

Analysis of How Much Ohio Workers Are Losing Under Attorney General Mike DeWine's Overtime Pay Cut

While Ohio's economy is growing, working families across the state are struggling, squeezed between flat paychecks and the rising cost of necessities. One factor dragging down paychecks is the erosion of overtime pay. The salary level below which workers are guaranteed overtime pay when they work more than 40 hours a week has not been updated in years, causing the share of salaried middle-class workers automatically eligible for overtime to plummet from 62 percent in 1975 to less than 7 percent today.¹

Executive Summary

In 2016, the U.S. Department of Labor ordered a long overdue update to restore overtime pay protections to middle-class workers earning less than about \$48,000 a year. However, this overtime pay raise was blocked in Ohio and nationwide as the result of a lawsuit brought by Ohio Attorney General Mike DeWine. As a result of the lawsuit, hundreds of thousands of Ohioans lost out on overtime pay rights.

This report provides data for the first time on the local impact on Ohio workers of Attorney General DeWine's action blocking this middle-class raise. Starting with state-level data available from the Economic Policy Institute, the report breaks down the impact, county by county.

The key findings include:

- Statewide, 327,000 Ohioans lost overtime pay protections as a result of the lawsuit.
- Workers in every county across the state lost overtime protections. The largest impacts were 37,000 workers in Franklin County, 34,000 in Cuyahoga County, and 22,000 in Hamilton County.
- Other major impacts include 17,000 in Montgomery County, 16,000 workers in Summit County, 13,000 in Lucas County, and 13,000 in Stark County.
- As a result, this year and every year Ohio workers are losing \$42 million in overtime raises. That's \$42 million in badly needed higher pay that workers across the state are losing every year because of the lawsuit brought by DeWine to block the overtime raise.
- In other states, including California, New York, Washington State, and Pennsylvania, governors and state legislatures are responding to the blocked federal overtime pay expansion by acting under state law to deliver this raise.

- Ohio’s governor and legislature should follow those states’ lead and act quickly to deliver this badly needed overtime raise for the state’s workers.
- Past polling found that Ohio voters support an overtime pay expansion by an overwhelming 80 to 14 percent margin.

This report provides background on the overtime pay issue, presents the data on the impact across the state of blocking the overtime pay raise, and explains how Ohio’s governor and legislature can act to finally make these overtime raises happen.

1. Background on the Lawsuit Blocking the Federal Overtime Pay Restoration

Despite a growing economy and record corporate profits and CEO pay, paychecks for most of the workforce are barely keeping up with the rising cost of living.² One of the reasons is eroding pay protections, including those for overtime pay.

It used to be that if you worked more than 40 hours a week, your employer would pay you time-and-a-half for those extra hours. There was an exemption for managers and professional employees, but only for workers who were both highly paid above a salary threshold and had specific management responsibilities or professional roles. Those protections ensured that most workers didn’t have to work excessive hours—and that if they did, they would receive extra pay to make up for it.



Back in 1975, the overtime salary threshold for that exemption was the equivalent of \$61,200 a year, and 62 percent of salaried workers in the U.S. were automatically eligible for overtime pay.³ Today, the level has plummeted to less than 7 percent because the salary threshold has been frozen at just \$23,660 since 2004.⁴ As a result, many low-paid employees like assistant managers at fast-food restaurants, retail stores, health insurance companies and the like who struggle on salaries of \$25,000 to \$45,000 a year aren’t eligible for overtime and can be forced to work 50, 60, or even 70 hours a week for no extra pay.

In 2016, the U.S. Department of Labor updated the overtime salary threshold to \$47,476 a year—a moderate increase that would not even have fully restored overtime to the 62 percent of salaried workers who used to receive it.⁵

But a group of 21 state attorneys general, including Ohio’s Mike DeWine, sued and blocked this middle-class pay raise for their own constituents.⁶

While legal experts and even the Trump Administration believed the court’s ruling was erroneous and was likely to be reversed on appeal,⁷ the administration announced in 2017 that the U.S. Department of Labor would rewrite the blocked overtime rule, most likely rolling

back this long overdue pay raise and replacing it with weaker protections for fewer workers.⁸ In September 2018, the Trump Labor Department scheduled a series of “listening sessions” as part of this effort to revise the rule and substitute weaker protections for fewer workers.⁹ Despite the rollback of the overtime restoration by DeWine, employer surveys show that 50 percent or more of national companies, including major retailers, restaurant chains, and banks, have already adopted the higher, updated overtime standards and adjusted their pay scales.¹⁰ That shows that restoring overtime pay is economically realistic and would not entail a burdensome transition for businesses.

2. The Impact of the Blocked Overtime Pay Restoration in Ohio—and the Benefits of Finally Delivering It

In this report we use state-level data available from the Economic Policy Institute, the Bureau of Labor Statistics, and the U.S. Census Bureau to analyze for each county across Ohio how many workers lost overtime pay as a result of DeWine’s blocking the U.S. Labor Department’s overtime pay restoration—and how many would regain those protections if Ohio’s governor and legislature act to deliver this long overdue raise.

