

Higher Education and Labor Standards: Adapting to Overtime Regulations at the University of Mississippi

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*To my mother Annette Hocevar and my father Chris Hocevar who have always believed
in me more than I believed in myself.*

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ABSTRACT

ELIZABETH MORGAN HOCEVAR: Higher Education and Labor Standards: Adapting to Overtime Regulations at the University of Mississippi
(Under the direction of Dr. Melissa Bass)

Recent attempts of amending the Section 13(1) overtime regulations proposed by the Wage and Hour Division in 2016 have placed a strain on universities' budgets and services. As a result, departments on university campuses are home to challenges that affect both employers and employees. I provide a record of the history of Section 13(1) amendments to date in order to establish the context of my thesis. My thesis attempts to observe how various departments at the University of Mississippi have adapted to the new rule that the University has recently adopted. My review of the literature in combination with my survey results help me explore the main strategies departments use, which include the following: offering compensatory time instead of overtime pay, changing employee status to non-exempt, restricting overtime, and increasing pay. My survey results reveal respondents want overtime pay and more flexible hours to complete duties. I highlight the challenges universities and college students face due to the new rule. Finally, I propose some solutions to better overtime regulations, including increasing employer transparency of departmental overtime regulations, lowering the standard salary threshold, limiting comp time, and allowing for more flexible work hours.

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List of Acronyms

- Department of Labor..... DOL
- Executive, Administrative, and Professional..... EAP
- Fair Labor Standards Act..... FLSA
- Highly Compensated Employees..... HCE
- Human Relations..... HR
- Kansas University..... KU
- National Industrial Recovery Act..... NIRA

Ch. 1: Introduction

Section 13(1) of the FLSA outlines standards in order to protect blue-collar workers and help distinguish the following types of employees: 1) exempt employees, or employees that make a minimum annual salary, have some kind of supervising and expertise in their job duties, and work more than 40 hours per week, and 2) non-exempt workers, or workers who are paid by the hour, do not have exempt job duties, and are compensated for work above 40 hours per week. The most recent implementation of new overtime regulations occurred in 2004, with no proposed changes until 2016. Due to a presidential memorandum issued by President Obama, the DOL published a proposal in the summer of 2016 for new overtime regulations in which the new standard salary level for exempt employees would be raised to \$47,476. In August, the rule was put on hold. Universities across the nation began to approach the new rule with caution, questioning the possibility of the rule being prevented from going into effect. Then in November 2017, two weeks before the rule was to go into effect, Texas U.S. District Judge Amos Mazzant shut down the rule. Universities that had not adopted the new rule had no obligations to change their regulations, while universities that had already adopted the new rule were faced with the challenge of adapting and complying to new overtime regulations. After seeing some negative implications from new overtime regulations at the University of Mississippi in the Department of Student Housing, I questioned whether these effects were present on the campus as a whole, whether there were other

implications I was not aware of, and what the answers of these questions meant for employees and students at the University. In order to answer these questions, I conducted a survey on a sample of University employees, some of which did and did not qualify for overtime according to new regulations. Additionally, the effects of adapting to new regulations were affecting University employees, but what did this look like on a national scale? Were employees being prioritized? To begin answering these questions, I reviewed current literature on overtime and sought to understand how the DOL's new rule came about and how it incorporated universities in overtime policy changes, which I explain below and in further detail within my literature review.

The Need for New Overtime Regulations

There were several reasons the 2004 regulations needed to be updated. FLSA collective action litigation, mostly relating to wages and hours, increased by 450% from 2001 to 2015 (Seyfarth Shaw LLP, 2016). One major cause of this increase was FLSA regulations introduced in the JOBS bill in 2004. This increase in FLSA lawsuits is represented in **Figure 1** below, created by the law firm Seyfarth Shaw LLP, which also shows the specific number of filings for each year from 2010 and 2015, with 2015 setting a record for the number of cases (2016).

Figure 1



While Seyfarth Shaw LLP argues that this is due to increased workers’ awareness of wage and hour laws due to accessibility to these laws via technology such as the internet, I would argue that a lack of clarity and applicability within current overtime regulations could also contribute to more FLSA lawsuits. This leads to the second reason justifying the need to update overtime regulations: pertinence. Perez argues that, “with more subcontracting, temping, and outsourcing, employment relationships have become more tenuous and workers are more vulnerable to labor violations” (530, 2015). Because of the complexity of overtime regulations, clear wording and updated definitions to wage and hour jargon present in these regulations are essential. The Wage and Hour Division argued that the 2004 Final Rule has led to a misclassification of employees due to gray areas in the rule. The 2004 final rule did not limit the amount of nonexempt work any exempt worker can perform, allowing employers to hire employees under exempt status and give them an unrestricted amount of nonexempt work. The dependence on one

standard test and the elimination of the short and long tests, which were more effective in determining which employees were and were not eligible for overtime, paired with vague terminology, created an atmosphere where employers could infringe upon workers' rights to fair pay for fair work, overloading employees deemed "white-collar" workers with "blue-collar" work.

On March 13, 2014, President Obama issued a Presidential Memorandum titled "Updating and Modernizing Overtime Regulations" to the Secretary of Labor. This memorandum was meant to "propose revisions to modernize and streamline the existing overtime regulations," due to current overtime regulations being what Obama deemed "outdated" (2014). The 2004 "salary test" qualifications for exempt EAP employees from section 13(a)(1) of the FLSA were still in need of revision; the current \$455 a week was below the 2014 poverty threshold for families of four (Wage and Hour Division, 2016). Obama insisted that revisions made to Section 13(1) of the FLSA ought to be "consistent with the intent of the [FLSA]," which Obama states is to provide "basic rights and wage protections for American workers" (2014). This memorandum commenced the Wage and Hour Division's development of a new overtime regulation proposal.

There also seemed to be a longer agenda through which President Barack Obama pushed for new overtime standards. Cinquegrani and Opfer interviewed former Deputy Labor Secretary Seth Harris, who informed them that Obama's memorandum was a "part of the larger agenda to increase workers' wages" (2014). Due to the tense political atmosphere during Obama's presidency, Republicans were not likely to vote for raising the minimum wage. The memorandum to revise overtime regulations was a strategy to "raise wages for a group of employees" in an effort to increase pay for blue-collar

workers in the labor force (Cinquegrani & Opfer, 2014). Additionally, this proposal came during the second term of Obama's presidency, which undoubtedly influenced Obama to push the Wage and Hour Division of the Department of Labor for new regulations.

The 2017 New Rule

After consideration of public commentary and past methods of setting salary levels, the rule set the standard salary level required for exemption to a new \$913 per week, or \$47,476 annually. The Wage and Hour Division concluded "an up-to-date and effective salary level protects against the misclassification of overtime-eligible workers as exempt and simplifies application of the exemption for employers and employees alike" (DOL, 2016). The Final Rule did not reinstate the long and short tests for EAP employees that were combined in 2004. Instead, the Wage and Hour Division stated that the final rule "updates the standard salary level and total annual compensation requirements to more effectively distinguish between overtime-eligible white collar employees and those who may be exempt, thereby making the exemption easier for employers and employees to understand and ensuring that the FLSA's intended overtime protections are fully implemented" (2016). The standard salary level of \$913 per week, or \$47,476 annually, was "the 40th percentile of full-time salaried employees in the lowest-wage Census Region" (Wage and Hour Division, 2016). Finally, in order to prevent overtime regulations from becoming outdated, the Wage and Hour Division added a "mechanism to automatically update the salary and compensation thresholds" every three years (2016). This final was to go into effect on December 1, 2016.

On November 22, 2016, Texas U.S. District Judge Amos Mazzant “issued a preliminary injunction in the case, siding with plaintiffs” who stated that the new overtime regulations would increase government costs and incur large costs for businesses, possibly leading to the laying off of workers (Booker, 2016). Mazzant placed the rule on hold temporarily. The Department of Labor appealed, but the same judge shot down the final rule on August 31, 2017, putting “another nail in the coffin” for the “Obama-era” overtime rule (Opfer, 2017). Mazzant’s reasoning for killing the rule was that the Department of Labor “exceeded its authority by issuing the rule, which would have doubled—to \$47,000 per year—the salary under which workers are automatically entitled to overtime pay for all hours beyond 40 a week” (Opfer, 2017). He argued the standard salary level was too high, and there was not enough focus on duties within the rule. And while Labor Secretary Alexander Acosta hinted at revising the standard salary threshold to around \$32,000, there have not been any further attempts to update the overtime regulations regarding salary and duties for EAP workers (Opfer, 2017).

