Debates over new OT rules pick up steam as deadline nears

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Denise Porter, an employee at Lee's Famous Recipe Chicken, fills an order at the West Columbia Street location. JEFF GUERINI/STAFF

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New overtime rules slated to go into effect in December could boost pay for as many as 4.2 million workers across the U.S., but some Clark and Champaign County employers are concerned the change will lead to higher costs for businesses and less flexibility for workers.

The rules are expected to go into effect on Dec. 1, and could mean more than 134,000 managers and white-collar workers in Ohio will be eligible to receive overtime pay, according to information from the U.S. Department of Labor.

Proponents of the new rules argued it's a long-overdue remedy to prevent some employers from designating a worker as salaried, then demanding long hours without additional pay. But many employers are worried the rules will backfire, leading to less hiring and increased automation.

The law could also create confusion, particularly for nonprofits like the Champaign Family YMCA that has a handful of workers who are expected to fall under the new rules, CEO Paul Waldsmith said.

“To me, there could have been a sensible, bipartisan solution to this that could have phased it in over three to five years and made the pain much easier for different companies,” Waldsmith said.

Organizations like the YMCA are grappling with how to best handle the change over the next several months, he said.

“I don’t know how we’re going to be able to afford to keep them all as exempt,” Waldsmith said. “I’m not committing us to one specific course of action. I’m trying to work closely with the human resources experts that I have on the YMCA board to make reasonable decisions. I’m also trying to communicate with our staff so they’re not surprised.

Edward Forman, an employment attorney in Columbus, said he understands why some businesses have expressed concern, but doesn’t believe the change will have the dramatic impact some expect.

It will have the biggest affect on national chains whose business model relies on inexpensive labor, he argued.

“Most businesses can manage to pay people for overtime if they’re working 42 or 43 hours per week,” Forman said. “What this really goes after is people who are just getting worked to death for a very small salary.”

Who’s impacted?

Most workers must be paid at least 1.5 times their hourly wage once they work more than 40 hours a week under the Fair Labor Standards Act.

The law exempts managers if they earn at least $455 a week, about $23,600 a year. That threshold was never tied to inflation and has only been updated once since the 1970s.

Number of affected workers by state

The new rules double that level to more than $47,400, meaning many more employees will be able to earn overtime.

Currently just 7 percent of full-time salaried workers are eligible to earn OT based on their pay, compared to 62 percent in 1975, according to the U.S. Department of Labor. Once the rule is in place, about 33 percent of the workforce will be eligible.

The new threshold will be adjusted for inflation every three years.

To comply with the changes, employers can raise workers' salaries above the limit, pay overtime, limit a worker's hours to 40 per week or some combination. Companies will also be able to count bonuses and commissions toward a portion of the salary threshold.

Scott Griffith and his wife Kim own seven Lee's Famous Chicken Restaurants in the area, employing about 175 workers. He agrees the current threshold was too low. But doubling it at once could come as a shock to some employers, he said.

He argued the increase should have been phased in, allowing businesses more time to plan for the additional costs.

"To wait until it's doubled, that's the problem," Griffith said. "I don't think that's right."

The business will comply with the changes and Griffith said he's already working with his staff and human resources experts to be prepared once the rule takes effect.

For many of his employees, some overtime each week was already calculated into their salaries. Now, those workers will have to clock in and out for various duties and some will likely be reclassified as hourly workers.

"This removes the flexibility that most salaried team members enjoy," Griffith said. "If they take work home, answer the phone while off duty, or stop to pick up supplies on the way to work — these hours must be documented. We have less issue with paying the overtime than the loss of flexibility for these team members in reporting their hours worked."

For smaller and regional businesses, he also raised concerns it may be harder to compete with much larger, national chains who can better absorb the added costs that will likely ensue early on once the rule takes effect.

In most cases, the change might not have as big an impact as many businesses fear, said Judy Conti, a federal advocacy coordinator for the National Employment Law Project. The rule doesn't include many of the smallest businesses, such as those making $500,000 or less in commercial business receipts.

Even doubling the threshold will mean only slightly higher payroll costs for many employers, she argued.

