

Expanding overtime protection for teachers under the Fair Labor Standards Act

Report • By John Schmitt, Heidi Shierholz, and Jori Kandra • November 22, 2021

Executive Summary

Federal regulations (CFR Section 541.303) currently bar most teachers from eligibility to receive overtime pay under the Fair Labor Standards Act (FLSA) when they work more than 40 hours in a week, even if they earn less than the FLSA salary threshold (the threshold below which most workers must be paid overtime) or are paid by the hour. Eliminating this blanket exemption on teacher eligibility for overtime pay would affect 1.5 million teachers, almost one-fourth (23.8%) of the teaching workforce. These affected teachers would be newly eligible for overtime pay unless their employer raises their pay to at least the FLSA salary threshold in order for them to remain exempt.

The teachers who would most benefit from ending the specific teaching exemption are women (24.8% of women teachers would be affected), teachers of color (28.0%), teachers under the age of 25 (67.3%), those teaching in preschool and kindergarten (33.1%) or postsecondary schools (31.2%), those without a four-year college degree (67.0%), and those paid by the hour (65.4%).

Removing the teacher exemption would be particularly beneficial to teachers in private schools (31.7% of all private school teachers would benefit) and nonunionized public school teachers (32.4% would benefit). The share of

unionized public school teachers who would benefit under the same change is 10.6%.

Teachers newly *eligible* for overtime would receive overtime pay only when they work more than 40 hours in the same week. Just over half (53.2%) of all affected teachers work part-time schedules; these part-time teachers would be unlikely to be significantly impacted by this rule change in practice.

Teachers and the Fair Labor Standards Act

The Fair Labor Standards Act requires employers to pay workers one-and-a-half times their normal hourly rate for each hour they work above 40 hours in a week. The FLSA also establishes criteria for exempting workers from this overtime pay requirement, with the idea being that those workers who are exempt have enough responsibility and high enough earnings that they do not need these protections. In general, workers are exempt from receiving overtime pay if they meet *all* three of the following requirements: (1) they are paid a fixed salary independent of the exact number of hours worked in a given week (“salary basis test”); (2) that salary is above a specified threshold (“salary level test”); and (3) workers’ jobs primarily involve executive, administrative, or professional responsibilities (“duties test”). The Code of Federal Regulations ([Section 541.303](#)), however, specifically exempts teachers from overtime protections as long as they pass the duties test—even if they are hourly workers or their salary is below the threshold established by the salary level test (the current standard salary threshold is \$684 per week).¹

This report estimates the number and share of teachers who would be affected if this specific exemption for teachers were removed and teachers were treated in the same way as most other workers covered by the FLSA. To produce this estimate, we use data from the Current Population Survey (CPS), a large, nationally representative survey of U.S. households, to identify teachers who have earnings below the current threshold of \$684 per week for the “salary level test.”² Our analysis is based on teachers’ usual weekly earnings, as calculated by the Bureau of Labor Statistics (BLS) and reported directly in the CPS.

In addition to reporting the number and the share of teachers who would be affected, we provide breakdowns of affected teachers by gender, race/ethnicity, age, education level, broad occupation within the teaching profession, full-time or part-time status, and hourly or salaried status. In all cases, our estimates refer to the number of teachers who would be affected—that is, would either become eligible for overtime or would have their pay raised to at least the salary threshold—if the teacher exemption were removed. Our estimates do not refer to the number of teachers who would *receive* overtime pay with the rule change, which would depend on any salary adjustments that occur in response to the rule, along

with the actual number of hours worked in a week.

Impact of Removing the FLSA's Teacher Exemption

We look first at the total number (and share of all teachers) who would be affected if teachers were subject to the same eligibility tests applied to the rest of the workforce. We then report on the demographic and other characteristics of affected teachers.