The Situation Facing Universities

The timeframe of new overtime regulations created a unique situation for universities. The new proposal geared up universities to prepare for overtime changes, with some following the new rule and others waiting to see if the rule would actually be implemented. When the rule was put on hold, this raised doubts for public universities. If the rule was blocked, universities could continue with their current regulations or drop the new regulations in favor of their previous overtime regulations. But if the rule’s hold was lifted and it was implemented, universities who decided not to update their

regulations could face consequences for not being compliant to the new overtime regulations. Because of the haunting possibility of not being compliant if the rule was implemented, many universities felt pressured to adopt the new regulations and adapt to them. The University of Mississippi was one of those universities who went ahead and adopted the new overtime regulations. These decisions were further challenged when Judge Mazzant killed the new rule. Because the new rule was killed, universities were not required to keep the newly adopted regulations. Universities could certainly keep them if they wished, whether to avoid whiplash with HR or raise compensation for workers, as raising salaries above the threshold is still compliant of FLSA regulations. The unique circumstances of this policy change in which the DOL proposal, inflexible changes, and risk rather than federal order influenced whether universities chose to adopt the new regulations or not.

After the push for new overtime regulations, multiple universities and higher education professionals have commented on the impact these regulations have or will have on institutions of higher education. Brent Paterson, Ph.D, who serves as the Assistant to the President at Illinois State University, states that the new rule came at “a time when higher education institutions continue to struggle with reductions in funding and criticism for not being more affordable” (2016). With less funding every year, universities are forced to get creative in compensating their workers due to the “over 100% increase” in the exempt salary threshold (Rounds, 2016). This situation demands a lot from institutions of higher education who chose to adopt the new overtime regulations, but there are ways that employers at universities can use to adjust to the new rule.

The unique context for universities has already been addressed by the Department of Labor. After publishing the final rule, the Department of Labor released a guide in May 2016 for institutions of higher education on how to comply with the new overtime rule. It included a section titled “Options for Compliance” in which the Department lists various ways employers can respond to changes in salary thresholds due to the new rule. The first option is rather obvious: if an employee still meets the standards for their current status, you can leave them as such with no changes. The second strategy is to raise the employee’s salary “to maintain exemption” if they work above 40 hours, pass either duties test, and do not meet the salary threshold currently (DOL, 2016). A third option is for employers to pay time and a half for hours worked above 40 per week and keep the employee’s current salary the same. The last strategy listed is to “reorganize workload, adjust schedules, and spread work hours” (DOL, 2016). The DOL noted that heavier workloads assigned to days earlier in the week could help prevent employees from working excess hours due to work piling up during the later half of the week (2016). Additionally, adjusting work schedules to be more flexible can allow for a better distribution of workload and use of hours. For example, if most of an employee’s customers are available between 4pm and 7pm but the original work schedule is 9am to 5pm, the employer can change the work schedule to 11am to 7pm in order to allow the employee to better serve those customers and still work 40 hours without the need for overtime. The DOL states that “employers can adjust the amount of an employee’s earnings to reallocate it between regular wages and overtime” as long as the employer still meets the minimum wage pay for employees (2016). The DOL is essentially saying that employers can reduce hourly pay and add more overtime hours as long as it does not

go below minimum pay. Finally, the DOL addresses compensation for overtime, where public universities are considered public agencies, allowing employers to provide compensatory time instead of paying per hour of overtime (2016). Employers can utilize these strategies on a case-by-case basis, perhaps involving one or multiple options, in order to adapt to the new rule. I will explore which of these proposed strategies are reflected within the departments at the University of Mississippi.

Ch. 2: Literature Review

As I address the Department of Labor’s new overtime regulations, several aspects can complicate the analysis. I will also use other sources that have analyzed or predicted implications of these new regulations at institutions of higher education. Thus, this literature review will help clarify aspects of the regulations addressed within my thesis as well as provide support for my analysis of how departments on campus have adapted to new overtime regulations. I will draw on various kinds of literature, including government research, opinion pieces, university research, and think tank research, in order to provide context to my research. Finally, this literature will allow me to identify questions about higher education and overtime regulations that have and have not been answered.

FLSA & Overtime Background

The FLSA overtime regulations are replete with jargon; so it is important to begin by defining key terms. Crampton and his co-authors clearly define the FLSA’s terminology, specifically regarding exempt and nonexempt employee status of workers listed in part 541 of the Code of Federal Regulations lists four categories as exempt from overtime: executive, administrative, professional, outside sales people, and computer employees (sometimes called the “EAP” exemptions). Crampton, Hodge, and Mishra define “exempt” as employees that are “in one of the four categories identified [...] paid

a salary on a salary basis” and pass the duties test: a short test that exempts employees with a primary duty of management and a long test that exempts employees who “have the authority to hire or fire employees or to make recommendations on hiring, firing or disciplining workers; they must customarily and regularly exercise discretionary powers in their work; and they must not spend more than 20 percent of their time in a week on activities not closely related to management duties” (2003). “Nonexempt” employees are defined as “employees [that] do not fit in any of the [exempt] categories” and are thus covered by “the minimum wage and overtime provisions” of the FLSA (Crampton et. al., 2003, p.336). The terms “exempt” and “nonexempt” are central within my thesis, especially when looking at the effects of the new regulations on employees.

The history and purpose of the FLSA are critical to understanding any analysis of whether policy relating to overtime follows the intent of the FLSA. The United States Department of Labor has documented the history of the FLSA in Jonathan Grossman’s narration titled “Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage.” This historical account explains how the FLSA was created, changed, and passed, along with the intent of creating the act. Before and during the Great Depression, employers took advantage of American workers by requiring excessive hours for little pay, and child labor was exploited throughout the country (Grossman, 1978).

Policymakers under President Franklin D. Roosevelt sought to boost the economy by implementing minimum wages and maximum hours employees could work per week. Roosevelt’s advisors developed the National Industrial Recovery Act (NIRA) in 1933 so that “industries could enforce fair-trade codes resulting in less competition and higher wages” (Grossman, 1978). NIRA, along with other bills that were intended to implement

labor standards, were later struck down in federal courts. Roosevelt worked with Secretary of Labor Frances Perkins to develop a bill that would “give ‘all our able-bodied working men and women a fair day's pay for a fair day's work’” (Grossman, 1978). What resulted was the Fair Labor Standards Act (FLSA), which “banned oppressive child labor and set the minimum hourly wage at 25 cents, and the maximum workweek at 44 hours” (Grossman, 1978). President Roosevelt, “signed the Fair Labor Standards Act to become effective on October 24, 1938,” along with Secretary of Labor Frances Perkins (Grossman, 1978). The article explains that the intent of passing the FLSA was to limit hours worked while placing a “floor” on wages, and abolish child labor. I will consider the intent of the FLSA as I determine whether the University of Mississippi’s interpretations of the new overtime rules achieve the intentions of the FLSA overall.

In 2005, William G. Whittaker wrote a history of the evolution of Overtime Pay Requirements of Section 13(a)(1) through Cornell University. This history describes the initial overtime regulations exempting “bona fide executive, administrative and professional” employees, along with all of the revisions and updates of the act including the Bush II Administration’s changes, which raised the salary threshold for EAP workers to \$425 per week and further defined parts of the duties test. Essentially, “this report sketches the evolution of the Section 13(a)(1) regulation and explores the arguments, pro and con, that it has encountered” (Whittaker, 2005). Originally there was no mention of salaried or hourly workers within the FLSA, and the definitions for executive, administrative, and professional employees were quite vague. Because the regulations were so broad, “some employers had attempted to circumvent the state law by too broadly defining their workforce as executive or administrative or professional”

