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Former DOL Administrator Bashes Obama's Overtime Rule

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Former Labor Department Administrator Alexander Passantino recently issued stark warning about the new overtime regulation: It could hurt the workers it was ultimately meant to help.

Passantino worked as the deputy administrator for the Wage and Hour Division at the department between 2006 and 2009. He now works as an attorney at the law firm Seyfarth Shaw where he handles wage litigation. He warned the department went too far when raising a salary exemption threshold in its attempt to make millions of more workers eligible for overtime by Dec. 1.

"A lower threshold or getting to the same threshold over a longer period of time, either one those options would have been better," Passantino told The Daily Caller News Foundation. "I know it seems like six months is a long time, but given budget cycle and the work that needs to be done to get these compensation decisions made, it really is a sizable jump."

The department released the final version of the rule May 18 after about a yearlong drafting process. Executive or manager type positions currently cannot qualify for overtime if they have a salary of $23,660 annually. The new rule will raise the exemption threshold to $47,476 annually, making an estimated 4.2 million more workers eligible for overtime.

"Employers are going to have to make decisions that they wouldn't have had to make if the initial amount was lower and/or the amount was phased in over a longer period of time," Passantino said. "So you're making your calls and you're making your reclassification decisions under more pressure then you would otherwise have done."

Employers could be left with few options to overcome the added cost of labor once the rule goes into effect. Those working in salaried position could be reclassified as hourly, resulting in higher pay for some, and less flexibility and chances for advancement for others. The department also included a provision in the new rule that will update the exemption threshold automatically every three years.

“I think the concept of automatic increases is a bad idea because it doesn’t allow for the flexibility you need in, for example, an economic downturn,” Passantino continued. “The point of having the rule-making process is the agency gets to ask is this a good idea.”

President Barack Obama signed a memo March 2014 compelling his administration to expand overtime privileges to more workers. Upon its release, the White House argued the updated rule will help restore overtime privileges which have dwindled over the decades. It notes the share of full-time salaried workers that qualify for overtime has plummeted despite wage and job growth.

“If someone is earning $45,000 a year and has a $5,000 bonus eligibility, well the results of this rule change may be that they earn $48,000 a year and have a $2,000 bonus eligibility,” Passantino went onto say. “So at the end of the day, that person’s pay isn’t going to change at all, their total comp, only the salary component might.”

Passantino said opponents have a much better chance of reversing the rule before it goes into effect. They can utilize lawsuits and the legislature in order to delay or even stop it altogether, but once it’s fully implemented Dec. 1, it will be nearly impossible to counter. Some lawmakers have already tried to stop the rule but with little success thus far.

“There could be a lawsuit that stops it,” Passantino said. “There is a bill pending in both the House and the Senate that would require the department to conduct a more thorough economic impact analysis which would absolutely slow it down and potentially stop it and then there is the appropriations process.”

Republicans Sen. Tim Scott and Rep. Tim Walberg introduced legislation March 17 that would require the department to conduct a thorough economic analysis before implementing a final version of the rule. Lawmakers can also use the Congressional review process which allows them to vote down regulatory changes.

“Employees who are most likely impacted by this are people who are in entry-level management positions or maybe second level administrative positions,” Passantino added. “If those positions get reclassified to nonexempt, to hourly, there are a whole series of pay rules that are going to come along with that.”

Salaried workers could lose their ability to work flexible work hours because their employers will have to track when they are working and if they have reached overtime. Competitive Enterprise Institute Expert Trey Kovacs said the rule puts a huge cost and regulatory burden on employers. The Cato Institute concludes employers may try rearranging work schedules and reduce their workforce.

“The empirical research on overtime regulations suggests that employers will lower the base salaries to offset the anticipated cost of paying overtime,” Mercatus Center Scholar Liya Palagashvili said in a statement provided to TheDCNF. “It’s possible that employers will also respond by cutting some benefits or replacing a junior role in the firm.”

Labor unions have been much more open to the updated overtime exemption threshold. AFL-CIO President Richard Trumka, Teamsters President James Hoffa and United Auto Workers

President Dennis Williams among other top unions officials praised the rule as a much-needed update.

“The fight for even stronger overtime protections and to raise wages for all working people continues,” Trumka said in a statement. “But today, millions of workers will receive a long overdue raise, healthier and more productive jobs, and more time to spend with our community and loved ones.”

Democratic presidential candidate Sen. Bernie Sanders also applauded the new rule. Sanders has made worker rights and compensation a central focus of his campaign. He has also introduced legislation aimed an increasing the national minimum wage to $15 an hour.