Number of teachers who would be newly eligible for overtime protections

Table 1 presents our findings for **all teachers in public and private schools**, including all teachers in preschools, kindergartens, and elementary, middle, secondary, and postsecondary schools, as well as special education teachers at all levels. We estimate that of the 6.5 million teachers who meet these criteria, just over 1.5 million, or 23.8% of the total, would be affected if the blanket teacher exemption were removed. These 1.5 million teachers are either hourly or salaried and earn less than the weekly threshold for overtime eligibility (\$684 per week), but they currently do not receive overtime when they work more than 40 hours per week because of the blanket teacher exemption.³

Removing the teacher exemption does not imply that the affected teachers will necessarily receive overtime pay. Some of the affected teachers would see a raise in pay to at least the salary threshold and would as a result remain exempt. Those whose salaries aren't raised to the threshold would receive overtime pay only if they work more than 40 hours in a week. We estimate that, currently, just over half (53.2%) of the teachers who would be affected under the rule change currently work part-time schedules, which means they are unlikely to be significantly impacted in practice.

Table 2 limits the analysis to **public school teachers**. Of the 4.6 million public school teachers, about 950,000, or 20.7% of the total, have weekly earnings below the FLSA's current salary level test threshold of \$684 per week.

Table 3 shows the findings for **private school teachers** only. Of the almost 1.9 million private school teachers, about 590,000 are below the salary threshold. This translates to 31.7% of private school teachers—well above the 20.7% rate for public school teachers.

Tables 4 and **5** look at **public school teachers by union status**. The share of the 2.5 million unionized teachers paid below the \$684 per week threshold is 10.6%. The corresponding rate for the 2.1 million nonunionized teachers is more than three times higher at 32.4%.

Table 1

Numbers and shares of public and private school teachers who currently fall below the FLSA standard salary threshold and would therefore be affected if the teacher exemption were removed from the FLSA, by selected characteristics

	Total number of teachers	Share of all teachers	Number of teachers below the threshold	Share of group that is below the threshold	Number of teachers in the group that are below the threshold, as a share of all teachers below threshold
All	6,476,059	100.0%	1,543,733	23.8%	100.0%
Gender					
Women	4,555,480	70.3%	1,131,417	24.8%	73.3%
Men	1,920,579	29.7%	412,316	21.5%	26.7%
Race/ethnicity					
White	4,864,659	75.1%	1,092,216	22.5%	70.8%
Black	598,962	9.2%	155,959	26.0%	10.1%
Hispanic	599,237	9.3%	167,088	27.9%	10.8%
Asian	365,831	5.6%	115,944	31.7%	7.5%
Other	47,369	0.7%	12,525	26.4%	0.8%
Age					
Under 25	400,498	6.2%	269,627	67.3%	17.5%
25–54	4,641,448	71.7%	892,756	19.2%	57.8%
55–64	1,015,709	15.7%	209,693	20.6%	13.6%
Over 65	418,403	6.5%	171,657	41.0%	11.1%
Education level					
Less than four-year college degree	552,064	8.5%	369,740	67.0%	24.0%
Four-year college degree	2,396,194	37.0%	655,907	27.4%	42.5%
Advanced degree	3,527,801	54.5%	518,087	14.7%	33.6%
Occupation					
Elementary and middle school teachers	3,407,222	52.6%	723,708	21.2%	46.9%
Postsecondary teachers	1,321,148	20.4%	412,758	31.2%	26.7%
Preschool and kindergarten teachers	231,358	3.6%	76,614	33.1%	5.0%
Secondary school teachers	1,027,785	15.9%	161,481	15.7%	10.5%
Special education teachers	361,337	5.6%	73,084	20.2%	4.7%
Other teachers and instructors	127,209	2.0%	96,088	75.5%	6.2%

Table 1
(cont.)

	Total number of teachers	Share of all teachers	Number of teachers below the threshold	Share of group that is below the threshold	Number of teachers in the group that are below the threshold, as a share of all teachers below threshold
<i>Work status</i>					
Full-time	5,443,639	84.1%	723,196	13.3%	46.8%
Part-time	1,032,419	15.9%	820,538	79.5%	53.2%
<i>Pay periodicity</i>					
Hourly	765,153	11.8%	500,376	65.4%	32.4%
Salaried	5,710,906	88.2%	1,043,357	15.6%	67.6%

Notes: Based on teachers' weekly earnings as calculated by the Bureau of Labor Statistics analysis of the Current Population Survey, 2017–2019. The current standard threshold is \$684 per week. Pay periodicity refers to the time frame for the pay the teacher reported their salary in their response to the CPS questionnaire.

