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Regulations and Flexibility

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Regulations and Flexibility

Abstract

"Salaried workers are more likely to blur their work and home lives by taking work home, checking emails at night, or telecommuting."

Posting about changes in labor laws from *In All Things* - an online hub committed to the claim that the life, death, and resurrection of Jesus Christ has implications for the entire world.

<http://inallthings.org/regulations-and-flexibility/>

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Regulations and Flexibility

 allinallthings.org/regulations-and-flexibility/

Donald Roth

One of the biggest stories of the summer in the world of labor and employment law was news that the Department of Labor [plans to more than double the threshold](#) for exemption from the Fair Labor Standards Act's overtime pay requirements. In practical terms, this means that at least [five million new workers will be eligible for overtime pay in 2016](#). While President Obama is advertising this move as a [victory for middle class labor conditions](#), these regulatory changes also mean that those five million workers will essentially be converted from being paid on a salary basis to being paid on an hourly one, and this may create challenges for one of the President's other labor policy interests, [workplace flexibility](#). This does not necessarily mean the new regulations are bad, but there is good evidence that the changes were not designed with flexibility in mind, and it is worth weighing what impact these rules might have and determining whether or not the tradeoff is worth it. As someone interested in the field but with no skin in the game (educators are never entitled to overtime pay), what follows is my attempt to do just that.

The Regulator's Imagination

If you've ever watched a president's State of the Union address, you've probably noticed that there's always a group of individuals, usually up in the balcony, that the President will mention as a story to anchor some new policy initiatives. The same thing is true of a lot of legislation that gets passed. As people, we find story more compelling than dry data, and in order for a proposal to build the head of steam it needs to become law, it can be extremely helpful to make the need for change relatable to some real-life situation. Legislators and regulators like to feel that they are solving specific problems, and attaching a story to that problem can help them define the issue and tailor their solution.

The issue of overtime pay is no exception. As becomes overwhelmingly evident when looking at the press releases by the [Department of Labor](#) and the [White House](#), the story that captured their imagination is of the [managers at retail stores and restaurant chains](#) who, in addition to opening and closing the store, have duties which are largely the same as the hourly staff. Under current regulations, so long as a manager has at least two employees answering to them and makes more than about \$24,000, the manager is [not entitled to overtime pay](#). This creates compelling stories like former Starbucks store manager [Kevin Keevican](#), who, although he spent 70-80% of his 65-70 hour work week on normal barista duties, lost his 2007 suit against Starbucks seeking overtime pay because his title was "manager" and there were no higher ranking employees on site.

However, the proposed rules aim to instate overtime pay requirements for workers [making up to \\$50,400 \(40% of the U.S. workforce\)](#), and while that's not a lot of money in most urban areas in the U.S., there are plenty of places in the country where more than half of the households in the state don't make that much (around [23 states, depending on your data set](#)). This doesn't necessarily mean that the standard the Administration set is a bad one, but if the picture in your head isn't a "[glorified barista](#)" working 70 hours a week but anyone making around \$50,000, the nature of the situation may feel a little different.

The Impact on Flexibility

Ultimately, the reason why it's important to think of more than overworked retail managers is because the switch from salaried to hourly employees comes with a variety of trade-offs in terms of [flexibility, job security, and job responsibility](#). Even analysis favorable to raising [the exemption cutoff agrees that the](#)

differences in flexibility as to start/stop time are genuine, particularly for workers making closer to the cutoff (regardless of quibbles I'd have with their other data interpretation). On top of this, there is a certain psychological difference between having someone track the work you do compared to the hours you spend doing it, and the value of the perception of control over one's schedule, even if salaried workers tend to put in extra hours as a result, should not be ignored.

One issue that both sides of the aisle agree on is that salaried workers are more likely to blur their work and home lives by taking work home, checking emails at night, or telecommuting. The President has worked to promote flexibility in work arrangements, viewing them as [vital to a healthy workforce](#), but the reality is that this is a developing area, and the legal complexities of allowing flexible work arrangements for hourly workers far exceed difficulties with giving flexible arrangements to salaried employees. For instance, employers in states like California have to [strictly regulate employee access to company email in their off-work hours](#), and this can lead to restricting availability of things like cellphone benefits and the ability to use company laptops at home.

The kicker with this aspect of the analysis is that the upcoming millennial workforce [doesn't mind blending their work and home lives](#). In fact, analysts recommend that employers seek to [expand flexible work arrangements](#), including a focus on [outcomes over things like face time or hours worked](#). Currently, about [1% of employers have even embraced "unlimited vacation" policies](#), with notables like Netflix offering unlimited paid parental leave and Evernote paying a \$1,000 stipend to employees who take at least one week off. These kinds of policy innovations have advocates and detractors, but they are impossible for an hourly workforce (even at the [companies mentioned](#)).

Weighing the Cost

So how does this all balance out? I think the answer will all depend on where you live in the country and where you find yourself in the workforce. There is still uncertainty about how employers will respond; in the targeted group, retailers are saying they're [more likely to cut hours and hire part-timers than pay overtime](#), but time will tell whether that's true or not. There is also an argument to be made that, despite what [millennials](#) might say, more separation from work might be a healthy thing. Just because we can be connected to work by our devices doesn't mean it's a good thing.

For me, if the abuse we're concerned about is employers misusing the "manager" label, then we should target our solution to that issue. There is logic to pegging the exemption threshold to where it would have been if it had been inflation-adjusted initially, but the reality is that it hasn't been inflation adjusted for decades, and people's expectations have evolved over that time. In particular, the move to greater flexibility is, in many ways, still in its infancy, but I believe that it's an overwhelmingly good thing, and I'd hate to see that trend stunted inadvertently.

Ultimately, I like being a salaried worker. Sure, I can gripe about the hours I put in at times, but I also have a sense that my employer wants me more for my work product than my work hours, and that gives me a sense of ownership about what I do that is deeply rewarding. I also enjoy a remarkable amount of flexibility in how I do my job, and I would hate to have that curtailed by the rigidity of an hourly structure. That may be part of why my profession will never be hourly, but maybe I'm not so unique.

What do you think about the proposed changes?