



## **Wolf Proposal Would Restore 40-Hour Work Week and Fair Overtime Pay for 465,000 PA Salaried Workers**

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In June, Governor Tom Wolf issued a notice of his intention to restore guaranteed overtime pay for Pennsylvania salaried employees earning between about \$24,000 and \$48,000 when they work more than 40 hours in a week. This change would benefit an estimated 465,000 Pennsylvania salaried employees statewide, including up to 20% of workers in some lower-wage rural counties with shortages of family-supporting jobs.

Governor Wolf's proposed change would also boost job creation in Pennsylvania because some existing salaried employees would receive higher pay and other businesses would hire new employees to work the hours salaried employees previously worked for free. Existing and new employees with bigger paychecks would spend more at local businesses, further driving job creation.

This brief explains Governor Wolf's proposed expansion of overtime pay for salaried employees and presents estimates of the number and share of workers who would benefit by county. It also details how Pennsylvanians can provide formal comments on the proposed rule (before the deadline of August 22, next Wednesday) as part of the formal regulatory review process required before Governor Wolf's proposal can go into effect.

### **Most U.S. Salaried Workers Used to Receive Overtime Pay**

In 1975, nearly two-thirds of U.S. salaried workers were guaranteed overtime pay if they worked over 40 hours per week just like workers paid by the hour.<sup>1</sup> Since then, as with many other public policies—such as the minimum wage—our overtime rules have tilted against workers. At this point, only about one in 14 U.S. salaried employees automatically receives overtime pay. This shift took place because of the failure of policymakers to adjust the first of two ways U.S. and Pennsylvania law determine that salaried workers may receive overtime pay.

- The first way specifies that salaried workers below specific salary levels (with a few exceptions) are automatically eligible for overtime.
- The second way specifies that salaried employees, primarily in the executive, administrative, and professional (EAP) categories, must have certain responsibilities (“duties”) to be considered exempt from overtime. If they fail a duties test—in layperson’s terms, if their jobs are not that different than hourly workers’ jobs—these employees should receive overtime pay even if their salary exceeds the relevant threshold below which all salaried workers in that category receive overtime.

Up until the mid-1970s, these two approaches to determining salaried worker eligibility for overtime pay worked in tandem. Periodic increase of the salary thresholds below which salaried workers received overtime pay helped ensure that only relatively highly paid salaried employees were denied overtime pay. The salary thresholds also aligned with duties tests because most people below the salary

thresholds would have failed such tests. The thresholds—and their periodic increases to keep pace with general increases in salaries due to inflation and rising real incomes—represented a form of regulatory simplification and facilitated enforcement. Even though most people below the thresholds would fail duties tests, this didn't have to be proved on a case-by-case basis by going through a duties test for every worker; employers could just look at worker's salary and see that it was low enough for automatic eligibility. Businesses and workers could rely primarily on the salary thresholds to know who should get overtime and who would not (except that some workers above the thresholds, if they failed a duties test, would still be eligible for overtime pay).

### **Now Fewer Than One in 14 Salaried Workers Automatically Receives Overtime Pay**

After the mid-1970s, regular increases in U.S. and Pennsylvania overtime pay salary thresholds stopped, leading to the current reality of fewer than 7% of workers being below the U.S. threshold of \$23,660.<sup>2</sup> This has led to a situation in which large shares of salaried workers above the low threshold of \$23,660 fail duties tests—they should be getting overtime pay if they work over 40 hours, but in many cases are not. As a result, hundreds of thousands of Pennsylvania salaried employees get denied overtime pay even though their duties are little different from hourly workers. These include shift supervisors in fast food who lock the door at closing time but mostly staff a cash register like hourly employees; assistant department managers in department and discount stores; assistant branch managers; para-professionals in law, accounting, and business service firms; and office managers in small for-profit and non-profit businesses. The situation has become so bad that some employers, such as higher education institutions, think they've turned the clock back 100 years—to before we had a 40-hour work week—simply by labelling employees salaried and giving them a fixed weekly paycheck.

