

and whether we do that on Sunday or Monday, I believe that is the appropriate thing to do.

I know the Chair will join with me in saying, these people here are glassy-eyed. They have worked so long and so hard. The Capitol Police, the official reporters, the enrolling clerks, the Parliamentarians, everyone here has worked so hard. Our staff has worked tireless hours. We are the ones who are here and people see us, but they see mere shells of what we would be but for their great work. They protect us. They cover for us. The mistakes we make, they find them and come back and correct legislation. So I want everyone who is here to know how much we appreciate what they do. They get so little attention. It is all of us who get the attention and we are the ones who depend on them so much. I know the majority leader joins me in this.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. I do again want to emphasize what the distinguished assistant minority leader has said. What the American people see and what our colleagues see on the floor is a tiny portion of what is going on, whether it is the pages, law enforcement, Capitol Police, and the hundreds of staff people who are here to make this operation work, from early this morning until late tonight, and they will actually be here well after we close down. So we do want to express our appreciation, especially on this weekend when it is not totally unprecedented, but it is very unusual.

ORDER FOR ADJOURNMENT

Mr. FRIST. Mr. President, finally, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following up to 20 minutes to be used in morning business by our colleague from the great State of Missouri.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Missouri.

TRUTH BEHIND OVERTIME: IT HELPS WORKERS

Mr. TALENT. Mr. President, I am very grateful to the majority leader and the Democratic whip for allowing me this time. I am sorry to run in breathless at the end of the evening to ask for it. I thought I would have an opportunity, perhaps in the wee hours of the morning, to make this statement. I think it will be evident when I get into it why I want to do it now. I will explain that also.

Let me say I agree completely with the statement of the Senator from Nevada regarding the staff. I have presided, myself, during this weekend, on several occasions. I am grateful to the staff for coming in and sorry to keep them a few minutes later than they would otherwise have to stay. I just

want all the staff to know that, in compensation to them as a small token, if they would like to come to my desk after we adjourn, I have plenty of Russell Stover candy, pecan rolls and almond rolls—and low carb candy also, I say to the majority leader. I am more than happy to share it with all the staff who worked so hard this weekend.

I want to talk a little bit about overtime. I have not talked about overtime on the floor of the Senate despite the fact that there has been a lot of controversy over it. There are a lot of reasons I have not to this point. I have had other priorities. But the overtime regulations that went into effect about 6 weeks ago are actually, of course, having an impact in the United States. In other words, they are now the law. People are having to comply with them. Employers are having to comply with them.

So we have reached a new stage in the controversy over those rules because we don't have to speculate anymore what their impact is going to be. We know what their impact is because they have become law. What we are finding is that these overtime regulations, as many of us thought and as the Secretary of Labor said over and over again, are working the most significant enlargement of overtime pay, the most significant increase of overtime coverage in the history of the overtime law, at least since 1938.

I wanted to say this on the floor of the Senate before we left because I think it is owing, in particular, to the Secretary to say it. She has been criticized by many outside of this body and some in this body. They have said these overtime regulations the Department has issued would restrict overtime for people. It is not working that way, and there are a lot of us who knew it wouldn't work that way, which is why we always voted to allow that process to move forward.

So I want to say this evening, and I am going to go through the reasons why and then talk about what exactly is happening out there in my 20 minutes, but I want to repeat, these overtime regulations, far from restricting overtime coverage, are working the most significant enlargement in overtime protection since 1938.

I want to explain now why those of us who have some familiarity with this field of law always thought that would be the case. I read these proposed regulations when they came out about a year ago. I looked at them and said to myself, as a person who used to practice labor and employment law, my gosh, there are going to be a lot more people getting overtime under these regulations than have gotten it before. Let me explain why.

This is a rather arcane field of law, but it is possible to understand it. You have to start from the assumption that unless the law provides otherwise, every employee in the country is entitled to overtime if they work more

than 40 hours a week. You are entitled to overtime unless the law exempts you from overtime, so the bigger the exemption, the less the overtime. When we talk about exemptions expanding, we are talking about overtime restricting, and it is important to keep that in mind.

