

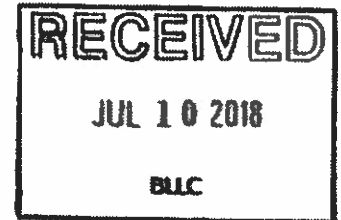
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PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

July 9, 2018

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



RE: Comments on the Department of Labor and Industry's Proposed Rulemaking for Title 34 PA Code, Chapter 231, Part XII, "Overtime Pay."

Dear Mr. Smolock:

The Pennsylvania State Association of Township Supervisors ("PSATS") respectfully submits these comments on the Proposed Rulemaking to Title 34 Pa. Code, Chapter 231, "Minimum Wage and Overtime Pay." The proposed regulations would amend the exemption from minimum wage and overtime pay for executive, administrative, and professionals (referred to herein as the "white collar" exemption) by increasing the minimum salary level that employees must meet in order to be subject to that exemption.

PSATS is a non-profit association that represents the interests of municipal officials from over 1,400 townships of the second class in the Commonwealth for almost 100 years. Townships of the second class represent approximately 95% of the land mass within the state and are home to more than 5.5 million Pennsylvanians. These townships are very diverse, ranging from rural communities with fewer than 200 residents to suburban communities with populations in excess of 60,000 residents. Townships of the second class employ thousands of Pennsylvanians. PSATS estimates that substantially all of its membership will be affected in some way by the proposed changes to these proposed regulations.

PSATS objects to the proposed changes because they would significantly and negatively impact virtually all of PSATS's members and, by extension, the residents and taxpayers they serve, who would be forced to pay higher taxes or obtain or otherwise have access to fewer vital services.

I. The Proposed Changes to the "Salary Level" Test would Adversely Affect All Municipal Government Employers, Particularly Those that are Located in More Rural Areas and have Fewer Employees.

The department proposes to increase the minimum weekly salary level for the "white collar" exemption from current federal rate of not less than \$455 per week to \$921 per week after three years, which translates to approximately \$48,000. Therefore, if the regulations proposed in the Notice are implemented, the minimum weekly salary level will increase for "white collar" employees by 200%, a staggering jump.

The department posits in the Notice that the proposed adjustment in the minimum salary level simplifies the administration of the "white collar" exemption and "establishes an appropriate dividing line between overtime-eligible workers and those who are not." But while the proposed salary level adjustment may be easier for the department to administer, as illustrated by the examples set forth below, the adjustment will greatly harm municipal employers because every municipal employee making less than \$47,892 will become eligible for overtime pay. This will cause incredible strain on municipal budgets and taxpayers.

In 2016, PSATS conducted a wage and benefits survey of over 1,000 Pennsylvania townships. Those townships provided wage and benefits data regarding 48 different full-time employee positions, many of which would be classified as exempt under existing regulation. Those positions include that of township manager, generally responsible for managing the day-to-day operations of the township, and finance director, generally responsible for managing the financial affairs of the township. In all, PSATS collected wage and benefits information for eleven different "management/professional" level positions. For every one of those eleven positions, the lowest full-time salary reported was below the department's proposed new salary floor for exempt employees. In some cases, the reported salary levels were more than \$15,000 below the proposed threshold when fully implemented. Moreover, for 23 of the remaining 37 positions, the reported average and median salaries were below the threshold. This illustrates the widespread impact that this salary level change would have across PSATS's entire membership.

Our 2016 survey was conducted during August to July 2016, just a few months before the federal rule to increase the minimum threshold to \$47,476 per year was expected to take effect. We asked several questions to determine the proposed impact on our members. 135 townships, or 23 percent of responding townships that employ full-time employees, reported that 249 full-time employees, or 6 percent of all full-time employees reported on the survey, would be affected by the proposed federal rule requiring employees that make less than \$47,476 to receive mandatory overtime for any hours worked that exceed 40 per week.

To prepare for the federal rule's expected December 1, 2016 implementation, 37 townships reported budgeting for additional overtime, 7 planned to increase some employee salaries, 1 planned to hire additional employees, 15 planned to reduce the number of hours worked by affected employees, and 95 did not know how they would address the new rule.

