

Analysis of How Much Nevada Workers Are Losing Under Attorney General Adam Laxalt and Wes Duncan's Overtime Pay Cut

While Nevada'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 Nevada and nationwide as the result of a lawsuit brought by Nevada Attorney General Adam Laxalt and First Deputy Attorney General Wes Duncan. As a result of the lawsuit, tens of thousands of Nevadans lost out on overtime pay rights.

This report provides data for the first time on the local impact on Nevada workers of Attorney General Laxalt and First Deputy Duncan'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, 104,000 Nevadans lost overtime pay protections as a result of Laxalt and Duncan's lawsuit.
- Workers in every county across the state lost overtime protections, including 78,000 workers in Clark County and 16,000 workers in Washoe County.
- Smaller communities still saw significant impacts, including 1,900 workers in Carson City, 1,700 in Douglas County, 1,600 in Elko County and 1,100 workers in Lyon County.
- As a result, this year and every year Nevada workers are losing \$8 million in overtime raises. That's \$8 million in badly needed higher pay that workers across the state are

losing ever year because of the lawsuit brought by Laxalt and Duncan 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.
- Nevada’s next governor and new legislature should follow those states’ lead and act quickly to deliver this badly needed overtime raise for the state’s workers.
- In particular, under Nevada law, the governor, acting through the Nevada Labor Commissioner, has the power to update overtime pay on his or her own without need for action by the legislature. Governors in Pennsylvania and Washington State are already doing so.

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 Nevada’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.



TOTAL OVERTIME PAY
RAISES LOST PER YEAR
BY NEVADA WORKERS:

\$8,404,652

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, led by Nevada’s Adam Laxalt and his deputy Wes Duncan, 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 Laxalt and Duncan, 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 Nevada— 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 Nevada how many workers lost overtime pay as a result of Laxalt and Duncan’s blocking the U.S. Labor Department’s overtime pay restoration—and how many would regain those protections if Nevada’s governor and/or legislature act to deliver this long overdue raise.

As summarized in **Table 1**, the data show that a total of 104,000 workers across Nevada lost overtime pay as a result of the Laxalt and Duncan lawsuit.

Workers in every county across the state lost overtime protections, including 78,000 workers in Clark County and 16,000 workers in Washoe County. Smaller communities still saw significant impacts, including 1,900 workers in Carson City, 1,700 in Douglas County, 1,600 in Elko County and 1,100 workers in Lyon 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 Nevada would have had overtime pay restored under the 2016 U.S. Labor Department expansion if Laxalt and Duncan had not blocked it in court.

As **Table 2** details, as a result, this year and every year Nevada workers are losing \$8 million in overtime raises. That’s \$8 million in badly needed higher pay that workers across the state are losing every year because of the lawsuit brought by Laxalt and Duncan 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 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. Nevada’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

Nevada’s governor and legislature should follow those states’ lead and act quickly to deliver this badly needed overtime raise for the state’s workers. In particular, under Nevada law, the governor, acting through the Nevada Labor Commissioner, may update the applicable overtime pay rules on his or her own without need for action by the legislature.¹⁵ Nevada’s governor thus has the power to deliver the long overdue overtime raise, as governors are currently doing in Pennsylvania and Washington State. Alternatively, the Nevada legislature also has the power to expand overtime pay.

Updating Nevada’s overtime rules would finally deliver this long overdue raise for 104,000 or more middle-class workers across the state.



Endnote

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 Office of the Nevada Attorney General, Press Release, Nevada Attorney General Adam P. Laxalt Applauds Ruling Permanently Invalidating Obama-Era Overtime Rule (Aug. 31, 2017), available at: http://ag.nv.gov/News/PR/2017/Nevada_Attorney_General_Adam_P_Laxalt_Applauds_Ruling_Permanently_Invalidating_Obama-Era_Overtime_Rule/
- 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 Nev. Rev. Stat. Ann. § 608.018(3)(d) exempts “employees who are employed in in bona fide executive, administrative, or professional capacities” from overtime pay. The commissioner’s current regulations, Nev. Admin Code 608.125(c), instruct that “the Commissioner will refer to [the U.S. DOL’s overtime exemption] 29 C.F.R. §§ 541.1 and 541.2 to determine if an employee is employed in a bona fide executive or administrative capacity.” However, the governor and commissioner could update the regulations to delink them from the federal standard and adopt a higher salary threshold.

Tables

Table 1. Nevada Workers Statewide and by County Who Lost Stronger Overtime Pay Protections	
State/County	Total workers affected
Nevada	104,339
Carson City	1,871
Churchill County	648
Clark County	78,106
Douglas County	1,717
Elko County	1,565
Esmeralda County	N/A

Eureka County	115
Humboldt County	392
Lander County	101
Lincoln County	115
Lyon County	1,103
Mineral County	94
Nye County	754
Pershing County	71
Storey County	497
Washoe County	16,994

White Pine County	197
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 Nevada Workers
\$8,404,652
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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