

---

# Economic Policy Institute

---

1660 L STREET, NW • SUITE 1200 • WASHINGTON, DC 20036 • 202/775-8810 • FAX 202/775-0819

## **Economic Policy Institute's (EPI) Recommendations to Clarify U.S. Department of Labor's Overtime Rules**

### **RECOMMENDATION #1**

**Any employee who has not completed at least four years of academic training and received a B.A., or equivalent degree in the professional field in which an exemption is sought, should not be denied overtime pay as a “learned professional.”**

- Under the DOL’s proposed rule, employers will be encouraged to treat long-time, non-degreed employees as “learned professionals” to avoid paying them for overtime work;
- EPI’s recommendation makes the exemption more in keeping with the original intent of Congress. Employees would be even better protected if the rule required an advanced degree (an M.A. or equivalent).

### **RECOMMENDATION #2**

**The employee’s primary duty must be something the employee performs during at least 50% of his/her work time. If more than half of the time is spent performing nonexempt work, the employee must not be treated as exempt.**

- The proposed rule would eliminate the rule of thumb that an employee’s primary duty is the duty that is performed at least 50% of the time, making it impossible to know which is the primary duty;
- EPI’s recommendation strengthens and clarifies the limits on how much nonexempt work an employee could do and still be considered exempt.

### **RECOMMENDATION #3**

**To be exempt, an administrative employee must be a “salaried eligible employee who is among the highest paid 10% of the employees employed by the employer within 75 miles of the facility at which the employee is employed.” Executive exemptions would also be limited to the top 10% of salaried employees in an organization.**

- The proposed rule on administrative exemptions is so ambiguous that even the National Association of Manufacturers—an employer rights organization—finds it more obscure than current law;
- EPI’s recommendation substitutes a realistic salary test, used in the Family and Medical Leave Act, as the measure of “responsibility.”

**RECOMMENDATION #4**

**Exemptions shall not apply to any police officer, fire fighter, construction worker, factory workers, first responder, Licensed Practical Nurse, paralegal, teamster or union member, regardless of his or her salary level, primary duty or performance of non-manual or office work.**

- The proposed rule is not in concert with the position taken in various public statements by the Department, the Assistant Secretary for Employment Standards, and the Wage and Hour Administration;

**EPI’s recommendation would make the regulations comply with official Department rhetoric, public positions and statements.**