Research

The Overtime Rule: Effects on Institutions of Higher Education

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INTRODUCTION

Next month the Department of Labor (DOL) will implement a rule to expand the number of salaried workers entitled to overtime pay. Starting on December 1, the minimum weekly pay needed to exempt workers from overtime pay will more than double from $455 per week to $913 per week.[1] All workers earning below $913 per week will automatically be entitled to time-and-a-half pay for working beyond 40 hours per week. Previously, American Action Forum (AAF) found that the benefits of this rule to workers are extremely modest, while the administrative costs to employers are quite large.[2] The rule, however, will impact some industries more than others. Higher education institutions have expressed concerns that the rule will affect a large number of their workers and that they have limited resources to afford the new administrative costs. In this paper, we examine the magnitude of the rule's impact on higher education, and what it could mean for students.

Summarized, we find that in higher education the rule will:

- Potentially benefit 42,100 workers,
- Impose $724.3 million in annual costs, and
- Adversely impact students by increasing tuition and/or reducing access to student support services.

BACKGROUND

In May, the DOL finalized a rule to expand federal overtime pay protections. Under the Fair Labor Standards Act (FLSA), employees who work more than 40 hours per week must be paid 1.5 times their usual hourly pay rate for each overtime hour. However, certain categories of workers, primarily those classified as executive, administrative, or professional employees, are exempt from these requirements and are ineligible to receive overtime pay. This is often referred to as the "white collar" exemption because it generally applies to office jobs that usually pay well. The Secretary of Labor has the authority to "define and delimit" what constitutes the types of employees who are exempt.[3] So the DOL can change who is required to receive overtime pay by modifying the requirements for the white-collar exemption and reducing the number of people who are exempt from FLSA standards.

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).[4]

Under the rule, the DOL will adjust the salary level test. Specifically, starting on December 1st, the DOL will raise the minimum weekly pay threshold legally required to exempt salaried workers from overtime to the 40th percentile of earnings for full-time salaried workers in the lowest-wage census region, which is currently the

South. This means that the salary threshold will increase from the current level of $455 per week or $23,660 per year to $913 per week or $47,476 per year. Anyone earning below $913 per week will automatically no longer be exempt and will now be entitled to overtime pay. Going forward, the DOL will also automatically update the salary threshold every three years so that it remains fixed at the 40th percentile of weekly earnings in the lowest wage census region.

HIGHER ED WORKERS IMPACTED BY THE RULE

With efforts to expand overtime pay underway, institutions of higher education (IHE) have raised concerns about the administrative cost burden of implementing and managing the transition of traditionally exempt employees to nonexempt status. So how many workers in IHEs will this rule impact?

Overall, the DOL estimates that for 2017 across all sectors, nearly 4.2 million workers will earn between $455 and $913 per week and no longer be exempt from overtime pay under the new rule. However, most of these workers will not benefit from the overtime pay rule, as DOL also estimates that only 825,000 of those workers regularly work more than 40 hours per week.

It is important to note that these estimates have been disputed. For instance, the Economic Policy Institute estimates that the rule will impact 12.5 million workers.[5] The large discrepancy between these estimates stems from the fact that official surveys of the U.S. labor market do not track whether workers are exempt from FLSA wage and hour standards. So, when analyzing the impact of the overtime rule, analysts must guess how frequently each type of salaried occupation is currently exempt from FLSA overtime protections.

Given this discrepancy in these estimates, for higher education perhaps it is best to examine the magnitude of the number of workers whose worker status could potentially change from exempt to nonexempt. Using 2013 data from the Survey of Income and Program Participation, we analyzed these workers.[6] Table 1 outlines the estimated number of salaried workers in higher education, how many earn between $455 and $913 per week, and the number who will likely no longer be exempt from overtime pay because of the rule.

Table 1: Workers Potentially Impacted by Overtime Rule in Higher Ed

Category	Workers
Salaried	2,902,500
Earn between $455 & $913 per week	842,100
Teachers (unaffected by rule)	357,000
Non-Teachers (affected by rule)	485,100

Overall, we estimate that about 2.9 million workers in higher education are salaried, 842,100 of whom earn between $455 and $913 per week. In higher education, however, not every salaried worker who earns between

$455 and $913 per week will be impacted by the rule. According to DOL guidance on the rule, teachers have a unique exemption from FLSA wage and overtime protections that does not depend on their weekly pay rate.[7] This means that the DOL's effort to raise the minimum salary threshold to exempt workers from overtime pay will not change the exemption status of IHE workers in teaching related occupations, which also includes coaches, graduate and undergraduate student teaching assistants, and academic administrative personnel.

