Testimony

Testimony on: The Department of Labor Proposed Overtime Pay Rule and Its Economic Consequences Hearing on “Bad for Business: DOL’s Proposed Overtime Rule”

DOUGLAS HOLTZ-EAKIN | NOVEMBER 29, 2023

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Chairman Kiley, Ranking Member Adams, and members of the committee, thank you for the privilege of appearing today to discuss the Department of Labor’s (DOL) proposed overtime pay rule and its economic implications. The Department of Labor recently announced a Notice of Proposed Rulemaking (NPRM) that would increase the annual salary threshold for those who qualify for overtime pay from $36,000 to $55,000. The rule is intended to ensure that more “low-paid salaried employees” benefit from time-and-a-half pay for any hours worked above the typical 40-hour work week. I hope to make the following main points regarding the rule:

- Based on traditional criteria, there is no compelling case to be made for the timing or content of the proposed rule;
- The dollars to cover additional overtime expense are simply a tax and inevitably must crowd out other hiring, pay raises, or return to capital, or be passed on to customers at time when inflation is a paramount economic challenge; and
- The primary intent appears to be redistribution, yet research at the American Action Forum (AAF) finds that only 3.1 million additional workers would actually benefit from the overtime pay expansion and that the rule would minimally affect those at the lower end of the income distribution.

Let me discuss each in turn.

Introduction

In 1938, Congress enacted the Fair Labor Standards Act (FLSA). Among its provisions are those for overtime pay. Under FLSA, employees who work more than 40 hours per week must be paid 1.5 times their usual pay rate for each overtime hour. Certain categories of workers – primarily those classified as executive, administrative, or professional employees – are exempt from these requirements, however, and are, accordingly,

ineligible for overtime pay. The Secretary of Labor has the authority to "define and delimit" what constitutes the types of employees who are exempt.

Today there are three primary requirements to exempt a worker from overtime pay: The worker must be salaried (the salary basis test), the salary must meet a minimum level (the salary level test), and the worker's duties must align with the definition of an executive, administrator, or professional (the duties test).

The Proposed Rule

On August 30, 2023, DOL announced an NPRM that would increase the number of workers eligible for overtime pay by raising the annual qualifying salary threshold for time-and-a-half pay from approximately $36,000 to $55,000. This threshold increase would therefore impact workers that earn between $692 to $1,059 per week and work more than 40 hours per week.

The proposed rule raises a series of questions. Why raise the threshold? Why now? Why to $55,000?

A review of the legislative history of the Depression-era Fair Labor Standards Act indicates the overtime provisions had three purposes: (1) to prevent workers who (perhaps out of desperation) were willing to work abnormally long hours from taking jobs away from workers who prefer shorter hours, including union members; (2) to spread available work among a larger number of workers and thereby reduce unemployment; and (3) to compensate overtime workers for the increased risk of workplace accidents they might face due to extra exertion.

In the current context, the Biden Administration is certainly committed to protecting unions. But there is no need to limit overtime to force more hiring in the labor market of 2023 and there is no mention of workplace safety in the rule. Instead, overtime is just another tool for income redistribution and the pursuit of an ill-defined "fair" outcome.

The rule is intended to benefit "low-paid salaried employees," which the DOL therefore defines as any wage up to $2,000 below the median wage of $57,200 per year, by expanding overtime pay to millions of additional salaried workers. Yet AAF research, using 2022 data from the Survey of Income and Program Participation, finds that only 3.1 million additional workers would benefit from the overtime pay expansion. Of these additional workers, few would be on the lower end of the income distribution and would only be minimally affected.

Workers Impacted by Proposed Overtime Pay Expansion

By raising the salary threshold from $692 to $1,059 per week, the proposed rule would expand overtime pay eligibility to all salaried workers whose pay falls within that range. Using 2022 data from the Survey of Income and Program Participation, AAF finds that 18.9 percent of all salaried workers earn between $692 and $1,059 per week. That percentage translates to about 11.2 million workers who earn salaries that fall within the range.

Those salaried employees will only benefit from the rule change if they work more than 40 hours per week and therefore qualify for overtime. Of the 11.2 million workers, only 5.3 percent work overtime and would qualify for the additional time-and-a-half pay. The overtime rule would have a limited scope and only impact approximately 3.1 million workers.

The proposed rule is intended to boost incomes for “low-paid salaried employees” and their families. Yet the data indicate only 2.4 percent of the impacted workers are in poverty. Moreover, 46.5 percent are in families with incomes more than triple the poverty threshold (at least $90,000 for a family of four). The data suggest that raising the annual salary threshold for overtime pay to $55,000 would not effectively assist “low-paid salaried employees.” Instead, the benefits would fall to individuals in families with relatively high incomes.

Economic Impacts of the Proposed Rule

The analysis thus far suggests that the proposed rule would have few benefits, even when taking the distributional objectives at face value. It would, however, certainly have costs. AAF estimates that the total additional wage cost of the rule would be $18.8 billion annually, or roughly $6,000 per affected worker. Finalizing the rule will not change the resources the affected firms have available, and $18.8 billion will have to come from somewhere. In the end, the burden is quite likely to be borne by workers.

This additional cost could come from less future hiring by the firms. In this case, the economic impact would transfer the dollars from those who did not get a job to those who have a job. This is a perverse outcome at odds with the intent of the rule.

Alternatively, the trajectory of hiring may remain unchanged, but future wage increases would be reduced by $18.8 billion. In this case, the transfer is from all other workers to the 3.1 million affected workers.

Another possibility is that the resources will come at the expense of contributors of capital to the firm or retained earnings and future capital investment. In either case, the impact will be to reduce the capital intensity of the businesses, slow the growth of productivity, and ultimately reduce all workers’ real wages.

A final possibility is that firms will pass along the $18.8 billion in the form of higher prices. This has the effect of shifting the burden most broadly, as it has the effect of reducing the purchasing power of wages throughout the economy.

In practice, some combination of all these possibilities will occur. The upshot, however, is that the overtime rule is far from a blessing to workers as a whole since it is quite likely that the burden will be shifted to other workers in the economy.

Thank you and I look forward to your questions.