



Obama Wants More Americans to Qualify for Overtime – Would His Plan Actually Work?

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Today President Barack Obama is announcing a plan to increase the number of Americans who qualify for overtime, potentially putting the screws to small businesses who depend on flexible schedules for low-level managers or administrators.

Federal law currently allows employers to exempt employees making more than \$455 per week from overtime laws if they're involved in management or supervisory duties. The president wants to propose increasing the pay threshold to trigger the exemption. The Associated Press notes:

In his memorandum, Obama plans to direct the Labor Department to recommend new regulations that could increase the salary threshold for overtime eligibility and to change the definition of what constitutes a supervisor.

The change in overtime rules does not require approval from Congress. However, the process to implement the changes is extremely bureaucratic and could take years to actually complete.

The new threshold is not known yet, but it could be as high as \$900 a week or more, if the administration accepts the research by liberal research group Center for Budget and Policy Priorities.

What's the possible impact?

Since the announcement came as a bit of surprise, just filtering out Wednesday, analysis is just beginning. At *Forbes*, Daniel Fisher runs through some of the most basic concerns about the president's plan: Will it actually result in workers bringing home more money?

By sweeping millions of workers into the overtime system, however, the administration may not be doing many of them a favor. First of all, nobody is guaranteed a pay increase as a result. Back when I was briefly in the Newspaper Guild, an older employee explained his real view of the utility of overtime laws: They force managers to schedule more carefully, to avoid cost overruns. As a relatively highly paid young reporter with zero control over my schedule, that made sense.

But that also means non-exempt employees will be watched more closely to avoid tripping the sort of litigation threat that increasing numbers of labor lawyers are looking out for. Working at home could become taboo, since the employer has more difficulty monitoring hours and working conditions. Employees who harbor the perhaps foolish idea that by working hard and taking on greater responsibilities they can move up in the organization will instead be told to go home and relax.

Complex overtime rules have proven to be a flashpoint for lawsuits. Walter Olson noted at the Cato Institute how the ambiguities of overtime regulations create a market for lawyers looking for targets. Now the stakes will be even higher:

Already, wage-and-hour lawsuits are a thriving hub of litigation, since the law sets up a retrospective guessing game as to whether or not exemption will be upheld: “Enterprising plaintiff attorneys have made hundreds of millions of dollars pursuing lawsuits on behalf of stockbrokers, mortgage loan officers and other white-collar professionals not normally associated with punch-the-clock, shop-floor labor.”

For years, some lawyers have been advising clients not to hand out company-paid cellphones to any workers who lack a lawful overtime exemption, lest a claim later be made that work was done on the phones during evenings and weekends. Where the law is particularly stringent about calculation of lunch breaks, as in California, some lawyers have advised employers to make it a firing offense to do any work during the allotted break.

The president’s memorandum also orders the Department of Labor to “simplify the overtime rules to make them easier for both workers and businesses to understand and apply.” Once the lobbying begins, does anybody actually believe the rules would actually be simplified?

On the other side, there’s this rather unusual take in support in the president’s proposal. It may screw over small employers and increase the possibility of lawsuits, but by cutting back the hours of low-level managers, University of Texas economics professor Daniel Hamermesh says there’s an upside:

“I would argue it’s a job-creation program,” Hamermesh said. “There’s no question it gives employers the incentive to cut the hours of some people. But if you do that, it increases the demand for more individuals, and that creates jobs.”

But it doesn’t create the *money* to hire more individuals, which is why, like the hike in the minimum wage, it’s going to wallop small- to mid-sized businesses, who are still struggling to deal with Affordable Care Act costs, more than the big boys.