We start from the proposition that all employees are covered by overtime. The law exempts management employees. It has always been an aspect of the law that if you are in management, if you are one of the people who run the company, you are not entitled to mandatory overtime.

So how does the law define management? First of all, to be a management employee you have to be salaried. If you are paid by the hour, you get overtime. It doesn't matter what else your job may entail, you get overtime. So you have to be salaried.

Second, you have to be salaried above a certain level. This is very significant because it has changed. Under the old regulations, before the new regulations were issued and took effect, under the old regulations, if your salary was below about \$13,000 a year you automatically got overtime. You could not be considered management unless your salary was at least \$13,000 a year. That wasn't much protection because just about everybody in the country who worked full time and got a salary earned more than \$13,000 a year. But the new regulations raised that threshold to \$23,600. What the law is now, if you get paid a salary of less than \$23,600, you get overtime protection. You get mandatory overtime regardless of what the rest of your job may entail.

When I saw that, I knew immediately that there were going to be tens and tens of thousands of people who had been exempt, whose overtime had been denied them legally under the old regulations, who would now get it automatically. I am talking about people who work as assistant managers of restaurants or in some cases you might be a line leader in a plant or you might have some other job which looks like it may be management so you got exempted under the old regulations. But where you were not paid \$23,600, automatically those people come under protection.

It is not enough to be paid a salary above \$23,600 or above the threshold, whatever it is, to be considered management, and it never has been. The first step is, are you paid a salary? Is it above that certain level? If it is, you might be exempt. You might not be entitled to overtime if you fell into one of several categories of management.

I am not going to go through them all, but let me take two very briefly. One of them is if you were an executive. If you got a salary above the threshold and you were an executive, you were not entitled as management to overtime.

How do you define executive? The old rule said—I hope you are sticking with

me here, Mr. President, and through you, all the vast numbers of Senators who are here on the floor listening to this—if you got paid a salary above the threshold and under the old regulations you supervised at least two people—and by “supervising,” the law meant you did at least one of the things that typically supervisors did. So it might be directing their performance on the job; it might be deciding what their schedules were, when they could come in to work, when they took vacations; it might be training them on the job. If you did any of those things and you supervised two people and you had a salary above \$13,000, you were exempt from coverage.

You can see that covered a lot of people, a lot of your first-line supervisors. Think about this for a second. A lot of your first-line supervisors, your shift foremen, your line leaders, your assistant managers, they get paid above \$13,000, they have two people underneath them, and they decide, for example, when you come in to work or which clothesrack you should be working on, if it is an assistant manager in a clothing store, right? So those people were exempt from overtime.

Now under the new regulations you have to be paid at least \$23,600, you have to supervise two people, and then here is the thing: You have to hire or fire or effectively recommend the hiring or firing of employees. If you don't do that, you are not exempt, under that exemption anyway.

Look at the difference. Under the old law you weren't exempt, you were exempt if you got above \$13,000 in salary; you supervised two people, and you did anything in terms of the direction of their work. But now you have to get above \$23,600, you have to supervise two people, and you have to effectively recommend hiring or firing on a day-to-day basis. That very substantially restricts the exemption, which very substantially increases the number of people who are covered by the overtime laws.

You may be exempt if you supervise people. I just went through that. You also may be exempt if you supervise functions. Under the old law, typically the classic example is somebody who is the lab director in a laboratory. They may not have people under them, but they supervise the lab. But that exemption has been restricted, too, under the new regulations because it always required that you exercise what is called independent judgment or discretion with respect to whatever function you are supervising. But now the independent judgment and discretion must be with respect to something, to an operation that has a significant impact on the workplace. It is no longer enough to supervise a piece of a function; you have to supervise the whole thing. This, too, increases the number of people who are covered by overtime by reducing the breadth of the exemption.

The same thing could be said with regard to the professional exemption.

There are many aspects of these regulations which were designed to and do work an enlargement of overtime coverage.

How do we know they do that? Because the regulations have been in effect for 6 weeks and all the general counsels of all the big companies are looking at them. Do you know what they are recommending? They are telling their employers we have to reclassify these job duties. These job classifications, they are no longer exempt from overtime. We have to start paying people overtime.