(Whittaker, 2005, p.3). In 1938, when the FLSA was first signed into law, Section 13(1) declared that employers with executive, administrative, or professional capacity (EAP employees) were not subjected to minimum wage and overtime pay laws, and those employees who were classified as “EAP employees” were not protected by these laws. There have been several amendments to Section 13(1) since its first implementation in 1938. When the FLSA was originally written, Section 13(1) had no definitions of “bona fide executive, administrative and professional” employees. According to Whittaker’s account of the history of Section 13(1), the first reform of Section 13(1) occurred in 1938, when the terms executive and administrative were combined and defined broadly (2005). These two terms were then separated in a 1940 regulation that defined “executive” as someone whose primary duty is management, in which a person manages, can hire or fire, makes \$30 per week, exercises discretionary powers, and “whose time spent engaged in work comparable to that of nonexempt employees does not exceed 20% of his (the executive’s) work hours” (Whittaker, 2005). The 1940 regulation also deemed “administrative” employees “to include those whose duties, while important and associated with management, are functional rather than supervisory,” (Whittaker, 2005). Finally, the regulation in 1940 defined professional employees as those whose jobs require knowledge of that certain field and whose work cannot be standardized to a given amount of time, in which it does not exceed 20% of work performed by nonexempt employees, and who makes no less than \$200 per month (Whittaker, 2005). The definitions of executive, administrative, and professional employees were debated but not changed by Congress from 1940 until 2003 when a new rule was proposed by the Wage and Hour Division to raise the salary threshold for EAP employees to \$22,100 per year

and redefine EAP worker definitions (Whittaker, 2005). This new rule was the first rule to attempt to further define EAP workers since 1940, but due to worries about “stripping” workers of their overtime, the amendment, titled the “Harkin” amendment after Senator Harkin, was rejected by Congress (Whittaker, 2005). After receiving commentary from Congress, business owners, and economic experts, a final rule was published by the DOL in 2004 that contained new definitions for professional workers, which were broad and included new terminology not seen in previous versions of Section 13(1). The DOL eliminated the long and short salary tests in favor of a “standard” test intended to make employer compliance to overtime regulations less complicated (Wage and Hour Division, 2016). Originally, there were two tests: a long test, which had a lower salary level but contained restrictions for the percentage of nonexempt work an exempt worker could perform and a short test, which set a salary level at which any employee was determined exempt with no limit to nonexempt work (Wage and Hour Division, 2016). The 2004 rule created a combination of the short and long tests that established a minimum salary level of \$425 per week for EAP workers, no limits on nonexempt work, and determined some duties that were specific the EAP employee umbrella (Wage and Hour Division, 2016). After these adjustments, the rule was passed as a bill, called the “JOBS” bill, and signed into law in October 2004 (Whittaker, 2005). This was the most recent act to amend and clarify overtime regulations.

The 2004 regulations were also the most recent updates to the salary thresholds for EAP employees. The first update was in 1949, when the Wage and Hour Division’s Administrator authorized a new final rule that increased the earnings threshold as follows: executive workers must be paid a minimum of \$55 per week, administrative

workers must make a minimum of \$75 per week, and professional workers must make \$75 per week, with \$100 being the minimum salary for exempt workers (paired with duties requirements) (Whittaker, 2005). From 1949 to 2004, these thresholds were updated due to inflation and rising poverty rates. In the 2004 “JOBS” bill, the regulations determined “three categories of salaried workers under the final rule: (a) those earning less than \$23,660 who are minimum wage and overtime pay protected; (b) those earning between \$23,660 and \$100,000, who, depending upon their duties, may be exempt; and (c) those earning more than \$100,000 who likely are exempt” (Whittaker, 2005). Whittaker’s record of Section 13(1)’s history shows the long process of amending overtime regulations over time, leading to the new overtime rule I am studying.

The Wage and Hour Division’s document on the new overtime regulations also provides a brief history of Section 13(a)(1) of the FLSA. This document includes the changes made to the final rule before 2015 and provides further detail on the tests laid out by Section 13(1) that help determine whether an employee is exempt from overtime. Overall, Section 13(1) of the FLSA imposed clarification tests in order to determine which employees were and were not subject to the minimum wage and overtime pay requirements laid out in the FLSA. The Wage and Hour Division of the Department of Labor described the three tests workers must meet in order to be considered exempt from overtime: “(1) The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the “salary basis test”); (2) the amount of salary paid must meet a minimum specified amount (the “salary level test”); and (3) the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the “duties

test”)” (Wage and Hour Division, 2016). These tests draw the line between exempt and non-exempt workers, and changes with these tests will be observed throughout my thesis.

Cinquegrani and Opfer’s article “Obama to Direct FLSA Overtime Expansion to Promote Administration’s Wage Agenda” provides background on what influenced the 2016 overtime regulations proposal. Essentially, the overtime expansion was seen “as a political maneuver intended to show that the president is bypassing congressional gridlock to move forward with vital job and economic growth initiatives,” (Cinquegrani and Opfer, 2014). Cinquegrani and Opfer address the proposal’s focus on “tightening qualifications of workers to be classified,” as EAP workers and its place as a part of the administration’s agenda to boost workers’ wages. The authors predict the regulations will be controversial, as they were introduced at the same time Republicans were fighting against proposals to raise the minimum wage. Overall, this article provides essential information on the factors that influenced the proposal of the new overtime regulations.

Critiques and Recommendations of Overtime

An article by Crampton, Hodge, and Mishra titled “The FLSA and Overtime Pay,” critiques the lack of clarity within the regulations, arguing “It's time to revisit the provisions and interpretations of the 1938 Fair Labor Standards Act” (Crampton et. al., 2003). The authors point out that the previous FLSA protections did not cover all workers because of how vaguely the word “employee” (a worker employed by an employer) is defined; trainees and independent contractors do not fit this definition and are thus not protected by FLSA (Crampton et. al., 2003). The authors also point out that the FLSA’s

overtime exemption requirements lack clarity, causing underpayment of workers and many legal problems for employers. In fact, “an additional \$19 billion a year” would be given to workers if the rules were correctly followed. Violations happen for 3 main reasons: “(1) failure to pay overtime due to the misclassification of employees as exempt; (2) Failure to properly calculate overtime premium payments due to not understanding or improperly deriving the regular rate of pay; and (3) Failure to pay for unauthorized overtime or allowing time worked off the clock” (Crampton et. al., 2003). These violations and the resulting loss of pay for workers could be avoided if the overtime regulations were more explicit. This article will help me determine whether the new regulations fulfill their intent of clarifying exempt and nonexempt status for employers, especially regarding “white collar” workers.

In 2010, Calvasina wrote an article titled, “Complying with the Fair Labor Standards Act (FLSA): A Continuing Legal Challenge for Employers.” The article discusses the rise in litigation due to the lack of specificity within FLSA regulations (Calvasina, 2010). For example, much action has been taken against employers over break time because the FLSA does not require employers to provide time for lunch or breaks (Calvasina, 2010). Additionally, “the number of claims alleging employee misclassification as exempt or not exempt from overtime pay under the FLSA has increased ‘a whopping 77 percent during the first half of the decade,’” because of confusion between FLSA exemption requirements and job titles (Calvasina, 2010). The authors then offer suggestions for employers to create clear work policies to avoid these mix ups and utilize the Department of Labor’s various resources meant to help educate

employers and workers. This article helps inform my thesis by providing examples of direct effects of the lack of clarity within FLSA regulations.

Estimates of the Effects of the New Rule

My thesis will address whether the estimates made of the effects of the new FLSA overtime regulations by various sources match the effects I identify at the University of Mississippi. The Wage and Hour Division's Final Rule document lists the DOL's estimates on how many workers will be affected by the new FLSA regulations. For example, "In Year 1, FY2017, the Department estimates that 4.2 million currently exempt workers who earn at least the current weekly salary level of \$455 but less than the 40th earnings percentile in the South (\$913) would, without some intervening action by their employers, become entitled to minimum wage and overtime protection under the FLSA" (Wage and Hour Division).

In 2015, the Economic Policy Institute (EPI) posted a fact sheet, "Why It's Time to Update Overtime Pay Rules," arguing that the salary thresholds are too low and unclear terminology is leading to overworking low-paid employees. EPI supports the initially proposed salary threshold of \$50,440 per year and estimates that 12.5 million salaried workers would benefit from the new overtime regulations, with office and administrative occupations benefiting the most (2015). They also anticipate that the new and higher thresholds would encourage employers to either hire more people or "increase hours of part-time workers" (EPI, 2015).

The EPI also released a comparison of their estimates versus the Department of Labor's estimates on how workers will be affected by the new overtime salary threshold.

The DOL estimates about 600,000 more workers will benefit than EPI determined. But EPI points out that their estimates only include workers who make a salary between the old and new FLSA thresholds, whereas the Department of Labor includes all employees covered by FLSA. EPI criticizes the DOL for using data from 2004 to make its estimates and for undercounting “the number [of workers] whose rights will be changed” due to new regulations (EPI, 2016). This article offers a more critical perspective on the Department of Labor’s analysis while also providing another set of estimates to compare to my study.

Lonnie Golden’s article “FLSA Working Hours Reform: Worker Well-Being Effects in an Economic Framework” presents an economic model developed to predict how the proposed FLSA revisions will affect workers. Specifically, Golden blends all the proposed changes together when analyzing data and predicting their effects. Golden creates a formula in order to calculate how many workers in various occupations are overemployed. Specifically, “a worker is overemployed if their actual hours (H) exceed desired hours (H^*) given the current wage and job (Golden, 2015). Golden concludes that more hours combined with hour flexibility prevent overemployment and increase the well being of employees. But Golden also states that the FLSA amendment for comp-time could lead to an “increase average hours demanded per worker” (2015). Golden determines that there is no significant relationship between the amount of hours worked and an employee’s desire for overtime, as workers prefer to earn more pay with the time they take on. Golden argues that the FLSA does not allow flexibility and needs more specificity in order to correctly prevent worker abuse and overemployment (2015).

