

Analysis of How Much Wisconsin Workers Are Losing Under Brad Schimel and Scott Walker's Overtime Pay Cut

While Wisconsin'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 Wisconsin and nationwide as the result of a lawsuit brought by Wisconsin Attorney General Brad Schimel with the support of Governor Scott Walker. As a result of the lawsuit, hundreds of thousands of Wisconsinites lost out on overtime pay rights.

This report provides data for the first time on the local impact on Wisconsin workers of Attorney General Schimel'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 the following:

- Statewide, 165,000 Wisconsinites lost overtime pay protections as a result of the lawsuit.
- Workers in every county across the state lost overtime protections, including 23,000 in Milwaukee County, 14,000 in Dane County, and 8,500 in Green Bay's Brown County.
- Smaller communities also saw significant impacts, including about 6,400 in Appleton's Outagamie County, 4,700 in La Crosse County, 4,600 in Oshkosh's Winnebago County, 4,500 in Wassau's Marathon County, 4,500 in Kenosha County, 3,900 in Eau Claire County, and 1,100 in Douglas County in the Superior/Duluth area.
- As a result, this year and every year Wisconsin workers are losing \$23 million in overtime raises. That's \$23 million in badly needed higher pay that workers across the

state are losing every year because of the lawsuit brought by Schimel to block the overtime raise that Walker also opposed.

- 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.
- Wisconsin'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 Wisconsin law, the governor, acting through the Wisconsin Department of Workforce Development, 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.
- Past polling found that Wisconsin voters support an overtime pay expansion by an overwhelming 81 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 Wisconsin's governor or 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 Wisconsin’s Brad Schimel, sued and blocked this middle-class pay raise for their own constituents.⁶ Scott Walker also vocally opposed the overtime pay raise and called for its repeal as part of his platform of labor “reforms.”⁷

While legal experts and even the Trump Administration believed the court’s ruling was erroneous and was likely to be reversed on appeal,⁸ 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.⁹ 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.¹⁰ Despite the rollback of the overtime restoration by Schimel, with Walker’s support, 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.¹¹ 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 Wisconsin—and the Benefits of Finally Delivering It

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

As summarized in **Table 1**, the data show that a total of 165,000 workers across Wisconsin lost overtime pay as a result of the Schimel lawsuit.

Workers in every county across the state lost overtime protections, including 23,000 in Milwaukee County, 14,000 in Dane County, and 8,500 in Green Bay’s Brown County. Smaller communities also saw significant impacts, including about 6,400 in Appleton’s Outagamie County, 4,700 in La Crosse County, 4,600 in Oshkosh’s Winnebago County, 4,500 in Wassau’s Marathon County, 4,500 in Kenosha County, 3,900 in Eau Claire County, and 1,100 in Douglas County in the Superior/Duluth area.

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 Wisconsin, would have had overtime pay restored under the 2016 U.S. Labor Department expansion if Schimel had not blocked it in court.

As **Table 2** details, as a result, this year and every year Wisconsin workers are losing \$23 million in overtime raises. That's \$23 million in badly needed higher pay that workers across the state are losing every year because of the lawsuit brought by Schimel to block the overtime raise that Walker also opposed.

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. Wisconsin'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 Wolf¹² and Washington State Governor Jay Inslee¹³ 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 2022.¹⁴ 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.¹⁵

Wisconsin'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 Wisconsin law, the governor, acting through the Wisconsin Department of Workforce Development, may update the applicable overtime pay rules on his or her own without need for action by the legislature.¹⁶ Wisconsin'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 Wisconsin legislature also has the power to expand overtime pay. Past polling found that Wisconsin voters support an overtime pay expansion by an overwhelming 81 to 14 percent margin.¹⁷

Updating Wisconsin's overtime rules would finally deliver this long overdue raise for 165,000 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 “Wisconsin joins 20 states to challenge federal overtime rule,” Capital Times (Sept. 20, 2016), available at: https://madison.com/ct/news/local/govt-and-politics/election-matters/wisconsin-joins-states-to-challenge-federal-overtime-rule/article_1c7808a3-bad2-50f1-a388-e575fa84f8ea.html
- ⁷ “Scott Walker wants every state to be a right-to-work state,” Washington Post (September 14, 2015), available at: https://www.washingtonpost.com/news/post-politics/wp/2015/09/14/scott-walker-wants-every-state-to-be-a-right-to-work-state/?utm_term=.479bfff6b4b4b
- ⁸ “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).
- ⁹ “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
- ¹⁰ 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>
- ¹¹ “The State and Fate of Overtime, ComplianceHR (Oct. 27, 2017), available at: http://event.lvl3.on24.com/event/15/06/73/3/rt/1/documents/resourceList1507125242509/web_chr_1004_final.pdf
- ¹² “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>
- ¹³ Washington State Dep’t of Labor & Industries, Overtime EAP Rulemaking, available at <https://lni.us.engagehq.com/learn-about-eap-exemptions>
- ¹⁴ “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>
- ¹⁵ 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>
- ¹⁶ Wisconsin’s overtime rules are established in large part by regulation, and exempt “persons whose primary duty consists of executive, administrative, or professional work.” Wis. Admin. Code DWD 274.04. While the department’s current regulations defining those terms incorporate a \$700 a week salary threshold, the governor and commissioner could update the regulations to raise the threshold.
- ¹⁷ Public Policy Polling, Wisconsin Survey Results (Aug. 26-28, 2016), available at: <http://nelpaction.org/wp-content/uploads/2018/09/Wisconsin-Public-Policy-Survey-Results-Aug-2016.pdf>

Tables

Table 1. Wisconsin Workers Statewide and by County Who Lost Stronger Overtime Pay Protections	
State/County	Total workers affected
Wisconsin	164,795
Adams County	380
Ashland County	594
Barron County	1,705
Bayfield County	370
Brown County	8,468
Buffalo County	300
Burnett County	362
Calumet County	1,157
Chippewa County	1,867
Clark County	848
Columbia County	1,562
Crawford County	677
Dane County	13,901
Dodge County	2,221
Door County	1,297
Douglas County	1,146
Dunn County	1,261
Eau Claire County	3,892
Florence County	107
Fond Du Lac County	2,980
Forest County	186
Grant County	1,400

Green County	1,233
Green Lake County	475
Iowa County	739
Iron County	183
Jackson County	495
Jefferson County	2,422
Juneau County	638
Kenosha County	4,522
Kewaunee County	538
La Crosse County	4,664
Lafayette County	325
Langlade County	693
Lincoln County	681
Manitowoc County	2,293
Marathon County	4,513
Marinette County	1,322
Marquette County	334
Menominee County	12
Milwaukee County	23,490
Monroe County	1,448
Oconto County	826
Oneida County	1,305
Outagamie County	6,442
Ozaukee County	2,747
Pepin County	162
Pierce County	760

Polk County	1,290
Portage County	2,320
Price County	426
Racine County	4,355
Richland County	493
Rock County	4,178
Rusk County	433
Sauk County	2,886
Sawyer County	539
Shawano County	1,126
Sheboygan County	3,461
St. Croix County	2,485
Taylor County	668

Trempealeau County	1,037
Vernon County	768
Vilas County	725
Walworth County	3,345
Washburn County	533
Washington County	3,578
Waukesha County	11,185
Waupaca County	1,521
Waushara County	574
Winnebago County	4,578
Wood County	2,350

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 Wisconsin Workers
\$23,160,733
<i>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.</i>

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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