



Legislation Text

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Res. No. 860

Resolution calling upon the Congress of the United States to adopt legislation protecting the right to earn overtime pay and reversing the affects of detrimental new federal regulations that significantly weaken overtime protections.

By Council Members Clarke, Brewer, Comrie, James, Koppell, Nelson, Palma, Perkins, Sanders Jr., Seabrook and Quinn

Whereas, Until recently, certain workers, pursuant to the Fair Labor Standards Act of 1938, had the right to be paid at enhanced rates for overtime work; and

Whereas, According to the Center for Policy Alternatives, this right extended to approximately 90 million workers, who were entitled to be paid time-and-a-half if they worked more than 40 hours in a week; and
Whereas, Regulations promulgated by the United States Department of Labor at 29 C.F.R. Part 541, which became effective on August 23, 2004, revised regulations governing the exemption from overtime pay for executive, administrative, professional, outside sales, and certain computer employees, making it easier for employers to classify their employees as exempt from the right to earn overtime pay; and

Whereas, Three separate tests must be met to classify a white-collar employee as exempt from overtime protections, and thus ineligible for overtime pay; and

Whereas, These three tests consist of a “salary level” test, which dictates that employees earning less than a certain level each week cannot be exempt, a “salary basis” test, which mandates that employees must be paid a set salary, rather than an hourly wage, in order to be exempt, and a “duties” test, which requires that a worker cannot be denied overtime pay unless his or her duties are primarily administrative, professional or executive in nature; and

Whereas, While the Bush Administration’s new overtime regulations change the “salary level” test,

making it easier for some, but more difficult for others, to earn overtime pay, the changes made to the “duties” test are more damaging to overtime rights; and

Whereas, The Bush Administration’s new regulations make it easier for an employer to meet the “duties” test by eliminating the requirement that exempt employees possess the authority to exercise a certain amount of discretion or independent judgment in their work, and by weakening education requirements so that workers with a high school diploma and a similar low level of work experience may be classified as exempt; and

Whereas, According to the Economic Policy Institute, as a result of the new federal overtime regulations, nationally, 78 occupational groups, out of 257 “white-collar” occupations, including 2.5 million salaried employees and 5.5 million hourly workers, will lose their right to overtime pay; and

Whereas, According to the Center for Policy Alternatives, jobs directly affected by the new regulations include police, firefighters, licensed practical nurses, emergency medical technicians, dental hygienists, lab technicians, retail managers, insurance claims adjusters, paralegals, draftsmen, surveyors, technical writers, bookkeepers, cooks, factory supervisors and journalists; and

Whereas, In order to restore the rights of millions of such individuals to overtime pay for overtime work, the Congress of the United States should adopt the Overtime Rights Protection Act, S.223, introduced on January 31, 2005, which would amend the Fair Labor Standards Act of 1938, to reverse the dilution of overtime protections resulting from the Bush Administration’s revised regulations; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the Congress of the United States to adopt legislation protecting the right to earn overtime pay and reversing the affects of detrimental new federal regulations that significantly weaken overtime protections.

THC - LS #2356
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