

JANUARY 6, 2004

**SCHAKOWSKY: BUSH ADMINISTRATION'S MISSTATEMENT OF THE DAY -
DENYING WORKERS OVERTIME PAY**

WASHINGTON, D.C. - U.S. Representative Jan Schakowsky (D-IL) issued today's "Bush Administration's Misstatement of the Day" on denying overtime pay to workers.

[After successfully gutting overtime pay protections for millions of workers last year](#) , the Bush Administration is going a step further by helping to take away overtime from those they insisted would benefit under their proposal.□ □

In September, Secretary of Labor Elaine Chao pledged to *"continue our efforts to strengthen overtime protections for workers."*

(
Washington Post
, 9/11/03).□ And Ed Frank, a Labor Department spokesman, stated in November:
"We're committed to these reforms because they will benefit more than 1.3 million workers who are not getting overtime today."
(Washington Post, 11/21/03)

However, the *Associated Press* reported today that the Department of Labor is in fact providing employers with details on how to deny 1.3 million low-wage workers their overtime pay.□ According to the story:

The 1.3 million low-wage workers the Labor Department says will be guaranteed overtime pay as part of new rule changes may not necessarily see any extra cash. While touting the \$895 million in increased wages it says those workers would be guaranteed from the changes, the Labor Department is suggesting ways employers can keep their labor costs from going up.

Among the options: cut workers' hourly wages and add the overtime to equal the original salary, or raise salaries to the new \$22,100 annual threshold, making them ineligible. The department says it is merely listing well-known choices available to employers, even under current law. "We're not saying anybody should do any of this," said Labor

Department spokesman Ed Frank.

January 6, 2004

AP: U.S. Offers Tips on Cutting OT Costs

By THE ASSOCIATED PRESS

WASHINGTON (AP) -- The 1.3 million low-wage workers the Labor Department says will be guaranteed overtime pay as part of new rule changes may not necessarily see any extra cash.

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"We're not saying anybody should do any of this," said Labor Department spokesman Ed Frank.

New overtime regulations were proposed in March after employers complained they were being saddled with costly lawsuits filed by workers who claimed they were unfairly being denied overtime. But the regulations themselves have stirred controversy over how many workers would be stripped of their right to overtime pay.

The issue is being seized by Democrats in their attempt to win back Congress and the White House.

A final rule, revising the 1938 Fair Labor Standards Act, is expected to be issued in March. The act defines the types of jobs that qualify workers for time-and-a-half if they work more than 40 hours a week.

Overtime pay for the 1.3 million low-income workers has been a selling tool for the Bush administration in trying to ease concerns in Congress about millions of higher-paid workers becoming ineligible.

But the Labor Department, in a summary of its plan published last March, suggests how employers can avoid paying more money to those newly eligible low-income workers.

"Most employers affected by the proposed rule would be expected to choose the most cost-effective compensation adjustment method," the department said. For some companies, the financial impact could be "near zero," it said.

Employers' options include:

--Adhering to a 40-hour work week.

--Raising workers' salaries to a new \$22,100 annual threshold, making them ineligible for overtime pay.

If employers raise a worker's salary "it means they're getting a raise -- that's not a way around overtime," Frank said. The current threshold is \$8,060 per year.

--Making a "payroll adjustment" that results "in virtually no, or only a minimal increase in

labor costs," the department said. Workers' annual pay would be converted to an hourly rate and cut, with overtime added in to equal the former salary.

Essentially, employees would be working more hours for the same pay.

The department does not view the "payroll adjustment" option as a pay cut. Rather, it allows the employer to "maintain the pay at the current level" with the new overtime requirements, said the Labor Department's Wage and Hour Division administrator, Tammy McCutchen, an architect of the plan.

Labor unions criticized the employer options.

Mark Wilson, a lawyer for the Communications Workers of America who specializes in overtime issues, said the Bush administration was protecting the interests of employers at the expense of workers.

"This plan speaks volumes about the real motives of this so-called family friendly administration," Wilson said.

He says cutting workers' pay to avoid overtime is illegal, based on a 1945 Supreme Court ruling and a 1986 memo by the Labor Department under President Reagan.

But McCutchen disagreed. If changes were made week to week to avoid overtime, they would be illegal. A one-time change is not, she said.

"We had a lot of lawyers look at this rule. We would not have put that in there if we thought it was illegal," she said.

"Unless you have a contract, there is no legal rule ... prohibiting an employer from either raising your salary or cutting your salary," she said, adding, "We do not anticipate employers will cut people's pay."

The final plan does not require approval from Congress. That hasn't stopped Democrats and some Republicans from trying to block the rule, thus far unsuccessfully, out of fear that millions of workers would become ineligible for overtime.

Department officials say about 644,000 higher-paid workers would lose their overtime eligibility. But the proposal says 1.5 million to 2.7 million workers "will be more readily identified as exempt" from overtime requirements. Labor unions claim the figure is about 8 million.

The Labor Department is aware of lawmakers' concerns has read tens of thousands of comments about the proposal, McCutchen said.

"We understand what the public concerns are and we're going to be doing our best to address them," she said. "It's important to allow us to finish that process so we can back up our words with some good-faith action."