Backgrounder

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Modernizing Overtime Regulations to Benefit Employers and Employees

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Much controversy surrounds the U.S. Department of Labor's decision to update regulations governing "white-collar" exemptions from the Fair Labor Standards Act (FLSA). Labor union officials have interpreted the new regulations as the end of overtime pay for millions of workers. In reality, however, relatively few workers are likely to lose overtime pay under the new regulations, which will simply clarify, simplify, and update regulations that date back to the mid-1950s.

Clear, simple, and up-to-date standards will benefit both workers and employers. The new regulations will enable workers to recognize more easily when they are owed overtime pay and will reduce investigation and enforcement costs when violations occur. Employers will benefit from clearer rules that limit the risk of legal confusion, which can lead to costly litigation. An update of the white-collar regulations is long overdue, and Congress should allow the new regulations to take effect.

Current Regulations Are Outdated

The Fair Labor Standards Act of 1938 established both a minimum wage and a standard workweek for American workers. Updated numerous times since 1938, the current FLSA calls for a minimum wage of $5.15 per hour and a 40-hour workweek.[1] The workweek rule is not absolute, but employees must be paid an additional 50 percent ("time and a half") for time worked beyond the standard 40 hours.

The FLSA exempts some workers from its minimum wage and overtime pay requirements. Among

Talking Points

- The "white collar" regulations define which workers qualify as executive, administrative, or professional employees and are thus exempt from the Fair Labor Standards Act.
- With the exception of some piecemeal revisions, the regulations have not been updated for 50 years. The result has been confusion, litigation, and reduced job creation.
- The current salary thresholds are laughably low: An "executive" can earn a salary of only $8,060. The updated salary thresholds will result in hundreds of thousands of workers gaining overtime pay.
- Under the new regulations, the basic policies and tests for exemptions will remain essentially the same, with some details added for specific occupations and industries to clarify who is exempt. Few workers are likely to lose overtime pay.
- The new rules will be easier to follow and enforce, reducing the need for litigation, which is costly to both employees and employers.

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the most important of these exemptions are the "white-collar" exemptions, which cover "any employee employed in a bona fide executive, administrative, or professional capacity."[2] Because white-collar workers tend to be paid more than other workers and white-collar work frequently requires longer hours, the debate over the white-collar exemptions tends to be cast in terms of overtime eligibility.[3]

Between 1938 and 1954, the rules for the white-collar exemptions evolved substantially to reflect changes in the workplace. For instance, the first regulations had one set of exemption rules covering both executive and administrative personnel, while later regulations separated these two categories. In 1949, the Department of Labor (DOL) further defined the terms used in the earlier regulations, and in 1954, it revised the salary basis test for white-collar employees.

The 1954 revision settled the basic structure of the current white-collar regulations. Under this structure, in order to qualify for exempt status, an employee was required to meet:

- A *salary basis test*, which stipulated that exempt white-collar employees must not be paid on an hourly or piecework basis;
- A *salary level test*, which required that a white-collar employee's compensation must meet a minimum amount in order for that employee to be considered exempt; and
- A *duties test*, which defined the types of work assignments an exempt executive, administrator, or professional might perform.

The duties tests took two forms: a stricter *long test* and a less stringent *short test* that applied to higher-paid employees.[4]

The workforce has continued to evolve since 1954, but the white-collar regulations have remained relatively static. Changes in the white-collar regulations have been directed at specific groups of employees or have consisted of updating the minimum salary levels. The duties tests for most workers have not changed since 1954, and the salary levels have not been updated since 1975.

The Case for New Regulations

Failure to update the white-collar regulations has negatively affected both workers and employers. As a result, salary rules are outdated, and employers find it increasingly difficult to follow the law and avoid large judgments.