Salaried employees denied overtime often work 45-55 hours per week for effective wages of as little as \$10 per hour (as the examples in the box on the next page illustrate). Virtually all Pennsylvanians get served by these hard-working, moderate-wage salaried employees every day. These employees are our neighbors and our friends. They are some of the hardest working, unsung heroes of Pennsylvania businesses, small and large, for-profit and non-profit. These employees deserve to be paid overtime if they work more than 40 hours in a week—or to get back time with their family if their employer cuts them back to 40 hours rather than pay overtime.

### **Governor Wolf's Proposed Increase in the Overtime Threshold: A Modest Proposal**

Recognizing the failure to increase salaried thresholds as another reason the Pennsylvania economy has become rigged against working Pennsylvanians, in June Governor Wolf submitted the paperwork required for him to initiate an increase of the Pennsylvania overtime pay salary threshold to the 30th percentile (salary higher than 30% of salaried employees and less than 70% of salaried employees) of the Northeast U.S. salaried employee distribution—\$47,892 in 2016. Since Pennsylvania is a relatively low-wage state within the Northeast region, this would mean that a bit more than a third of Pennsylvania salaried employees would automatically be eligible for overtime pay based on their salaries. This is a modest proposal to inject a bit more fairness into the Pennsylvania economy; it would ensure automatic eligibility for overtime pay for only about half the share of U.S. salaried employees automatically eligible for overtime pay in the mid-1970s. Moreover, full phase in to a new, higher salary threshold will take until the full phasing-in process isn't until January 1, 2023, four years from now, giving businesses ample time to adjust.<sup>3</sup>

### **Box 1. In Their Own Words: Workers Make the Case for a Higher Pennsylvania Overtime Threshold**

An opportunity for members of the public to comment on the proposed rule change is one of the first steps in the regulatory process triggered by Governor Wolf's June notice of his intention to raise the salary below which Pennsylvania workers will automatically receive overtime pay. The public comment period ends in two days, on August 22. The public comments received to date are publicly available online at <http://www.irrc.state.pa.us/regulations/fullList.cfm?ID=3213&typ=ppc>

Some of the worker comments eloquently convey how employers take advantage of salaried employees in some cases. Here are three examples, edited down from the complete comments on line.

**Sharyn from Philadelphia, PA:** "I work in the job title of Lead Health Assistant and earn an hourly wage. However, until recently, my employer (Accolade, Inc.) paid me a salary of under \$47,000, expected me to work long hours (usually over 50 hours per week), and did not pay me extra overtime compensation.

Companies enjoy a big benefit when they pay employees a salary, require the employees to work long hours, and avoid making extra overtime payments. But employers that benefit from this tactic should at least be required to pay a respectable salary. In my opinion, requiring employers to pay the very modest salary of \$47,892/year (which does not get you too far in today's economy) is a matter of basic fairness."

**Justin from Pittsburgh, PA:** "I previously worked as a salaried Assistant Manager at a retail bank. My salary was under \$40,000/year and the bank did not pay me any overtime even though I almost always worked over 40 hours per week and frequently worked over 50 hours per week. Even though I was given a 'Manager' job title, I spent almost all of my time performing the same customer service tasks that the hourly bank tellers performed.

The banks business model was pretty obvious: Shift all the overtime work over to me, since I was required to work the extra overtime hours 'for free.' Meanwhile, the hourly employees (who basically were doing the same work as me) rarely got an opportunity to earn extra overtime pay."

**Tawilla from Glenolden, PA:** "Until recently, I worked as a salaried Case Manager for Public Health Management Corporation. I was making under \$47,000/year and often worked over 60 hours/week. In late-2016, my employer informed me and other Case Managers that we would receive raises because President Obama was changing the federal overtime law to require that overtime-exempt workers be paid over \$47,000 per year.

Unfortunately, in late-November 2018, my employer stated that it was not going forward with the promised raise because 'a federal judge in Texas has blocked the implementation of the new overtime rules that were scheduled to take effect.' This seemed very unfair.

Social workers deserve to be paid a fair salary for the important work we perform. If we are going to be treated as overtime-exempt 'professionals,' then we should be paid a respectable salary."

