



The Hospital + Healthsystem  
Association of Pennsylvania

3202

*Leading for Better Health*

August 21, 2018

Mr. Bryan M. Smolock  
Director, Bureau of Labor Law Compliance  
PA Department of Labor and Industry  
651 Boas Street, Room 1301  
Harrisburg, PA 17121



**RE: Department of Labor and Industry's Proposed Rulemaking for 34 PA Code, Chapter 231, Overtime Pay; Minimum Wage #12-106 (IRRC Number 3202)**

Dear Mr. Smolock:

The Hospital and Healthsystem Association of Pennsylvania (HAP), on behalf of its members, more than 240 acute and specialty hospitals and health systems, appreciates the opportunity to comment on the Department of Labor and Industry's proposed rulemaking to revise the overtime eligibility rules found in 34 PA Code, Chapter 231.

Upon review of the proposed rulemaking, HAP notes that the proposal seeks to:

- Alter the tests used to determine eligibility
- Increase the overtime eligibility wage threshold for "exempt status" for employees by more than double
- Provide an automatic increase to the wage threshold every three years beginning 2023

HAP recognizes that the department's proposal represents a similar effort put forth by the Obama Administration that was struck down by a federal court last year. Twenty-one states, with the support of key business groups, challenged the federal rule citing significant concerns about high labor costs and the difficulties related to moving salaried employees to hourly positions.

HAP cites the same concerns for Pennsylvania's proposed rule, as unintended consequences of this rulemaking could have a significant financial impact on health care. Given the tight operating margins hospitals face, organizations will need to adjust staffing and other employee related investments to offset the increased labor costs.

HAP shared the proposed rulemaking with its members, who commented that:

- Many staff appreciate the flexibility an exempt position affords them. Their job and schedule flexibility may be greatly reduced once they become non-exempt. Employee morale may be negatively impacted for those re-classified to non-exempt.



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- This rulemaking could negatively impact a number of professional development programs. Programs could be eliminated because the hospitals will not be able to absorb the overtime costs that would be incurred.
- Increasing the eligibility wage threshold in such an aggressive timeframe will adversely affect some employers, particularly small employers. Employers need to be able to prospectively plan for the increased cost to their business.
- The proposed change may have substantial impacts across the commonwealth for years to come due to the automatic increases built into the regulations. The automatic increases do not consider any downturn in the economy and may result in preventing new employers and existing employers from having a presence in Pennsylvania.

HAP opposes this proposal for the reasons stated above. HAP understands that the U.S. Department of Labor expects to propose a new ruling. With that in mind, HAP recommends that the commonwealth wait until the federal government proposes its new rule before pursuing its own changes to the state's overtime eligibility rules.

**HAP appreciates the opportunity to provide comments on this proposed rulemaking on behalf of Pennsylvania hospitals and health systems. If you have any questions about HAP's comments, please feel free to contact me at (717) 561-5325 or by email at [jbechtel@haponline.org](mailto:jbechtel@haponline.org).**

Sincerely,

A handwritten signature in black ink that reads 'Jeffrey W. Bechtel'. The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Jeffrey W. Bechtel, JD  
Senior Vice President, Health Economics and Policy  
The Hospital and Healthsystem Association of Pennsylvania

c: Independent Regulatory Review Commission