

## **Modernizing Federal Wage and Hour Policy**

Statement for the Record

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“Federal Wage and Hour Policies in the Twenty-First Century Economy”

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Chairman Byrne, Ranking Member Takano, and Subcommittee members, thank you for the opportunity to submit written comments about modernizing wage and hour policy. I am Pamela Villarreal, a senior fellow at the National Center for Policy Analysis (NCPA). We are a nonprofit, nonpartisan public policy research organization headquartered in Dallas, Texas.

The workplace has changed dramatically since the 1930s, yet most federal wage and hour policies are based on rules that were established under the Fair Labor Standards Act of 1938. While the FLSA has been amended over time, wage and hour policies have been slow to change with the diverse needs of the labor force. The participation rate of women has nearly doubled since 1950. Union membership has been on the decline since the mid-1950s. U.S. manufacturing jobs have fallen by two-thirds since 1960, comprising about 8 percent of employment. Technological changes allow employees to work in non-office environments. Two-parent and single parent earner households have made it necessary for employers to be flexible in allowing workers to care for children or family members. Despite these changes in the workforce, federal wage and hour policies are mandated one-size-fits-all and do not allow employers to meet the various needs of their employees. Employee benefits law tends to be very rigid. In general, employees are not allowed to choose between taxable wages and nontaxed benefits.

A prime example of this is mandated benefits such as overtime pay policy. In general, hourly workers have very little flexibility with respect to work hours. For example, a working mother who takes off an afternoon to attend a child's soccer game cannot make up the time by working additional hours in the next pay period. Instead, federal law forces her to receive less pay and fewer benefits in the week of the game, and forces the employer to pay overtime in the week when she makes up the time. Women are particularly affected by these restrictions. About 63 percent of women are hourly workers, totaling over 37 million women. Interestingly, federal law allows employees of the federal and state governments to do what the private sector cannot do. Government workers can choose between overtime pay and comp time. In 2001, 30 percent of state employees and 34 percent of federal employees opted for comp time instead of overtime pay. At a minimum, allow hourly employees in the private sector to have the same choices as employees in the public sector.

An NCPA study suggests there is a tradeoff between mandatory overtime pay and employee benefits.<sup>1</sup> In 2004, the Bush administration raised the exempt salary level from \$155 a week to \$455 a week, but instituted a less restrictive duties test. The adjustment of the duties test meant that many preschool teachers, chefs and line supervisors of food preparation workers were exempted, because they were now considered executives, managers or learned professionals. Prior to 2004, many employers were required to pay overtime to individuals in these jobs. After the changes, employers were no longer required to pay them an hourly wage, rather than a set salary, or to pay them overtime for additional hours of work. The Economic Policy Institute and the AFL-CIO decried the move but, after 10 years, it is possible to see whether the loss of mandated overtime pay hurt or helped preschool teachers and chefs.

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<sup>1</sup> Jacob Kohlhepp, "Redefining Jobs Down: Managers, Salaried Workers and Overtime Pay," National Center for Policy Analysis, December 2015. Available at <http://www.ncpa.org/pdfs/ib181.pdf>

The best way to evaluate the Bush administration rule change is to examine data on workers in reclassified positions from the March Supplement of the Current Population Survey. Did the Bush administration overtime regulations affect other aspects of employment compensation beyond wages? An analysis of employer-provided pensions and medical insurance reported in the CPS suggests there may be a link. From 2003 to 2005:

- The percent of chefs with an employer-provided pension rose 7.5 percent.
- Preschool teachers saw an increase in pension coverage of 4.3 percent.
- First line supervisors of food preparation workers saw a rise of 4.3 percent as well.

These gains occurred despite a decrease in employer-provided pensions among employees in general. Among individual workers who were interviewed before and after the 2004 change, there was also a significant increase in the percent of pension coverage.

Furthermore, the percentage of preschool and kindergarten teachers with health insurance coverage at least partially paid for by the employer increased dramatically. From 2003 to 2005:

- The percent of chefs covered by employer-provided health insurance fell 1.5 percentage points.
- However, the percent of preschool and kindergarten teachers covered by employer-provided health insurance rose 3.4 percentage points. Because employment of preschool and kindergarten teachers rose, the total number of these teachers with employer-provided health insurance also increased.
- The percent of first-line supervisors of food preparation workers covered by employer-provided health insurance rose 0.3 percentage points. These trends ran counter to a general decrease in health insurance coverage among all paid workers of 0.9 percentage points during this period.

The rise in preschool and kindergarten teacher employer-paid health insurance coverage is especially interesting, because it occurred despite a fall in the percent of preschool and kindergarten teachers with health and pension coverage from 2002 to 2003, the year right before the overtime reform.

This suggests a tradeoff between overtime pay and benefits. Salaried employees, although not necessarily paid more by the hour, are probably more likely to receive noncash benefits from their employer.

Thus, it appears that allowing employers to offer flexibility in pay and benefits to their employees would better meet the needs of individual workers.

Thank you for the opportunity to submit these written comments.