

3202



Kathy Cooper

From: Thomas J. Trgovac <tomtrgovac@gdcit.com>
Sent: Tuesday, July 03, 2018 5:32 PM
To: IRRC
Cc: Senator Rich Alloway; Reichard, Chad; Rob Kauffman; Mike Ross; Matt A. Anderson
Subject: Gov Wolf's proposed overtime reform

I am writing to voice my opposition to the overtime rule proposed by the Wolf Administration:

1. For the past 8 years, I have been advocating that the Pennsylvania General Assembly and the Department of Labor and Industry amend its overtime laws and regulations. My chief complaint is (and has been) that Pennsylvania's body of law in this subject area is long overdue for an overhaul since the law and the accompanying regulations have not been revised since around 1980. Federal law in the area of overtime has been amended multiple times between 1980 and present day so there is a significant delta between the existing Federal body of overtime law & regulations and the Pennsylvania body of law & regulations. Moreover, all the states that surround Pennsylvania have followed the Federal amendments by enacting amendments that mirrored the Federal Law (with a few state specific revisions to match state priorities). The net effect of Pennsylvania's inaction in this subject area has resulted in Pennsylvania employers having, in effect, two distinctly different sets of rules when it comes to overtime. As such, overtime compliance and predictability by Pennsylvania employers is incredibly and needlessly difficult. In Pennsylvania, an employer can be fully compliant with Federal overtime laws and find itself badly exposed with the State law, which makes Pennsylvania employers a prime target for overtime lawsuits. Moreover, the vast delta between Federal and Pennsylvania law has made it difficult for the State of Pennsylvania to attract businesses that are seeking to relocate. Employers seeking to relocate to Pennsylvania want to know that they will have one set of rules to follow when it comes to overtime eligibility -- that was not something Pennsylvania could offer. However, Gov Wolf's proposed overtime revision does not address the key problem with Pennsylvania's overtime laws -- we still will have two distinctly different sets of rules to follow when it comes to overtime law, but now the situation will be even worse since Pennsylvania's overtime laws and regulations will be dramatically more onerous than the surrounding states (with the possible exception of New York).
2. In addition to analyzing the impact on competitiveness through the prism of businesses seeking to relocate to Pennsylvania, we need to account for how the salary test differential will impact a Pennsylvania business's ability to compete with like businesses in the surrounding states. GDC is a full service information technology services company. We provide software development services, network engineering services, call center services, hosting services, and a number of other IT related services that are ancillary to our core service offerings. We chose to locate our business in South Central Pennsylvania for several reasons. Amongst them are location/proximity to the I-81 corridor, quality of life, the reasonable tax rates, the sensible cost of real estate and consumer goods, and most importantly the reasonable payroll costs (with a lower cost of living, salary demands are not as high). We are able to set ourselves apart from our competition because we are able to offer our services at a much lower price than our competition in the high cost regions like NYC, Washington DC, and the surrounding metropolitan regions. Since our cost of doing business in South Central Pennsylvania is lower, we pass those savings on to our customers in the form of lower rates. Our customers do not select us because of where we are located, they select us because we offer high quality professional IT services at a very attractive rate. Our customer base includes global corporations and businesses that are headquartered outside of Pennsylvania. So if we moved our operation across the border into Maryland or West Virginia, to escape the significantly higher payroll expenses that would be mandated if we stayed in

Pennsylvania, our customer and employee bases would not be impacted by the move, but the State of Pennsylvania will feel it in the form of lost tax revenue. The single highest expense item in our company is payroll. With the stroke of a pen, Gov Wolf will eviscerate a key component of our ability to set ourselves apart from and compete with companies in the surrounding states.