"This is something employers of all kinds can manage," Conti said. "It's certainly something they can adjust to and it's a huge deal for workers who are going to get more money or more time back."

Flexibility

Ken Churchwood, a general manager at Lee's Famous Recipe on West Columbia Street in Springfield said the business will adjust to the rule change, although it will drive up labor costs.

Churchwood wouldn't be impacted personally, but said managers are reviewing hours and duties to find the best way to classify affected workers. Most managers plan to work about 45 hours per week, he said, although that can be closer to 50 during particularly hectic weeks.

The rule change has a lot of moving parts, so he said it's too soon to say what the full impact will be. For example the current schedule allows managers flexibility to go complete tasks like dropping off deposits, training or cleaning.

The rule change will mean workers under the new threshold will now have to log their time on the clock more closely.

Some managers can also receive a bonus depending on how effectively they manage staff and keep overtime costs down, so it's not clear how that will be affected.

It's also possible managers above the new threshold will be asked to work more to keep labor costs down. Lee's may be in better shape than some businesses because the company's pay is already competitive, he said.

"We're competing for every good employee along with every other business, he said.

As may as five or six staff members at the Champaign Family YMCA could be impacted by the change, Waldsmith said. Like Griffith, he said his biggest concerns included the sudden doubling of the threshold, as well as less flexibility for employees.

At places like the YMCA, several staff members regularly work off hours because of their involvement in the community, he said. That could include everything from teaching a class to attending a community meeting after work.

"It will change how we track people's schedules and there's a certain amount of resentment I have based upon the fact that bureaucrats in Washington haven't done their job over the last 30 years," Waldsmith said.

Other factors

One of the benefits of the rule change is it will likely make clearer which employees should be considered exempt and which should be hourly, said Anthony Lazzaro, a Cleveland attorney who practices wage and hour law.

Employers are required to review an employee's duties as a factor in whether that workers should be considered exempt from overtime laws. There will likely be fewer lawsuits in which an employee is mistakenly classified as exempt because it will be more clear based on their salary whether workers are entitled to overtime, he said.

The intent of the change was stop cases in which employers classified low-salaried workers as exempt based on their role as a manager, then required them to work long hours with no extra pay, Lazzaro said.

The rule was originally created in the late 1930s as a way to create more jobs for workers. At the time, many employers were requiring employees to stay on the job as many as 70 or 80 hours per week, he said.

"Why would an employer go out and hire two employees when they could have one employee working the same number of hours?" he said.

Requiring overtime encouraged them to hire more workers to reduce costs, he said.

“What I do think we’ll see more of are those off-the-clock cases in which employees are coming in early and not getting paid, working after their shift and not getting paid, or going to meetings or trainings off the clock,” Lazzaro said. “We’re going to see a lot more of those cases because there will be more employees out there who are overtime eligible as a result of the rule. The employer doesn’t want to raise the salary above the threshold but they’re going to try to find ways to avoid paying overtime.”

That would be illegal, and employees should seek an attorney in those cases, Conti said. She said she understands business concerns about the sudden spike, but believes the change was long overdue.

“The Department of Labor took a lot into consideration and determined that there hasn’t been a meaningful update since 1975,” Conti said. “In essence, employers have been getting the benefit of a rigged system ever since then. While there were calls to consider phasing it in over time, the Department of Labor decided workers have waited long enough.”

Don Boyd, director of labor and legal affairs for the Ohio Chamber of Commerce, argued the rule change may have several unintended consequences for workers, however.

Especially in industries like fast food, companies are increasingly looking to kiosks and other forms of automation to reduce costs. That will likely accelerate as labor costs rise, he said.

It also may mean workers whose are considered exempt because their salaries are over the threshold will be asked to work even longer hours. And some workers consider going from salary to an hourly wage a demotion, he said.

“Labor costs for a lot of employers, especially in the restaurant industry are already operating on pretty thin margins,” Boyd said. “Those labor costs are always a worry and many of the bigger chains are looking at various forms of automation whether it’s ordering at a kiosk or what have you.”