

# ISSUE BRIEF

## FLSA Rollbacks

**In previous sessions of Congress, there have been repeated attempts to condition minimum wage increases on proposals to roll back wage and hour protections of the Fair Labor Standards Act (FLSA).** Proposals to carve out certain kinds of workers—or states—from the FLSA’s minimum wage and overtime protections would reduce pay for millions of workers and encourage employers to impose excessive work hours. Congress must not pass any FLSA rollback proposal—as part of minimum wage legislation or separately.

The FLSA establishes a national minimum wage of \$5.15 per hour and requires employers to pay a time-and-a-half cash premium for work performed in excess of 40 hours per week. The purpose of the FLSA’s overtime provisions is not only to give workers a wage premium, but also to discourage employers from imposing excessive hours and to encourage creation of more fulltime jobs. The FLSA’s wage and hour provisions are intended to set a national floor, above which states may opt to provide additional protections.

**Allowing states to opt out of future minimum wage increases negates the purpose of the FLSA.** States already have the flexibility to establish minimum wage rates higher than the FLSA. President George W. Bush’s proposal to let states opt out of minimum wage increases would give states an effective veto over any future increase and nullify the FLSA’s role as a national floor.

**Excluding bonuses from calculation of overtime pay would reduce working families’ incomes.** The FLSA requires employers to pay an overtime cash premium equal to 150 percent of the “regular rate of pay,” which is defined to include commissions, gain sharing and performance-contingent bonuses. The Rewarding Performance in Compensation Act would exclude these forms of pay from the calculation of overtime, thereby reducing overtime pay for millions of workers. This legislation would encourage employers to lower their payroll costs by converting hourly wages into bonuses, reducing workers’ overtime pay even more. And reduction in employers’ overtime costs would lead to an increase in mandatory overtime. A large number of employers already provide performance based pay and need no additional incentive to do so.

**Denying minimum wage and overtime protections to “inside” salespersons would lower pay and increase hours.** The Sales Incentive Compensation Act would deny minimum wage and overtime protections to salespersons working *inside* the employer’s worksite, who earn as little as \$22,500 per year. Salespersons working *outside* the worksite are exempt from the FLSA’s minimum wage and overtime provisions because the nature of their work makes it hard for employers to verify their work hours. There is no justification for similarly exempting *inside* salespersons, who are under the direct supervision of their employers. Such an exemption would result in lower pay and longer work hours for as many as 2.5 million workers—more than one-third of all salespersons—with a disproportionate impact on women and low-wage workers.

**Prohibiting states from establishing higher income protections for tipped workers would reduce income for low-wage workers.** Under the FLSA’s “tip credit” provision, employers can pay a tipped employee as little as \$2.13 per hour—so long as the employee’s hourly compensation *including tips* meets the federal minimum wage. Many states provide additional income protections for tipped employees by allowing smaller tip credits or no tip credit at all. A proposal to bar states

from adopting lower tip credits *under their own state laws* would revoke the FLSA's historical role as a national floor above which states may choose to provide additional protections.

**Denying minimum wage and overtime protections to funeral directors and embalmers would lower pay and increase hours.** There is no justification for exempting from the FLSA employees of the corporate chains that now own and operate more than 25 percent of the nation's \$15 billion funeral home industry. If funeral directors are truly managers, they are already exempt under one of the FLSA's white-collar exemptions (see 29 CFR Part 541). Nonmanagerial directors and embalmers are relatively low-income workers who need overtime protections precisely because they work long, irregular hours. The FLSA already accommodates many kinds of irregular work schedules.

**Denying overtime protections to workers in certain computer-related jobs would lower pay and increase hours.** Congress should repeal the exemption of certain computer professionals from FLSA overtime provisions, which it passed in 1990. And Congress should oppose legislation to include within this exemption additional workers at lower skill and compensation levels: network and database analysts and designers and people who train them. If such workers are truly "professionals," they are already exempt under one of the FLSA's white-collar exemptions (see 29 CFR Part 541).

**Minimum wage legislation must not include FLSA rollbacks.** None of these proposals would benefit any worker in any way. Minimum wage legislation must not take away with one hand what it gives with the other.

**White-collar exemptions must not be expanded.** The regulations in 29 CFR Part 541 provide for the exemption of administrative, executive and professional (white collar) employees from the FLSA. The Bush administration is preparing to modify these rules. The new rules must not exempt a higher percentage of lower-wage workers or higher-wage workers.