## Governor Wolf's Proposal Would Benefit an Estimated 465,000 Employees with Large Numbers in Major Cities but the Biggest Share in Lower-Wage Rural Areas

The Economic Policy Institute estimates that 465,000 Pennsylvania salaried employees would benefit from Governor Wolf's proposal to increase the salary threshold to \$47,892.<sup>4</sup> Although we haven't yet analyzed the demographic, industry, and occupation analysis of this specific proposal in Pennsylvania, its general affects would be like those of President Obama's proposal to increase the federal overtime threshold to \$47,456. That proposal would have benefited a broad cross section of U.S. salaried employees (Table). Governor Wolf's proposal would do the same in Pennsylvania.

<b>Table 1. Salaried workers directly benefiting* from an increase in the overtime salary threshold like Gov. Wolf's proposal** represent a cross section of the workforce.</b>		
<i>Group</i>	<i>Share of group's salaried workers that are directly benefiting</i>	<i>Group's share of directly benefiting workers</i>
All (1)	23%	100.0%
<b>Gender</b>		
Male	22%	49.1%
Female	25%	50.9%
<b>Race/ethnicity***</b>		
White	21%	64.3%
Black	31%	12.0%
Hispanic	32%	16.0%
Asian	19%	6.2%
Other	23%	1.5%
<b>Age group</b>		
16–34	30%	36.3%
16–24	33%	7.5%
25–34	29%	28.7%
35–44	21%	22.1%
45–54	21%	21.9%
55–64	21%	15.9%
65+	17%	3.8%
<b>Educational attainment</b>		
Less than high school	37%	5.5%
High school	38%	25.3%
Some college	34%	30.7%
College degree	19%	29.3%
Advanced degree	9%	9.3%
* Directly benefiting salaried workers are those who will newly be guaranteed overtime protection based on their salary alone under a higher overtime threshold. This includes workers who were excluded from automatic overtime protection because they were classified, in some cases incorrectly, as executive, administrative, and professional or "EAP" employees; and workers whose rights are strengthened (they were at risk of being classified as EAP employees).		
** Table 1 shows the demographics of U.S. workers who would have benefited from President Obama's proposed increase in the national salary threshold for overtime pay to \$47,476. Governor Wolf's proposed increase to \$47,892 would have a similar impact, improving pay and/or shortening work hours for a broad cross section of the Pennsylvania workforce.		
*** Race/ethnicity categories are mutually exclusive (i.e., white non-Hispanic, black non-Hispanic, and Hispanic any race).		
Source: adapted from Table 1 in Ross Eisenbrey and Will Kimbell, "The new overtime rule will directly benefit 12.5 million people," Economic Policy Institute, May 17, 2016; <a href="https://www.epi.org/publication/who-benefits-from-new-overtime-threshold/">https://www.epi.org/publication/who-benefits-from-new-overtime-threshold/</a>		

Building on the Economic Policy Institute's analysis of the number of Pennsylvanians who would directly benefit from Governor Wolf's proposal, the National Employment Law Project (NELP) has estimated the share of the workers benefiting who would live in each county of Pennsylvania (Table 2 and Maps 1 and 2). NELP's analysis drives home two main points.

- The number of workers who benefit will be greatest in the counties that have the largest populations and the most salaried employees, led by Philadelphia and Allegheny Counties.
- Second, the share of workers who benefit is greatest in lower-wage counties, primarily in rural areas. This makes intuitive sense. These areas have high concentrations of low-to-moderate wage service industries, such as retail, fast food and other eating and drinking places, and hospitality, in which lower-paid salaried employees are concentrated. Salaried employees in these industries would especially benefit from the proposed increase in the threshold below which all salaried employees qualify for overtime. In these rural areas, the proposed overtime rule change would make a vital contribution to increasing the number of family-supporting jobs.

In sum, urban and rural areas alike have a strong interest in the implementation of Governor Wolf's proposed increase in the threshold below which most salaried workers would automatically receive overtime pay.

The 465,000 Pennsylvanians who benefit include two categories of salaried employees below \$47,892. The first group includes salaried employees, currently eligible for overtime because they would fail duties tests that would exempt them from overtime. This group would now have more transparent eligibility for overtime, understood clearly by employer and employee. The second category includes newly eligible workers who would pass a duties test exempting them from overtime despite their modest salary. Now, based on the resurrection of an idea taken for granted throughout the United States until the mid-1970s—that ALL modestly paid salaried employees should receive overtime pay if they work more than 40 hours in a week—this second group would join the ranks of workers that enjoy overtime protections.