The Current Regulations Contain Unrealistically Low Salary Levels. For employees, the failure to update the regulations has left salary levels for exempt white-collar workers at laughably low levels: $155 a week (or $8,060 per year) for executives and administrative employees and $170 a week for professional employees. Furthermore, the "short test" comes into play at only $250 per week (or $13,000 per year). Inflation has eroded the salary levels to the point that virtually all full-time employees meet the salary level test, and the short test—originally intended for higher-salaried workers—now applies to the overwhelming majority of employees.[5]

In practice, substituting the short test for the long test has had the greatest effect on low-level supervisors, who are much more likely now to qualify as executives and thus to be exempt from overtime pay. The short test for executives requires only that the employee regularly supervise two or more other workers and that his or her primary duty involve management. Substantial judgment or decision-making authority is not necessarily required.

1. 29 U.S.C. §201 *et seq*.
2. 29 U.S.C. §213(a)(1).
3. The FLSA also provides for the exemption of "outside sales" and "computer" employees. The new regulations also cover these areas, but these provisions have not yet generated as much interest or opposition as those pertaining to executives, administrators, and professionals.
4. For the white-collar exemption rules, see 29 C.F.R. §541.
5. Cynthia Fagnoni, *Fair Labor Standards Act: White-Collar Exemptions Need Adjustments for Today's Work Place*, U.S. General Accounting Office, GAO/T–HEHS–00–105, May 3, 2000, at *www.gao.gov/new.items/he00105t.pdf* (August 9, 2004).

Two federal court decisions in 1982 arising from litigation between DOL and Burger King Corporation found that assistant managers at the chain's restaurants could qualify as executives, even if they spent more than half of their time preparing food.[6] The low threshold for the executive exemption has created an incentive for some employers to multiply the number of departments within their operations, allowing them to expand the number of exempt executives.[7]

The Current Rules Are Increasingly Difficult to Apply. Out-of-date rules create legal problems for even the most scrupulous employers. The sole remedy for a violation of overtime pay regulations is restitution of back pay, even when the failure was entirely due to an employer's good-faith mistake or to the confusion created by an unclear rule that a court interpreted in an unexpected way.

Of the three tests, the duties test is usually the most difficult to apply. Real-world examples would be extremely valuable, but the examples given in the 1954 rules are increasingly out of date. The "current" rules include examples of how to classify linotype operators, machine men, and straw bosses[8] but say little or nothing about more current job titles such as physicians' assistants, licensed practical nurses, or paralegals. Outdated rules make it much more difficult for workers and employers to apply the duties tests.

Whenever the white-collar regulations are the subject of litigation, employers bear the burden of showing why an employee is exempt. When rules are vague and details are lacking, that burden becomes even more difficult for employers to meet. For example, in *Hashop v. Rockwell Space Operations*, a Texas federal court ruled that a team of scientists and engineers who ran simulated space shuttle missions for the U.S. space program did not qualify as professionals because they did not exercise sufficient discretion and independent judgment.[9] The court found that lengthy guidelines on discretion were applicable to the *administrative* exemption but were of limited value in cases involving the *professional* exemption. The court went on to conclude that the team's work did not qualify them for the professional exemption, even though every team member had a minimum of a bachelor's degree and performed work that required a high degree of technical expertise.

Another problem that has developed under the current rules relates to the effects of docking pay. Because exempt workers must be paid on a salary basis (as opposed to an hourly basis), reductions in an exempt employee's hours do not automatically translate into a reduction in pay. The current rules allow limited pay docking for time off and for violations of major safety rules, but they make no provision for violations of other company policies, such as policies on drug or alcohol abuse, sexual harassment, or misuse of expense accounts.[10] Furthermore, the current rules give little guidance about how a violation of the docking rules can affect the status of other employees, creating a situation in which an entire category of otherwise exempt employees—such as a team of corporate attorneys—can be declared non-exempt because they were subject to unpaid suspensions for violations of company rules.[11]

The Current Regulations Cause Expensive (and Unnecessary) Litigation. Back-pay awards can reach astronomical levels. These are understandable for intentional violations but unjustifiable when

