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# House Votes to Amend Overtime Pay Regulations

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# House Votes to Amend Overtime Pay Regulations

**By Maura Deady**

The U.S. House of Representatives approved an amendment by a vote of 223-193 in September that restored overtime pay rights for 6 million workers whose pay was threatened by regulatory changes to the Fair Labor Standards Act.

Rep. David Obey (D-Wis.) and Rep. George Miller (D-Calif.) introduced the amendment, which would force the Dept. of Labor to repeal overtime pay eligibility changes made in April to the FLSA, but let stand new inflation adjustment rules that would benefit approximately 384,000 low-income workers. President Bush has threatened to veto the Labor-HHS appropriations bill, which includes funds for issues such as health care and education, if it contains the Obey-Miller amendment.

Proponents of the overtime law say that the FLSA is important to keep overtime rules in line with the nation's changing job structure. Prior to the change in the FLSA regulations, many American workers were guaranteed overtime pay, also known as "time-and-a-half," for every hour worked beyond 40 hours per week. In April, the DOL amended the basic tests that a worker must pass in order to qualify for overtime pay. First, under the salary test, an employee must make under $23,660 a year in order to qualify for overtime. According to the Economic Policy Institute Report, however, this is the only positive change in the new regulations for employees. Second, under the duties test, Section 541.203(c) of FLSA "exempts an employee who leads a team of other employees assigned to complete major projects for the employer." Prof. Thomas Kochan of Massachusetts Institute of Technology's Sloan School of Management has shown that this exemption could apply to as many as 2.3 million employees throughout U.S. industry who are currently non-exempt team leaders. Third, an employee making over $100,000 a year will now be exempt from overtime pay. The Economic Policy Institute estimates this exemption to affect as many as 400,000 employees across the country.

AFL-CIO President John Sweeney calls the House vote on Sept. 9 "a victory for America's workers and a clear signal to the Bush Administration that it should repeal its pay cut. This is the fifth time Congress has voted to stop the administration from slashing paychecks for up to 6 million workers." Sweeney is also calling on Bush to withdraw his veto threat or explain why he would veto a bill which provides funds for education and health care merely because it includes the Obey-Miller overtime amendment.

House Republicans told the *New York Times* on Sept. 9, 2004, that they were confident that they can eliminate the overtime provision in the Labor-HHS appropriations bill during negotiations with the Senate, which would preclude the need for a veto by the president. Bill co-sponsor Miller said in response that he feared that "the Republican leadership will stop at nothing to strip this provision from whatever final bill is sent to the president."

***"With homeland security needs increasing demands on state and local security, we are being asked to work longer, for less."***

-Patrolman Tim Shortgen

Some say that if the Republicans succeed in stripping the appropriations bill of the overtime provision, many Americans will see detrimental effects to their family income. According to the AFL-CIO Web site, Patrolman Tim Shortgen of Defiance, Ohio, for example, will lose approximately $2,000 a year in overtime pay if the April 2004 changes go through. Shortgen says that this is money that he cannot put toward his daughter's college education. "This comes down to protecting the 40-hour work week," Shortgen said. "With homeland security needs increasing demands on state and local security, we are being asked to work longer, for less."

Some also fear the impact April changes will have on quality of life. Shelia Perez, a federal employee who tests and maintains submarine systems, may be reclassified as exempt from overtime pay. She is currently facing a job transfer that would require her to work 500 hours of annual mandatory overtime and 10-hour, 7-day work weeks. "Many of us are 45 and older, and you are talking about a lot of stress on the body," Perez said. "After 40 hours a

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week, why should we make less than straight time? It makes no sense to me."

Some states, such as Illinois, have passed legislation to ensure that their workers will not be affected by the changes to the regulations.

"Governor Rod Blagojevich took a bold stand in defiance of President Bush and his administration by signing legislation this past spring that will ensure that 375,000 workers in Illinois will not lose their overtime rights," said Jeff Weiss, communications director of the Chicago Federation of Labor, AFL-CIO. Despite their local victory, the Chicago Federation of Labor and the Illinois AFL-CIO continue to work closely with Illinois Congressional members to protect the rights of all workers to receive overtime pay.

# Chicago Excludes Asians From Contract Program

**By Amee Patel**

In February 1996, the Builder's Association of Greater Chicago sued the City of Chicago in the U.S. District Court for the Northern District of Illinois claiming that the Minority Business Enterprise/Women Business Enterprise quota requirement has denied many association contractors of bids. BAGC asserted that "Chicago has encouraged racial, ethnic and gender-based discrimination against non-minority owned entities."

BAGC's strong assertions stemmed from an ordinance adopted in 1990 that established an affirmative action program for City procurement, encompassing construction, goods and services. Under this ordinance, 25 percent of City contracts were reserved for minority-owned firms while about 5 percent were reserved for women-owned companies. A company could qualify as a set-aside candidate as long as their revenues did not go beyond the ceiling of $27.5 million. Consequently, BAGC felt that many rich and well-established companies could qualify for extra assistance unfairly.

With respect to the groups that could qualify, the ordinance specifically recognized as an MBE a local business, majority-owned and controlled by a minority group (defined as African-Americans, Hispanics, and Asian-Americans). It also recognized a local business majority-owned and controlled by women as a WBE. Whether the ordinance passed constitutional muster, however, came into question under BAGC's lawsuit.

After the *BAGC v. City of Chicago* hearing, Judge James B. Moran's December 29, 2003 opinion determined that while the program was needed, it was too broad and inflexible. Judge Moran deemed that while the "City has a compelling interest in not having its construction projects slip back to near-monopoly domination by white-male firms," he stated that the City had to demonstrate "that the current program was sufficiently narrowly tailored to meet strict constitutional scrutiny." Moran gave the City six months to review the ruling and adopt a new program.

> ***"For both groups there remains the question whether they are victims of discrimination or whether they, like countless others, before them, face language and cultural barriers..."***
>
> Judge Moran's Opinion

The City's subsequent interpretation of Moran's decision has upset some minority groups. In April, which is coincidentally Asian-American Heritage Month, the City revised its set-aside ordinance to include only African-Americans, Hispanics and women within the presumptive socially disadvantaged groups. However, the City included a caveat that members of other groups who faced discriminatory construction contracting practices would still be able to participate in the program. By submitting an affidavit detailing the discrimination and presenting it to members of the City's Affirmative Action Advisory Board, other groups could be included in the program.

Despite the City's caveat, the Indian American Bar Association President Bina Sanghavi said it is clear that Moran's opinion did not call for an exclusion of any minority group such as Asians. "Moran specifically cites Asians as included within that group of racial and ethnic minorities, noting

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