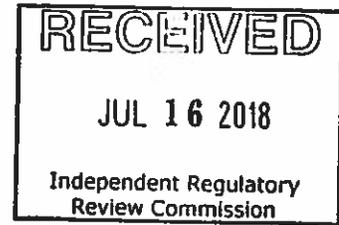




Women's Law Project



3202

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July 16, 2018

Bryan M. Smolock, Director
 Bureau of Labor Law Compliance
 651 Boas Street, Room 1301
 Harrisburg, PA 17121
bsmolock@pa.gov

Re: Proposed Regulation - IRRC 3202

Dear Mr. Smolock:

I am writing on behalf of the Women's Law Project to express our strong support for the regulation proposed by the Pennsylvania Department of Labor and Industry regarding the Executive, Administrative, and Professional (EAP) salaried worker exemptions. The prior regulation has been in place since 1977 and has not kept pace with the cost of living and housing in Pennsylvania, or with the realities of our workplaces.

In Pennsylvania, there are an estimated 465,000 workers who currently fall into the EAP exemption, but would not be exempt under the proposed regulation. The increase in the overtime threshold will also benefit women in particular because of their concentration in lower wage occupations. Women who have worked overtime without additional pay will now be eligible for additional income to provide for their families. The women who will benefit the most are single mothers, black and Hispanic women, and women working in the service occupations.

For these workers, the current exemption often means working 60 hours per week, with a few administrative duties and a fixed salary so their employers can avoid paying them overtime. The impacted workers include shift supervisors at a McDonald's who mostly serve customers, assistant department managers at big box stores like Target or Walmart, accountants and paralegals overseen by high-paid executives and partners, office managers in small service firms, and team leaders in factories who spend most of their time doing production work. But these workers are not truly managerial employees and should be properly compensated for their time.

A copy of the official registration and financial information may be obtained from the Pennsylvania Department of State by calling toll free 1.800.732.0999. Registration does not imply endorsement.

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Under the current regulations in Pennsylvania, the minimum salary threshold for the EAP exemption is either \$8,060 or \$13,000, depending on job duties.¹ In 1977, this amount may have made sense, but 40 years later it is at or below the federal poverty level of \$12,140. The minimum salary threshold should be close to the average statewide wage, not the poverty level.² A retail store manager should not be able to work 10 hour days, 6 days per week, while earning poverty level wages that are potentially less than the minimum wage.

By clarifying the definitions of EAP employees and raising the minimum salary to reflect current wage levels, the proposed regulation would make it much more difficult for employers to misclassify workers in order to get around the overtime requirements. This would mean that workers are not called managers when they're not actually managers, and ensure that workers on the lower end of the wage spectrum are paid correctly for all of the hours they work.

This regulation would likely have two practical outcomes:

- (1) People who work over 40 hours per week will be paid more for their work by being compensated for overtime hours or by having their salaries raised if they are truly managerial workers; or
- (2) Employers who do not want to pay overtime will simply choose to hire more people to work the extra hours that are currently worked for free, giving hard-working salaried employees more time to spend with their families and creating new opportunities for unemployed and under-employed Pennsylvanians.

Either outcome would be good for workers and Pennsylvania on the whole, with more money in the pockets of working Pennsylvanians and their families. This additional income would be spent in local communities, providing a boon for businesses and higher tax revenues for the Commonwealth.

The proposed changes to the EAP exemption are long-overdue, and we commend the Department of Labor and Industry's efforts to strengthen protections for Pennsylvania workers.

Sincerely,



Terry L. Fromson
Managing Attorney
Women's Law Project

¹ For workers covered by the federal Fair Labor Standards Act (FLSA), the threshold is somewhat higher at \$23,660. But that amount has not been updated since 2004, and many small businesses are not covered by FLSA anyway.

² According to the Department of Labor and Industry, the Statewide Average Weekly Wage was \$1025.26 in fiscal year 2016, the most recent year with data. The average yearly wage was therefore \$53,313.52. *Statewide Average Weekly Wage (SAWW)*, Pennsylvania Department of Labor and Industry, http://www.workstats.dli.pa.gov/Documents/SAWW/fiscal_year.pdf.