As summarized in **Table 1**, the data show that a total of 327,000 workers across Ohio lost overtime pay as a result of the DeWine lawsuit.

Workers in every county across the state lost overtime protections. The largest impacts were 37,000 workers in Franklin County, 34,000 in Cuyahoga County, and 22,000 in Hamilton County. Other major impacts include 17,000 in Montgomery County, 16,000 workers in Summit County, 13,000 in Lucas County, and 13,000 in Stark County. See **Table 1**.

A typical worker who lost out on expanded overtime pay was an assistant manager at a big-box retail store or a restaurant chain who earns \$25,000 to \$45,000 a year. Other affected workers include low-level, low-paid managers at banks, health insurance companies, and a wide range of other types of businesses.

These workers, of which there are many thousands in Ohio, would have had overtime pay restored under the 2016 U.S. Labor Department expansion if DeWine had not blocked it in court.

As **Table 2** details, as a result, this year and every year Ohio workers are losing \$42 million in overtime raises. That’s \$42 million in badly needed higher pay that workers across the state are losing every year because of the lawsuit brought by DeWine to block the overtime raise.

That figure for total lost pay combines projections for two types of lost raises. The first is the total of estimated unpaid overtime hours being worked each year by workers who would have been covered under the updated overtime protections. The second part consists of estimated



raises for workers whose employers would likely have raised their salaries up to the level of the new overtime threshold in order to keep them exempt from overtime requirements.

3. Ohio's Governor and Legislature Should Follow the Lead of Other States and Act Quickly to Deliver the Long Overdue Middle-Class Overtime Raise

In other states, including Pennsylvania, Washington State, California and New York, governors and state legislatures are responding to the blocked federal overtime pay expansion by acting under state law to deliver this raise. For example, Pennsylvania Governor Tom Wolf¹¹ and Washington State Governor Jay Inslee¹² this year both directed their state labor departments to update their overtime regulations to expand overtime pay—a process that is now underway in both states. California's overtime salary threshold is already in the process of increasing to \$62,400 a year by 2022.¹³ And New York's overtime salary threshold is increasing to \$58,500 a year by late 2021 in the suburbs and by late 2018 in New York City, and by a date still to be determined in the remainder of the state.¹⁴

Legislation was introduced this session in the Ohio legislature calling for restoring overtime pay.¹⁵ Ohio's governor and legislature should follow those states' lead and act quickly to deliver this badly needed overtime raise for the state's workers.

Past polling found that Ohio voters support an overtime pay expansion by an overwhelming 80 to 14 percent margin.¹⁶

Updating Ohio's overtime rules would finally deliver this long overdue raise for 327,000 or more middle-class workers across the state.

Endnotes

¹ Economic Policy Institute, What's at stake in the states if the 2016 federal raise to the overtime pay threshold is not preserved—and what states can do about it (Nov. 15, 2017), available at: <https://www.epi.org/publication/whats-at-stake-in-the-states-if-the-2016-federal-raise-to-the-overtime-pay-threshold-is-not-preserved/>

² "In U.S., wage growth is being wiped out entirely by inflation," Washington Post (August 10, 2018), available at: https://www.washingtonpost.com/business/2018/08/10/america-wage-growth-is-getting-wiped-out-entirely-by-inflation/?utm_term=.364004afa05d

³ Economic Policy Institute, What's at stake in the states if the 2016 federal raise to the overtime pay threshold is not preserved—and what states can do about it

⁴ Ibid.

⁵ "White Increases Overtime Eligibility by Millions," New York Times (May 17, 2018), available at: <https://www.nytimes.com/2016/05/18/business/white-house-increases-overtime-eligibility-by-millions.html>

⁶ "Ohio, Ky. and other states challenge US on OT rule," Cincinnati Enquirer (Sept. 16, 2016), available at: <https://www.cincinnati.com/story/money/2016/09/22/ohio-ky-and-other-states-challenge-us-ot-rule/90837396/>

⁷ "Labor Department to Appeal Court Ruling Striking Down Obama-Era Overtime-Pay Rule; Trump administration remains likely to significantly change regulations," Wall Street Journal (Oct. 27, 2017), available at: <https://www.wsj.com/articles/labor-department-to-appeal-court-ruling-striking-down-obama-era-overtime-rule-1509141625> See also Brief for Defendant-Appellant, Nevada v. U.S. Dep't of Lab. No. 16-41606 (5th Cir. June 30, 2017).