As illustrated in table 1, of the 842,100 salaried workers in higher education who earn between $455 and $913 per week, 357,000 are in teaching-related occupations and should not be impacted by the rule. But, starting on December 1st, the remaining 485,100 salaried workers who are non-teaching personnel will no longer be exempt and gain overtime protections. These non-teaching workers include postdoctoral researchers, non-academic administrative workers such as admissions counselors, recruiters, and financial aid specialists, and other salaried workers such as food service managers or campus police.

REGULATORY BURDEN OF THE NEW OVERTIME STANDARDS ON HIGHER EDUCATION

IHEs will face two costs due to the rule, the increased labor cost of overtime workers and the administrative cost of complying with the new rule. Of course, the increase in labor cost will only apply to those who actually work over 40 hours per week. As illustrated in table 2, we estimate that of the 485,100 newly covered workers, only 42,100 work more than 40 hours per week and could directly benefit from the rule.

Table 2: Regulatory Burden of New Overtime Standards

Affected workers who work overtime	42,100
Extra pay per worker annually	$16,400
Total extra pay for all overtime workers annually	$688,876,100
Administrative cost	$35,460,700
Total Regulatory Burden	**$724,336,800**

To gauge the magnitude of this cost, let's assume for simplicity that these institutions begin to pay time-and-a-half for overtime to these workers, without reducing hours or employment. On average, annual pay for each worker would increase by $16,400. In total, IHEs would have to spend an additional $688.9 million in overtime pay.

In addition to increasing pay for the 42,100 overtime workers, IHEs would also face substantial administrative cost burdens for all the 485,100 workers who would be newly covered by the federal overtime standards. The DOL estimates that for all 4.2 million workers nationwide who will be newly covered by federal overtime standards, private businesses will face roughly $304.3 million in annual compliance costs.[8] That equates to about $73.10 per worker. Applying that per worker compliance cost estimate to the 485,100 newly covered workers in higher education means that IHEs will face about $35.5 million in additional cost burdens. Between the labor and compliance costs, the DOL's new overtime rule will cost IHEs $724.3 million annually.

Moreover, the total regulatory burden on IHEs could be even larger. A recent Congressional Budget Office (CBO) report indicates that the overtime rule's annual compliance costs could be much larger than the DOL suggests.[9] Specifically, the CBO concludes that the overtime regulation will result in 3.9 million salaried workers gaining overtime protections and that private businesses will face about $1 billion in average compliance costs,[10] which equates to about $264.50 per newly covered worker. This means that IHEs could face up to $128.3 million in annual compliance costs, substantially larger than the $35.5 million estimate derived from the DOL figures, and the total regulatory burden on IHEs could be as much as $817.2 million annually.

To pay for the rule, IHEs will have to either pass the cost directly on to students through higher tuition, or cut back hours and employment among non-teaching personnel, which would also adversely impact students. Since academic budgets for this school year are already fixed, several universities are planning to limit the hours of their non-teaching personnel. In Ohio, for instance, thousands of workers in IHEs must now request overtime, approval for which will be made on a case-by-case basis.

TYPES OF HIGHER EDUCATION WORKERS ADVERSELY IMPACTED BY NEW OVERTIME RULE

Although the rule will impact a number of IHE workers, quantifying its exact impact on them is challenging. Public comments and congressional testimony on the DOL's proposed overtime rule, however, suggest that there are two areas of concern for the higher education workforce – student services and postdoctoral research.

Student Service Workers

The overtime rule will likely limit the roles of employees in a wide range of student support services and adversely impact students. For instance, employees in student recruitment and student enrollment are prone to working more than forty hours during specific times of the year, such as the beginning of the school year, the start of spring and summer sessions, or near admission deadline dates. As described by Kansas University, "[KU] does not have the resources to raise these employees to the new FLSA overtime threshold in order to maintain their exempt status nor does the university have the resources to pay overtime once these employees are categorized as non-exempt. The result will be reduced services provided to our students."[11] Other student support services the rule could adversely affect include food services, library services, and transportation services, though, as argued by DOL, these positions are more easily adjusted and often employ workers that fail to meet the forty-hour threshold.

For smaller schools with limited resources, such as those represented by South Carolina Independent Colleges and Universities (SCICU) who submitted comments on the proposed rule, the failure of DOL to take regional differences in pay into consideration could lead to unintended bias in favor of larger institutions. According to SCICU, employees at smaller institutions and those in lower cost areas of the country like South Carolina would be significantly and adversely impacted because public sector pay is frequently lower in these areas than nationwide averages.[12] SCICU goes on to detail benefits its institutions provide workers such as health coverage, retirement and paid leave, as well as benefits unique to employment with IHEs, such as campus health and recreational facilities and tuition reimbursements. In their comments, SCICU suggests that the DOL should take into consideration the value of these forms of compensation when accounting for the minimum salary level. Failing to adjust for these regional variations in pay could lead to greater workforce reduction in these lower cost areas.

