OVERTIME

Office workers toil, too

By Marc Linder special to the national law journal

HE U.S. DEPARTMENT of Labor recently proposed rules that would increase the number of white-collar workers excluded from the right to overtime pay. While the debate focuses on these new exclusions, nobody questions the rationale for the Fair Labor Standards Act's original exclusions of 1938.

Yet why should white-collar workers with lower incomes than many bluecollar workers have to work long hours without pay? Feeling some office workers had enough power to stop employers from overreaching, Congress excluded "bona fide" executive, administrative and professional employees, but didn't identify them. The Labor Department years ago adopted broad definitions that excluded far more office workers than justified by the act's purposes (which were work-sharing and prevention of oppressive hours by penalizing firms whose employees worked more than 40 hours).

case of Consider the Dorothy Haywood, a typical office administrator. A customer-service claims adjuster in the mid-1990s for a moving company, Haywood worked 45 to 50 hours weekly and four Saturdays yearly for a \$28,000 salary, and no overtime pay. She sued for back pay. The 7th U.S. Circuit Court of Appeals in Haywood v. North American Van Lines simply noted that her job met the Labor Department's criteria for exemption. Her salary exceeded \$250 weekly. (Indeed, the proposed increase to \$425, or \$22,100 annually, wouldn't help low-paid workers like Haywood.) She did office work directly related to the company's general business operations requiring the exercise of some discretion and independent judgment. The court found her employer exempt.

While it's possible to quibble with the decision, the department's rules are very broad. Even if the court applied them correctly, do rules excluding 25 to 30 million office workers bear any rational relationship to whether employers should be free to require workers to work 50hour weeks without overtime pay?

The Labor Department said in March the Federal Register that Congress believed such workers "typically earned salaries well above the minimum wage, and...were presumed to enjoy other compensatory privileges such as above-average fringe benefits, greater job security and better opportunity for advanc-ment, setting them apart from those pay." overtime But entitled to Haywood's salary so high that, as the department asserted in 1940, if she were paid time-and-a-half, she "would have paid time-and-a-half, she serious doubts [she] earned it"? On the she's precisely the kind contrary, worker the Labor Department had in mind in 1940: "There is little advantage in salaried employment if it serves merely as a cloak for long hours of work.

The only other reason offered for excluding office workers was the difficulty of standardizing a time frame for their work. Hence their overtime hours "could not be easily spread to other workers." Consequently, the work-sharing rationale

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for the time-and-a-half penalty wouldn't apply. Yet, organized according to principles similar to those of assembly lines, white-collar work has also been simplimechanized and computerized. Companies prescribe times for many office tasks; Haywood was required to respond to communications within corpo-Lines monitored how many customers she handled daily, told her to complete phone sessions faster and based her salary on this output. Since the company had 50 people doing the same work, it could have shortened the work week and hired more adjusters.

Don't exclude salaried workers

In 1940, the Labor Department said there was no reason for reluctance to make overtime payments to salaried workers: "Either the penalty payments will discourage long hours of work, or the worker will receive a reasonable compensation for his additional efforts. [I]t is a serious misreading of the act to assume that Congress meant to discourage long hours of work only where the wages paid were close to the statutory minimum.

Ironically, the rhetoric employers use in their campaign to deregulate overtime—this Depression-era law must be modernized to deal with today's workplace realities—compels a conclusion diametrically opposite to theirs: As more white-collar employees work in factorylike offices, more rather than fewer of them face conditions requiring the same protections blue-collar workers enjoy.

The only relevant difference between blue- and white-collar employees is that some of the latter get such huge salaries nobody cares whether they're paid overtime. The law and its enforcement would be immensely simplified for employers if Congress chose a high salary level as the sole criterion so that all employees earning (say) \$100,000 (inflation indexed) annually or less would be entitled to overtime pay. 🔣