

2ND DISTRICT
CHRISTINE M. TARTAGLIONE

3202

SENATE BOX 203002
THE STATE CAPITOL
HARRISBURG, PA 17120-3002
717-787-1141
FAX: 717-787-7439

1061 BRIDGE STREET
PHILADELPHIA, PA 19124
215-533-0440
FAX: 215-560-2627

400 WEST ALLEGHENY AVENUE
PHILADELPHIA, PA 19133
215-291-4653
FAX: 215-560-3260

REPLY TO: Harrisburg



Senate of Pennsylvania

January 30, 2020

Independent Regulatory Review Commission
Market Street Tower
333 Market St., 14th Floor
Harrisburg, PA 17101

Dear Commissioners,

I'd like to express my unmitigated support for the final rulemaking submitted by the Pennsylvania Department of Labor and Industry regarding IRRC #3202/Regulation #12-106. I believe that the proposed updates to the Minimum Wage Act of 1968 pertaining to the overtime requirements for executive, administrative, and professional salaried employees (EAPs) are warranted at this time.

Under current Pennsylvania law, EAPs who earn at least \$250 per week in salary are not protected by the state's mandatory overtime pay requirements. That is, employers may choose not to pay them at the overtime rate of 150% of their regular salary when the employee logs more than 40 hours in a workweek. Considering today's economic conditions, this means, in effect, that an employer may choose to deny overtime pay to any worker who meets the considerably subjective definitions of an EAP.

Federal overtime regulations have long employed a higher earnings level for EAP exemption. On January 1, the federal government raised its level from \$455 per week (\$23,660 per year) to \$684 per week (\$35,568 per year). Because federal law supersedes state law in this regard, Pennsylvania's exemption level is obsolete. Yet, even the updated federal regulations fail to protect tens of thousands of Pennsylvanians who may be defined as EAPs but are not being paid at a level commiserate with their professional designations.

The Department's proposed final rulemaking would rectify this injustice within the Commonwealth. It would raise the exemption level in increments to \$875 per week by 2022, which equates to \$45,500 annually and is more in-line with the salaries that professional, supervisory, and executive-level employees command. Furthermore, the

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rulemaking would create an automatic adjustment to the exemption level, which would be updated every three years starting in 2023 to reflect economic conditions of the time.

An additional 143,000 workers would be eligible for mandatory overtime pay by 2022 under the proposed regulations. It should be noted that the exemption level proposed in this final rulemaking is less than the level originally proposed by the Department. The reduction reflects extensive public feedback received by the Department since June 2018.

In addition to the exemption level adjustment, the proposed final rulemaking would clarify the criteria for individual employees to be classified as EAPs so that their specific job duties align more closely with federal criteria. This will make it easier for employers to determine, based on an employee's job duties, if that worker qualifies for mandatory overtime pay. These provisions would strengthen overtime protections for 251,000 additional workers so that the proposed final rulemaking, in its entirety, would directly benefit 394,000 Pennsylvanians who are not currently protected by the overtime provisions of the state's Minimum Wage Law.

All things considered, I believe that the Department has undertaken a thorough, well-informed, transparent, and timely initiative to modernize Pennsylvania's Minimum Wage Law in an area where it is antiquated and sorely lacking. I strongly and respectfully urge the members of the Commission to approve this final rulemaking.

Sincerely,



Christine M. Tartaglione
State Senator – 2nd District