

Legislative Blast **March 2014***

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PRESIDENT OBAMA ORDERS UPDATE OF FEDERAL OVERTIME REGULATIONS

On March 13, 2014, President Obama signed a memorandum that begins the process of updating the Fair Labor Standards Act's overtime regulations. The President directed U.S. Secretary of Labor Thomas E. Perez to update the overtime rules and to consult with businesses and workers during the process. In particular, changes will be proposed to the "white collar exemptions." According to the White House, the Fair Labor Standards Act protects over 135 million workers in more than 7.3 million workplaces nationwide.

Details of the Presidential Memorandum

The Presidential Memorandum instructs the Secretary of Labor to update regulations regarding who qualifies for overtime protection. In so doing, the Secretary shall consider how the regulations could be revised to:

- Update existing protections in keeping with the intention of the Fair Labor Standards Act.
- Address the changing nature of the American workplace.
- Simplify the overtime rules to make them easier for both workers and businesses to understand and apply.

White House Fact Sheet

In announcing the Presidential Memorandum, the White House issued the following Fact Sheet entitled Opportunity for All: Rewarding Hard Work by Strengthening Overtime Protections:

"After weathering the Great Recession and through five years of hard work and determination, America is creating jobs and rebuilding our economy. But as a result of shifts that have taken hold over more than three decades, too many Americans are working harder than ever just to get by, let alone to get ahead.

President Obama believes that, in America, if you work hard and take responsibility, you should have the opportunity to succeed. That's why he has pledged to make 2014 a year of action, working with Congress where they're willing, but using his phone and his pen wherever he can

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to build real, lasting economic security for the middle class and those working hard to become a part of the middle class.

As part of that effort, today, President Obama is directing the Secretary of Labor to begin the process of addressing overtime pay protections to help make sure millions of workers are paid a fair wage for a hard day's work and rules are simplified for employers and workers alike.

Basic Overtime Protections Have Eroded

The overtime rules that establish the 40-hour workweek, a linchpin of the middle class, have eroded over the years. As a result, millions of salaried workers have been left without the protections of overtime or sometimes even the minimum wage. For example, a convenience store manager or a fast food shift supervisor or an office worker may be expected to work 50 or 60 hours a week or more, making barely enough to keep a family out of poverty, and not receive a dime of overtime pay. It's even possible for employers to pay workers less than the minimum wage per hour.

The overtime and minimum wage rules are set in the Fair Labor Standards Act, originally passed by Congress in 1938, and apply broadly to private-sector workers. However, there are some exceptions to these rules, which the Department of Labor has the authority to define through regulation. One of the most commonly used exemptions is for "executive, administrative and professional" employees, the so-called "white collar" exemption.

Workers who are paid hourly wages or who earn below a certain salary are generally protected by overtime regulations, while those above the threshold who perform executive, professional or administrative duties are not. That threshold has failed to keep up with inflation, only being updated twice in the last 40 years and leaving millions of low-paid, salaried workers without these basic protections. Specifically:

- In 1975 the Department of Labor set the threshold below which white collar workers were entitled to overtime pay at \$250 per week.
- In 2004 that threshold was set at \$455 per week (the equivalent of \$561 in today's dollars). This is below today's poverty line for a worker supporting a family of four, and well below 1975 levels in inflation adjusted terms.

Today, only 12 percent of salaried workers fall below the threshold that would guarantee them overtime and minimum wage protections (compared with 18 percent in 2004 and 65 percent in 1975). Many of the remaining 88 percent of salaried workers are ineligible for these protections because they fall within the white collar exemptions. Many recognize that these regulations are outdated, which is why states like New York and California have set higher salary thresholds.

At the same time, employers and workers alike have difficulty navigating the existing regulations, and many recognize that the rules should be modernized to better fit today's economy."

Sources: The White House; United States Department of Labor