⁸ "Labor Department to Start Process of Revising Overtime Rule," Wall Street Journal (July 25, 2017), available at: https://www.wsj.com/articles/labor-department-to-start-process-of-revising-overtime-rule-1501002130?mod=article_inline

- ⁹ U.S. Department of Labor, “White Collar Exemption Regulations; Public Listening Sessions,” 83 Federal Register 43825 (Aug. 28, 2018), available at: <https://www.federalregister.gov/documents/2018/08/28/2018-18649/white-collar-exemption-regulations-public-listening-sessions>
- ¹⁰ “The State and Fate of Overtime, ComplianceHR (Oct. 27, 2017), available at: http://event.lv3.on24.com/event/15/06/73/3/rt/1/documents/resourceList1507125242509/web_chr_1004_final.pdf
- ¹¹ “Pa. proposal would boost overtime for half a million workers,” Philadelphia Inquirer (June 26, 2018), available at: <http://www2.philly.com/philly/blogs/inq-phillydeals/overtime-labor-employment-trump-wolf-pennsylvania-overtime-20180626.html>
- ¹² Washington State Dep’t of Labor & Industries, Overtime EAP Rulemaking, available at: <https://lni.us.engagehq.com/learn-about-eap-exemptions>
- ¹³ “California’s Exempt Salary Threshold Will Rise Regardless of Blocked Overtime Rule,” Society for Human Resource Management (Dec. 15, 2016), available at: <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/overtime-california-employers.aspx>
- ¹⁴ New York’s overtime salary threshold for the Executive and Administrative Exemption is increasing to \$1,125 a week, which is \$58,500 a year. See New York State Department of Labor, Miscellaneous Industry Wage Order Summary, available at: <https://labor.ny.gov/formsdocs/wp/Part142.pdf>; New York State Department of Labor, Hospitality Industry Wage Order Summary, available at: <https://labor.ny.gov/formsdocs/wp/Part146.pdf>
- ¹⁵ “State Lawmakers, Policy Experts Urge Action On Overtime Pay, Call Out GOP Obstruction,” Ohio House of Representatives (April 3, 2018), available at: <http://www.ohiohouse.gov/brigid-kelly/press/state-lawmakers-policy-experts-urge-action-on-overtime-pay-call-out-gop-obstruction>
- ¹⁶ Public Policy Polling, Ohio Survey Results (Aug. 26-28, 2016), available at: <http://nelpaction.org/wp-content/uploads/2018/09/Ohio-Public-Policy-Survey-Results-Aug-2016.pdf>

Tables

Table 1. Ohio Workers Statewide and by County Who Lost Stronger Overtime Pay Protections	
State/County	Total workers affected
Ohio	327,063
Adams County	459
Allen County	3,647
Ashland County	1,592
Ashtabula County	2,809
Athens County	1,652
Auglaize County	1,530
Belmont County	1,918
Brown County	693
Butler County	9,185
Carroll County	550
Champaign County	791
Clark County	4,012

Clermont County	4,176
Clinton County	1,161
Columbiana County	2,773
Coshocton County	886
Crawford County	1,244
Cuyahoga County	34,201
Darke County	1,593
Defiance County	1,053
Delaware County	4,367
Erie County	3,348
Fairfield County	3,938
Fayette County	1,249
Franklin County	36,711
Fulton County	1,456
Gallia County	991
Geauga County	2,673

Greene County	3,922
Guernsey County	1,228
Hamilton County	21,894
Hancock County	2,811
Hardin County	740
Harrison County	255
Henry County	799
Highland County	1,011
Hocking County	698
Holmes County	1,863
Huron County	1,711
Jackson County	976
Jefferson County	1,582
Knox County	1,581
Lake County	6,552
Lawrence County	1,179
Licking County	4,056
Logan County	1,307
Lorain County	7,129
Lucas County	13,361
Madison County	1,226
Mahoning County	8,903
Marion County	1,873
Medina County	4,533
Meigs County	339
Mercer County	1,674
Miami County	3,132
Monroe County	256
Montgomery County	16,526
Morgan County	225
Morrow County	358

Muskingum County	2,775
Noble County	250
Ottawa County	973
Paulding County	425
Perry County	511
Pickaway County	904
Pike County	538
Portage County	3,840
Preble County	908
Putnam County	1,044
Richland County	4,695
Ross County	1,905
Sandusky County	2,162
Scioto County	2,107
Seneca County	1,826
Shelby County	1,548
Stark County	12,880
Summit County	15,992
Trumbull County	5,302
Tuscarawas County	3,130
Union County	1,340
Van Wert County	993
Vinton County	175
Warren County	4,942
Washington County	1,651
Wayne County	3,297
Williams County	1,438
Wood County	4,469
Wyandot County	685

Source: NELP Action analysis of data from the Bureau of Labor Statistics' Quarterly Census of Employment and Wages (QCEW), the Economic Policy Institute and the Current Population Survey.

Table 2: Total Overtime Pay Raises Lost Per Year by Ohio Workers

\$42,099,593

Source: NELP Action analysis of data from the Bureau of Labor Statistics' Quarterly Census of Employment and Wages (QCEW), the Economic Policy Institute and the Current Population Survey.

Appendix: About the Data

The analysis in this report was prepared with data available from the Economic Policy Institute (EPI), and draws on state-level analyses by EPI of the impact of the 2016 U.S. Department of Labor overtime raise. Beginning with EPI's estimates of statewide worker impact and its estimates of overtime pay lost annually, the analysis then used data from the Bureau of Labor Statistics' Quarterly Census of Employment and Wages and the Current Population Survey to update those estimates to the present, and to estimate county-level impacts.

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