

The Impact of Labor Department Overtime Rules on Early Childhood Educators

New rules issued by the Bush administration may cost low-paid early childhood educators their right to overtime pay. Under these rules, scheduled to take effect **Monday, Aug. 23, 2004**, workers defined as “nursery school teachers” stand to lose the right to overtime pay. Under the old rules, most early childhood educators qualified for overtime if their duties involved a substantial amount of custodial care or if they were paid on an hourly basis. The new rules make it substantially easier for employers to deny overtime pay to these workers even when they are paid on an hourly basis, if their job duties involve some educational instruction. Although the new rules require that every other worker earning less than \$455 per week qualify for overtime pay, nursery school teachers who earn less could still be denied overtime. This difference is particularly harmful to early childhood educators who, according to Labor Department statistics, earn \$9.53 per hour on average, or \$382.20 per week.

Here is how it works: Under both the old, and the new overtime rules, teachers are considered professionals, similar to doctors and lawyers and therefore *not* entitled to overtime. The twist is that the new rules change the definition of “teacher.”

The *old* test required that for a worker to be considered an overtime-exempt teacher:

- She must impart knowledge to pupils;
- Imparting knowledge must be her *primary* duty, and her assignment must involve the consistent exercise of discretion and judgment;
- She must be paid on a salaried basis and not less than \$250 weekly.
- She not perform nonexempt duties (e.g., driving the school bus or providing for the care and feeding of children) on a regular basis.

This test applied to those working in early childhood education and pre-kindergarten through grade 12. Because early childhood educators rarely fit the above criteria, they were entitled to overtime pay.

The *new* test requires that for a worker to be considered an overtime-exempt teacher:

- She must impart knowledge to pupils.

The new rule eliminates the other safeguards that distinguished lower-paid early childhood educators from overtime-exempt elementary and secondary school teachers. The opinion letters issued by the Labor Department under the old rules explained that nursery school teachers were entitled to overtime because in most instances their duties were primarily custodial in nature, even if imparting knowledge to pupils were a part of the job. Under the new rules, to be considered overtime-exempt, the worker need only have as a major or important duty the responsibility to impart knowledge.

The AFT will continue to fight this battle by pressuring elected officials to reverse the harm caused by the Labor Department. For more information, visit www.saveovertime.org; or take action, visit the AFT Legislative Action Center (www.unionvoice.org/campaign/otpay071204) and send a letter to your senator or representative in Congress.