

# Analysis of How Much Michigan Workers Are Losing Under Bill Schuette's Overtime Pay Cut

*While Michigan'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.<sup>1</sup>*

## Executive Summary

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

This report provides data for the first time on the local impact on Michigan workers of Schuette'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, 271,000 Michiganders lost overtime pay protections as a result of Schuette's lawsuit.
- Workers in every county across the state lost overtime protections. The largest impact was in Oakland County, with 36,000 workers losing pay protections.
- In other large counties, the impacts included 34,000 workers in Wayne County, 30,000 in Kent County, 19,000 in Macomb County, 10,500 in Genesee County, 9,000 workers in Ottawa County, and 8,000 in Kalamazoo County.
- In smaller counties, impacts included 4,000 workers in Grand Traverse County, and 2,000 workers in Marquette County.

- As a result, this year and every year Michigan workers are losing \$37 million in overtime raises. That's \$37 million in badly needed higher pay that workers across the state are losing every year because of the lawsuit brought by Schuette 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.
- Michigan'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 Michigan law, the governor, acting through the Michigan Department of Licensing and Regulatory Affairs, 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.
- Michigan voters support expanding overtime pay eligibility for the state's workers by an overwhelming 75 to 18 percent margin, according to a spring 2018 poll by EPIC/MRA.

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 Michigan's governor and legislature can act to finally make these overtime raises happen.

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

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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.<sup>2</sup> 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.<sup>3</sup> Today, the level has plummeted to less than 7 percent because the salary threshold has been frozen at just \$23,660 since 2004.<sup>4</sup> 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.<sup>5</sup>

But a group of 21 state attorneys general, including Michigan's Bill Schuette, sued and blocked this middle-class pay raise for their own constituents.<sup>6</sup>

While legal experts and even the Trump Administration believed the court's ruling was erroneous and was likely to be reversed on appeal,<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> Despite the rollback of the overtime restoration by Schuette, 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.<sup>10</sup> 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 Michigan—and the Benefits of Finally Delivering It**

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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 Michigan how many workers lost overtime pay as a result of Schuette's blocking the U.S. Labor Department's overtime pay restoration—and how many would regain those protections if Michigan's governor and/or legislature act to deliver this long overdue raise.

As summarized in **Table 1**, the data show that a total of 271,000 workers across Michigan lost overtime pay as a result of the Schuette lawsuit.

Workers in every county across the state lost overtime protections. The largest impact was in Oakland County, with 36,000 workers losing pay protections. In other large counties, the impacts included 34,000 workers in Wayne County, 30,000 in Kent County, 19,000 in Macomb County, 10,500 in Genesee County, 9,000 workers in Ottawa County and 8,000 in Kalamazoo County. In smaller counties, impacts included 4,000 workers in Grand Traverse County, and 2,000 workers in Marquette 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 Michigan, would have had overtime pay restored under the 2016 U.S. Labor Department expansion if Schuette had not blocked it in court.

As **Table 2** details, as a result, this year and every year Michigan workers are losing \$37 million in overtime raises they would otherwise have received. That's \$37 million in badly needed higher pay that workers across the state are losing every year because of the lawsuit brought by Schuette 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. Michigan's Governor and Legislature Should Follow the Lead of Other States and Act Quickly to Deliver the Long Overdue Middle-Class Overtime Raise**

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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 Wolf<sup>11</sup> and Washington State Governor Jay Inslee<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

Michigan’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 Michigan law, the governor, acting through the Michigan Department of Licensing and Regulatory Affairs, has authority to update the applicable overtime pay rules on his or her own without need for action by the legislature.<sup>15</sup> Michigan’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 Michigan legislature also has the power to expand overtime pay, and legislation to do so has been introduced in past sessions.<sup>16</sup>



Michigan voters support expanding overtime pay eligibility for the state’s workers by an overwhelming 75 to 18 percent margin, according to a spring 2018 poll by EPIC/MRA. Broken out by partisan affiliation, the poll found support for overtime expansion among 85 percent of Democratic voters, 67 percent of Republican voters, and 65 percent of Independents, along with 65 percent of Tea Party members.<sup>17</sup>

Updating Michigan’s overtime rules would finally deliver this long overdue raise for 271,000 or more middle-class workers across the state.

## Endnotes

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<sup>1</sup> 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/>

<sup>2</sup> “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](https://www.washingtonpost.com/business/2018/08/10/america-wage-growth-is-getting-wiped-out-entirely-by-inflation/?utm_term=.364004afa05d)

<sup>3</sup> 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

<sup>4</sup> Ibid.

