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Independent Regulatory
Review Commission

Kathy Cooper

From: Smolock, Bryan <bsmolock@pa.gov>
Sent: Friday, July 27, 2018 10:41 AM
To: IRRC; Kathy Cooper
Cc: Rapach, Jennifer Buchanan; Haffner, Garrett; Schramm, Robert (LI-OCC)
Subject: FW: Argentum Comments on 34 PA Code Chapter 231 regarding Overt Time Pay
Attachments: Argentum Comments on PA Code Chapter 231 Overtime Pay.pdf

From: Neil Cohen [<mailto:ncohen@argentum.org>]
Sent: Friday, July 27, 2018 9:54 AM
To: Smolock, Bryan <bsmolock@pa.gov>
Subject: Argentum Comments on 34 PA Code Chapter 231 regarding Overt Time Pay

Mr. Smolock,

I understand we are submitting these comments past deadline, however I hope you will take them into consideration.

Thank you for your time.

Sincerely,
Neil

Neil Cohen
Director, Government Relations

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July 27, 2018

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

Re: Proposed Rulemaking; Amendments to 34 Pa. Code Chapter 231 regarding
Overtime Pay

Dear Mr. Smolock,

Argentum (formerly known as the Assisted Living Federation of America) is the leading national association exclusively dedicated to supporting professionally managed, resident-centered senior living communities and the older adults and families they serve. The association's provider member companies operate senior living communities offering assisted living, independent living, continuing care, and memory care services.

Argentum advocates for meaningful laws and regulations to protect the rights of seniors to age in the setting of their choice with freedom, independence, and dignity, as well as educates members on best practices and innovations to address critical issues related to providing quality of care and quality of life for senior living residents. Argentum has 33 state affiliates including the Pennsylvania Assisted Living Association (PALA).

Argentum's 400 member companies operate in all 50 states, the District of Columbia, the United Kingdom and Canada. They represent nearly 2/3 of the largest 115 provider companies in the United States, offering 360,000 senior living residences. Pennsylvania is the 6th most populous state for senior living communities, approximately 124 of which are represented by Argentum.

The members of Argentum employ many workers who qualify for exempt status under the regulations defining and delimiting executive, administrative, professional, outside sales, and computer employees. Employers and employees throughout the senior living industry rely on the current definitions of exempt job categories to classify their employees properly under the FLSA and state law. The exemptions are statutorily required and are needed to allow flexibility in setting hours for covered workers, while also promoting career advancement opportunities helping to avoid misclassification errors by employers.

The proposed drastic increase in the minimum salary of exempt staff, if allowed to become final, would be harmful to employers as well as to many of their currently exempt employees, and to the senior living industry as a whole. The proposed minimum salary is expected to exceed \$48,000 when the new rule is fully in effect by 2022. Under the newly proposed, drastically increased salary level, many employees in senior living facilities who should be considered exempt will no longer be able to qualify for exempt status, regardless of their job duties.

By setting the minimum salary so high across the state and regardless of industry, the Department will force senior living employers to reclassify their currently exempt employees at disproportionately high rates. This certainly will happen in rural parts of the state and in areas where the cost of living is lower than average. The new salary is much higher than the norm in those regions of the state where the cost of living is dramatically lower than in the urban parts of the state.

To the extent that the minimum salary level is increased at all from the current amounts, the increase should be consistent with the 2004 levels adjusted for inflation. The salary increases should also be phased in over a longer period of time rather than being dramatically increased over just a few years as the current proposal would do.

We also have concerns regarding the morale of reclassified exempt employees. Those that are reclassified from salaried to hourly employees are likely to feel demoted which in turn could impact job performance and ultimately care for the residents.

Lastly, it is worth noting that the number one expense for senior living providers is the cost of labor. Residents in Argentum represented communities across the country and particularly in Pennsylvania pay for their care out of pocket. Therefore, any increase in cost to the employer will be directly handed down to the residents, many of whom are spending down their savings and may not be able to handle the burden of an increased cost of care.

Therefore, we respectfully ask that the proposed amendments to 34 Pa. Code Chapter 231 regarding Overtime Pay be withdrawn.

We would welcome the opportunity to further discuss these issues and answer any questions you may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Neil Cohen', written in a cursive style.

Neil Cohen
Director, Government Relations
Argentum