Source: Authors' analysis of EPI Current Population Survey Extracts, Version 1.0.22 (2021), <https://microdata.epi.org>.

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Table 2

Numbers and shares of public school teachers who currently fall below the FLSA standard salary threshold and would therefore be affected if the teacher exemption were removed from the FLSA, by selected characteristics

	Total number of teachers	Share of all teachers	Number of teachers below the standard threshold	Share of group that is below the standard threshold	Number of teachers in the group that are below the threshold, as a share of all teachers below threshold
All	4,608,117	100.0%	951,641	20.7%	100.0%
Gender					
Women	3,300,608	71.6%	701,630	21.3%	73.7%
Men	1,307,509	28.4%	250,010	19.1%	26.3%
Race/ethnicity					
White	3,507,944	76.1%	675,471	19.3%	71.0%
Black	422,760	9.2%	100,650	23.8%	10.6%
Hispanic	418,981	9.1%	97,976	23.4%	10.3%
Asian	223,568	4.9%	68,904	30.8%	7.2%
Other	34,863	0.8%	8,640	24.8%	0.9%
Age					
Under 25	239,286	5.2%	145,306	60.7%	15.3%
25–54	3,379,306	73.3%	553,775	16.4%	58.2%
55–64	730,190	15.8%	142,620	19.5%	15.0%
Over 65	259,335	5.6%	109,939	42.4%	11.6%
Education level					
Less than four-year college degree	317,669	6.9%	204,411	64.3%	21.5%
Four-year college degree	1,757,406	38.1%	420,224	23.9%	44.2%
Advanced degree	2,533,042	55.0%	327,006	12.9%	34.4%
Occupation					
Elementary and middle school teachers	2,591,600	56.2%	473,244	18.3%	49.7%
Postsecondary teachers	692,489	15.0%	229,716	33.2%	24.1%
Preschool and kindergarten teachers	161,096	3.5%	38,244	23.7%	4.0%
Secondary school teachers	783,042	17.0%	94,748	12.1%	10.0%
Special education teachers	305,353	6.6%	60,541	19.8%	6.4%
Other teachers and instructors	74,537	1.6%	55,148	74.0%	5.8%

Table 2
(cont.)

	Total number of teachers	Share of all teachers	Number of teachers below the standard threshold	Share of group that is below the standard threshold	Number of teachers in the group that are below the threshold, as a share of all teachers below threshold
<i>Work status</i>					
Full-time	3,974,190	86.2%	454,214	11.4%	47.7%
Part-time	633,927	13.8%	497,427	78.5%	52.3%
<i>Pay periodicity</i>					
Hourly	466,542	10.1%	296,006	63.4%	31.1%
Salaried	4,141,575	89.9%	655,635	14.8%	68.9%

Notes: Based on teachers' weekly earnings as calculated by the Bureau of Labor Statistics analysis of the Current Population Survey, 2017–2019. The current standard threshold is \$684 per week. Pay periodicity refers to the time frame for the pay the teacher reported their salary in their response to the CPS questionnaire.

Source: Authors' analysis of EPI Current Population Survey Extracts, Version 1.0.22 (2021), <https://microdata.epi.org>.