6. *Donovan v. Burger King Corp.*, 672 F.2d 221 (1st Cir., 1982), and *Donovan v. Burger King Corp.*, 675 F.2d 516 (2nd Cir., 1982).
7. U.S. General Accounting Office, *Fair Labor Standards Act: White Collar Exemptions in the Modern Workplace*, GAO/HEHS–99–164, September 1999, p. 29.
8. For linotype operators, see 29 C.F.R. §541.118(c). For "machine men" and "straw bosses," see 29 C.F.R. §541.115(c)(2).
9. *Hashop v. Rockwell Space Operations*, 867 F.Supp. 1287 (S.D.Tex., 1994).
10. 29 C.F.R. §541.118(a)(5).
11. In *Auer v. Robbins*, 519 U.S. 452, 117 S. Ct. 905 (1997), the Supreme Court somewhat limited the possible effects of incidental violations of the docking rules but left open important questions regarding the docking rule that are best resolved by DOL. U.S. General Accounting Office, *Fair Labor Standards Act: White Collar Exemptions in the Modern Workplace*, pp. 17–21.

the "violation" is the result of a court interpreting a vague rule in an unexpected way. For example, if an exempt employee who receives a modest annual salary of $52,000 while working a steady 50 hours per week is later found to be entitled to overtime pay (i.e., found to be non-exempt), the employer will owe $5,200 in back pay for just one year of work. This amount increases with longer service or higher base salary and can be multiplied by hundreds (or even thousands) of dollars in larger organizations if the employees involved can be grouped together as plaintiffs in a class-action suit.

There have been multimillion-dollar judgments and settlements in class-action overtime lawsuits. In 2001, a lawsuit based on a California statute similar to the FLSA resulted in a jury award of $90 million to a group of 2,400 insurance claims adjusters.[12]

Even larger judgments involving larger pools of employees are possible. One lawsuit involving Taco Bell had a potential class of 14,000 employees, and a case involving 69,000 Wal-Mart pharmacists was reportedly settled out of court for $50 million.[13] In many cases, employers could plausibly argue that the employees involved qualified as exempt executives, administrators, or professionals.

Vague rules that lead to large judgments are not necessarily good news for workers either—even those who win lawsuits. Under clearer rules, many of these workers would probably receive the same overtime pay without the delay of a lawsuit and without paying as much as one-third of their awards in attorney fees.

Vague and outdated rules, combined with the possibility of lucrative large-scale class-action suits involving years of back pay, have created a storm of high-stakes FLSA litigation. The number of class-action suits based on the FLSA climbed from 31 in 1997 to 102 in 2003.[14]

The Department of Labor Proposes New Rules. The Department of Labor reopened the white-collar exemption issue in December 2001, announcing its intention to investigate and revise the regulations. After more than a year of examination, DOL released proposed rules on March 27, 2003.

Union officials harshly criticized the proposed rules, arguing that 8 million employees would lose overtime pay. This estimate was based on misapplications of the proposed rules, but in spite of the estimate's shortcomings, the Department of Labor significantly revised its proposal. Assuming Congress does not interfere, the new rules will take effect on August 23, 2004.[15]

Given the sheer size of possible FLSA overtime lawsuits, continuous changes in the workplace, and the propensity of courts to construe vague exemption rules against employers, fairness commands periodic clarifications and updates to the regulations that determine which employees are exempt from the FLSA. Congress should not delay revised rules that are already years overdue.

Comparing the Current and New Rules

A comparison of the current and new rules shows that in many critical areas, the new rules actually give workers more protection than the current rules. In general, workers who have a settled right to overtime pay under the current rules will continue to receive overtime pay under the new rules, and the number of workers with overtime rights is more likely to increase than to decrease.

