



PARTNERSHIP TO PROTECT **WORKPLACE OPPORTUNITY**

Currently under the Fair Labor Standards Act (FLSA) a person must satisfy three criteria to qualify as exempt from federal overtime pay requirements: first, they must make a salary; second, that salary must be more than \$455/week (\$23,660 annually); and third, their “primary duties” must be consistent with managerial, professional or administrative positions as defined by the US Department of Labor (DOL).

On June 30, DOL proposed increasing the salary threshold to \$50,440 per year as of 2016, which is the 40th percentile of earnings for all full-time salaried workers. This is a 113% increase in the salary threshold. DOL also proposed increasing this minimum salary on an annual basis by pegging it to the 40th percentile or by indexing it to inflation for urban goods and services (CPI-U, an aggressive measure of inflation). DOL proposes publishing the increased minimum salary *only* 60 days before it becomes effective. While DOL did not offer a specific proposal to modify the standard duties tests, the department suggested it is considering making some rather extreme changes.

While an increase to the salary threshold is due, the magnitude proposed by DOL and almost any changes to the duties test DOL would make will hurt small businesses, workers, and the economy as a whole. Many employees would lose the flexibility they currently enjoy, employers would be faced with crushing increases in labor and administrative costs, businesses would suffer with low employee morale, and the American people would experience jumps in prices for goods and services as well as diminished customer service. In an already stagnant economy, these consequences will be devastating.

That is why the Partnership to Protect Workplace Opportunity (PPWO) supports S.2707/H.R. 4773, the *Protecting Workplace Advancement and Opportunity Act*, which would prevent DOL from moving forward with the proposal unless the Department conducts a robust economic analysis on the effects of the proposed changes to small businesses, nonprofits and higher education institutions. It would also require a federally mandated review and comment period for any proposed changes to the duties test and block any automatic annual increases to the salary threshold. [Take action NOW and call on your elected officials to support S. 2707/H.R. 4773 and protect your workplace flexibility and opportunities!](#) Below are some important points about DOL’s proposal and its potential impact:

The Proposal will Impact Millions of Workers and Cost Billions to Businesses

According to DOL, the rule will affect over 10 million workers; that’s more than the populations of Maine, New Hampshire, Rhode Island, Montana, Delaware, South Dakota, Alaska, North Dakota, Vermont, Washington, and Wyoming combined! That’s 10 million workers who may see their workplace flexibility diminished or a loss in other benefits they rely on. According to the National Retail Federation (NRF), which conducted an economic analysis of the proposal on the retail and restaurant industries, businesses will see an increase of over \$8.4 billion per year in costs with the proposed salary level.

Main Street Understands DOL's Proposal Goes Too Far

In a recent survey conducted by the polling company, inc./WomanTrend, a 65%-majority of adults would increase the salary limit by no more than 50%. Only 15% thought the threshold should be increased by over 100%, as DOL is considering. Once again, bureaucrats in Washington, D.C. think they know best and are pushing the country in a direction that hurts the average American.

DOL's Proposal Slams Lower Cost Areas

While the public understands that what works in DC, New York City, and San Francisco won't work for Indianapolis, Louisville, Birmingham or Boise, let alone more rural areas, DOL doesn't seem to get it. Of the people surveyed by WomanTrend, 63% agree a "one-size-fits-all" approach to overtime rules is inappropriate for the different industries and various regions of the country. DOL disregards the impact on areas of the country with lower costs of living, however, and has set its proposed minimum salary threshold nearly \$10,000 *higher* than that of California and nearly \$15,000 *higher* than New York's; two of the country's most expensive states to live in. DOL's proposal will disproportionately impact workers and companies in cities and states with lower cost of living, including college graduates in those areas who will start their professional careers with less flexibility and fewer opportunities for advancement.

Americans Know these Changes Won't Benefit the Average Worker

NRF also conducted a survey of restaurant and retail managers and found that over 8 in 10 (85%) believe changing employees from salaried to hourly will usher in a variety of negative consequences. Of those surveyed by WomanTrend, nearly six in 10 (58%) believe the overtime changes may not result in more money for workers; 43% will not support the changes knowing they will result in workers being moved from salaried to hourly employees.

Flexibility is Essential to American Workers

The WomanTrend survey determined flexibility is a benefit employees at all income levels are unwilling to sacrifice. Forty nine percent of those surveyed will be less likely to support the changes should tracking of hours be required, and 48% would be less likely to support the rule if it resulted in employees losing workplace flexibility.

Main Street Morale Shouldn't be Compromised on the Whim of DC Bureaucrats

Forty five percent of those surveyed by NRF believe a change in employment status from salaried to hourly would make them feel they're working a job rather than pursuing a career. Eighty six percent believe their perceptions of themselves as managers would deteriorate in some way.

Changes in the Duties Test will put DC between Employees and their Livelihood

Over 8 in 10 managers (81%) surveyed by NRF believe their customers will be adversely affected if managers were banned from partaking in non-managerial tasks due to changes to the primary duties test. Under the rule all of these workers will have to punch the clock, track their daily tasks, and limit the amount of time they spend doing nonexempt work, like helping keep the business running efficiently or assisting customers as needed. Businesses nationwide will suffer as managers cannot lend a hand with non-managerial work and customers cannot get the attention they need.