Overall, this article is extremely useful because, much like my own research, it addresses the effects of amendments to the FLSA.

Boudreaux and Palagashvili's 2016 article "An Economic Analysis of Overtime Pay Regulations," critiques the Department of Labor's reasoning for its proposed overtime standards while making estimates on whether the new FLSA overtime pay regulations will fulfill its intent of targeting overwork and underpayment. The authors argue that "the department provides no evidence that an 'underpayment' or 'overwork' problem exists" and that the new regulations will not affect workers in any new or beneficial way because they do not address any real labor issues (2016). Finally, the authors predict the new overtime regulations will "hurt the start-up industry" that is already declining, and it will not have any positive effects because employers will seek to avoid paying more than they have previously (Boudreaux and Palagashvili, 2016). Boudreaux and Palagashvili's analysis uses economic theory, similar to Golden's article, which helps me address the economic effects of the new rule on the University of Mississippi campus and whether the new rule hurts or helps employee compensation.

Chris Opfer's article "Texas Judge Kills Obama Overtime Rule" covers current news on the new overtime regulations, which were struck down by Texas judge Amos Mazzant, who held that the Department of Labor overstepped its authority in raising the new salary level to such a high amount. Instead, Mazzant believed the Department of Labor should "consider revising the salary threshold to somewhere near \$32,000 a year" (Opfer, 2017). The judge also held that the rule focused too much on salary versus the duties test, which is meant to clarify EAP distinctions. The judge held that "the department cannot 'categorically exclude' workers from the white-collar exemption

‘based on salary level alone’” (Opfer, 2017). This article includes insight on the current status of the 2016 overtime regulations and raises questions about how universities will respond to the ruling: will they keep the changes or revert back to prior policies? These are questions that I address within my thesis.

Effects on Colleges and Universities

Brent Paterson explains his own predictions of how the new regulations will affect college campuses in his column “FLSA Overtime Final Rule to Change the Way Student Affairs Operates.” Paterson argues that the new FLSA regulations will force many housing departments at universities to reduce the number of hours their employees work due to lack of funds. Paterson then anticipates housing professionals will no longer have enough time needed “to perform necessary tasks within a 40-hour work week,” thus causing Student Affairs to be focused more on hourly constraints rather than on providing services (Paterson, 2016). This article is essential to my evaluation of how the interpretations of the new FLSA overtime regulations affect student affairs at the University of Mississippi.

The American Action Forum published their own research in “The Overtime Rule: Effects on Institutions of Higher Education.” Gitis and Miller lay out their estimate for how the new overtime rule will affect colleges and universities, determining that the rule will “potentially benefit 42,100 [higher education] workers, impose \$724.3 million in annual costs, and adversely impact students by increasing tuition and/or reducing access to student support services” (2016). The authors explain that institutions of higher education will “face two costs due to the rule: the increased labor cost of overtime

workers and the administrative cost of complying with the new rule” (2016). They also state that student service workers and postdoctoral researchers will be impacted the most, because their jobs usually require work hours beyond the 40 hour threshold, and their hours vary throughout the year (Gitis and Miller, 2016). Because a great number of employees have unique hours and job descriptions, universities may have a harder time trying to comply with new FLSA regulations than other employers. This is exactly what I will be investigating at the University of Mississippi.

Michael Rounds, the Associate Vice Provost for Human Resources Management at the University of Kansas, wrote a statement lamenting the financial burden the new overtime rule puts on the University of Kansas. In his testimony for the U.S. House of Representatives Committee on Education and the Workforce, Rounds explains that, whether the University pays the cost of raising exempt employees’ salaries to the threshold of \$47,476 or decides to pay the expected overtime needed for newly nonexempt employees to fulfill their job duties, the cost will be over \$2 million dollars per year (\$2,937,980.05 for the new exempt salary or \$2,303,554.25 for overtime) (Rounds, 2016). This amount is beyond the University’s budget, so they plan to follow the regulations by paying postdoctoral researchers the \$47,476 and seeking budget restraints in various departments. Rounds explains that with the mandated FLSA salary threshold update for 2020, the University of Kansas would not be able to keep up with rising standards of pay for their employees. This article is extremely useful in that it gives an example of the issues of and effects on one university, which I can use to compare to the University of Mississippi.

Gitis and Miller's article "The Overtime Rule: Effects on Institutions of Higher Education" describes the overall effect of new overtime regulation on higher education, offering the big picture along with statistics. They conclude that the rule will "potentially benefit 42,100 workers, impose \$724.3 million in annual costs, and adversely impact students by increasing tuition and/or reducing access to student support services" (Gitis and Miller, 2016). The authors identify student service workers and postdoctoral researchers as those most likely to be affected by the new rule. This article contains helpful predictions that I will compare to the effect I find on the University of Mississippi's campus.

Finally, Ben Penn wrote an article in 2016 titled "Higher Education Becomes 'Poster Child' for Overtime Rule Concerns" that explores the debate on the severity and legitimacy of the rule's negative impact on universities. Penn points out that, no matter the perspective in the debate, universities are still faced with choosing between adopting the new overtime standards and subjecting their departments to large change or not adopting the overtime standards and facing repercussions if and when the rule went into effect. Penn quotes Peter McDonough, vice president and general counsel of the American Council on Education, "'many if not most' of the student life and admissions jobs 'are paying less than \$47,000'" (Penn, 2016). This article is useful in that it provides varying perspectives on how the new overtime regulations affect higher education, and whether or not that is an issue of importance. Penn interviewed a labor law professor at the University of Michigan named Kate Andrias, who thought "the extent of the impact on institutions of higher education is probably less than some of the rhetoric would suggest" (2016). Similarly, UCLA labor economics professor Chris Tilly stated that

“higher education is one small window into a much larger phenomenon,” where universities employees’ situations are not “representative of the bulk of workers” experiencing the affects of this rule (Penn, 2016). Frederick Hess, director of education policy studies at the American Enterprise Institute had a different perspective; Hess insists that “the added costs both of moving folks up [in salary] and then of having to move people above them up so you don't get undue wage compression” is a challenge that might cause layoff or the closing of a university (Penn, 2016). Finally, Penn states “compliance can't occur without tuition hikes, layoffs or service cuts” (2016). Penn details how universities are responding, adopting the regulations or not, which gives useful examples of strategies that universities are coming up with to navigate these effects.

Conclusion

Research shows varying effects of the new regulations on employers and employees, especially within higher education. The high salary threshold and weekly hour limitations could inhibit the services institutions of higher education are able to provide, and with the blocked implementation of the regulations, those institutions are at a crossroads when deciding whether and what to implement. My thesis will study the University of Mississippi in order to determine what exactly the departments on campus have decided to do, how that has affected those departments’ work forces, and whether their decisions truly benefit workers on campus.

Ch. 3: Methodology

Some of the literature noted that overtime regulations are expected to have varying effects on higher education institutions. After seeing changes in job descriptions, hours worked, and exempt status in the Department of Student Housing at the University of Mississippi, I wondered what compliance with new overtime regulations looked like on a larger scale at the University. I decided to conduct a survey to gather data about University employees and overtime regulations. The current situation of overtime regulations is still fresh and lacks official documentation on how these regulations are being implemented and how these regulations are affecting university employees.

Selecting a Population

I determined that I needed to survey employees of the University, and I expressed an initial interest in employees of specific departments I thought were more likely to have overtime employees and thus more likely to be impacted by overtime changes. I met with and worked with Human Resources and with Karen Kate Kellum, Ph.D, who is the Associate Director of Institutional Effectiveness and an assistant professor in the Psychology department, to determine the population based on the characteristics of being exempt, non-exempt, and employees that have changed status to exempt or to non-exempt. Based on these characteristics, Human Resources then pulled a randomly selected sample of 563 employees to survey.

Developing a Survey

Over the course of Summer 2017 into Fall 2017, I used William Foddy's *Constructing Questions for Interviews and Questionnaires: Theory and Practice in Social Research* to help me develop unbiased, clear questions for my survey. I had multiple meetings with my advisor Dr. Bass, who assisted me as I developed my survey questions. I chose questions that asked for basic information about the respondent such as annual salary, department, exempt or nonexempt status, and years worked in their position and at the University of Mississippi in order to establish sample characteristics. I also developed questions asking respondents if they knew if they qualified for overtime, whether they worked overtime, how much overtime they worked, and whether their exempt or nonexempt status had changed. I asked these questions to further understand what overtime compensation looked like in various departments and to see how departments were using the new standard salary test to determine exempt and nonexempt employees. I then submitted my survey questions to IRB for approval, which can be found in the Appendix under "Survey."

