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From the Baltimore Sun

OT rules shift is slow; grievances mounting

Federal Workers: Melissa Harris

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Three years ago, the Department of Labor overhauled the nation's overtime rules - but only for the private sector.



The federal government plans to follow suit, but change has been slow, leaving most of the executive branch open to what former Labor Secretary Elaine Chao once described as "a lawsuit lottery."

Pikesville attorney Mike Snider is a frequent player. He is managing grievances against at least 15 agencies for depriving workers of thousands of dollars in overtime, and he has won concessions from five of them. He has reached settlements with two other agencies and won a favorable judgment in another.

The legal debate centers on the Fair Labor Standards Act - a 1938 law that entitles workers to time-and-a-half pay when they work more than 40 hours a week. The bill, however, exempts "executive," "professional" and "administrative" jobs from the time-and-a-half benefit. Congress expanded the act to cover federal workers in 1974.

"Exempt" federal employees either are not entitled to overtime, are forced to take compensatory time or have their overtime capped. The difficulty, for managers at least, is that the standards for exempting workers are quite high, Snider said.

The decision cannot be based on the employee's job description or rank, but rather on a worker's day-to-day duties, he said. That requires a lot of research.

"It's time-consuming for an agency to do an exemption correctly," Snider said.

Many don't, said Joseph Goldberg, assistant general counsel for the American Federation of Government Employees.

"It comes about from managers who are trying to meet budgets," Goldberg said. "They want to look good and reduce their overtime, and so some of them exempt employees out of pure ignorance of the law, and some know that what they're doing is illegal. They go out a hero with a bonus for lowering costs, and they don't care if the roof caves in after they've left."

The unions often win.

According to Government Executive magazine, workers who have won back pay and had their exemptions undone include:

- Navy electronic technicians (\$200,000 for 12 employees)
- Bank liquidators at the Federal Deposit Insurance Corp. (\$3 million)
- Claims representatives at the [Social Security Administration](#) (estimates range from \$52 million to \$210 million - the latter number includes damages)
- Border patrol agents at the old Immigration and Naturalization Service (estimated \$20 million)
- Computer specialists at the Veterans Health Administration (\$1 million)

In 1999, as a lawyer for the [Social Security Administration](#)'s union, Snider ensured that the Woodlawn-based agency properly moved a large majority of its work force under the Fair Labor Standards Act.

Now in private practice, he has set his sights on the Office of Personnel Management, the [Small Business Administration](#), the Department of Labor and the Department of Housing and Urban Development, to name a few.

At HUD, Snider has succeeded in removing exemptions on all employees at the GS-10 level or below and all paralegals represented by the union. The years in which employees can claim back-pay is still in dispute, said Carolyn Federoff, president of the council that oversees HUD's unions.

A spokeswoman for HUD declined to comment because the matter still is in arbitration.

Federoff said that before filing a grievance, the union had warned the agency repeatedly about its failure to follow the act's provisions and at first sought only reimbursement for unpaid travel time.

After her warnings were ignored, she sought out Snider. Now, the agency has much more to lose, she said.

"Had the agency been responsive in the first six months, their damages would have been far, far lower," she said.

The reporter welcomes your comments and feedback. She can be reached at melissa.harris@baltsun.com or 410-715-2885. Recent back issues can be read at www.baltimoresun.com/federal.

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