has increased 400 percent since 1950, however there has been no drop in the average workweek nor a corresponding rise in pay.



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