July 23, 2015

Written Testimony of Mr. Eric Williams
Chief Operating Officer, CKE Restaurants
Hearing on:
"Examining the Costs and Consequences of the Administration's Overtime Proposal"
Before the House Subcommittee on Workforce Protections

Chairman Walberg, Ranking Member Wilson, and members of the Subcommittee, thank you for the opportunity to testify today on the negative impact on economic opportunity and job creation that would be caused by the Administration's proposed overtime regulations.

My name is Eric Williams, and I serve as the Chief Operating Officer at CKE Restaurants, the parent company of the Carl's Jr. and Hardee's restaurant chains. In this role, I manage operations for both the Carl's Jr. and Hardee's brands. I also own and operate seven Hardee's franchised restaurants in and around Indianapolis, Indiana in which I employ about 160 employees.

CKE Restaurants is a quick service restaurant company headquartered in Carpinteria, California with regional headquarters in Anaheim, California and St. Louis, Missouri. CKE operates Carl's Jr. and Hardee's as one brand under two names, acknowledging the regional heritage of both banners. CKE now has a total of 3,588 franchised or company-operated restaurants in 44 states and 35 foreign countries and U.S. territories. The Carl's Jr. and Hardee's brands continue to deliver substantial and consistent growth in the United States.

We employ approximately 10,000 people in the United States. Our domestic franchises employ roughly an additional 65,000 people. In sum, CKE and its franchises account for about 75,000 jobs within the United States of America. Our company's impact on the nation's employment rate goes well beyond the number of people we directly employ. The hundreds of millions of dollars we and our franchisees spend on capital projects, services, and supplies throughout the United States create additional jobs and generate broader economic growth.

We provide significant employment opportunities for minorities and women. More than 61% of our company's employees are minorities. Similarly, more than 61% of our employees are women. Our company-owned restaurant General Managers are 65.6% minorities and 69.3% women. We are proud of our company's diversity.

The average hourly rate for restaurant level employees is $9.30. Last year, CKE spent $329 million on restaurant level labor.

Their ages range from 22 to 65, and on average they are 41 years old. They earn a management-level salary that starts around $28,782 per year and goes as high as $59,320 per year plus benefits – the average is around $46,130 per year. They also have the potential to earn a substantial performance-based bonus in addition to their salary. As in my personal experience, employees in our company can progress through our management ranks as high as their ambition may take them.

Time well spent allows one to achieve success

Through hard work, determination, and the opportunities available in the quick-service restaurant industry, I have been able to enjoy a long and fruitful career. I was able to get my start in the industry in 1979 working as a crew person while a high school student enrolled in the Distributive Education Clubs of America (DECA) program, which was designed to provide exposure to the work world to young adults through part time employment at a local business. The experience I received was very valuable: I learned how to work as part of a team, how to respect authority, and received the satisfaction of achieving goals. My hard work was rewarded with increased responsibility, greater pay, and opportunities to advance for a job well done.

I began my career with Hardee's in 1983 at a single-unit franchise location in my hometown of Louisville, Kentucky. About a year later, I was promoted to Crew Supervisor, which was an entry-level management position. Career development, learning the business, and demonstrating my ability to lead was initially a slow process: the particular position I was in was an hourly management position limited to 40 hours per week. As a small business, overtime was a labor expense that was closely managed. Once I reached our weekly maximum, I was not allowed to work additional hours. I would have gladly traded the overtime premium to gain more experience and knowledge about the business.

In the spring of 1984, I was promoted to Assistant Manager, which was a salaried position. As a salaried manager, I was able to work the hours necessary to help the team succeed and still pursue advancement opportunities.

After completing additional management training, I was promoted to Restaurant Manager and given responsibility for managing the second location our franchise owner opened. As a Restaurant Manager, I was able to work a schedule that was most beneficial to the business and take off during the times that my supervision wasn't as needed. For example, there were several instances where local events – such as conventions – provided significant business opportunities with significantly higher customer demands, and I wanted to be able to take advantage of that opportunity for the restaurant. Conversely, there were also a number of times when business was slow; during this time I was able to spend additional time with my family, raise my three daughters, attend school functions, work with my church, and take vacations.

For a period after this success, I specialized in turning troubled restaurants into well-operating restaurants that turned a profit. As a salaried manager at these time-demanding locations, I was able to earn a good living and still enjoy a good quality of life.

In the late 1980s, my career accelerated and I was promoted into middle-management where I worked in corporate training, district-level operations, corporate project management, franchise training, and franchise operations. During my time in middle-management and as Vice President managing the Indianapolis, Indiana market, I saw a great number of young, inexperienced workers follow the same path to advancement that I followed, many of whom are still with our company or are occupying similar positons at other companies. Like myself, they have advanced in their careers, purchased homes, put their children through college, and saved for the future by taking advantage of an entrepreneurial model that encourages and rewards hard work. Because I could see the direct impact of my time at work in the results that I achieved and through my compensation, at no time did I ever feel cheated.

After operating the top region in our company for eight years, I was promoted to Executive Vice President of Carl's Jr. Additionally, my career of hard work allowed me the ability this past December to purchase several restaurants through a refranchising program. In June of this year, I was promoted to Chief Operating Officer at CKE Restaurants.

The Department of Labor's Overtime Proposal Hurts Workers and Businesses

(A) My Franchised restaurants

As I noted a moment ago, aside from serving as CKE's COO, I currently own and operate seven Hardee's restaurants in Indianapolis. My company creates jobs for 160 people who live primarily in low income urban areas. I operate entry-level management programs similar to the ones which provided me with the opportunities I had to advance within our company over the last thirty years. Without these programs and the labor guidelines that allow for them, many talented young adults will be stuck in jobs focused on time spent on the clock rather than time well spent. They will not have the same opportunities I had because businesses just can't afford it.

