Proposed Revisions to DOL Overtime Regulations:
Impact on Workers, Consumers, Businesses and Economic Opportunity

*US Department of Labor’s Proposed Revisions to Overtime Regulations Promise to Erect Barriers to Workplace Flexibility and Opportunity, Diminish Prospects for Incentive Bonuses and Other Performance Rewards for Managers, and Disrupt Operations for Businesses and Consumers*

**Background:**

In general, under the Fair Labor Standards Act (FLSA), a person must satisfy two criteria to qualify as a salaried worker exempt from federal overtime pay requirements: first, they must make more than $455/week ($23,660 annually); and second, their “primary duty” must be consistent with those common to managerial, professional or administrative positions. Employees who meet these criteria are eligible for salaried compensation and will enjoy the flexibility and opportunities that accompany that status. All other employees have their work hours set by their employer and are customarily only paid for the hours they work. As a result, hourly employees have less control over their schedules as well as less flexibility with respect to hours worked and, in many cases, work location. Hourly employees receive overtime pay at one and one-half times their normal pay rate for time worked over 40 hours in one week; due to those costs, employers try to limit overtime hours, resulting in hourly workers having fewer opportunities than their salaried counterparts.

President Barack Obama issued a [directive](#) on March 13, 2014, ordering the Department of Labor (DOL) to make changes to FLSA regulations governing eligibility for exempt/salaried status. Based on the administration’s comments, it is expected that the DOL will increase the salary threshold and possibly change the primary duties test. The proposed regulations were expected in February 2015, the target date set by the DOL in its most recent regulatory agenda; however, the DOL has yet to issue the regulations or a revised release date. Once the DOL releases the proposed changes, the public will have an opportunity to comment on the proposal.

The Partnership to Protect Workplace Opportunity (PPWO) will be providing information to the public and filing detailed comments on the proposal once it’s released.

**What’s at Stake:**

- While the number of workers impacted by changes to the regulations will depend on the exact size of the increase to the salary threshold and the nature of any changes to the duties test, the number of employees affected will be in the millions and the changes will unquestionably have a larger impact in areas with lower wages and lower costs of living.
For example, labor union leaders have proposed increasing the threshold for salaried/exempt status by over 200 percent from $455/week ($23,660 annually) to $970/week ($50,440 annually). This change would cause an estimated 5 million to 10 million workers to possibly lose their exempt/salary status. Others have suggested even more dramatic increases—some nearly as high as 300 percent. Increases of such proportions would have an enormous impact on the country and would even have a significant impact on high-wage areas such as New York City and California.

**Loss in Workplace Flexibility:**

- Changes to overtime regulations could effectively require employers to reclassify millions of salaried employees to hourly workers, resulting in less workplace autonomy and fewer opportunities for advancement, while forcing employees to closely track their hours to ensure compliance with overtime pay and other requirements. In short, employees would have less control over when and where they work.
  - For example, changing from exempt/salaried to non-exempt/hourly status will mean that many employees will lose the ability to structure their time to address needs such as attending their child’s school activities or scheduling doctors’ appointments.
  - Many employees also may lose the opportunity to work from home or remotely, as it can be difficult for employers to track employees’ hours in those situations. Employers may also cease providing employees with mobile devices, as any time spent checking them would now have to be accounted for.

- A sizable increase in the minimum salary level would also eliminate many part-time exempt positions where the employees value the flexibility. For example, currently a full-time salaried employee making $60,000 could have the opportunity to reduce his or her position to half-time to allow more family time and still be exempt at $30,000. If the salary threshold level is increased to above $30,000, this employee would no longer be exempt. The change to the hourly status may make the position far less flexible with respect to both when and where the employee works. Employers also may be reluctant to allow part-time work that is otherwise exempt be performed by hourly employees, and thus the change could reduce the number of part-time work opportunities for salaried employees.

**Loss in Career Opportunities, Incentive Pay and Employee Morale:**

- Changes to the overtime regulations could eliminate career opportunities and prevent employee advancement through the loss of exempt status for many otherwise-exempt employees. For example, employees who have reached or are near 40 hours of work in a week may need to forgo workplace training or other career-enhancing opportunities because the employer is not able to pay overtime rates for that time.

- “Non-exempt” does not necessarily mean that employees will be paid more due to a windfall of overtime hours; eligibility for overtime does not necessarily mean earning overtime. Employees will still have to work more than 40 hours in a given week. Employers must always carefully manage labor costs to remain in business, and there is no reason to believe that they would not do so here as well.
When employees have been reclassified from exempt to non-exempt, there is very often a decline in employee morale, as this change is generally seen as a loss of “workplace status.” Employees often believe they are being punished or demoted, and some even lose trust that their employer sees them as professionals.

Employees who lose exempt status also may find that they have lost their ability to earn incentive pay. Under the existing rules for calculating overtime for hourly workers, many incentive payments must be included in a non-exempt employee’s “regular rate” (i.e., overtime) of pay. Faced with the difficult recalculation of overtime rates—sometimes for every pay period in a year—employers often simply forgo these incentive payments to non-exempt employees rather than attempt to perform the calculations.

Disruption to Operations, Harming Both Businesses and Consumers:

- Reports indicate that the DOL is also considering changes to the “primary duty” test to require salaried employees to spend a specific percentage of their time performing certain duties. This means a manager who is responsible for store operation, and thus by virtue of the position “managing,” would often be prohibited from performing tasks such as customer service, training employees in non-exempt tasks and managing inventory. The manager also would be required to track his or her activities, undermining the discretion and flexibility that comes with being exempt.

- California already applies this “quantification requirement”; to be exempt under California state law, an employee must spend more than 50 percent of his or her time performing the primary duties. The result has been that the exemptions from overtime are very difficult to use, resulting in many managers being denied the opportunities and flexibility that come with exempt/salaried status. There has also been a marked increase in litigation.

- Currently, exempt employees such as store or restaurant managers are permitted to perform duties that are non-exempt in nature while simultaneously acting in a managerial capacity. If this “concurrent duties” provision is eliminated, it could mean the loss of the exemption for store managers, particularly in smaller establishments.

- Employers have spent tens of millions of dollars defending against expensive litigation related to manager positions. Just as the litigation wave has started to settle down and employers have obtained some legal clarity on these classification issues, new regulations will restart the process, resulting in additional litigation.