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Trump Paving the Road to Overtime Pay With Good Intentions

Back in 2016, the Obama administration passed an overtime-pay regulation that would have required employers to pay overtime for salaried employees who earn less than $47,476 per year. But its implementation was blocked by a federal judge in November 2016 in response to a lawsuit filed by states and businesses. That regulation is back in the news, however, after the Trump administration has spent months re-examining the issue and seems close to a final decision.

Under the Fair Labor Standards Act, most employers must pay a time-and-a-half rate for overtime hours (usually understood as hours worked beyond 40 hours per week) for salaried employees who don't have sufficiently advanced job duties or who earn less than $23,660 annually. These standards were last set in 2004.

The Obama administration decided to go all in and double the salary threshold. While in the past, employers only had to track the hours of salaried employees eligible for overtime, under the new rules they'd be required to track the hours of salaried employees making less than this amount, no matter how advanced their duties — a significant increase in reporting requirements. At the time, the Department of Labor estimated that an additional 4.2 million workers would qualify for the added pay, with 35 percent of full-time salaried workers expected to fall below the threshold under the new rule.

The Obama administration's motivation for proposing the new rules was the belief that without government intervention, employers always tend to make their employees work long hours without paying them appropriately. Yet Obama's folks failed to demonstrate that the American workforce was indeed plagued by rampant underpayment and overwork. Even if there were a problem, this "solution" would hardly be an appropriate way to address it.

Raising firms' costs to employ people is never a recipe for increasing employment. It isn't even a recipe for higher pay for the new workers who qualify under the rules but enter the workforce after the new rules are implemented.

Most firms aren't actually sitting on piles of unspent cash that they could easily use to pay for overtime. As such, in the short term, when faced with higher costs, we can expect firms to look for ways to offset them, either by reducing the hours that employees work — so that fewer of them work more than 40 hours a week — or by using more part-time workers in place of full-time workers. In the long run, employers may mitigate the costs by reducing the base wages so that total compensation (base wages plus overtime pay) is again equal to what it was before the new rule implementation.

Research confirms this theory: Back in 2015, The Heritage Foundation reviewed the literature on the economic impact of expanding overtime coverage. This study found that "employers largely respond to new overtime requirements by cutting base pay — leaving total hours and earnings little changed."

Some states and businesses sued, arguing that the Labor Department didn't have the authority to set a salary threshold. Unfortunately, in a world where the government has usurped the right to tell businesses how to conduct their affairs — whether by setting wage floors or by dictating the conditions under which employers can and can't fire their employees — the Trump administration has declared that indeed it can, and will, set the overtime-pay threshold (even though it appears to be considering a level lower than the Obama administration proposed). The *Wall Street Journal* recently reported that the new annual level could be set at about $32,000.

Testifying before Congress last July, Labor Secretary Alexander Acosta signaled empathy for increasing the level with a cost-of-living adjustment, saying, "I think it's unfortunate that rules involving dollar values can go more than a decade without adjusting," since "[l]ife does get more expensive."

Unfortunately, it seems to have never occurred to the labor secretary that the existence of the threshold itself actually works against workers. With an actual limit set on when and how to pay overtime, most businesses might decide to stick to that limit instead of letting competition between firms for employees raise wages and overpay threshold. As the saying goes, the road to hell is paved with good intentions.

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