A survey was recently done among Fortune 500 companies by the HR Policy Association, and the return was this: Half of the Fortune 500 companies said they were going to treat more employees as eligible for overtime. The other half said there would be little or no change.

The University of Missouri at Columbia—of course we all know that fine institution in Missouri—they said 400 to 500 workers would be reclassified as eligible for overtime who were not eligible before.

Sears Roebuck & Company said 2,000 employees will be reclassified as non-exempt, and nonexempt means you are covered. Overtime has to be paid to you.

Burdines-Macy's, 3M, McDonald's, St. Jude Children's Research Hospital, the University of Kansas, they are all reporting that they are going to reclassify employees so they are covered by overtime, where under the old regulations that Members of this body have been fighting for a year to preserve, these people did not get overtime.

Senator BOND and I were contacted by police sergeants of the St. Louis City Police Department. These sergeants had earlier, under the old regulations, been found exempt, not entitled on a mandatory basis to overtime. They believed, reading the new regulations, that they would be entitled. I believe they have a good case. I don't want to prejudge it. Senator BOND and I asked the Department of Labor to investigate. They are investigating. My prediction is—I can't be certain because this gets down to the details of the job on a day-to-day basis, but my belief is that they will be entitled to overtime unless the police department changes their duties or arranges for them to work under 40 hours a week.

The new regulations contain specific references to police sergeants and firefighters and say they are entitled to overtime as examples of people who would be entitled under the new rule who were not necessarily entitled under the old—this with respect to a regulation that again I say for the last year Members of this body have been saying over and over again will restrict overtime. Yet I tell you and the Senate that it will work out to be the most significant enlargement of overtime since 1938. Not a single company reported that they were going to reclassify people downward to make them ex-

empt. We are aware of thousands and thousands of cases already, in 6 weeks, where we know people are going to be reclassified as covered by overtime when they were not covered before.

We don't yet know—I asked the Department of Labor this today. I asked them if they knew of a single case that had gotten up to their level where a person who had been receiving overtime under the old regulations had lost it under the new. They don't know of a single case where that happened.

It could happen. There is one aspect of the regulation that applies to people who are getting salaries of \$100,000 a year or more. I talked with a lady today who worked in Wage and Hour and was responsible for this. She said: As I read it, I don't really think it is going to restrict overtime. It could. I could probably construct a law school hypothetical where somebody in that position lost overtime. It is possible. We may see a handful. I don't believe we will see more than that.

I am not going to go through all these remarks because I know the staff has worked all weekend and I don't want to keep them any later. I thought it was important to say this. It is owing to Secretary Chao and for the hard work she has put in to make this statement and to make clear to the Senate how significant these new regulations are in that they are going to enlarge overtime.

I do think it is important to say also that if the efforts of Members of this Senate who have fought these regulations had succeeded, then these thousands and thousands of people who are now getting overtime would not be getting it. If the bill that has been sponsored—I understand we are going to vote on it through a voice vote—were to pass, it would mean the withdrawal of overtime protection for all the people in the last 6 weeks who have been reclassified as entitled to it. That would be a great shame. But it will happen because, as I read these regulations and as they are working in practice, they are working a significant expansion of protection for employees around the United States.

I congratulate the Department. They have taken care of inequities that have existed in this system for decades and decades. When you look at the struggle they have gone through, you understand why it was not remedied before now.

This is an arcane and a difficult area. Misinterpretations are possible. I do think many outside this Senate and some inside the Senate have been subject to a misinterpretation of these regulations. I hope I have cleared it up, and I wanted to have the opportunity to do that before we adjourned, until the election.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 4 minutes.

Mr. TALENT. I think I will give that 4 minutes as a gift to the staff and to

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you. I appreciate your staying afterwards to preside, Mr. President, and I yield my time.

adjourned until 10 a.m. tomorrow morning.

Thereupon, the Senate, at 9:26 p.m., adjourned until Monday, October 11, 2004, at 10 a.m.

ADJOURNMENT UNTIL 10 A.M.
TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands

CONFIRMATION

Executive nomination confirmed by the Senate October 10, 2004:

DEPARTMENT OF DEFENSE

RICHARD GRECO, JR., OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF THE NAVY.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE ON THE SENATE.