3. Gov Wolf makes the absurd statement that the proposed regulation “will have a small impact on Pennsylvania’s ability to compete and potentially have a net positive impact.” The proposed regulation will more than double the salary level threshold to be declared exempt from the overtime requirements (from \$23,660 to \$47,476) -- and Gov Wolf believes it will have a “small impact” on Pennsylvania’s ability to compete? If this proposed regulation goes into effect, the salary threshold to be deemed exempt from the overtime requirements will be \$23,660 in the Federal Government and in the states of New Jersey, Delaware, Maryland, Virginia, West Virginia, and Ohio -- but in the state of Pennsylvania the salary threshold will be \$47,476. One has to be detached from reality to believe that such a large overtime salary difference will have only a small impact on a Pennsylvania business’s ability to compete! When it comes to costs of doing business, payroll costs are typically either the highest or amongst the highest cost factors for a business. What company that is looking to relocate its headquarters is going to choose Pennsylvania over New Jersey, Delaware, Maryland, Virginia, West Virginia, or Ohio knowing that relocating to Pennsylvania is going to expose them to significantly higher payroll costs? The answer is none! In order to remain competitive with the 6 surrounding states, Pennsylvania needs to set its salary threshold at the same level as the Federal Government. If the Federal Government and all the states surrounding Pennsylvania increases their salary threshold for overtime exempt status eligibility, then if Pennsylvania follows suit, the impact on competitiveness will be small. But until that happens, it is reckless and irresponsible to raise the overtime salary threshold as proposed.
4. The Wolf Administration’s proposed overtime regulation will dramatically increase the cost of doing business in Pennsylvania.
 - a. Businesses will basically have four options when confronted with the proposed rule: (1) Keep staffs at present levels and reduce sales or production expectations for its salaried staff to match the fewer numbers of hours being worked, (2) Retain present production expectations and increase payroll expenses for salaried employees by paying them at a level that is equal to or above \$47,476 (increase salaries to avoid paying overtime), (3) Retain present production expectations and increase payroll expenses by giving overtime pay to salaried employees that were not previously entitled to overtime pay (pay more overtime rather than increase salaries), or (4) Retain present production expectations and hire more employees to meet present production expectations (this will limit overtime pay, but increase straight time payroll and employee benefits expenses). All of these options will dramatically increase the cost of doing business and/or dramatically decrease profitability for Pennsylvania businesses. As such, one has to be detached from reality to believe these responses will have a small impact on Pennsylvania employers.
 - b. The Wolf Administration makes the erroneous assumption that Pennsylvania businesses will do one or more of the following in response to the proposed regulation: (1) Reduce sales expectations or decline to meet customer expectations (and just absorb the sales revenue losses and customer losses) rather than pay overtime, (2) Retain current production expectations and just absorb the increased labor costs by reducing profitability, or (3) Increase costs for products and services and pass those increases on to its customers. This last assumption also makes the erroneous assumption that the customers will willingly accept and pay the higher prices that Pennsylvania businesses will charge for products and services so the business can pay for Pennsylvania’s mandated higher salary costs. None of the foregoing responses will have a

“small impact” or make Pennsylvania businesses more attractive in a competitive marketplace – and to think otherwise is a fantasy.

- c. Pennsylvania businesses will pay a substantial cost in terms of lost customers and diminished profitability if this proposed regulation is enacted. And in turn, the State of Pennsylvania will lose tax revenue and existing businesses to neighboring states. These outcomes are predictable based on the application of simple economics principles. The Wolf administration’s proposed regulation makes outcome assumptions that are grounded in theory, but when confronted with the real business world, these theories will fail and Pennsylvania will be widely regarded as a highly unappealing place to conduct business..
5. While I am pleased that Gov Wolf’s proposal eliminates the short test and long test for overtime exemption categories in favor of the Fair Labor Standards Act (FLSA) “duties” test, Gov Wolf’s proposal does not include adding the Computer Employee exemption category, which is a stand-alone exemption category in the FLSA (and is included in the overtime laws of every State that surrounds Pennsylvania). So once again, Pennsylvania businesses that employ highly skilled computer employees, and businesses whose core business is information technology, will not have a specific overtime exemption available to them that is available to competitors in every state surrounding Pennsylvania. Given the importance of information technology in today’s business world, and the pay levels (and tax revenues) that come with highly skilled information technology employees, it baffles me that the Computer Employee exemption is still not recognized in Pennsylvania. Considering the tax revenues and job growth that follows when information technology companies and computer employees take up residence in the state, Gov Wolf’s administration should be concentrating its legislation and regulation priorities on making Pennsylvania an attractive destination for companies that employ highly skilled computer employees and/or on companies that focuses its core business on information technology products and services. By declining to add the Computer Employee exemption, this proposed revision downright fails to remedy a substantial and glaring omission in Pennsylvania law.
6. Rather than adopting the misguided proposed regulation, I would recommend we take a much more simple approach by creating an overtime rule that achieves the following: (1) Set the salary level threshold to be the same level as that imposed by the Federal Government and the State Governments of Ohio, West Virginia, Virginia, Maryland, Delaware, and New Jersey. Each of these Government entities have the overtime salary threshold set at \$23,660 annual or \$455 per week, (2) Adopt the “duties” test, as proposed, (3) Adopt the exemption categories currently in place for the Federal Government, which includes a Computer Employee Exemption, and apply the duties test to each category in the same way that it is applied in the Federal Government. Adopting that approach is much easier and less controversial than the proposed regulation. Moreover, Pennsylvania businesses will no longer be needlessly exposed to overtime lawsuits since they will only have to comply with one set of rules when it comes to overtime thus enhancing their profitability, sustainability, and ability to compete with similar businesses in neighboring states.

If you have any questions regarding my comments, please feel free to contact me.

Best regards,

Thomas J. Trgovac

Executive VP & General Counsel
Global Data Consultants, LLC
1144 Kennebec Drive
Chambersburg, PA 17201
www.gdcitsolutions.com

email: tomtrgovac@gdcit.com
(717) 262-2080, ext 206