New Rules Boost Salary Levels. The one change that nearly all parties would agree is long overdue is increasing the minimum salary levels

12. Ron Gaswirth, "FLSA: An Old Law That Can Cost Companies Millions," *Texas Lawyer,* Vol. 18, No. 53 (March 3, 2003), p. 11.
13. Robert P. Davis, "Class Actions Seeking Overtime or Other Pay Pose Issues of Complaint Formality and Compliance with FLSA's 'Opt-In' Feature," *National Law Journal*, Vol. 23, No. 23 (January 29, 2001), and Mark Taylor, "'No Overtime' Claims Lose Luster at Appellate Level," *Texas Lawyer,* Vol. 20, No. 35 (October 28, 2002).
14. See Administrative Office of the U.S. Courts, "Judicial Business of the U.S. Courts," annual reports, 1997–2003, Charts C-2 and X-5, at *www.uscourts.gov/judbususc/judbux.html* (August 9, 2004).
15. For DOL's final regulations, see 69 Fed. Reg. 22122–22274 (April 23, 2004). Assuming they take effect, they will replace the current rules in the Code of Federal Regulations (29 C.F.R. §541).

for the white-collar exemptions. The only question is how high the minimum salary levels should be raised. Currently, executives and administrators could be exempt while earning as little as $155 per week (and professionals as little as $170). The new regulations call for all exempt white-collar workers to earn a salary of at least $455 per week.

Critics point out that the new salary levels do not match the rate of inflation since 1954 and argue that the minimum salary should be raised even further. However, DOL points out that it arrived at this amount using much the same methodology and criteria that have been used in prior revisions of the white-collar rules: examining salary data and selecting a salary floor at a point at which roughly 10 percent of workers who pass one or more of the duties tests will still receive overtime pay. DOL estimates that the increase in the required salary level will remove 6.7 million workers from consideration for exempt status—including 1.3 million who will gain the right to overtime pay and another 2.6 million who are at risk of being misclassified.[16]

The importance of this should not be underestimated. Setting a more reasonable threshold for application of the white-collar exemptions will decrease the risk that these workers will be denied overtime pay because of either fraud or confusion. A quick check of pay stubs will confirm that all of these workers are eligible for overtime pay without any need to discuss job titles or duties.

New Duties Tests Will Not Strip Overtime Protections. To be classified as exempt (assuming that the salary is sufficient), an employee's duties must pass the duties test for executive, administrative, or professional employees. The new regulations replace the current short and long "duties tests" with one standard test for each category of white-collar employees.

This change will probably have minimal effect on workers because inflation has rendered the long duties tests largely irrelevant. However, it simplifies the regulations and allows employers, employees, and DOL enforcement staff to operate under one basic set of tests that apply to most workers.

Executive Test Will Be Strengthened. The test for executives has been tightened in the new regulations. Under the current short test, an executive position is one in which (1) the employee's primary duty is managing an enterprise, a recognized division, or department and (2) the job includes the regular direction of two (or more) other employees.[17] The new rules add a third requirement, pulled directly out of the current long test: Either an executive must have the authority to hire, fire, or promote other employees, or the executive's recommendations on these and other personnel decisions must be given "particular weight."[18]

This new standard test would provide extra protection to low-level supervisors. In order to remain exempt from overtime pay under the new rules, these managers must be given significant authority over an important aspect of their organizations' operations: the hiring, firing, and promotion of staff. Consequently, low-level supervisors will either gain real executive authority or receive overtime pay.

Critics have called attention to the issue of supervisors who perform work associated with non-exempt employees, such as retail managers who stock shelves or assist customers. The new standard test would eliminate a provision in the long test that limited the amount of time that an exempt executive could spend on such work.

Critics also have argued that this change will weaken overtime protection, but as explained earlier, the long tests apply to an extremely small percentage of workers. Exempt executives themselves must also determine when they will do non-exempt work, guided by their judgment of the needs of the enterprise or division that they lead—a standard that is more demanding than any rule based on a percentage of time.

Administrative Test Remains Largely the Same. The basic test for administrative employees

16. 69 Fed. Reg. 22123.

