



Testimony of  
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Hearing on

**“An Examination of the Administration’s Overtime Rule and the Rising Costs of Doing Business”**

Before the

**U.S. Senate Committee on Small Business and Entrepreneurship**

10:00 a.m., Wednesday, May 11, 2016

Russell Senate Office Building, Room 428A

Chairman Vitter, Ranking Member Shaheen, and Members of the Committee:

Thank you for the opportunity to testify on the topic of the administration’s proposed update to the regulations governing which people are entitled to the Fair Labor Standards Act’s (FLSA) overtime pay protections.

My name is Sarita Gupta, and I am the executive director of Jobs With Justice, an independent nonprofit organization dedicated to advancing working people’s rights and an economy that benefits all Americans. Jobs With Justice brings together labor, community, faith and student voices at the national and local levels through a network of coalitions across the country. With research, analysis, organizing, and public advocacy, Jobs With Justice creates innovative solutions to the problems working people face today.

At Jobs With Justice, we believe FLSA protections are central to ensuring that all Americans can enjoy the country’s prosperity to which they contribute. In passing and signing the FLSA into law, the U.S. Congress and President Roosevelt recognized in 1938 what today’s working women and men know to still be true: economic stability can only be achieved through family-sustaining wages *and* hours.

Jobs With Justice supports the administration’s proposed update of regulations implementing the FLSA’s overtime provisions. If today’s employees are to realize the law’s basic promise of a reprieve from overwork in order to spend time with their families, the FLSA’s overtime protections must be strengthened and protected. We believe the proposed rule will do just that.

### **Raising the Salary Threshold Will Broadly Benefit Working People**

The U.S. Department of Labor (DOL) has proposed adjusting the “salary test,” the more objective method for determining overtime eligibility, by increasing the salary threshold from \$23,660 in annual pay to \$50,440 in 2016.<sup>1</sup>

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<sup>1</sup> Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 80 FR 38515 (July 6, 2015)

The working people I talk to say adjusting the salary threshold is long overdue. The current threshold covers only eight percent of salaried employees today. Individuals that Congress never intended to be exempt from overtime protections have fallen out of the law's coverage. Employers are currently within their rights to deny overtime pay to employees earning less than the poverty level for a family of four.

Raising the salary threshold to \$50,440 in 2016 will benefit a significant number of employees. The DOL itself estimates that the proposed salary threshold would extend overtime protections to nearly 5 million employees. The Economic Policy Institute projects 13.5 million people will directly benefit from the proposed update to the overtime rules, most of who will newly gain overtime pay eligibility.<sup>2</sup>

At the same time, 10 million salaried employees presently paid between the current and proposed salary thresholds stand to gain greater protections against overtime misclassification.<sup>3</sup> These women and men are currently eligible for overtime protections based only on their job duties. The proposed salary threshold will establish their overtime eligibility solely by the salary test, making it difficult for unscrupulous employers to manipulate the duties test to misclassify them as exempt from overtime protections.

Access to overtime eligibility will have a meaningful impact on the lives of Americans who qualify under either scenario. Quite simply, their time will become more valuable. Assigning them more than 40 hours of work per week will be more expensive for their employers – and, as an employer myself, I say that is a good thing.

I have mentioned a number of statistics, but I urge us to consider the real lives that will change for the better by changing the rules. Wanda Womack managed a Dollar General store in Alabama for 11 years. In 2004, her last year with the company, Wanda earned about \$37,000 working 50 to 70 hours each week. Wanda was accountable for the type of responsibilities we typically expect of a store manager, but she spent most of her time performing non-managerial work, like running the cash register, unloading merchandise from trucks and performing inventory.<sup>4</sup>

Scott Wilson worked for Walmart as an asset protection manager between December 2011 and February 2014, earning \$46,000 by the end of his tenure with the company. Scott's job description said he was supposed to keep Walmart's alarm equipment in working order, catch and process shoplifters, monitor store surveillance footage, train store associates on the proper use of theft-prevention equipment and attend weekly continuing education meetings on theft-prevention techniques. Upon taking over a new job at his store, Walmart regularly assigned Scott basic tasks that should have been outside normal managerial duties, such as making repairs in various departments, unloading merchandise from trucks, corralling shopping carts and assembling promotional displays. These non-managerial, non-exempt tasks ended up taking most of Scott's day. Scott often needed to stay late to

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<sup>2</sup> Eisenbrey, R. & Mishel, L. (2015, Aug. 3). The New Overtime Salary Threshold Would Directly Benefit 13.5 Million Workers. Washington, DC: Economic Policy Institute. Retrieved from: <http://www.epi.org/publication/overtime-threshold-would-benefit-13-5-million/>.

<sup>3</sup> 80 FR 38546 (July 6, 2015)

<sup>4</sup> Conti, J. (2014, Dec.) The Case for Reforming Federal Overtime Rules: Stories from America's Middle Class. New York, NY: National Employment Law Project. Retrieved from: <http://www.nelp.org/content/uploads/2015/03/Reforming-Federal-Overtime-Stories.pdf>.

get the work in his job description done. That meant Scott was working 60- to 70-hour weeks, which negatively impacted Scott and his family.<sup>5</sup>

“When everything over 40 hours is free to the employer, the temptation to demand more is almost irresistible,” consultant Fran Sussner Rodgers observed in a June 2015 *New York Times* column.<sup>6</sup> Currently, exempt employees like Wanda and Scott, working jobs with little pay and long hours, know this to be true. Under the proposed update to the salary threshold, these women and men will either get a pay raise or many hours of their lives back from their employers.