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Table 3

Numbers and shares of private school teachers who currently fall below the FLSA standard salary threshold and would therefore be affected if the teacher exemption were removed from the FLSA, by selected characteristics

	Total number of teachers	Share of all teachers	Number of teachers below the threshold	Share of group that is below the threshold	Number of teachers in the group that are below the threshold, as a share of all teachers below threshold
All	1,867,941	100.0%	592,093	31.7%	100.0%
Gender					
Women	1,254,871	67.2%	429,787	34.2%	72.6%
Men	613,070	32.8%	162,306	26.5%	27.4%
Race/ethnicity					
White	1,356,715	72.6%	416,745	30.7%	70.4%
Black	176,202	9.4%	55,309	31.4%	9.3%
Hispanic	180,256	9.6%	69,112	38.3%	11.7%
Asian	142,262	7.6%	47,040	33.1%	7.9%
Other	12,506	0.7%	3,886	31.1%	0.7%
Age					
Under 25	161,212	8.6%	124,321	77.1%	21.0%
25–54	1,262,142	67.6%	338,981	26.9%	57.3%
55–64	285,519	15.3%	67,073	23.5%	11.3%
Over 65	159,068	8.5%	61,718	38.8%	10.4%
Education level					
Less than four-year college degree	234,395	12.5%	165,329	70.5%	27.9%
Four-year college degree	638,788	34.2%	235,683	36.9%	39.8%
Advanced degree	994,758	53.3%	191,081	19.2%	32.3%
Occupation					
Elementary and middle school teachers	815,622	43.7%	250,464	30.7%	42.3%
Postsecondary teachers	628,660	33.7%	183,042	29.1%	30.9%
Preschool and kindergarten teachers	70,262	3.8%	38,370	54.6%	6.5%
Secondary school teachers	244,742	13.1%	66,733	27.3%	11.3%
Special education teachers	55,984	3.0%	12,544	22.4%	2.1%
Other teachers and instructors	52,672	2.8%	40,940	77.7%	6.9%
Work status					
Full-time	1,469,449	78.7%	268,982	18.3%	45.4%

Table 3
(cont.)

	Total number of teachers	Share of all teachers	Number of teachers below the threshold	Share of group that is below the threshold	Number of teachers in the group that are below the threshold, as a share of all teachers below threshold
Part-time	398,492	21.3%	323,111	81.1%	54.6%
<i>Pay periodicity</i>					
Hourly	298,610	16.0%	204,370	68.4%	34.5%
Salaried	1,569,331	84.0%	387,723	18.8%	65.5%

Notes: Based on teachers' weekly earnings as calculated by the Bureau of Labor Statistics analysis of the Current Population Survey, 2017–2019. The current standard threshold is \$684 per week. Pay periodicity refers to the time frame for the pay the teacher reported their salary in their response to the CPS questionnaire.

Source: Authors' analysis of EPI Current Population Survey Extracts, Version 1.0.22 (2021), <https://microdata.epi.org>.

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Table 4

Numbers and shares of unionized public school teachers who currently fall below the FLSA standard salary threshold and would therefore be affected if the teacher exemption were removed from the FLSA, by selected characteristics

	Total number of teachers	Share of all teachers	Number of teachers below the standard threshold	Share of group that is below the standard threshold	Number of teacher in the group that are below the threshold, as a share of all teachers below threshold
All	2,488,407	100.0%	264,643	10.6%	100.0%
Gender					
Women	1,831,826	73.6%	204,767	11.2%	77.4%
Men	656,581	26.4%	59,876	9.1%	22.6%
Race/ethnicity					
White	1,965,105	79.0%	198,910	10.1%	75.2%
Black	181,999	7.3%	21,922	12.0%	8.3%
Hispanic	228,152	9.2%	27,607	12.1%	10.4%
Asian	94,977	3.8%	14,724	15.5%	5.6%
Other	18,174	0.7%	1,481	8.1%	0.6%
Age					
Under 25	78,339	3.1%	29,070	37.1%	11.0%
25–54	1,903,091	76.5%	164,524	8.6%	62.2%
55–64	409,278	16.4%	46,347	11.3%	17.5%
Over 65	97,699	3.9%	24,701	25.3%	9.3%
Education level					
Less than four-year college degree	89,340	3.6%	44,615	49.9%	16.9%
Four-year college degree	878,514	35.3%	114,378	13.0%	43.2%
Advanced degree	1,520,552	61.1%	105,650	6.9%	39.9%
Occupation					
Elementary and middle school teachers	1,489,601	59.9%	141,482	9.5%	53.5%
Postsecondary teachers	196,178	7.9%	42,623	21.7%	16.1%
Preschool and kindergarten teachers	91,834	3.7%	12,425	13.5%	4.7%
Secondary school teachers	499,863	20.1%	33,041	6.6%	12.5%
Special education teachers	194,598	7.8%	27,489	14.1%	10.4%
Other teachers and instructors	16,333	0.7%	7,582	46.4%	2.9%

Table 4
(cont.)