I created my survey by entering my questions into Qualtrics. I then met with Brent Duke, a graduate assistant over survey panels who looked over my survey, provided a contact list for my survey from Human Resources, and helped me set up the distribution of my survey via e-mail.

Facilitating the Survey

I sent one recruitment e-mail to my contact list followed by three reminder e-mails over the course of two and a half weeks in December 2017. These e-mails were distributed via Qualtrics. My e-mail explained the purpose of the survey and those respondents' names would remain anonymous. My thesis advisor, Dr. Bass, and I answered questions about the survey via e-mail throughout this time. I took note of the issues that arose, explanations of which can be found in my "Limitations" section.

Methods of Analysis

My survey questions generated both quantitative and qualitative data. First, I translated my quantitative survey results acquired through Qualtrics using descriptive statistics. I also translated responses into bar graphs to serve as visual aids within my thesis. I utilized cross tabulations in order to find relationships between data acquired in my survey, translated them into descriptive statistics, and calculated the p value in order to determine whether the relationship was statistically significant.

My qualitative data came from my three discussion questions (Questions 14-16) at the end of the survey. Respondents were asked about changes within their department regarding overtime, whether they supported those changes, and what changes they would make to overtime regulations. Once the survey was closed, I then categorized responses based on topics mentioned in each response. Each discussion question included categories of "none" or "n/a" for respondents who chose not to respond to the discussion question. Question 14 asked what departmental changes have occurred, if any, and I assigned the following categories to responses based on common themes: "No Changes,"

“Department Avoids Giving Overtime,” “Permission Needed for Overtime,” “Not Enough Time to Complete Tasks,” “Overtime Compensated by Comp Time,” “Timesheets,” “Change in Status,” and “Department Encourages More Time Off.” For Question 15, I assigned the categories “n/a,” “oppose,” “support,” and, “both support and oppose.” Question 16 had many categories that occurred across multiple responses: “n/a,” “Choice in Overtime Pay or Comp Time,” “Switch Status,” “Extra Pay,” “Higher Salaries,” “More Flexibility,” “Keep Overtime,” “Allow Lunch,” “Get Rid of Timesheets,” and, “Re-Classify Job.” I used these categories to organize responses and further discuss them in my results and discussion section.

Ch. 4: Survey Results

After about two weeks, my survey generated a 15.8% response rate from 563 e-mail invitations, which totaled 79 responses. Respondents came from a variety of departments, allowing for a decent range of results. In this section I will report the results for each question in the survey. It is important to note that respondents were allowed to skip any questions they were not comfortable answering, resulting in various numbers of responses per question.

How long have you been working at the University of Mississippi?

Of the 79 who responded to this question, 3 respondents reported that they have worked at the university for less than a year, 27 for 1-4 years, 21 for 5-10 years, 18 for 10-20 years, and 10 for over 20 years.

How long have you been working in your current position?

Out of 78 respondents, 6 stated they had been in their position less than a year, 37 said 1-4 years, 22 said 5-10 years, 12 said 10-20 years, and 1 said over 20 years.

Which department at the University of Mississippi do you work for?

Of 79 respondents, only 18 respondents claimed to work under one of the 13 departments listed: Admissions (1), Financial Aid (1), Fraternal Leadership & Learning (1), Human

Resources (3), Ole Miss Union (1), Bursar (1), Parking and Transportation (1), Research (3), Student Disability Services (1), Student Housing (2), University Police Department (1), Center for Student Success & First Year Experience (1), and Facilities Management (1). In contrast, 69 respondents reported that they were in other departments not listed.

Table 1

Annual Salary	
Salary	N
Less than \$10,000	0
\$10,000-\$20,000	0
\$20,000-\$25,000	1
\$25,000-\$30,000	8
\$30,000-\$40,000	21
\$40,000-\$47,000	24
\$47,000-\$50,000	1
\$50,000-\$60,000	10
\$60,000-\$70,000	5
\$70,000-\$80,000	2
\$80,000-\$90,000	3
\$90,000-\$100,000	0
\$100,000-\$112,000	0
\$112,000-\$120,000	0
More than \$120,000	1

What is your annual salary (whether you are paid annually or hourly) without overtime?

In **Table 1**, most annual salaries reported fell between \$25,000 and \$90,000. There were two outliers: one disclosed an annual salary of over \$120,000, and another disclosed an annual salary of between \$20,000 and \$25,000. Additionally, most of the 79 respondents report salaries on or around the line of the new salary threshold, with 21 reporting annual salaries of \$30,000-\$40,000 and 24 reporting annual salaries of \$40,000-\$47,000.

Are you aware of your department’s overtime regulations?

Of 79 respondents, 68 said yes, 8 said somewhat, and 3 said no.

Do you qualify for overtime?

Of 79 respondents, 46 said yes, 32 said no, and 1 selected “not sure.”

In your current position:

Of 79 respondents, 23 stated that as employees they have always been paid by the hour, and 24 said they have always been paid a salary. Six respondents reported that their status changed to salary in their current position, while 26 reported a change from salaried to hourly pay.

Over the past year, have you worked overtime?

Of 79 respondents, 52 said yes, while 27 said no.

Table 2

Hours of Overtime Worked*	
Hours	N
0	38
1	8
2	8
3	3
4	4
5	5
6	2
7	2

8	1
9	0
10	1
11	0
12	0
13	0
14	0
15	0
16+	3
*per pay period	

On average, how many hours of overtime per pay period do you work?

As seen in **Table 2**, of 75 respondents, 38, or just over 50%, reported that they do not work any overtime hours on average. Meanwhile, 8 respondents reported 1 hour of overtime, 8 reported 2 hours of overtime, 3 reported 3 hours of overtime, 4 reported 4 hours of overtime, 5 reported 5 hours of overtime, 2 reported 6 hours, 2 reported 7 hours, 1 reported 8 hours, 1 reported 10 hours, and 3 reported working more than 16 hours of overtime.

Within the last year, have you experienced a change in the number of hours you work per week?

Of the 79 responses, 20 said yes, and 59 said no.

Has your job description changed within the past year?

Out of 79 responses, 10 said yes and 69 said no.

How have your department's changes, if any, in overtime regulations affected you and your job?

55 survey respondents provided a written reply to discussion Question 14. While 28 employees said they had not experienced any changes, 12 employees reported that their department seems to avoid giving overtime and 6 stated that they had to receive permission in order to work over 40 hours. Six answers included complaints about not having enough time to complete responsibilities during the workday or week. Three respondents disclosed that they reported overtime as compensatory (comp) time, and 1 respondent stated that their department has been encouraging employees to take time off.

Question 15: Do you support or oppose your department's changes, if any, to its overtime regulations?

Of 52 responses, 24 responses had no comment, 15 opposed the changes, and 11 supported the changes. Three respondents supported some changes and opposed others within their department. There were multiple complaints about how departments heavily regulating overtime, flex time, and vacation time make it more difficult for employees to balance work and home life.

Question 16: What changes, if any, would you make to your department's current overtime regulations?

Of the 52 responses, 20 had no reply. 13 wanted employees to be able to choose between receiving overtime pay or compensatory time. Five respondents wished they could go back to their previous status and salary as an exempt employee, 4 called for more flexible work schedules, and 7 recommended raising salaries or increasing pay for overtime hours worked. The remaining 4 advocated the following, respectively: keeping overtime in

order to prevent more pay gaps, allowing lunch breaks, getting rid of time sheets, and reclassifying positions that have taken on more supportive duties that go beyond their job classification.

Limitations

There are several limitations to my survey. First, technological difficulties hindered my ability to receive more responses. There were 96 surveys that were started, but only 79 were completed (the completion rate being 82%). Through e-mail contact, multiple respondents reported difficulty getting past the first question due to the inability to select the “I am 18 or older” box, which was required in order to continue the survey. There were also complaints about not being able to submit all responses at the end of the survey.

Another limitation was that respondents could choose whether or not to answer each question, and multiple respondents chose to exercise this freedom. There were some respondents who did not list their salary or answer the three discussion questions at the end of the survey. As a result, I made sure to only take the true response number to each question into account when generating statistics and graphs.

One respondent e-mailed me stating they had put the wrong information in their answer and asking if they could change it. To preserve the anonymity of the survey, I was not able to honor this request.

Finally, on survey question 3, 69 respondents said that they worked for a different department than the options given. The departments listed in question 3 (which can be seen within the Survey in the Appendix) were chosen from the organizational charts of

the university, specifically departments that I suspected might have more staff who would be more likely to work overtime hours and be impacted by the new rule. Not only does this restrict my ability to closely analyze how departments adapt to overtime regulations; it also inhibits my ability to correlate other survey data with the strategies that specific departments are utilizing.

