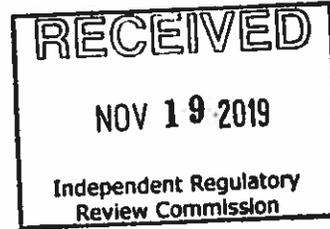


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November 19, 2019

To: Dep. Secretary Jennifer Berrier (jeberrier@pa.gov) and Independent Regulatory Review Commission (IRRC) Commissioners (irrc@irrc.state.pa.us; cbrandt@irrc.state.pa.us)

Dear IRRC Commissioners and Deputy Secretary Berrier:

I am writing to supplement our letter of November 15 with one additional comment. This additional comment relates to our recommendation that the final rule return to using the 30th percentile of the NE salaried distribution to set the Pennsylvania threshold for salaried workers to automatically receive overtime. (This is the threshold that was proposed in the initial rule.) The final rule proposed instead using the weighted average of the 10th percentile of 300 OES occupations adjudged exempt from the overtime rule. There are two technical challenges with defining the salary threshold in this second way. The first is that it is not clear (at least to us) how this threshold relates to the duties tests regarding the eligibility of salaried workers for overtime pay. By contrast, the 30th percentile of the NE salary distribution is a threshold set low enough that most people below the threshold are likely to fail the duties tests and thus should already be receiving overtime pay (even though in many cases they are not). Second, as a matter of mathematics, the 10th percentile of a pool of occupations should be determined by pooling all the individual observations in each occupation and then identifying the 10th percentile. (Similarly, the median of the pool of two equally sized groups of workers is not necessarily that unweighted average of the medians for each group.) We understand that data confidentiality rules prohibit you from using the mathematically correct approach, hence your use of an approximation. As noted, rather than using an approximately, we think it preferable to use the 30th percentile of the NE salary distribution

Sincerely,

Stephen Herzenberg
Executive Director