	Total number of teachers	Share of all teachers	Number of teachers below the standard threshold	Share of group that is below the standard threshold	Number of teacher in the group that are below the threshold, as a share of all teachers below threshold
<i>Work status</i>					
Full-time	2,310,898	92.9%	161,302	7.0%	61.0%
Part-time	177,509	7.1%	103,341	58.2%	39.0%
<i>Pay periodicity</i>					
Hourly	146,211	5.9%	65,678	44.9%	24.8%
Salaried	2,342,196	94.1%	198,965	8.1%	75.2%

Notes: Based on teachers' weekly earnings as calculated by the Bureau of Labor Statistics analysis of the Current Population Survey, 2017–2019. The current standard threshold is \$684 per week. Pay periodicity refers to the time frame for the pay the teacher reported their salary in their response to the CPS questionnaire.

Source: Authors' analysis of EPI Current Population Survey Extracts, Version 1.0.22 (2021), <https://microdata.epi.org>.

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Table 5

Numbers and shares of nonunionized public school teachers who currently fall below the FLSA standard salary threshold and would therefore be affected if the teacher exemption were removed from the FLSA, by selected characteristics

	Total number of teachers	Share of all teachers	Number of teachers below the standard threshold	Share of group that is below the standard threshold	Number of teacher in the group that are below the threshold, as a share of all teachers below threshold
<i>All</i>	2,119,710	100.0%	686,998	32.4%	100.0%
<i>Gender</i>					
Women	1,468,782	69.3%	496,864	33.8%	72.3%
Men	650,928	30.7%	190,134	29.2%	27.7%
<i>Race/ethnicity</i>					
White	1,542,839	72.8%	476,561	30.9%	69.4%
Black	240,761	11.4%	78,728	32.7%	11.5%
Hispanic	190,829	9.0%	70,369	36.9%	10.2%
Asian	128,592	6.1%	54,181	42.1%	7.9%
Other	16,689	0.8%	7,159	42.9%	1.0%
<i>Age</i>					
Under 25	160,947	7.6%	116,236	72.2%	16.9%
25–54	1,476,215	69.6%	389,250	26.4%	56.7%
55–64	320,912	15.1%	96,273	30.0%	14.0%
Over 65	161,636	7.6%	85,238	52.7%	12.4%
<i>Education level</i>					
Less than four-year college degree	228,329	10.8%	159,796	70.0%	23.3%
Four-year college degree	878,891	41.5%	305,846	34.8%	44.5%
Advanced degree	1,012,490	47.8%	221,355	21.9%	32.2%
<i>Occupation</i>					
Elementary and middle school teachers	1,101,998	52.0%	331,762	30.1%	48.3%
Postsecondary teachers	496,311	23.4%	187,092	37.7%	27.2%
Preschool and kindergarten teachers	69,262	3.3%	25,820	37.3%	3.8%
Secondary school teachers	283,179	13.4%	61,707	21.8%	9.0%
Special education teachers	110,756	5.2%	33,051	29.8%	4.8%

Table 5
(cont.)

