

3202



Pennsylvania Food Merchants Association

Advocating the views of convenience stores, supermarkets, independent grocers, wholesalers and consumer product vendors.



Bryan Smolock  
Director, Bureau of Labor Law Compliance  
Department of Labor & Industry  
651 Boas Street, Room 301  
Harrisburg, PA 17121

August 21, 2018

Re: Proposed Rulemaking re: Overtime Pay - Regulation #12-106 - IRRC Number 3202

Director Smolock:

I write on behalf of the Pennsylvania Food Merchants Association (PFMA), a statewide trade association advocating the views of convenience stores, supermarkets, independent grocers, wholesalers, and consumer product vendors operating throughout Pennsylvania. Our membership consists of national chain stores, regional chains, and locally owned independent retailers of all sizes. Our more than 700 members operate more than 3,200 retail food stores and employ more than 200,000 Pennsylvanians. For reasons explained below, we respectfully ask that the Department withdraw the above-captioned proposed rulemaking.

This proposal would revise the regulations implementing 34 Pa. Code Chapter 231 regarding overtime pay by nearly doubling the minimum salary a Pennsylvania employee must receive to qualify as an executive, administrative, or professional worker exempt from overtime pay requirements from \$455/week to \$921/week in the second year. This initiative is quite similar to a recent federal effort to update the salary threshold, which was struck down in federal court.

We submit maintaining and promoting flexibility in employee scheduling and classification best accommodate the unique and changing needs of Pennsylvania workers and businesses. This proposal would significantly restrict that flexibility, interfering with the freedom of employers to allow for the vagaries of business demands as well as employees' needs. In turn, this would harm workplace morale, decreasing productivity and undermining good faith efforts to improve work-life balance.

Further, we understand that the U.S. Department of Labor (DOL) is undertaking a rulemaking to revise the federal salary threshold because of the court decision striking down the 2016 rule. It seems counterintuitive for the Commonwealth to act before the DOL rulemaking is published.

PFMA member businesses operate on thin margins. This change would present a difficult choice of increasing the salaries of affected employees or reclassifying such employees from salaried to hourly. Many - if not most - employees would negatively perceive that reclassification as well as loss of opportunities for professional development. Finally, this reclassification does not account for significant differences across Pennsylvania in the cost of living.

Thank you for this opportunity to share our thoughts as well as for your consideration of our concerns.

Respectfully,

Alex Baloga  
President & CEO

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