On average, our General Managers each run a $1.3 million business with 25 employees and significant contact with the public. They are in charge of a million-dollar facility, a profit-and-loss statement, and the success or failure of a business. Their salaries provide steady pay and they have the opportunity to significantly increase their take-home pay through performance bonuses. If the business succeeds, they benefit just as the owner of a small business would.

It can be both lucrative and fulfilling to the employees willing to invest the time and energy to move from hourly wage crew-level positions to salaried management positions with performance based incentives. However, the Department of Labor's proposal replaces a General Manager's incentive to get results with an incentive to clock more hours.

I fear the Department's proposal will severely limit hard working, talented Americans from realizing their dreams. It will also force businesses such as mine to face increased labor costs, not because business has increased but because labor guidelines have changed.

Beyond the impact to an individual salaried manager, the Department's proposed overtime rule would have a negative impact to other workers as well. For example, across the franchises that I operate in Indianapolis, we have 10 salaried managers. All of these managers currently receive a base salary and earn a performance bonus based on achieving their operating budget and additional bonus potential for exceeding their goals. This is highly motivating. To maximize their potential, they must have the flexibility to work the schedule the business needs each week without fear that their weekly hours are at risk if business slows down. They can plan their schedules and personal time as it suits them knowing they will receive their same pay regardless of the pace of business.

The salaries of four of my ten managers would be impacted by the proposed change to the Department's regulations. These four managers earn about $45,000 per year. Keep in mind that these salaries are competitive, and these managers are subject to the previously mentioned performance bonuses and also receive generous fringe benefits. To comply with the Department's proposal, these restaurants would take an estimated 6% reduction to the already thin margins that exist in the restaurant industry.

The question then becomes how to offset that increased cost to keep our restaurants financially solvent. The additional overtime cost is likely to negatively impact the rest of our hard-working workforce by reducing hours, reducing salaries, or reducing bonuses and equity incentives. I would be forced to eliminate three salaried Assistant Manager positions and put them back on the clock. I can assure you that a demotion is the last thing these employees want since it would block their career path to General Manager. I would be forced to limit their hours to 40 hours per week and to schedule them on the busier shifts, which would allow for little development time to grow their careers. Additionally, I would have to eliminate or greatly reduce our bonus program, thus limiting the entire management team's earning potential.

(B) CKE's Company Owned restaurants that I Manage As COO

As for CKE, our salaried Managers at the company average about $45,000 annually, or about $865 weekly as their base compensation. They also receive a performance bonus that is paid quarterly based upon the earnings of the business. If the business earns more, the employee is paid more which is good for both the employee and the business. The employees has the potential to increase their total compensation beyond their base salary without diminishing the profits of the business they operate.

Under the new rule, we will need to rethink how we staff and schedule our management employees. Overtime pay is a penalty employers pay for requiring employees to work extended hours, it does not increase productivity nor does it increase revenue, it simply requires employers to pay time and a half for routine work, which reduces earnings.

This is why we manage overtime very closely. Rather than staff our restaurants with salaried managers with performance based bonuses who can earn higher pay, we would be forced to operate the business with fewer managers (reduction of management coverage during a shift) who would be paid less (due to a reduction in hours and bonus) and who would be limited to a 40 hour work week (to tightly control overtime expense). Unfortunately, operating with fewer management positions would limit the advancement of crew employees into those positions and stifle their personal growth. Young workers who could have progressed through their career as I did, would see their future success threatened by this proposal.

As an example, I was promoted from a crew position to a management position because there was a position available and this opened many doors for me. Reducing the availability of those positions because they are too expensive hurts the very people we are attempting to help. Should the rule prevail, it's highly doubtful that we would expand our staffing much beyond current levels primarily due to the rising cost of recruiting, training and providing benefits to new employees.

We would first look for ways to increase existing employee productivity at the current wage, eliminate non-essential tasks altogether and utilize technology such as pre-portioned or precut prep items and customer self-order stations to reduce hourly positions. While we may find the need to increase our minimum staffing levels to maintain high levels of guest service, we would primarily utilize part time employees for limited shifts during the busiest hours of our operations.

It should be clear by now that the very people this overtime proposal is intended to help will unfortunately be the biggest losers. Their pay will be limited, performance bonuses will be reduced or abandoned. However, the biggest cost will be all the talented people who, like me, could have advanced from a cook to COO or Franchise Owner. They may never reach their potential or realize their career dreams because of this change.

In our experience, mangers who make below the proposed threshold are satisfied with their current salary structures and incentive compensation packages, and would be disappointed to go back to being hourly employees without bonus potential or equity incentives. Instead of rewarding employees for time spent on the job, policymakers should aspire to implement policies that allow American workers and business to focus on achieving success and exceeding their entrepreneurial goals.

"Stocking Shelves"

Finally, I've heard that people are concerned that to avoid paying overtime, employers are calling employees managers who are just "stocking shelves." However, in reality, stocking shelves, or engaging in similar activities, won't make you a manger, and won't exempt you from the overtime requirements under federal law.

To qualify for the management overtime exemption, federal law currently requires that a management employee be a "bona fide executive" whose "primary duty" is "managing" the business. Managing the business must be the "principal, main, major or most important duty that the employee performs." The employee must also supervise "two or more full-time employees" and have authority to the "hire or fire" employees."

Managers may well help their employees stock shelves or perform other "physical work" while performing their "primary duty" as a manager, which is hardly something to distain. Each manager is entitled to decide whether to perform such tasks just as small business owners may decide to perform non-managerial "physical work" to increase their profits or to show the crew they too can perform those tasks. As anyone who has run a business knows, that's what effective owners and managers do.

Thank you, and I am happy to answer any questions.