	Total number of teachers	Share of all teachers	Number of teachers below the standard threshold	Share of group that is below the standard threshold	Number of teacher in the group that are below the threshold, as a share of all teachers below threshold
Other teachers and instructors	58,204	2.7%	47,566	81.7%	6.9%
Work status					
Full-time	1,663,292	78.5%	292,912	17.6%	42.6%
Part-time	456,418	21.5%	394,086	86.3%	57.4%
Pay periodicity					
Hourly	320,332	15.1%	230,328	71.9%	33.5%
Salaried	1,799,378	84.9%	456,670	21.2%	66.5%

Notes: Based on teachers' weekly earnings as calculated by the Bureau of Labor Statistics analysis of the Current Population Survey, 2017–2019. The current standard threshold is \$684 per week. Pay periodicity refers to the time frame for the pay the teacher reported their salary in their response to the CPS questionnaire.

Source: Authors' analysis of EPI Current Population Survey Extracts, Version 1.0.22 (2021), <https://microdata.epi.org>.

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Characteristics of teachers newly eligible for overtime protections

Each of the five tables provides breakdowns of affected teachers by teachers' personal characteristics, including gender, race/ethnicity, age, education level, broad occupation within teaching, work status (full-time or part-time), and whether they are hourly or salaried employees.

Table 1 summarizes the results by these characteristics for all public and private school teachers. The second column presents the breakdown of all teachers by characteristics. For example, 70.3% of all teachers in the sample are women and 29.7% are men. The fourth column of the table shows the share of each of these groups who have earnings below the \$684 per week threshold. Looking at these shares by gender, 24.8% of women teachers and 21.5% of men teachers earn below the current weekly threshold. The last column gives the share of each group *in the total number of teachers below the salary threshold*: 73.3% of all workers below the threshold are women and 26.7% are men. As constructed, the table provides two ways to identify whether a group of teachers is more or less likely to be newly eligible for overtime. For example, we can note that a higher share of women (24.8%) are below the threshold than is the case for men (21.5%), or we can note that women are more represented in the share of teachers below the threshold (73.3%) than they are in the overall population of teachers (70.3%).

Reviewing each set of worker characteristics in turn, we can identify those characteristics that are associated with a higher likelihood of being affected by the rule change (that is, which characteristics are associated with lower weekly earnings).

As already stated, women in teaching are somewhat more likely to be below the earnings threshold (24.8%) than men in teaching (21.5%); and women teachers make up a somewhat larger share (73.3%) of the pool of teachers below the threshold than they do of the overall pool of teachers (70.3%).

Teachers of color are also more likely to have earnings low enough that they would be eligible for overtime if the teacher exemption were eliminated. A higher share of Black (26.0%), Hispanic (27.9%), and Asian (31.7%) teachers are below the earnings threshold than is the case for white teachers (22.5%). Taken together, teachers of color make up 24.9% of all teachers, but 29.2% of teachers below the earnings threshold.

Younger teachers (defined here as those under the age of 25) and older teachers (defined here as those 65 and older) are much more likely than teachers in the age ranges in between to have earnings below the threshold. Two-thirds of younger teachers (67.3%) and 41.0% of older teachers are below the threshold, compared with only about one in five teachers ages 25–54 (19.2%) and 55–64 (20.6%). Together the youngest and the oldest group of teachers make up 12.7% of all teachers, but account for 28.6% of all teachers below the earnings threshold.

Teachers with less than a four-year college degree make up a small share of all teachers (8.5%), but a large share of these teachers have earnings below the threshold (67.0%) and they make up a disproportionate share (24.0%) of all teachers below the threshold. Teachers with a four-year college degree account for 37.0% of all teachers and have a higher-than-average likelihood of falling below the earnings threshold (27.4%, compared with 23.8% for teachers overall). Teachers with advanced degrees make up more than half of the total teaching workforce (54.5%), but they are the least likely (at 14.7%) to earn below the threshold and they are underrepresented (at 33.6%) among teachers who fall below the earnings threshold.

The CPS data we analyze provide broad occupational breakdowns for teachers, which allow us to examine whether changes to overtime rules would affect different groups of teachers differently. Three teaching occupations have higher-than-average shares of low earners: preschool and kindergarten teachers (33.1%), postsecondary teachers (31.2%), and “other teachers and instructors” (75.5%). (For reference, again note that the share for teachers overall is 23.8%.) Preschool and kindergarten teachers and “other teachers and instructors” together make up a relatively small share of the teaching workforce (5.6%), but they make up 11.2% of all teachers paid below the earnings threshold. Postsecondary teachers make up one-fifth (20.4%) of the total teaching workforce but make up more than one-fourth (26.7%) of teachers paid below the earnings threshold.

