

From: Craig Novak <cnovak@favours.com>
Sent: Monday, August 13, 2018 1:56 PM
To: IRRC
Subject: Opposition to Proposed Overtime Eligibility Regulations

To: Independent Regulatory Review Commission
irrc@irrc.state.pa.us
From: Craig Novak, President & CEO
Unique Industries



Dear Commission:

This email is written in relation to the proposed overtime eligibility regulations submitted by the PA Dept. of Labor. As you know, the proposed regulations are designed to modify the rules establishing when employees receive overtime pay.

I understand the rationale behind the proposed regulations is to protect the financial interests of workers across Pennsylvania. I respect that rationale. As a business owner, I want my employees to be healthy, happy and – to the point of this legislative change – fairly compensated.

However, as a business owner and Pennsylvania resident, it is my firm belief that such changes will adversely impact not just my business and other businesses located throughout our State – it will also adversely impact the millions of Pennsylvania employees this proposal is designed to benefit.

This new proposal more than doubles the wage requirement to qualify for exempt status. This excessive increase will force employers, like my company, to convert salaried employees to hourly status. In my view, this will negatively impact Pennsylvania employees. It will result in inflexible work schedules, burdensome and costly record-keeping, and reduced benefits to employees. Further, this new multitude of hourly workers will receive less take-home pay if their hours worked in a week are less than 40; and companies will most assuredly take the affirmative steps to ensure employees do not work beyond the 40 hours.

In addition to the above, I can affirmatively state from personal experience that this is not legislation all employees actually desire. Employees are looking to escape what they see as the stigma of the non-exempt employee. Non-exempt employees want our company to provide them with laptops and work-from-home capabilities – entitlements which we do not grant to hourly employees. The hourly employee is burdened with the requirement to clock in and out; and saddled with a direct supervisor tasked to oversee and approve their hours. Conversely, salaried employees do not suffer these impediments and inconveniences to their workday. This may be surprising, but in my experience employees do not want the opportunity for more overtime pay – they want more freedom and flexibility at work.

Further, our company has locations across multiple states; and we have employees with the same or similar titles and job duties in those states. As a result, we may have similarly-situated employees with different classifications (non-exempt vs. exempt). This may cause a conflict within our company's compensation structure; and also a conflict under the FLSA.

Finally, and perhaps most significantly, this new legislation would act as a deterrent to businesses considering Pennsylvania as a place to establish operations. My understanding is that New Jersey, Delaware, and Maryland all have legislation that closely matches the FLSA. In fact, a bill introduced in Maryland to increase the salary threshold was resoundingly defeated by committee vote. If Pennsylvania adopts this change, it may ultimately drive businesses out of our state, as nearby states will become more attractive to businesses looking to establish operations.

The new legislation also proposes changes to the test used to determine exempt status. The expressed intention is to match Pennsylvania's duties test with the Federal test. As is likely known to the reader, the U.S. Dept. of Labor proposed similar regulations in 2015 - and employers fervently praised the ruling to strike down the proposal. My understanding is that U.S. Dept. of Labor is expected to propose a new rule related to the duties test in the near future. As a result, the timing of the proposed change is poorly conceived. In my opinion, it makes more sense for Pennsylvania to refrain from updating its overtime test – at least until the new federal rule is presented.

It is my genuine hope that you will seriously consider my comments, and not proceed with this new legislation. Thank you for your consideration in this matter. It is appreciated.

Regards,
Craig Novak
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