Forbes

May 18, 2016

The Harsh Reality Of Regulating Overtime Pay

By Andy Puzder

Today the Labor Department released its new overtime rule requiring that employers pay overtime to salaried managers who earn less than $47,500 per year, doubling the previous threshold of $23,660. Labor Secretary Tom Perez is promoting it as a means to increase middle-class wages claiming that "the overtime rule could… help millions of workers get back into the middle class." As with the Obama Administration's other efforts to regulate their way to economic prosperity, it will not deliver as promised.

The Labor Department claims the rule will benefit roughly five million employees and raise overall wages by around $1.3 billion But this is a static calculation that simply counts up the number of affected employees and mistakenly assumes that employers will accept the increased labor costs associated with such a regulation and make no moves to avoid or offset them.

The real world is far different than the Labor Department's Excel spreadsheet. This new rule will simply add to the extensive regulatory maze the Obama Administration has imposed on employers, forcing many to offset increased labor expense by cutting costs elsewhere. In practice, this means reduced opportunities, bonuses, benefits, perks and promotions.

The consequences

Perhaps the biggest consequence of the rule is that it will cause some employers to reclassify salaried employees as hourly, and set schedules so they can more easily track hours worked and avoid excessive claims for overtime. For example, taking a manager's current salary and allocating it across 45 hours (with 5 hours of overtime pay) will result in no increased labor expense or increased salaries. However, it would mandate five hours of overtime, rather than allowing managers to take advantage of the flexible schedules they currently enjoy.

Most employers incentivize their managers to run the businesses they manage like they own them with salaries and incentive compensation including performance-based bonuses rather than overtime pay. Owners set their own hours and work the hours necessary using their best business judgment rather than a schedule set by a superior. For many beginning managers, this new rule will reduce or eliminate that flexibility and the bonus potential associated with good performance.

Turning highly sought-after entry level management careers into hourly jobs where employees punch a clock and are compensated for time spent rather than time well spent is hardly an improvement on the path from the working class to the middle class.

Limiting the ability of entry level managers

At CKE Restaurants, our Chief Operating Officer Eric Williams started his career at Hardee's as a crew member in 1983, advancing through the ranks with various management positions. Testifying before the House Education and the Workforce Subcommittee on Workforce Protections last July, Williams criticized the proposal to turn salaried managers into hourly employees because it would limit the ability of entry level managers to allocate their time to satisfy the needs of the business and their personal lives.

For example, he testified that there were times when "local events – such as conventions – provided significant business opportunities with significantly higher customer demands." Williams was able to allocate more time to his restaurant and "take advantage of that opportunity" because he managed his own schedule unconcerned about getting approval for working the overtime hours the business required. On the personal side, there were also "times when business was slow" and he "was able to spend additional time with [his] family, raise [his] three daughters, attend school functions, work with [his] church, and take vacations."

As someone who worked his way up through the ranks, Williams is concerned that "[t]he very people this overtime proposal is intended to help will unfortunately be the biggest losers" and "may never reach their potential or realize their career dreams because of this change." He would know.

You cannot regulate your way to economic prosperity

Most salaried employees recognize that in exchange for the opportunity, prestige and financial benefits that come with a salaried position and a performance-based bonus, they're expected to have an increased sense of ownership and stay until the job gets done, to run the business like they own it. Many, like Williams, achieve the American Dream because of it, going on to upper management or owning their own businesses. The overtime rule devalues this career progression and forces some businesses to turn entry-level management careers with salaries and performance-based bonuses into hourly jobs to ensure they don't get dinged with unexpected and excessive overtime costs.

Once this new rule is published in the Federal Register, employers will have 60 days to comply with its directives. For most businesses it will be just another added regulatory cost they must look to offset. For their employees, it will be another barrier to the middle class rather than a springboard. One can only wonder when the advocates of progressive economics will realize that, despite their best efforts, you cannot regulate your way to economic prosperity.

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