17. 29 C.F.R. §541.1(f).

18. 69 Fed. Reg. 22261 (final rule 541.100).

is also based on the current short test, but it has been tightened up a bit. Under both sets of rules, administrative employees must perform office or non-manual work that is directly related to the management or general business operations of the employer or the employer's customers.[19] Both the current and the new rules also require that exempt administrative employees must exercise discretion and independent judgment.

However, while the current rules merely require that an exempt position must "include" the exercise of discretion, the new standard test stipulates that an administrator's *primary duty* must include the exercise of discretion *on matters of significance*.[20] At a minimum, this change will maintain the status quo, and it may result in more workers gaining overtime protection.

The new rules provide details in several critical occupations. Although the current rules provide little specific guidance for the financial services sector, the new administrative employee test provides valuable details, based on court applications of the current rules, for employees and employers in this fast-growing field.[21] The new rules also clarify that public-sector inspectors, such as those who enforce public health and safety laws and standards, generally do not qualify for exempt status. Various rules dealing with administrators in educational institutions are brought together into one section, and rules are provided for career programs and academic counselors.[22] These new rules will provide valuable guidance for employers and employees without making significant changes in the scope of the administrative exemption.

The new rules also clarify the administrative exemption of insurance adjusters, giving a fairly detailed description of the type of work that an adjuster should perform in order to qualify for the administrative exemption.[23] This section is new, but it is based on prior DOL policy, which at least one federal court has found to be consistent with the current rules.[24]

Professional Test Undergoes Minor Changes. While the sections on professionals have been reorganized, the essential criteria remain the same. To be considered exempt, a professional's primary duty must consist of work involving advanced knowledge in a scientific field of learning that typically requires prolonged intellectual study. The work must involve the consistent exercise of discretion and judgment, as opposed to routine calculation or physical work. As in the current regulations, a provision for "creative" professionals also allows an exemption for employees whose work involves imagination or talent in a recognized artistic field such as music or drama.[25]

Because science, medicine, and law are all evolving rapidly, professional work is constantly changing. Consequently, the new rules contain new or updated provisions for a wide range of occupations, including medical technologists, nurses, physician's assistants, dental hygienists, accountants, chefs, paralegals, athletic trainers, and funeral directors. The rules also allow the recognition of developing professional categories when a specific academic degree or certification becomes customary for entry into an occupation—a modification that allows the rules to keep pace with the constant evolution of the workplace as scientific and medical knowledge continues to grow.[26]

Effects of Pay Docking Clarified Under the New Rules. Under current rules, exempt employees must be paid on a salary basis: Compensation should be consistent and not immediately affected

19. 29 C.F.R. §541.2(e)(2), §541,2(a)(1), and 69 Fed. Reg. 22262 (final rule 541.200[a][2]).

20. 29 C.F.R. §541.2(e)(2) and 69 Fed. Reg. 22262 (final rule 541.200[a][3]).

21. 69 Fed. Reg. 22263 (final rule 541.203[b]).

22. 69 Fed. Reg. 22264 (inspectors final rule 541.203[j]; educational institutions final rule 541.204).

23. 69 Fed. Reg. 22263 (final rule 541.203[a]).

24. *Jastremski v. Safeco Insurance Co.*, 243 F.Supp. 2d. 743 (2003).

25. 29 C.F.R. §541.3(e) and 69 Fed. Reg. 22265 (final rules 541.300 and 541.301).

by performance or hours worked. This leaves disciplinary actions in a grey area. For instance, current rules allow pay docking for a serious violation of safety rules, but violations of other policies, such as sexual harassment or misuse of expense accounts, are not discussed.[27]

The new rules allow for unpaid suspensions of exempt employees who violate an employer's standards of conduct if the standards are written and generally applicable to all employees. They also give courts better guidance about when improper pay deductions will result in a larger classification of employees losing exempt status.