Only 15.9% of teachers work part time, but these part-time teachers have the highest rate of low earnings (79.5%) in the categories covered in this analysis. Taken together, the one in six part-time teachers account for more than half (53.2%) of all teachers below the threshold. The 84.1% of teachers who work full time have a much lower rate of low earnings (13.3%) and make up less than half (46.8%) of the total pool of teachers receiving low earnings.

Teachers paid by the hour make up a small share (11.8%) of the total, but the high share of this group with low earnings (65.4%) means that they are heavily overrepresented (32.4%) among teachers who would benefit from a change in the teacher exemption. That said, even though a much lower share of salaried teachers have low earnings (15.6%), it is still the case that two-thirds (67.6%) of all teachers who would benefit from a rule change are salaried teachers.

To summarize these results for the group that includes all public and private school teachers, the teachers most likely to benefit from a change in the FLSA’s teacher exemption are women teachers (24.8% would benefit), teachers of color (28.0%),⁴ those under the age of 25 (67.3%), those teaching in preschool or kindergarten (33.1%) or at the postsecondary level (31.2%), those with lower levels of formal education (67.0%), and those who are paid on an hourly basis (65.4%).⁵

A broadly similar pattern holds in Table 2, which restricts that analysis to public school teachers only. Just as was the case for all teachers, the public school teachers most likely to have earnings below the threshold are women (21.3%), teachers of color (25.1%),⁶ teachers who are younger (60.7%), those who teach in preschool or kindergarten (23.7%)

or postsecondary schools (33.2%), those who have less than a four-year college degree (64.3%), those who work part-time schedules (78.5%), and those who are paid on an hourly basis (63.4%).

The distribution of low earnings across teacher characteristics is almost identical for private schools (Table 3). The rates of low earnings, however, are generally much higher for private school teachers than for public school teachers with the same characteristics. The private school teachers most likely to have earnings below the threshold are women (34.2%, compared with 21.3% in public schools), teachers of color (34.3%,⁷ compared with 25.1% in public schools), those who are younger (77.1%, compared with 60.7% in public schools), those who teach preschool or kindergarten (54.6%, compared with 23.7% in public schools), those who have less than a four-year college degree (70.5%, compared with 64.3% in public schools), those who work part-time schedules (81.1%, compared with 78.5% in public schools), and those who are paid on an hourly basis (68.4%, compared with 63.4% in public schools). The only exception is that in private schools, postsecondary teachers have a rate of low earnings (29.1%) that is slightly below the average for all private school teachers (31.7%) and below the corresponding rate for public school teachers (33.2%).

The same pattern of low earnings across teacher characteristics holds for unionized public school teachers (Table 4). However, given that these unionized teachers have much lower overall rates of earnings below the threshold—10.6%, compared with 31.7% for private school and 32.4% for nonunionized public school teachers—it is not surprising that the rates of low earnings by the teacher characteristics analyzed here are also consistently lower than for their counterparts in private and nonunionized public schools. The unionized public school teachers most likely to have earnings below the threshold are women (11.2%—compared with 33.8% in nonunionized public schools); teachers of color (12.6%,⁸ compared with 36.5%⁹ in nonunionized public schools); those who are younger (37.1%, compared with 72.2%); those who teach preschool or kindergarten (13.5%, compared with 37.3%), postsecondary school (21.7%, compared with 37.7%), or special education (14.1%, compared with 29.8%); those who have less than a four-year college degree (49.9%, compared with 70.0%); those who work part-time schedules (58.2%, compared with 86.3%); and those who are paid on an hourly basis (44.9%, compared with 71.9%).

