Office workers toil, too

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By Marc Linder

T 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 who once had the power to stop employers from overworking their employees 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).

Consider the case of 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-wage 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, no rules excluding firms whose office workers exceeded 25 to 30 million office workers bear any rational relationship to whether employers should be free to require workers to work 50-hour weeks without overtime pay?

The Labor Department said in March in the Federal Register that Congress believed such workers "typically earned salaries well above the statutory minimum wage...and...were presumed to enjoy other compensatory privileges such as above-average fringe benefits, greater job security and better opportunity for advancement, setting them apart from those entitled to overtime pay." But was Haywood's salary so high that, as the department asserted in 1940, if she were paid time-and-a-half, she "would have serious doubts [she] earned it"? On the contrary, she's precisely the kind of 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 working of salaried

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