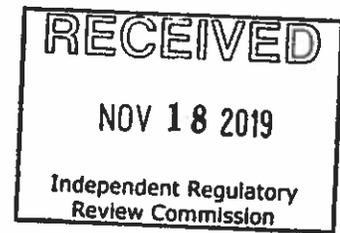


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To Whom It May Concern:

I send this comment on behalf of Winebrake & Santillo, LLC ("W&S") in general support of the above regulatory change, which will gradually increase the salary a worker must earn in order to be classified as an overtime-exempt executive, administrator, or professional under the Pennsylvania Minimum Wage Act ("PMWA"). While the proposed increased salary levels are not sufficient, the proposal is a "step in the right direction" towards mitigating the common business practice of classifying blue collar workers as overtime-exempt by paying them a low salary, giving them a fancy job title (e.g. "Assistant Manager"), and requiring them work long hours performing the same jobs as their hourly co-workers. As is discussed below, this business practice devastates both the salaried workers (who find themselves working long hours "for free") and the hourly workers (who are deprived of extra work opportunities).

A. Our firm has handled hundreds of overtime rights cases.

Since its founding in January 2007, W&S has exclusively represented employees in employment rights litigation. W&S is a pure contingency fee law firm and is "at risk" in every matter it handles. W&S never requires a client to pay an hourly fee or retainer. If a matter does not result in a money recovery, W&S recovers nothing.

Many of W&S's overtime rights cases are class or collective actions seeking damages on behalf of groups of employees. To date, W&S has resolved over 160 separate class/collective actions in courts throughout the United States. In addition, W&S has successfully resolved hundreds of "individual" overtime rights cases in which a single plaintiff (or a small group of named plaintiffs) alleges violations of federal or state employment laws.

At the United States Court of Appeals, W&S lawyers have argued cases resulting in precedential opinions in the area of overtime rights law: See *Mazzarella v. Fast Rig Support, LLC*, 823 F.3d 786 (3d Cir. 2016); *Resch v. Krapf's Coaches, Inc.*, 780 F.3d 869 (3d Cir. 2015); *McMaster v. Eastern Armored Services*, 780 F.3d 167 (3d Cir. 2015); *Knepper v. Rite Aid Corp.*, 675 F.3d 249 (3d Cir. 2012).

B. Increasing the salary threshold is consistent with Pennsylvania's tradition of providing employees with benefits that are more generous than those available under the Federal Fair Labor Standards Act ("FLSA").

Pennsylvania courts consistently hold that the PMWA is *more protective* of employee rights than the FLSA. As the Pennsylvania Supreme Court has observed, the FLSA "establishes only a national floor under which wage protections cannot drop, but more generous protections provided by a state are not precluded." *Bayada Nurses, Inc. v. Dept. of Labor & Industry*, 8 A.3d 866, 883 (Pa. 2010). In sum, "the FLSA does not supersede state law; Pennsylvania may enact and impose more generous overtime provisions than those contained under the FLSA which are more beneficial to employees; and it is not mandated that state regulation be read identically to, or *in pari materia* with, the federal regulatory scheme." Id.; see, e.g., *Verderame v. Radioshack Corp.*, 31 F. Supp. 3d 702 (E.D. Pa. 2014) (refusing to impose FLSA overtime calculation method on PMWA claim); *Chevalier v. General Nutrition Centers, Inc.*, 177 A.3d 280 (Pa. Super. 2017) (same).

C. “Executives,” “Administrators,” and “Professionals” deserve a little RESPECT.

Many of our firm’s current and former clients have worked excessive hours without overtime pay in exchange for very low salaries. The “Account Manager” who works for a cleaning contractor and spends all her time mopping floors and cleaning bathrooms. The “Store Manager” who works at the small convenience store and spends all his time working the cash register. The “Assistant Branch Manager” who works at the local bank and spends all her time doing the same work as the hourly tellers. The “Assistant Manager” who flips burgers at the fast food restaurant.

In denying overtime pay to our clients, the employer labels them “Executives” or “Administrators” or “Professionals.” But labels don’t put food on the table or pay the mortgage or cover the student loan. And *real* “Executives,” “Administrators,” and “Professionals” don’t earn \$28,000 or \$33,000 or even \$40,000 per year.

Several of the businesses and “entrepreneurs” opposing the proposed regulations argue that government should stay out of their business affairs. Ironically, however, businesses that pay workers salaries as low as \$25,000 are themselves feasting on government services. These businesses pay inadequate wages and then rely on taxpayers to subsidize the wages through Obamacare, the CHIP program, food stamps, and reduced school lunches.

Increasing the salary threshold is a matter of basic respect for thousands of salaried Pennsylvania employees who work long hours and struggle to make ends meet and for the millions of taxpayers who are subsidizing these corporate pay practices.

D. Increasing the salary threshold will benefit ALL employees.

The PMWA’s overtime pay mandate is intended to benefit the *entire* workforce, not just the recipients of overtime pay. As explained by Judge Wettick: “The purpose of the [PMWA’s overtime mandate] is to increase employment, reduce overtime, and adequately compensate employees who must work more than a standard forty-hour workweek. *The means for achieving this goal is to require sufficient extra pay for overtime work such that employers will hire new employees in lieu of requiring existing employees to work overtime.*” Chevalier v. General Nutrition Centers, Inc., 42 Pa. D. & C. 5th 1, 26-27 (Pa. Common Pleas, Allegheny Cty. 2014) (emphasis supplied).

Importantly, when employers can easily shift all of the overtime work onto the backs of salaried employees who receive either limited or no overtime pay, the PMWA’s remedial purpose of spreading work hours across the workforce is undermined. Under these circumstances, the PMWA “provide[s] very little financial incentive to expand the workforce rather than pay substantial hours of overtime to existing employees at lower rates per hour.” Chevalier, 42 Pa. D. & C.5th at 27.

Based on the above, increasing the salary threshold is crucial to the PMWA’s purpose of spreading work hours across the entire workforce. Under the current salary level, it’s far too easy for employers to pay workers a low salary, classify them as overtime-exempt, and assign them all the overtime work. This practice greatly benefits the employer, who escapes the PMWA’s overtime pay mandate. But it is terrible for *both* the salaried employee (who must work many extra hours without any extra pay) and for the hourly employee (who is deprived of the opportunity to work extra hours).

The above practice (which our firm has repeatedly encountered) is profoundly unfair. In some of our cases, the exempt Manager's effective pay rate has been *lower* than the pay rate of the hourly employees. For example, we have had cases where clients have routinely worked an average of 70 hours per week in exchange for salaries in the range of \$30,000 per year. These clients were effectively making as little as \$8.24 per hour [(\$30,000 *divided by* 52 weeks) *divided by* (70 hours)]. It really seems absurd to treat such workers as overtime-exempt "executives."

Finally, I attach comments that several of my clients submitted during the Department of Labor & Industry's rulemaking process. These comments demonstrate how the above business practices adversely impact salaried workers.

Thank you for considering my comments.

Respectfully,

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