Conclusions

Modifying the Code of Federal Regulations to remove the blanket exemption from overtime eligibility for teachers to receive overtime pay under the Fair Labor Standards Act would affect 1.5 million teachers, almost one-fourth (23.8%) of the teaching workforce. These affected teachers would be newly eligible for overtime pay unless their employers raise their pay to at least the salary threshold in order for them to remain exempt.

The teachers who would benefit most from ending the specific teaching exemption are women (24.8% of all women teachers would benefit), teachers of color (28.0% would

benefit), teachers under the age of 25 (67.3%), those teaching preschool or kindergarten (33.1%) or in postsecondary schools (31.2%), those with less than a four-year degree (67.0%), those who are paid by the hour (65.4%), and those who are working part-time (79.5%). Removing the teacher exemption would be particularly beneficial to teachers in private schools (31.7% of all private school teachers would benefit) and nonunionized public schools (32.4% of nonunionized public school teachers would benefit), but would still have significant impact even in unionized public schools (10.6%).

Teachers newly *eligible* for overtime would receive overtime pay only when they work more than 40 hours in the same week. Just over half (53.2%) of all affected teachers work part-time schedules.

Methodology

Our estimates of the total number and demographic characteristics of teachers who would be affected by the proposed change are drawn from the Economic Policy Institute Microdata Extracts of the Outgoing Rotation Group (ORG) of Current Population Survey (CPS), which are available at <https://microdata.epi.org>. We pool data on teachers in all months of the 2017, 2018, and 2019 CPS. We do not include 2020 or 2021 CPS data to avoid any labor market distortions related to the COVID-19 pandemic. Our sample of teachers includes all employed respondents in the following CPS occupation categories—postsecondary teachers (CPS occupation code 2200), preschool and kindergarten teachers (2300), elementary and middle school teachers (2310), secondary school teachers (2320), special education teachers (2330), and other teachers and instructors (2360)—who work in the CPS industry categories for elementary and middle schools (CPS industry code 7860) and colleges and universities, including junior colleges (7870). The sample includes all teachers in public and private schools and in unionized and nonunionized settings.

We identify teachers with usual weekly earnings below the current \$684 threshold for the salary test using their usual weekly earnings calculated by the Bureau of Labor Statistics based on respondents' answers in the CPS.¹ There is a special rule for highly compensated employees. If a salaried worker earns total annual compensation of at least \$107,432, the duties test that they must pass in order to be exempt from overtime is less stringent than the standard duties test. The less stringent duties test still covers teachers, so we are not addressing this special rule in this document.

Endnotes

1. There is a special rule for highly compensated employees. If a salaried worker earns total annual compensation of at least \$107,432, the duties test that they must pass in order to be exempt from overtime is less stringent than the standard duties test. The less stringent duties test still covers teachers, so we are not addressing this special rule in this document.

2. We assume that all teachers earning below the \$684 per week threshold would pass the broader “duties test” regarding executive, administrative, or professional responsibilities.
3. Another 264,777 workers are paid by the hour and earn above the salary threshold, calculated as the total number of hourly workers (765,153) minus the number of hourly workers who earn less than \$684 per week (500,376). Technically, these workers would also be affected by this rule change. However, since all an employer would have to do to keep them exempt would be to pay them on a salary, rather than hourly, basis, we assume that is what would occur and we therefore do not include them in our counts of affected workers.
4. Not shown in the table, but calculated as the weighted average rate for Black, Hispanic, Asian, and Other teachers in Table 1.
5. The categories are not mutually exclusive. The calculation for female teachers, for example, includes the experience of women of all races, ethnicities, and ages.
6. Not shown in the table, but calculated as the weighted average rate for Black, Hispanic, Asian, and Other teachers in Table 2.
7. Not shown in the table, but calculated as the weighted average rate for Black, Hispanic, Asian, and Other teachers in Table 3.
8. Not shown in the table, but calculated as the weighted average rate for Black, Hispanic, Asian, and Other teachers in Table 4.
9. Not shown in the table, but calculated as the weighted average rate for Black, Hispanic, Asian, and Other teachers in Table 5.