Ch. 5: Discussion & Recommendations

While the University of Mississippi has chosen to comply with the new rule, it is left to the various departments on campus to identify strategies to do so. In this section I will consider the intent of the Wage and Hour Division in proposing these overtime regulations while analyzing how departments at the University of Mississippi have chosen to adapt to new regulations and whether the implementation of the new salary test standards have truly benefitted employees and employers at the University. I will also discuss the potential impact on students, which is a perspective not yet discussed in current literature. Finally, I will propose my own suggestions for this policy.

Cross-Tabulations

My first cross tabulation observed the relationship between the factors of annual salary and the change or lack thereof in status of exempt or non-exempt obtained from my survey. The results (seen in **Figure 2**) show a varying number of salaries and status relationships and the relationship is determined as significant with a p value of 0.001. The first notable factor is that one survey participant reported a status of exempt, distinguished as “salary” within the survey, while also making below the Wage and Hour Division’s set minimum for hourly workers. As my data suggests, employees with higher wages are mostly salaried, or exempt, employees. But there is one outlier that makes \$30,000-\$40,000 annually yet is also a salary employee. An explanation for this outlier could be that the duties required in their job do not meet the duties test for an employer to

determine them an exempt employee. This might also be the case due to that many of the discussion question responses alluded to desk duties for employees' jobs, which may not necessarily meet the supervisory requirements needed in order to be determined as exempt.

Figure 2

		What is your annual salary (whether you are paid annually or hourly) without overtime?														Total		
		Less than \$10,000	\$10,000 - \$15,000	\$15,000 - \$20,000	\$20,000 - \$25,000	\$25,000 - \$30,000	\$30,000 - \$40,000	\$40,000 - \$47,000	\$47,000 - \$50,000	\$50,000 - \$60,000	\$60,000 - \$70,000	\$70,000 - \$80,000	\$80,000 - \$90,000	\$90,000 - \$100,000	\$100,000 - \$112,000		\$112,000 - \$120,000	More than \$120,000
In your current position:	You have always been an hourly employee.	0	0	0	0	7	8	5	1	0	0	0	0	0	0	0	0	21
	You have always been a salary employee.	0	0	0	0	0	1	2	0	9	5	2	3	0	0	0	1	23
	You were an hourly employee, but now you are a salary employee.	0	0	0	0	0	1	4	0	1	0	0	0	0	0	0	0	6
	You were a salary employee, but now you are an hourly employee.	0	0	0	1	1	11	13	0	0	0	0	0	0	0	0	0	26
Total		0	0	0	1	8	21	24	1	10	5	2	3	0	0	0	1	76

This cross tabulation also reveals that there are many employees who have changed status to hourly and make just below the \$47,476 threshold for exempt employees. 26 employees fall below this threshold and have changed status in their position. The number of employees who have switched to an hourly, or non-exempt, status is significantly larger than the number of employees who have changed to salary, or exempt, status, which amounts to 6 overall. This could show that employers favored the strategy of switching employees to hourly rather than raising their salaries in order to adapt to new overtime regulations. This raises a question: why not just raise the employees to exempt status if their salary is so close to the threshold? Perhaps departments do not have the funds to do so, or these employees do not meet the duties of

EAP workers. There were also 44 employees who experienced no change in status, which could show that employers either had alternative strategies to adjusting to the new overtime regulations or did not need to alter the status of any employees due to sustained compliance. Finally, there were employees who reported a status of always salary or switched to salary that do not meet the \$47,476 threshold. This could be either due to misclassification, but it is also possible that compensation for those employees can come in other forms that meet the threshold in sum.

Overtime vs Comp Time

“The FLSA allows public entities, including public colleges and universities, to offer compensatory leave, or comp time, in lieu of cash pay for work in excess of 40 hours per week,” (Asimou & Morse, 2016) creating a special case for universities like the University of Mississippi. Employers have the ability to work within their departmental budget by having non-exempt employees and offering compensatory (comp) time for hours worked over 40 per week. There are advantages and disadvantages to providing solely comp time. First, departments can stick within their budget, more easily navigating new overtime regulations without facing expenses that might accrue from paying time and a half for overtime. But, as Asimou and Morse point out, employees may come back from compensatory leave and face large amounts of work they must endeavor make up (2016). There are some costs employers might face after offering comp time, one cost being the “cash payout for each unused hour of comp time upon the individual’s separation from employment” (Asimou & Morse, 2016). The other cost comes in the form of a cash payout for every hour of overtime that goes beyond the maximum 240

hours of allowed comp time. The costs for employers are situational, while the negative implications of comp time for employees might occur more often.

In **Table 1**, most of the respondents' annual salaries were between \$25,000 and \$90,000, with most falling below the \$47,476 threshold. While this is a small sample of University employees, this suggests that departments have opted to have employees remain or changed to non-exempt status instead of raising salaries to the \$47,476 threshold. Departments preferring to have non-exempt employees could also be reflected in the results of the survey's discussion questions. With 49 respondents reporting a status of non-exempt, many of them wishing to be able to choose pay for overtime rather than comp time, it seems some departments have adopted the strategy of keeping employees non-exempt and offering comp time instead of pay for overtime.

While it is valid for employees to wish to be paid for the overtime hours they work, it is also valid for employers to seek other ways to compensate their employees under their often-tight budgets. Allowing employees to choose between compensatory time and overtime pay is simply unrealistic, as employers may not have the financial resources to pay every employee who chooses overtime pay. Given the minimum wage of \$7.25, overtime pay is at least \$10.88 (time-and-a-half as regulated by the FLSA). This means employers could be paying hundreds of dollars extra for their employees to work even a few overtime hours per person per week. Many departments may not have the budget to pay their employees overtime, so compensatory time is an easy way to compensate employees for working overtime without squeezing out any extra dollars from the budget. Opting for providing comp time is efficient, and it could be an incentive

for employers to keep employees at a non-exempt status, saving money in the department and still being able to compensate their employees.

In addition to wishing for overtime pay, there were some respondents commenting they “only earn comp time.” One comment in particular stated the following: “[The department] used the strong word ‘prefer’ when using overtime to be credited with comp time. This seems as a biased policy benefiting the University and not considerate to its employees. The majority of the employees would rather be paid instead of given comp time and not be allowed to utilize the time when they want to use the time with management's approval.” Departments have made it clear to their employees that overtime pay is not a viable option for compensation. A different respondent stated that their department was “very good at monitoring to ensure staff does not go into overtime,” which shows that departments are having to be extremely strict on overtime hours, most likely due to a lack of funding in the departmental budget.

Hours and Responsibilities

The amount of hours available for an employee to work and the amount of responsibilities given to an employee pose an issue in the workplace. Some exempt employees who took the survey stated that they do not have enough hours in the day to complete all of their responsibilities, often leading them to take work home with them. In a similar way, some non-exempt workers stated that they were not given enough overtime hours to work, or that comp time often inhibited them from completing tasks by the end of the week. This could reflect departments’ decisions to cut the number of employees, raise the remaining employees to exempt salaries, and assign laid off employees’ work

onto the few employees left within the department. This issue is so stark that one respondent, a non-exempt employee, reported not being able to eat lunch. This could be due to a plurality of causes. It could show that employers are simply giving too many responsibilities to non-exempt workers. The respondent mentioned above stated that they were “no longer allowed to eat [their] lunch at [their] desk.” This might be because the department prefers for the employee to eat elsewhere for reasons relating to pay. If workers are not allowed to work over 40 hours per week but have a lot of tasks to complete, employees could make workers leave the workplace in order to get lunch. This is so that employees do not have to pay their employees for lunch, as the break counts as a work hour that must be compensated for if the employee utilizes their lunch break in the office. This is something that I have seen within the Department of Student of Housing, as many supervisors leave campus for lunch and are not available for that hour. But it is also possible that this employee is being required to work all day in order to fulfill all of their duties, and sacrificing lunch time is necessary to do that.

The DOL also recounts the new rule’s requirement for employers to track all hours worked by employees; the method employers use to track these hours is flexible as long as the accounts are “complete and accurate” (2016). There were a few comments addressing a difficulty filling out time sheets for respondents to record their work hours. Both hourly and salary respondents expressed frustration with remembering to fill out timesheets, but tracking hours worked is essential in complying with new overtime regulations. This is an aspect of adjusting to the new rule that seems to come with transitioning into something new and possibly unfamiliar for employees.