While large numbers of workers would benefit, it should be acknowledged that the impact in many cases would be modest. In some cases, these salaried employees who would benefit do not currently work overtime. In other cases, they work occasional overtime; their employer might choose to eliminate those occasions or to pay a little bit extra. In another group of cases, employers might lift salaried employees above the new \$47,892 threshold, making them ineligible again for overtime if they pass a duties test.

For several reasons, the rule change can be expected to create jobs. At businesses where salaried employees have worked significant overtime and now work no more than 40 hours a week, new employees would be hired. In addition, the bump to the paychecks of salaried employees now working overtime and newly hired workers would stimulate consumer demand at Pennsylvania businesses, further spurring job creation.



## Pennsylvanians Can Voice Their Support for Gov. Wolf’s Proposal to Boost Pay for Salaried Employees

Under Pennsylvania law, Governor Wolf has the authority to increase the overtime pay threshold without passage of legislation by the General Assembly. In stark contrast to the minimum wage, where the state legislature must act if workers are to receive an increase, Governor Wolf can—and has—acted to expand overtime pay for salaried workers.

The regulatory process initiated by the governor’s proposal to increase the overtime threshold, however, will be an extended one that provides multiple opportunities for public input. The first opportunity is a public comment period on the proposed rule that closes on August 22. Until next Wednesday, Pennsylvanians may send an email to [bsmolock@pa.gov](mailto:bsmolock@pa.gov) to voice their support for Governor Wolf’s proposal. Pennsylvanians who want to support the governor’s proposal can also access a customizable comment template online at [this link](#).

A recent Pennsylvania Budget and Policy Center poll for the “We The People – Pennsylvania” campaign underscores the overwhelming popular support among Pennsylvanians for a “raise [in the] overtime threshold so that middle-class salaried workers get paid fairly for working extra hours.” [Voters favor this by an overwhelming 84%-13%](#), with strong support outweighing strong opposition (46% to 8%). The support for this change is significantly stronger than support for a minimum wage increase (although that support is also strong).

Pennsylvanians across party lines, men and women, minorities and whites, from Erie to Philadelphia and Greene to Monroe, all know that our economy has been tilted for too long against hardworking people. And they know that the hundreds of thousands of modestly paid salaried workers who open our coffee shops in the morning, serve us in bank branches, answer our questions when we visit college admission offices, or help us schedule appointments or sort out billing snafus at the doctor’s office are among those most deserving of more pay if they put in extra hours. Pennsylvanians are hungry for elected officials to take action to cut them a little slack. Governor Wolf deserves great credit for doing just that. And Pennsylvanians need to have his back as his proposed increase in the Pennsylvania overtime threshold moves through the regulatory approval process to eventual implementation.

### END NOTES

<sup>1</sup> Celine McNicholas, Samantha Sanders, and Heidi Shierholz, “What’s at stake in the states if the 2016 federal raise to the overtime pay threshold is not preserved—and what states can do about it,” November 15, 2017, Figure A, <https://www.epi.org/publication/whats-at-stake-in-the-states-if-the-2016-federal-raise-to-the-overtime-pay-threshold-is-not-preserved/>.

<sup>2</sup> The Pennsylvania threshold for EAP workers is even lower. In practice, therefore, the U.S. threshold of \$23,660 currently applies to most salaried workers in Pennsylvania.

<sup>3</sup> The proposed rule would increase the salary threshold for automatic eligibility for overtime pay to the 2016 30th percentile of the Northeast (NE) region (of the U.S.) salaried employee salary distribution in three steps from January 1, 2020 to January 1, 2022. It would then increase the threshold to the 30th percentile of the NE salaried employee distribution in 2021 on January 1, 2023.

<sup>4</sup> Current Population Survey analysis provided to the Keystone Research Center by Janelle Jones and Heidi Shierholz of the Economic Policy Institute. The estimate includes workers in affected sectors (i.e., to the extent possible, it excludes sectors not covered by the proposed rule).