

3202

Kathy Cooper

From: Smolock, Bryan <bsmolock@pa.gov>
Sent: Monday, July 30, 2018 9:02 AM
To: IRRC; Kathy Cooper
Cc: Rapach, Jennifer Buchanan; Schramm, Robert (LI-OCC); Haffner, Garrett
Subject: FW: Comment regarding Amendments to 34 Pa. Code Chapter 231 regarding Overtime Pay



From: Jonathan Potts [<mailto:potts@rmu.edu>]
Sent: Friday, July 27, 2018 2:55 PM
To: Smolock, Bryan <bsmolock@pa.gov>
Subject: Comment regarding Amendments to 34 Pa. Code Chapter 231 regarding Overtime Pay

Dear Independent Regulatory Review Commission (IRRC),

Robert Morris University ("RMU") thanks you for the opportunity to comment on proposed regulations submitted by the Pennsylvania Department of Labor and Industry; specifically, Amendments to 34 Pa. Code Chapter 231 regarding Overtime Pay (Minimum Wage #12-106 (IRRC# 3202)).

These proposed regulations are intended to update the rules pertaining to the salary threshold for exempt employees in Pennsylvania, and, if implemented, will adversely impact institutions of higher education and the students we seek to mold into Pennsylvania's future professionals.

While RMU understands the general rationale for implementing a reasonable increase in the salary threshold for exempt employees, we are deeply concerned about the negative impact the large increase would have on a nonprofit institution of higher education and the employees the proposal is meant to help. RMU would need to reevaluate approximately 70 employees resulting in significant additional expense.

Within two years, the salary threshold for exempt status would more than double the current threshold set by the United States Department of Labor (USDOL). Institutions of higher education, including RMU, may be forced to transfer the dramatically increased cost-of-doing-business to students. This places Pennsylvania colleges and universities at a disadvantage compared to colleges and universities in other states that will not be subject to the increased salary threshold. This proposed regulation will ultimately increase the overall cost of education for students to attend a college or university in Pennsylvania and could result in more students seeking higher education opportunities outside of the Commonwealth.

Due to the academic calendar, many higher education employees, including coaches, admission officers, and student affairs employees, have fluctuating periods of intense activity followed by lighter work schedules. These positions are critical for the attraction, retention, and success of students. This proposed regulation would eliminate the fluctuating, flexible schedules for these critical roles in higher education in order to avoid overtime pay. Student assistance outside of traditional hours -- which is common -- would diminish. Many institutions of higher education would find it financially prohibitive to hire additional employees resulting in exempt employees taking on the burden of completing the work left from limited hours of non-exempt employees. Additionally, many employees seek full-time employment in higher education to take advantage of tuition benefits. If positions need to be split into part-time positions, employees lose this benefit.

The proposed regulation would require more expensive and burdensome record-keeping. It would replace the flexibility employees have to balance their work and personal lives with a more rigid work schedule. Expanding eligibility for

overtime pay does not guarantee higher income if employees are shifted to hourly rates of pay and restricted from working over forty hours in a week. Employees would be required to reduce working hours to eliminate overtime pay, potentially resulting in a decrease in take-home pay if they work less than forty hours any given week.

Moreover, this proposed regulation differs from existing FLSA regulations in two important ways. It does not include any version of the FLSA's regulation extending the administrative exemption to employees whose primary duty is performing functions directly related to academic administration in an educational establishment. In addition, it does not extend a professional exemption to employees with a primary duty of teaching.

The USDOL is expected to propose a new rule and RMU encourages Pennsylvania to hold off pursuing its own update until the new federal rule is finalized. Harmony between the two regulations allows for ease of administration and, ultimately, compliance.

Thank you for considering RMU's views on this important matter.

Sincerely,

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