Previous Predictions vs Reality

It has become apparent that previous predictions of new overtime regulations benefitting employees do not prove true in the case of employees surveyed at the University of Mississippi. Gitis and Miller insisted that the new overtime rule would impact institutions of higher education by “Potentially benefit[ing] 42,100 workers, impos[ing] \$724.3 million in annual costs, and adversely impact[ing] students by increasing tuition and/or reducing access to student support services,” (2016). While it is not quite clear whether access to student services has been reduced, it does not seem as if employees are benefitting from the new rule. More employees are being moved to non-exempt status, and many of the respondents did not report salaries higher than the \$47,476 annual salary required to be exempt. Thus, employees do not seem to be getting higher salaries or more pay for their work as predicted.

On the other hand, there is certainly an effect from the costs of paying employees under the new standards. Gitis and Miller were correct in predicting rising costs for universities that must now pay employees more or compensate them somehow. While the overall cost for the University of Mississippi is not apparent, the cost for the University of Kansas is. In Rounds’ testimony to the U.S. House of Representatives in response to the proposed rule, Rounds estimates a cost of \$2,937,980 (2016). It is not difficult to imagine such a cost being incurred upon the University of Mississippi as well, which explains the creative strategies employers have resorted to using in order to compensate their employees, fulfill their services, and keep within a budget.

Impact on College Students

The literature in my research posed a significant concern for how new overtime regulations might affect employers and employees, but there was a lack of consideration for the effect on students due to these regulations. Some sources noted the impact on student post-doc workers, but only Rounds and Gitis and Miller mention the impacts of the rule on students in regard to student services. Gitis and Miller predict that the new rule will “limit the roles of employees in a wide range of student support services and adversely impact students,” referencing Rounds’ (2016) testimony to the U.S. House of Representatives and do not further discuss how the rule might impact students (2016). Rounds addresses that a “vast majority” of the 262 exempt employees at Kansas University will “become non-exempt due to [departments’] inability to afford to raise them to the new threshold” (2016). Rounds states that “student advising, student recruiting and student enrollment services” will be most impacted due to work limitations of 40 hours per week (2016). The results of the shifts of exempt employees in student services to non-exempt will result in “reduced services” for students, as well as higher tuition rates in order to help fund paying overtime and newly exempt employees at Kansas University . Rounds quoted KU Vice Provost Matt Melvin, who stated “student access to, and availability of, academic and support personnel and services will be reduced. KU needs to highlight that decreasing services is more than reducing operating hours. It will have a profound impact on our ability to attract, retain and graduate students” (2016).

Students at the University of Mississippi have not seen a significant increase in tuition due to the new rule, but I would argue that other ways departments have

adapted to new rules could incur negative impacts on students at the University. Departments depending on comp time to compensate workers means employees will not be as present on campus. Employees who work overtime are encouraged to utilize amount of comp time so employers will have less potential payments to make towards leftover comp time if those workers' employments are severed. As employees exercise this comp time, they will be taking more time off. As Rounds also argues, this prevents student services from establishing personal relationships and supporting students (2016). Student services workers who are gone more often will not be as available to students, creating a discrepancy between student services and the students they mean to support.

Also included in Rounds' testimony are predicted costs per department, or "unit," due to adapting to the new rule. For KU Student Affairs, the cost to keep employees exempt status would be \$167,298.09, and the cost to move exempt employees to non-exempt status would be \$155,568.36 (Rounds, 2016). Of all the organizational costs, student affairs had the third highest costs at KU for adapting to the new rule. Paterson expresses his own concern for student affairs: "The challenge to take what time is necessary to help a student with an issue, to insure that a program is successful, to provide services at the highest levels, I fear, will be heightened" (2016). Paterson points out that, within student affairs, "residence hall staff" create a great challenge, with room and board packages no longer considered as part of compensation under the new rule, irregular hours, and a job that requires "them to be available to respond to students and student staff members as needed" (2016). It is apparent that the new rule is predicted to put a constraint on how effective student services can be with less

flexibility. But further research is needed to assess whether students do feel as if student services are less available after changes to comply with overtime regulations were implemented. The following question needs to be answered: Are student services still able to fulfill their role in serving students effectively under this new rule?

Ch. 5: Recommendations

Transparency

A solution that benefits employees while being financially feasible for employers is difficult to imagine. Many of the answers to my survey discussion questions called for employees to be able to choose whether to be compensated with money or time but that comes at the cost of the employer, in this case the department. Currently, it does not seem that many employees are aware of how they will be compensated for overtime (with comp time or overtime pay) until the situation calls for it. My proposal would be for employers to provide overtime pay if they are able to afford it, but to also offer compensatory time with the consent of the employee. Departments that cannot afford to pay for overtime simply would not offer it. Then, those departments should be transparent with what means employees are compensated for overtime. This would allow a more competitive job market and allow employees to be able to be compensated in a way they agree with. Yes, employees do have to agree on comp time before they are compensated with comp time, but they do not have control over whether they are paid or given comp time. Why allow nonexempt employees to work overtime if you are not able or willing to compensate them accordingly for the hours they work? If employees are willing to do extra work, employers should be transparent in the way overtime work will be compensated. While this does not require employers to pay overtime, it does allow for a better working environment where employees do not feel as though they are being restricted or not valued.

Employers should be more transparent about restrictions and specifics of hours employees are allowed to work, and whether overtime is available at all to potential employees.

Lowering the Threshold

Another solution would be to lower the salary threshold. Multiple sources have stated that the \$47,476 threshold is too high of a standard with too soon of a deadline, especially for entities that have already established budgets for the 2016 fiscal year. Lowering the threshold to around \$30,000, or about double the annual salary of an employee working minimum wage, might be an easier task for universities, making the mandated increases in 2020 and beyond more viable in the realm of higher education. A threshold around this amount would still help boost employees' salaries overall and incur less costs for institutions of higher education when adjusting to the new rule. But there is still a higher cost for employers to raise some employees to any threshold, and this may not seem like a high enough thresholds to advocates of raising the minimum wage and fair compensation for the work of blue-collar workers.

I have identified multiple alternatives to paying overtime and avoiding bumping up employees to the \$47,476 salary threshold. The effects of this are reflected in the responses of my survey respondents, who comment on how their departments limit lunch breaks, add on responsibilities, and deny their employees the opportunity to work overtime as non-exempt workers. This has contributed to reduced morale at the University of Mississippi. It is not necessarily any departments' fault for not being able to pay their employees the full \$47,476 or overtime pay, but if employers did not

feel so pressured to squeeze out thousands of dollars from their budgets, they may not resort to cutting salaries and compensation opportunities for their employees. Perhaps the labor force, especially in the context of universities, is not yet ready for such a huge jump in the salary threshold.

Limiting Compensatory Time

Policymakers could choose to amend the FLSA to limit the amount of compensatory time allowed, lessening it from the current limit of 240 hours. Some universities, such as Kansas University, have placed their own limits on comp time (KU has a limit of 90 hours) (Rounds, 2016). Currently, employers must pay employees for every extra hour they work beyond the allowed amount of comp time. There is also a disparity in employees seeking better compensation for overtime but employers not being able to pay this overtime. According to the answers I received in my discussion questions, multiple respondents are not happy receiving comp time. One argument against this might be that as hours increase, employees will seek time off. Golden's poll and analysis counters that there is no significant relationship between hours worked and the amount of comp time wanted (2015). If the amount of comp time allowed was lowered to 168 hours, amounting to seven days of comp time, it would provide a decent chunk of time for non-exempt employees who wish to take time off. This new limit would also prevent employers from abusing the ability to compensate with comp time rather than overtime, making the extra pay above that limit more reachable for employees and making employees feel more fairly compensated for their overtime. The limit of this option is that employers would sooner have to pay overtime if their employee does reach

the limit of comp time. Additionally, employees who wish to have more time off available may not be able to get more than a week of time off. But higher compensatory limits can also incentivize employers to not offer overtime pay even if they can afford it; current compensatory limits could be taken advantage of, especially now with new overtime regulations with more restrictions.

Flexible Hours

One last option is employers could simply allow employees to have more flexible work hours. This is a strategy that I have witnessed within the Department of Housing at the University, and it has its advantages and disadvantages. Firstly, a majority of the complaints about overtime regulations in my survey express disdain for lack of flexibility with their hours. Employees who have switched from exempt to non-exempt status seemed to struggle the most with limited hours. One respondent stated that they “work only 40 hours a week doing the same tasks [they were] doing when [they were] able to work 60+ hours a week.” Another respondent said they were more stressed in their new non-exempt status because they are “asked to do the same amount of work each week with very little overtime approval.” Surely, with such tight constraints on their work day and overtime, these employees would benefit much more if their department altered their hours, as advised by the DOL in its guide to the new rule. As long as the department ensures that hours are tracked, employees could still accomplish their duties with more flexibility in doing so while still being available for students in the case of student services. Golden’s analysis supports extra hours and flexibility as means of increasing the well-being of employees (2015). Employees can take advantage of this, however; it is

easy to flex hours where, for example, an employee decides to work an extra two hours Monday through Thursday in order to not have to work at all on Friday. This also contributes to the issue of effectively addressing students' needs and being available for students. Perhaps departments can also require a certain amount of hours worked per day to prohibit an abuse of flexible hours. Overall, a balance of a regulated but flexible schedule might boost the morale that is lacking from employees within my survey.