The proposed increase in the minimum salary level will also disproportionately impact municipal employers in more rural areas with smaller populations, which happens to be a significant portion of PSATS's membership. For example, according to respondents to PSATS's 2016 survey, in townships with populations ranging from 1,001 to 2,000 and 2,001 to 4,000, the median salary for township managers was \$56,347 and \$61,256, respectively, while the lowest salary in each was \$38,480 and \$36,650, respectively. Yet, in townships with populations over

8,000, the median salary range for township managers was \$102,502 and the lowest was \$59,550.

A substantially similar disparity exists between the salary levels of municipal employees across the various geographic regions within Pennsylvania. As the department is aware, the Philadelphia and Pittsburgh metropolitan areas are subject to a higher cost of living than elsewhere in the state. That difference is borne out in the salary levels of municipal employees.

This illustrates the harm that an increase of over 100% in the minimum salary level for exempt workers will impose upon all municipal employers.

II. The Proposed Regulations Will Require Municipal Employers to Raise Taxes or Reduce Employees and Services.

The department correctly acknowledged that the proposed changes to the regulations will come at a cost to employers because the changes would "transfer income from employers to employees in the form of higher earnings." But that acknowledgment ignores the critical fact that because municipal governments do not sell goods and services, they do not have "earnings" that can be transferred to their employees. Instead, municipal governments operate within a finite universe of financial resources, which are obtained almost exclusively through taxes and financial assistance from state and federal governments and then budgeted to ensure the adequate and appropriate provision of necessary services. Thus, if forced to adapt to comply with the new regulations, municipal governing bodies will have to choose between the following options, none of which are beneficial to the municipal governments, their taxpayers and residents, or the economy as a whole.

First, if municipal employers wish to keep their current complement of employees in order to provide the level of services that their residents and taxpayers need and expect, they will need to increase taxes to account for the increased salary levels of their exempt employees. It is worthy to note that, municipal governments have statutory limits on the types and amounts of taxes that may be implemented. In other words, even if municipal governing bodies wanted to raise taxes to account for their increased payroll costs, they might not be able to do so.

Second, if municipal employers do not wish to raise taxes or otherwise do not have the capacity to do so, they would need to reduce the level of services that they provide to their residents and taxpayers. That could mean foregoing infrastructure repairs, laying off employees who perform critical roles for the municipality, closing down parks and recreation facilities, or reducing the complement of officers on the police force.

Third, municipal employers could be forced to reduce the salaries and hourly wages of other employees (both higher and lower paid) to ensure their compliance with the new requirements and their budgetary needs. They could also limit the amount of overtime work available to those employees who want it.

None of these are good options. There are a litany of other negative impacts that these proposed regulations could have on municipal governments and the residents and taxpayers that

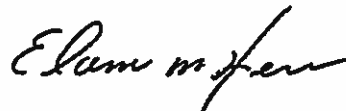
they serve. The department should take into account those impacts before imposing requirements that will apply across the board to all employers, regardless of their unique status or geographic location.

PSATS recognizes that some upward adjustment in the minimum salary level may be appropriate, particularly to address the impacts of historic inflation. But the department's proposed changes do not adequately take into account the varying cost of living levels and the fact that municipal employers, particularly in less urbanized settings, will most likely not be able to sustain themselves if forced to adjust their salary levels to comply with the proposed regulations. Moreover, when one takes into consideration the challenges that municipal governments face because they are dependent on revenues from taxes and fees, the issues are compounded. The assumption that there will be no cost to municipalities is ill-founded.

Therefore, the department should not implement the Proposed Rulemaking, Title 34 PA Code, Chapter 231, Part XII, "Overtime Pay." However, if the department does move forward with the regulations, it should (1) exempt municipal governments, thereby taking into account their inability to transfer "earnings" from the employer to its employees, as for-profit employers may more easily be able to do; or (2) revise its proposed regulations to account for regionalized costs of living, which, as evidenced by the examples above, would alleviate at least some of the devastating financial impact that implementation of these proposed regulations will have on PSATS' members.

Thank you for your consideration of these comments.

Sincerely,



Elam M. Herr
Assistant Executive Director

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