Given the stakes, clear rules on this point are absolutely necessary. The new rules will allow conscientious employers to know how to prevent an isolated violation of the salary basis test from turning into a multimillion-dollar class-action judgment. However, dishonest employers who intentionally misuse pay docking and blur the line between salary and hourly compensation will still be obligated to compensate their employees for overtime pay and will still be subject to large judgments when appropriate.[28]

Highly Compensated Workers' Status May Be Changed. The new rules provide for a looser application of the duties tests for workers who receive a total annual compensation of $100,000 or more. These highly compensated workers will be treated as white-collar employees if their primary duty is office or non-manual work and if they regularly perform at least one of the functions of an executive, administrative, or professional employee.[29]

The effect of this provision should not be overstated. Manual laborers will not qualify under this standard, regardless of salary. Although the duties tests will be less stringent, the burden will still be on the employer to show that exempted workers perform executive, administrative, or professional duties on a regular basis.

The rationale behind this provision is a strong one: While the Fair Labor Standards Act did not establish a salary test for exempt employees, compensation level is a strong indicator of white-collar work.[30] Furthermore, as compensation increases, so does the employee's importance to the employer. Highly compensated employees will be in a stronger position to negotiate their hours and, consequently, to protect themselves from overwork.

Enforcement of the overtime rules should therefore focus on lower compensated workers, who are likely to be in a weaker bargaining position and at a higher risk of being overworked. Together, the higher salary level test and the special rules for highly compensated workers reflect this commonsense understanding of the workplace and of the motivation behind the FLSA.

Clarifying the Rules Does Not Mean That Workers Will Lose Overtime Pay

Generally, the new rules are intended to streamline and update the current rules, and most of the principles behind the current white-collar rules will continue to be respected. Although there are exceptions, such as the highly compensated employees, the vast majority of employees who currently have a clear and settled statutory right to overtime pay will continue to have a statutory right to overtime pay under the new rules. In many cases, the new rules update or clarify terms in the current rules without making any significant policy changes.

Primary Duty Test Remains Intact. The Employment Policies Institute has argued that the new regulations change the "50 percent rule of thumb" under which an employee's primary duty

26. This is a clarification of a comment in the current rules. Compare 29 C.F.R. §541.301(e)(2) and 69 Fed. Reg. 22266 (final rule 541.301[f]).

27. 29 C.F.R. §541.118(a).

28. 69 Fed. Reg. 22270 (final rule 541.603).

29. 69 Fed. Reg. 22269 (final rule 541.601).

30. 69 Fed. Reg. 22172.

is considered to be that which takes up the majority of the employee's work time.[31] The institute argues that the new rule is one-sided because an employee who spends a majority of time on management duties would likely be considered exempt, while an employee who spends a majority of time on manual tasks might still be considered exempt.[32]

However, the same criticism could be leveled at the current rules, which specifically give a hypothetical example of an employee who spends a majority of time performing management tasks without mentioning the converse situation.[33] Hence, although the Department of Labor has updated the "50 percent rule of thumb," the courts are unlikely to find that a substantive change was intended.

No Change in the "Abe Lincoln Exception." Likewise, there is no significant change in the professional exemption in terms of the education needed to qualify—although some commentators have asserted otherwise. The new rules do provide for treating an employee with an advanced degree as an exempt learned professional as long as the employee has substantially the same knowledge and performs the same work as a professional with a degree.[34] The current regulations contain a similar provision.[35]

Both the current and new rules make allowance for the rare case of a person, such as self-taught attorney Abraham Lincoln, who gains acceptance into a profession by apprenticeship, work experience, or individual study. Both the current and the new regulations even give the same examples, verbatim: "the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry." Again, courts are unlikely to find a substantive change.

