

3202



August 22, 2018

Bryan M. Smolock, Director  
Bureau of Labor Law Compliance  
Department of Labor and Industry  
651 Boas Street, Room 1301  
Harrisburg, PA 17121  
Via Email: [bsmolock@pa.gov](mailto:bsmolock@pa.gov)

Re: Amendments to PA Code Ch. 231: Overtime Pay – Minimum Wage #12-106 (IRRC #3202)

Dear Mr. Smolock:

Thank you for the opportunity to provide comments on the proposed amendments to 34 Pa.Code Chapter 231 regarding overtime pay.

The Pennsylvania Council of Children, Youth and Family Services (PCCYFS) is a statewide, non-profit membership organization representing the interests of nearly 100 private human service agencies in Pennsylvania, which provide a wide range of child welfare, juvenile justice, and children’s behavioral health services. Our members’ services include residential, therapeutic and supportive services, ranging from prevention-focused, in-home services to foster and campus-based residential, to independent and transitional living. Member agencies also provide a variety of behavioral health services, drug and alcohol, and educational programs. As private providers of human services to at-risk children and youth across the Commonwealth, our members rely primarily on public funding to provide their services.

PCCYFS members support higher wages for human services employees. We urge the state government to increase funding to human services in a manner that would support the payment of such wages and stand ready to engage in any and all conversations that would lead to that result. Unfortunately, as the system stands today, increasing the threshold salary for exempt employees as proposed – without an accompanying increase in funding for services - would put an unbearable financial strain on many human services providers and would significantly, negatively impact the services they are able to provide. The large majority of provider expenses relate to personnel costs.

It is well-documented that there is a staffing crisis in the human services field in Pennsylvania and nationally. Employers simply cannot recruit or retain a sufficient number of qualified employees to staff necessary programs and facilities to serve the children, youth and families in need.

PCCYFS and its members actively participate in a number of regional and statewide workgroups and taskforces to identify and address critical, unmet needs of families and children in Pennsylvania. These discussions always turn to staffing and workforce needs and deficiencies. Our members cannot recruit or retain enough qualified employees to provide the necessary services. And although PCCYFS members believe that higher wages for employees are an important piece of this solution, programs are already operating, in many cases, at significant losses, and simply cannot compete with other, better paying, less stressful employment opportunities. One of our members currently has 45 vacant positions. Another reported that a staff member who was driving a youth to work learned during the car ride that the youth's hourly wage was higher than the staff member's driving her. This is not because human services providers do not want to increase wages. It is because the current funding environment prevents them from doing so.

We appreciate the proposal's reference to the more than 100,000 non-profit organizations operating in Pennsylvania, but must respectfully disagree that non-profits will be able to mitigate the effects of the rule by "adjust[ing] operationally and strategically with their funding requests" over the phase-in period. Pennsylvania's human services providers do not have the ability, on their own, to adjust their costs and reimbursement rates and cannot pass additional costs on to their customers. As you know, Pennsylvania is a state-supervised, county-administered child welfare system. Rates are controlled by the State Department of Human Services, individual counties with which providers contract, and managed care organizations. Depending upon the service provided, many provider rates have not increased in more than 10 years. During that same time, the regulatory and related requirements, as well as the needs of the children being served, have increased significantly.

As further evidence of the already-existing financial strain on human services organizations, programs have been closing across the state – not because of a lack of need - but because of a lack of funding. The proposed rules, while certainly well-intentioned, would only exacerbate this problem and further impact the services provided to at-risk children and youth in Pennsylvania.

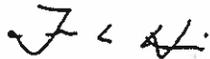
It is important to understand that these changes would have significant, direct impacts on many in supervisory roles within human services organizations. These individuals would continue to meet the "duties test" for exempt employees, but would no longer be classified as exempt due to the threshold increases. When the federal rules were expected to change, members reported that their exempt personnel expressed frustration about the proposed reclassification, explaining, among other things, that they appreciated the flexibility of the work schedule that came with an exempt status. Employees often perceive reclassification to non-exempt positions negatively, which directly affects employee morale.

We respectfully request that mandated increases to the exempt threshold should only be implemented in conjunction with a corresponding increase in human services funding, at least some of which must be specifically designated for private providers. Requiring one without the other would likely result in the unintended consequences of further reductions in services and/or the elimination of jobs. Our members strongly support increasing staff wages, receiving fair and appropriate reimbursement for the cost of care for the children and families that they serve, and expanding services to children and families in Pennsylvania. All must be achieved at the same time in order to be successful.

Finally, while we respect and understand the suggestion by some that non-profits should simply be exempt from these requirements, we are concerned that a non-profit exemption would only make us less competitive in the job market, leading to even more difficulties with recruitment and retention. We believe that a better solution would be to dedicate more time and study to the process and potential solutions, make sure that any proposal is consistent with the federal government's own work in this area, and phase-in any increase in a manner that provides businesses, both non-profits and for-profits, additional time to plan and adjust.

Thank you again for the opportunity to comment on these important issues and for your consideration of our concerns. If you have any questions, or if we can provide you with any additional information, please contact me at [terih@pccyfs.org](mailto:terih@pccyfs.org) or (717) 651-1725.

Sincerely,



Teri L. Henning  
Executive Director