<sup>5</sup> “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>

<sup>6</sup> “Michigan AG Bill Schuette says overtime rule would hurt job creation,” Michigan Live (Sept. 22, 2016), available at: [https://www.mlive.com/news/index.ssf/2016/09/schuette\\_says\\_hes\\_suing\\_becaus.html](https://www.mlive.com/news/index.ssf/2016/09/schuette_says_hes_suing_becaus.html)

<sup>7</sup> “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).

<sup>8</sup> “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](https://www.wsj.com/articles/labor-department-to-start-process-of-revising-overtime-rule-1501002130?mod=article_inline)

<sup>9</sup> 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>

- <sup>10</sup> “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](http://event.lvl3.on24.com/event/15/06/73/3/rt/1/documents/resourceList1507125242509/web_chr_1004_final.pdf)
- <sup>11</sup> “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>
- <sup>12</sup> Washington State Dep’t of Labor & Industries, Overtime EAP Rulemaking, available at <https://ni.us.engagehq.com/learn-about-eap-exemptions>
- <sup>13</sup> “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>
- <sup>14</sup> 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>
- <sup>15</sup> Mich. Comp. Laws Ann. § 408.414a(4)(a) exempts “employees who are employed in in a bona fide executive, administrative, or professional capacity” from overtime pay and authorizes the director of the Department Licensing and Regulatory Affairs to define those terms by rule. Mich. Comp. Laws Ann. § 408.414a(5). While the department’s current regulations defining those terms incorporate a very low \$250 a week salary threshold, the governor and the director can update the regulations to raise the threshold.
- <sup>16</sup> Michigan State Senate, S.B. 1137 of 2016, available at <http://www.legislature.mi.gov/documents/2015-2016/billintroduced/Senate/pdf/2016-SIB-1137.pdf>
- <sup>17</sup> EPIC MRA Statewide Poll of Active and Likely November 2018 Voters, Michigan Survey Results (Apr. 28-30, 2018), available at: <http://nelpaction.org/wp-content/uploads/2018/09/Michigan-Public-Policy-Survey-Results-Apr-2016.pdf>

## Table

**Table 1. Michigan Workers Statewide and by County Who Lost Stronger Overtime Pay Protections**

State/County	Total workers affected
<b>Michigan</b>	<b>270,880</b>
Alcona County	201
Alger County	189
Allegan County	2,841
Alpena County	1,209
Antrim County	663
Arenac County	557
Baraga County	149
Barry County	1,130
Bay County	2,893
Benzie County	534
Berrien County	4,242
Branch County	1,201
Calhoun County	3,374
Cass County	867
Charlevoix County	808
Cheboygan County	899
Chippewa County	1,021
Clare County	680
Clinton County	1,468
Crawford County	332
Delta County	1,387
Dickinson County	1,066
Eaton County	3,076

Emmet County	1,707
Genesee County	10,511
Gladwin County	435
Gogebic County	455
Grand Traverse County	4,301
Gratiot County	1,103
Hillsdale County	1,070
Houghton County	1,099
Huron County	1,103
Ingham County	8,712
Ionia County	2,779
Iosco County	796
Iron County	382
Isabella County	2,651
Jackson County	4,196
Kalamazoo County	7,775
Kalkaska County	232
Kent County	29,790
Keweenaw County	61
Lake County	180
Lapeer County	2,028
Leelanau County	637
Lenawee County	2,299
Livingston County	5,008
Luce County	187
Mackinac County	545
Macomb County	18,842
Manistee County	577
Marquette County	2,306

Mason County	1,053
Mecosta County	1,019
Menominee County	604
Midland County	1,892
Missaukee County	419
Monroe County	2,844
Montcalm County	1,463
Montmorency County	212
Muskegon County	5,616
Newaygo County	1,169
Oakland County	35,714
Oceana County	764
Ogemaw County	779
Ontonagon County	147
Osceola County	509
Oscoda County	226
Otsego County	1,092
Ottawa County	9,327
Presque Isle County	282
Roscommon County	719
Saginaw County	7,070
Sanilac County	1,253
Schoolcraft County	201
Shiawassee County	1,657
St. Clair County	3,700
St. Joseph County	2,362
Tuscola County	1,002
Van Buren County	1,790
Washtenaw County	8,096

Wayne County	33,981
Wexford County	1,361
<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>	

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

**\$37,370,076**

*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

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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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