New Team Leader Rule Not Likely to Have Wide Effect. A new provision under which "team leaders" are considered exempt administrators has also been the subject of controversy. Some have speculated that the leaders of millions of workplace teams established to improve quality, safety, morale, or customer service would qualify under the "team leader" rule and that blue-collar employees would thus be effectively converted into exempt managers.[36]

However, team leaders are not managers: The provision for team leaders is an application of the administrative exemption.[37] Among other things, this means that team leaders must perform primarily office or non-manual work that involves the exercise of discretion and independent judgment. The team leader provision should have little effect on blue-collar employees.

In general, policymakers should avoid the mistake of equating *clarification* of the exemptions with *expansion* of the exemptions. Sections of the new rules that provide detailed specifications for specific industries or occupations may result in the expansion or contraction of the exemptions, removing or bestowing overtime protections on employees, but they are more likely to be a distillation of court rulings and DOL enforcement policies or resolutions of contradictory rulings. Policymakers should carefully examine claims that new provisions will eliminate overtime protections, considering all relevant portions of the both

31. 69 Fed. Reg. 22272 (final rule 541.700[b]).

32. Ross Eisenbrey, "A Closer Examination of the Department of Labor's Final Overtime Regulations," Economic Policy Institute *Viewpoints*, May 20, 2004, testimony presented before the Subcommittee on the Workforce, Empowerment, and Government Programs, Committee on Small Business, U.S. House of Representatives, May 20, 2004, at *www.epinet.org/content.cfm/webfeatures_viewpoints_small_business_overtime_testimony* (July 23, 2004).

33. 29 C.F.R. §541.103.

34. 69 Fed. Reg. 22265 (final rule 541.301[d]).

35. 29 C.F.R. §541.301(d).

36. Eisenbrey, "A Closer Examination of the Department of Labor's Final Overtime Regulations."

37. 69 Fed. Reg. 22264 (final rule 541.203[c]).

the current and new regulations, as well as court rulings and DOL enforcement policies.

What Should Be Done

Over the next few weeks, Congress is expected to consider a number of measures to prevent or alter the new white-collar regulations, but it should resist the temptation to intervene. Specifically, Congress:

- Should not block the new regulations by passing a Congressional Review Act Resolution or by inserting language preventing their enforcement into the DOL appropriation. Either action would leave outdated and convoluted rules in place to the detriment of employers and workers.
- Should not mandate that workers who are entitled to overtime under current rules may not lose that protection under subsequent versions. Although this might seem consistent with DOL's intentions, it would force the courts to examine employees under both new and current regulations, adding further complexity to FLSA litigation.
- Should not consider legislation stating that specific, enumerated occupations are not to be exempted. Each enumerated occupation would, in turn, require its own regulatory definition, increasing the burden on DOL's regulatory staff and enforcement personnel.

Congress could make one constructive change by mandating periodic review of the white-collar exemptions. Fifty years is too long to wait between updates of the white-collar rules. A fresh review of white-collar exemptions every five or 10 years would reduce the extent to which out-of-date regulations can harm employers and employees.

Conclusion

Empowered, informed workers are the first line of defense against dishonest employers who seek to evade the requirements of the Fair Labor Standards Act. The new regulations reflect this. The new salary requirements, combined with simpler, clearer, and more up-to-date duties tests will make it easier for employees to recognize when their rights are being violated.

Needlessly complicated, out-of-date, and unclear rules do not benefit employees. Such rules are more likely to encourage litigation, draining resources from employers and employees. Expensive litigation has the perverse effect of drawing attention away from low-wage workers, who have the strongest need for statutory overtime protection, toward higher-paid employees, who generate larger back-pay amounts from which employment lawyers can draw their fees. Simpler rules, by contrast, lower enforcement costs and make it more practical for attorneys to accept cases involving low-wage workers.

The new white-collar regulations represent a substantial improvement over the current rules: Relatively few workers are likely to lose overtime protections because of the new rules, some will gain overtime protections, and enforcement will become easier. Updated white-collar exemption rules are already long overdue, and Congress would do well to allow these rules to take effect without modification and without further delay.

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