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New Overtime Mandate Shot Down

By: Alfredo Ortiz

Last week, Texas federal judge Amos Mazzant issued a preliminary injunction against the Department of Labor's overtime rule that was set to take effect yesterday. This means the rule that would have doubled the salary exemption under which employees are required to receive overtime pay to $47,476 is likely dead.

The rule forces many small business owners to make a difficult choice.

They must either raise employee salaries to meet the new threshold, or revert salaried positions to hourly ones to better account for hours worked and more easily avoid expensive overtime costs. Neither option—a forced raise or a forced reduction in labor—is attractive for business owners.

According to the Department of Labor, the rule will benefit the 4.2 million employees. "The overtime rule is designed to restore the intent of the Fair Labor Standards Act, the crown jewel of worker protections in the United States," said Thomas Perez, U.S. Secretary of Labor. An overview of the rule by the Department of Labor stated it will "put more money into the pockets of many middle class workers—or give them more free time."

But this conclusion ignores that some low-margin small businesses will not be able to adapt to the new mandate and will have to reduce job opportunities instead, leaving employees worse off with a higher level of income insecurity.

A study by the American Action Forum concludes that the wages of the 4.2 million affected workers are estimated to decline by 0.8%, while the number of working hours is expected to fall by 0.2%. Some employees will see much more dramatic impacts, including the loss of their jobs.

According to the National Retail Association, the overtime expansion "is likely to reduce job-advancement opportunities for workers, increase the use of part-time workers, [and] cut the hours of full-time workers."

The NRA estimates that 2.1 million retail and restaurant workers will be specifically affected by the new regulation; 32% of those employees will be converted from salaried employees to hourly workers. Another 11% will have their hours reduced to under 40 a week.

The outgoing Presidential Administration has said the rule will "strengthen and secure the middle class by raising Americans' wages." But as these studies and common sense illustrate, wage mandates are not a free lunch for economic prosperity.

Consider the quagmire faced by the small business owner whose salaried manager earns $40,000 per year. A 20% raise to reach the new salary threshold is unfeasible in an environment of single-digit profit margins. But paying overtime on the manager's hours worked beyond 40 in a week also amounts to an unaffordable 150% marginal labor cost increase. So the small business owner is forced to reclassify the salaried manager as an hourly employee, reducing labor needed during busy times and eliminating the perks, prestige, bonuses and benefits that go along with being a salaried manager.

There are additional consequences that aren't easily quantified. Take how the rule impacts responding to emails after-hours. Demotions to an hourly schedule makes this minor but often crucial task impossible.

The flexibility in working hours that has been made possible by telecommuting is also now made much more difficult. It's as though Washington bureaucrats think that every job and workplace operates the same as theirs. But that's not the 21st century economy.

The new overtime rule is a misguided attempt to artificially increase the payscale for millions of workers. The end result puts another burden on small businesses and their employees' livelihoods.

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