Ch. 6: Conclusion

In conclusion, I found that the situation in which departments must adapt to new overtime regulations at the University of Mississippi has only further constrained employers and employees at the University. These overtime changes arise from within a unique instance where a new policy proposal rather than a federal amendment has been implemented despite its fall in court. Paired with considering public universities public entities, which allows university employers to offer compensatory time, this creates a tense atmosphere that allows for a surplus amount of compensatory time offered to a significant population of non-exempt employees at the University.

The effects of new overtime regulations are revealed in my survey, which shows many university employees have always been or switched to non-exempt status. Most of these employees fall just under the \$47,476, which makes me question whether budgetary restrictions are as much of a worry for departments with employees already at this level of pay. Additionally, multiple employees complained about the lack of overtime pay available, with many employers opting to provide compensatory time rather than overtime. Within the discussion questions, exempt and non-exempt employees mentioned a difficulty completing tasks due to a lack of flexibility in hours and overwhelming amounts of duties assigned to them. Discussion questions also first revealed the conflict between employees wanting overtime pay, but employers only offering compensatory pay. Just over 50% of respondents reported that they did not work overtime, which

supports that overtime pay is not the most common means of compensation for overtime worked.

With strict budgets and rising expectations, departments have been forced to simply get creative in determining how to best fulfill their purpose while still compensating their workers. I identified the main strategies used at the University are increasing pay, changing the status of employees to non-exempt, heavily regulating overtime, and offering compensatory time instead of overtime pay. Each of these strategies was suggested as a way for universities to adapt by the DOL in their guide for institutions of higher education. These strategies show the true constraints on departmental budgets; employers can hardly afford to pay overtime pay to non-exempt workers, much less pay the annual salary of \$47,476 to their exempt employees. This has led to a significant population of employees who feel overworked and undervalued by their departments, as is reflected in my survey. While some of these issues are simply sacrifices needed to sustain departments on a budget, other instances such as adding additional duties and limiting overtime with strict hourly schedules do not benefit the employee. Departments implement the strategies previously mentioned in order to adapt, but budget constraints seem to create an atmosphere where employers must focus on sustaining their department, without fair compensation for non-exempt employees being as much of a priority. It seems that this is a lose-lose situation for university employers and employees unless something changes.

I have voiced multiple recommendations: lowering the salary threshold, allowing for more flexible hours for non-exempt employees, employer transparency, and limiting compensatory time. I believe a combination of lowering the salary threshold and allowing

for more flexible hours will best allow employees to have more fair work hour requirements and employers to better work within departmental budgets at the University. While this does not guarantee that employers will offer more overtime pay, it does address concerns of hour flexibility voiced by respondents in my survey results. Additionally, this solution would include the planned updates included in the DOL's new rule, guaranteeing salary threshold updates for employees in the future.

I predict that universities that chose to abstain from adopting new regulations will struggle as universities with new overtime regulations do now. Updates for Section 13(1) salary thresholds are likely to be updated in the near future, and universities with updated overtime regulations will be ahead of the game.. Meanwhile, other universities will have to catch up quickly in the face of future amendments to the thresholds. This will especially be true if there is an implementation of set threshold updates such as those included in the new rule; the universities who did not adopt new regulations would fall even more behind in updating their overtime policies. So, while current updates to overtime policies might seem costly now, the cost to update regulations may be inevitable.

Reflections

There are many things I wish I had done better throughout my research. I wish I had been more meticulous in my selection of departments for my survey. I would have also liked to fix the errors within my survey in order to allow more respondents to finish the survey, hopefully leading to a higher response rate. I would go back and change my survey questions to be more consistent in terminology within my research, and to be

more readable for respondents who may not be as familiar with overtime standards as I had originally expected. Other research I wish I could have included are a comparison of overtime regulations to a similar university and a larger population size to get a better picture of what adapting to new regulations and the effects of those strategies on employees look like at universities.

Other questions that remain to be answered are how do these regulations affect students, and how will universities continue to adapt to these new regulations? More research on how these regulations might affect the effectiveness of student services at universities is needed in order to complete the circle of effects of the new rule for employers, employees, and students. Finally, opinion pieces are not enough to analyze how universities are actively changing their approaches to new overtime regulations. Further analysis on how employers at various universities are choosing to adapt to new overtime standards is needed in order to compare which strategies better compensate employees for their work and whether strategies used at the University of Mississippi are consistent with strategies used at other universities.

Other future concerns will involve funding for compensating university employees. Small department budgets seem to generate limited resources for employee compensation. Research on means of fair compensation for university non-exempt employees who are (as indicated in my survey) often subjected to compensatory time rather than offered overtime pay is needed. This research would provide more insight on what the various ways of compensation are, as well as which of those means of compensation are more beneficial than others. If done by the Wage and Hour Division, the results of this research might help the DOL provide a new guide of how to

compensate employees rather than how to simply adapt to new overtime regulations outlined in the DOL's new rule.

Finally, my research indicates that further analysis on strategies for promoting policy might be needed to explore the policy process outside of federally implemented policies. The DOL is a federal entity, but it did not force universities to adopt new overtime regulations. The unique context that influenced universities to adopt new overtime policy allowed for adoptions of policy without any federal mandate. This highlights an area of policy that is unfamiliar to the usual legislative process, where proposal of a policy is all it took to generate its implementation. Case studies of policy implementations similar to how new overtime regulations were embraced by universities would provide insight on policy processes and comparisons to my observations at the University of Mississippi. Other strategies for pushing for the implementation of certain policies besides lobbying and legislative means could be utilized for implementing future policies; the same process could be used for future new overtime regulations along with other policies that political entities wish to implement, especially with institutions of higher education.

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Appendix

I. Survey

Question 1:

“By checking this box I certify that I am 18 years of age or older.”

Question 2:

“How long have you been working at the University of Mississippi?”

- Less than 1 year
- 1-4 years
- 5-10 years
- 10-20 years
- Over 20 years

Question 3:

“How long have you been working in your current position?”

- Less than 1 year
- 1-4 years
- 5-10 years
- 10-20 years
- Over 20 years

Question 4:

“Which department at the University of Mississippi do you work for?”

- Accounting
- Admissions
- Bursar
- Campus Recreation
- Career Center
- Center for Student Success and First Year Experience
- Counseling Center
- Emergency Center
- Facilities Management
- Facilities Planning
- Financial Aid
- Fraternal Leadership and Learning
- Golf Course Operations
- Health Center
- Human Resources
- Landscape Services

- Luckyday Programs
- Office of Conflict and Resolution and Student Conduct
- Office of Leadership and Advocacy
- Ole Miss Union
- Parking and Transportation
- Procurement
- Research
- Student Disability Services
- Student Housing
- University Police Department
- UOX Airport
- Other

Question 5:

“What is your annual salary (whether you are paid annually or hourly) without overtime?”

- Less than \$10,000
- \$10,000-\$20,000
- \$20,000-\$25,000
- \$25,000-\$30,000
- \$30,000-\$40,000
- \$40,000-\$47,000
- \$47,000-\$50,000
- \$50,000-\$60,000
- \$60,000-\$70,000
- \$70,000-\$80,000
- \$80,000-\$90,000
- \$90,000-\$100,000
- \$100,000-\$112,000
- \$112,000-\$120,000
- More than \$120,000

Question 6:

“Are you aware of your department’s overtime regulations?”

- Yes
- No
- Somewhat

Question 7:

“Do you qualify for overtime?”

- Yes
- No
- I don’t know

Question 8:

“In your current position:”

- You have always been an hourly employee.
- You have always been a salary employee.
- You were an hourly employee, but now you are a salary employee.
- You were a salary employee, but now you are an hourly employee.

Question 9:

“Over the past year, have you worked overtime?”

- Yes
- No

Question 10:

“On average, how many hours of overtime per pay period do you work?”

0,1,2,3,4,5,6,7,8,9,10,11,12, 13, 14, 15, 16+

Question 11:

“Within the last year, have you experienced a change in the number of hours you work per week?”

- Yes
- No

Question 12:

“Has your job description changed within the past year?”

- Yes
- No

Question 13:

“How have your department’s changes, if any, in overtime regulations affected you and your job?”

Question 14:

“Do you support or oppose your department’s changes, if any, to its overtime regulations?”

Question 15:

“What changes, if any, would you make to your department’s current overtime regulations?”