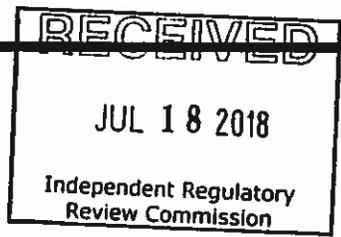


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Kathy Cooper



From: Rick Bloomingdale <president@paaficio.org>
Sent: Wednesday, July 18, 2018 2:30 PM
To: IRRC
Cc: Rick Bloomingdale; Frank Snyder
Subject: Comments on Overtime Pay Regulation from the DLI
Attachments: Letter to IRRC from PA AFL-CIO - Overtime Regulation.pdf

Sir or Madam,

Please review the attached letter describing the Pennsylvania AFL-CIO's support for the recently proposed regulation on overtime pay, submitted by the PA Department of Labor & Industry

We support the regulation because it would do the following three good things for workers:

- 1) Clarify the definitions of executive, administrative, and professional workers to make it much easier to figure out what kinds of job duties qualify under the EAP exemption. The new definitions would hopefully also make it harder for employers to circumvent overtime requirements under the EAP exemption by giving employees a few managerial duties when they really aren't managers/executives who should be exempt (think retail workers, fast food managers, etc.)
- 2) Raise the minimum salary threshold for the exemption from \$23,660/year to \$47,892/year within two years and then institute a formula to update the minimum threshold every three years going forward so the cut-off amount doesn't become outdated. This is huge and would mean that anyone making less than \$47,892 could not be exempt from overtime under the EAP exemption.
- 3) Allow employers to count nondiscretionary bonuses for up to 10% of the salary threshold (i.e. up to \$4,789/year could be paid in bonuses).

This regulation puts our best foot forward with progressive changes to salaried workers wages. This regulation would pay workers a fair salary and increase the number of jobs in the market or provide an expansion to overtime pay. This would no longer allow big businesses to undercut a worker's salary by misclassifying their job description.

Please let us know if you have any questions on our position.

Sincerely,
Rick Bloomingdale, President
Frank Snyder, Secretary-Treasurer

Richard W. Bloomingdale, President
PA AFL-CIO
600 N. 2nd Street
Harrisburg, PA 17101
(717) 231-2840

president@paafcio.org

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AMERICA WORKS BEST
WHEN WE SAY . . .



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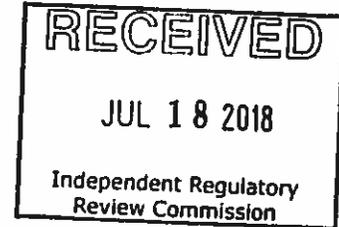
PENNSYLVANIA AFL-CIO

RICHARD W. BLOOMINGDALE
President

FRANK SNYDER
Secretary-Treasurer

July 18, 2018

Chairman George Belwick
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101



Dear Chairman Belwick:

The Pennsylvania AFL-CIO urges support for the new regulation proposed by the Pennsylvania Department of Labor and Industry regarding the Executive, Administrative, and Professional (EAP) salaried worker exemptions. This regulation is crucial for working men and women because of the continuous increases to the costs of living and housing after 40 years since the last regulation. 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 current regulation gives the employers an advantage over their employees. Employees would work more than the forty-hour week but have fixed salaries with minimal administrative managerial duties, so the employer can avoid paying these hardworking men and women the correct overtime wage they deserve. The Pennsylvania AFL-CIO strongly supports this new regulation so these hardworking men and women in our unions are fairly compensated for the work they have done.

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.

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.

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, 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 or increased opportunities in the job market. 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,

Richard W. Bloomingdale, President
Frank Snyder, Secretary-Treasurer