Postdoctoral Research

In its fact sheet and guidance on the overtime rule's impact on higher education the DOL specifically discussed the rule's impact on postdoctoral researchers.[13] These are generally entry-level academic employees who have earned their Ph.D.'s and are gaining additional training and mentorship in their areas of research. Often they are engaged in research, professional activity, and university public service, but do not have teaching responsibilities. These scholars are crucial to nearly all research universities in the United States. IHEs often base the pay for these employees off the National Institutes of Health (NIH) experience salary scale which has a minimum annual salary of $42,840 – $4,636 less than established in DOL's new rule.

Public comments from the University of California, in response to the rule, describe the concerns many research institutions shared. "The nature of their research and research training cannot be easily quantified within a typical 40-hour work week. Not only would monitoring their hours to pay overtime be extremely difficult," but the nearly five thousand dollars per newly-nonexempted worker will "place enormous strain on the University's budget, likely forcing layoffs and causing delays and disruptions in ongoing research."[14]

CONCLUSION

The overtime rule will have various effects on the higher education sector. The $724.3 million in costs due to the rule will only add to the overwhelming cost burdens already placed on the sector by the federal government. These costs will be passed on to students and will affect tuition, education quality, and the higher education workforce. Meanwhile, only about 42,100 workers in higher education could potentially benefit from the rule with an increase in pay. Consequently, in higher education the overtime rule imposes major costs to provide minimal benefits.

[1] 29 CFR Part 541, RIN 1235-AA11, "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees," Wage and Hour Division, Department of Labor, May 2016, Final Rule, https://www.federalregister.gov/documents/2016/05/23/2016-11754/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and

[2] Ben Gitis & Dan Goldbeck, "Final Overtime Rule: Minimal Benefits and Major Costs," American Action Forum, May 19, 2016, https://www.americanactionforum.org/research/final-overtime-rule-minimal-benefits-major-costs/

[3] Whittaker, William G. "The Fair Labor Standards Act: A Historical Sketch of Overtime Pay Requirements of Section 13(a)(1)," Congressional Research Service, May 2005, retrieved from Cornell University ILR School, available at
http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1240&context=key_workplace

[4] For a detailed description of overtime worker exemptions see: Primer: Overtime Pay Regulation

[5] Ross Eisenbrey & Will Kimball, "The new overtime rule will directly benefit 12.5 million working people," Economic Policy Institute, May 17, 2016, http://www.epi.org/publication/who-benefits-from-new-overtime-threshold/

[6] Survey of Income and Program Participation, 2008 Panel Wave 15 Core Microdata File, obtained from the National Bureau of Economic Research, http://www.nber.org/data/survey-of-income-and-program-participation-sipp-data.html

[7] "Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act," Wage and Hour Division, Department of Labor, May 18, 2016, https://www.dol.gov/whd/overtime/final2016/highered-guidance.pdf

[8] Ben Gitis & Dan Goldbeck, "Final Overtime Rule: Minimal Benefits and Major Costs," American Action Forum, May 19, 2016, https://www.americanactionforum.org/research/final-overtime-rule-minimal-benefits-major-costs/

[9] "The Economic Effects of Canceling Scheduled Changes to Overtime Regulations," Congressional Budget Office, November 14, 2016, https://www.cbo.gov/publication/51925

[10] The CBO estimates that annual compliance costs between 2017 and 2022 will range from $680 million to $1,810 million, indicating an average annual cost of $1,031.67 million.

[11] Michael Rounds, Associate Vice Provost for Human Resources Management, University of Kansas, Testimony for United States House of Representatives Committee on Education and the Workforce, June 9, 2016. http://edworkforce.house.gov/uploadedfiles/testimony_rounds.pdf

[12] South Carolina Independent Colleges and Universities, Comment on the Wage and Hour Division (WHD) Proposed Rule: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees https://www.regulations.gov/document?D=WHD-2015-0001-5569

[13] "Overtime Final Rule and Higher Education," Department of Labor, https://www.dol.gov/sites/default/files/overtime-highereducation2.pdf

[14]The University of California (UC) System, Comment on the Wage and Hour Division (WHD) Proposed Rule: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees https://www.regulations.gov/document?D=WHD-2015-0001-5555