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State action to save workers’ overtime pay

Fact sheet for “What’s at stake in the states if the federal raise to the overtime pay threshold is not resurrected—and what states can do about it”

Fact Sheet • By [Celine McNicholas](#), [Samantha Sanders](#), [Heidi Shierholz](#), and [Dianne Stewart](#) • November 15, 2017

Obama administration rule expanding overtime eligibility imperiled

A 2016 federal rule would have raised the salary threshold below which workers are automatically eligible for overtime pay—from \$23,660 to \$47,476 per year—restoring some of the coverage lost as inflation increasingly eroded this crucial worker protection. In 1975, more than 60 percent of full-time salaried workers were under the salary threshold and hence automatically eligible for overtime. By 2016, because of this erosion, the share had dropped to less than 7 percent. The new overtime rule would have partially restored that share, bringing it up to 33 percent. However, a district court in Texas determined that the rule was invalid, and the Trump administration DOL has signaled its intent to undertake a new rulemaking process that will likely set the threshold at a much lower level—one that would still leave millions of workers unprotected.

How the overtime threshold works

Overtime pay rules are designed to ensure that most workers who put in more than 40 hours a week get paid 1.5 times their regular pay for the extra hours they work. Almost all hourly workers are automatically eligible for overtime pay, but workers who are paid on a salary basis are only automatically eligible for overtime pay if they earn below a certain salary. Above that level, employers can claim that workers are

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“exempt” from overtime pay protection if their job duties are considered “executive,” “administrative,” or “professional.”

The current overtime salary threshold of \$23,660 is way too low to protect the workers it is meant to protect

The pay threshold that determines which salaried workers are automatically eligible for overtime pay has been so eroded by inflation that workers earning as little as \$455 per week (the equivalent of \$23,660 per year) can be forced to work 60–70 hours a week for no more pay than if they worked 40 hours. The extra 20–30 hours are completely free to the employer, allowing employers to exploit workers with no consequences.

The \$47,476 threshold reflects a modest managerial salary

A weekly salary of \$913 (or \$47,476 for a full-year worker) is equivalent to the 40th percentile of weekly earnings for full-time salaried workers in the lowest-wage U.S. census region (currently the South). It represents a significant but still conservative boost, approaching a level of pay that a modestly compensated manager might have.

State options to update overtime protections

Introduce legislation providing the protections that the 2016 federal overtime rule would have provided to workers

The strongest action states could take at this moment would be to pass legislation raising the state overtime threshold, following the parameters of the U.S. Department of Labor’s 2016 overtime rule. Even in states where passage of such a law would be difficult, introducing it and seeking public hearings or staging press conferences would raise awareness and could help build a constituency for better protections for overworked low- and moderate-wage workers.

Pursue a ballot initiative

In states with the option to pass legislation through ballot initiatives, an initiative to raise the state’s overtime threshold can be placed on the ballot.

Encourage the state’s governor or labor agency to take executive action

In some states, the overtime salary threshold may be changed through administrative regulation. A state’s governor or the appropriate state labor/workforce agency may be able to seek an administrative rule increasing the threshold.

For more information on state overtime options, contact your state EARN group via earn@epi.org.