Part-time, hourly employees also stand to benefit from a higher salary threshold. We know that too many people who stock the shelves, sweep the floors and serve us food are working fewer hours than they would like. In our recent study of employers’ scheduling practices in the service sector in Washington, D.C., 80 percent of survey respondents told us it was very important or somewhat important that they receive more hours.<sup>7</sup> Many of these individuals will likely have an opportunity to gain additional hours as employers shift assignments from overworked, low-paid salary employees who were previously exempted from overtime protections.

### **As a Nonprofit Executive, I Know the Proposed Overtime Update Is the Right Thing to Do**

In my role as the executive director of Jobs With Justice, I also have had to assess the proposed update to the overtime regulations from the perspective of a nonprofit employer. At Jobs With Justice local coalitions across the country, we have organizers who are currently under the proposed updated salary threshold. The proposed overtime rule update will require our coalitions to examine and amend their employment practices.

We think this is a positive development. A higher salary threshold will require us, and nonprofit groups like us, to promote practices that allow people to spend more time with their families, likely increasing employee satisfaction and lowering burnout rates along the way. That is good for our employees, for our organizations and for the people we strive to serve.

I know some nonprofit organizations have expressed concerns about the proposed overtime rule update and the impact it could have on their budgets. I also know that much of the “concern” for nonprofits’ ability to comply with updated overtime rules have been raised by the Chamber of Commerce, the Society for Human Resource Management and other Big Business lobby groups that do not typically advocate for the interests of nonprofits or the people served by them.

These concerns are vastly overstated, and they dismiss the rights of working people. Overtime pay was instituted to protect employees from difficult and, with the onset of fatigue, potentially dangerous working conditions, and to ensure that there is not an incentive for employers to hire just one person to

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<sup>5</sup> *Ibid.*

<sup>6</sup> Sussner Rodgers, F. (2015, June 22). Who Owns Your Overtime? *The New York Times*. Retrieved from: <http://www.nytimes.com/2015/06/22/opinion/who-owns-your-overtime.html?ref=opinion>.

<sup>7</sup> Schwartz, A., Wasser, M., Gillard, M., & Paarlberg, M. (2015). Unpredictable, Unsustainable: The Impact of Employers’ Scheduling Practices in D.C. Washington, DC: DC Jobs With Justice. Retrieved from: [http://www.dcjwj.org/wp-content/uploads/2015/06/DCJWJ\\_Scheduling\\_Report\\_2015.pdf](http://www.dcjwj.org/wp-content/uploads/2015/06/DCJWJ_Scheduling_Report_2015.pdf).

do the work of two people. People who work for nonprofit organizations deserve a fair return on their work. I know first-hand that for some nonprofit employees, the work, while often rewarding, can be stressful, emotionally tolling and lower paying. These conditions only further substantiate the need for nonprofit employees to have time away from work to recharge and to reconnect with family and friends, just as was intended by the FLSA.

Non-profits that contract with state Medicaid departments can push the state to increase rates. Many states revisit their Medicaid budgets throughout the year, since Medicaid costs fluctuate based on the economy, enrollment, eligibility and other factors. The state's investment will be less than many people may assume. The federal match for Medicaid spending can range from 50 to 74 percent, depending on the state.<sup>8</sup> States that wisely invest in increasing their rates will put more money in the pockets of working people and, as a result, into their state and local economies.

In January 2015, rules took effect that provided nearly 2 million home-care workers with overtime protections for the first time.<sup>9</sup> As with these home-care rules, I believe the DOL is committed to providing technical support and guidance for nonprofit employers, and to working with the Centers for Medicare and Medicaid Services to address Medicare- and Medicaid-funded impacts.

Regardless, no nonprofit employer should condone a business model that only succeeds based on its ability to take advantage of its employees through lax overtime rules. Overtime protections ensure that people are paid for the long hours they work, and that employers hire more employees when additional hours are required. It is the right thing to do.

The FLSA was enacted with the belief that Americans should earn a fair day's pay for a fair day's work. Yet today the inverse is true for too many of our country's salaried employees who are putting in more than a fair day's work for far less than a fair day's pay. That is true for employees of big businesses, small businesses, and nonprofits. The administration's proposed update to the FLSA's overtime regulations will serve as a crucial step to restoring this basic tenet of economic fairness – a tenant that should apply to all people, no matter the industry they work in or the size of their employer.

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<sup>8</sup> See the Federal Medical Assistance Percentage (FMAP) for Medicaid and Multiplier, Timeframe: FY 2017. (2016). Kaiser Family Foundation. Retrieved from: <http://kff.org/medicaid/state-indicator/federal-matching-rate-and-multiplier/>.

<sup>9</sup> Application of the Fair Labor Standards Act to Domestic Service, 78 FR 60453 (October 1, 2013).