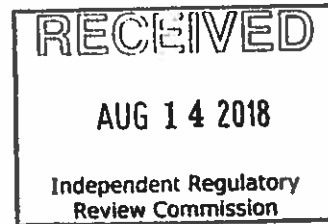


3202



PENNSYLVANIA ASSOCIATION OF COMMUNITY HEALTH CENTERS



August 14, 2018

RE: Comments on the Department of Labor and Industry's Proposed Rulemaking for 34 PA Code, Chapter 231 Re: Overtime Pay; Minimum Wage #12-106 (IRRC number 3202)

To Whom It May Concern:

Thank you for the opportunity to comment on proposed regulations submitted by the Pennsylvania Department of Labor and Industry (L&I). These regulations are intended to update the rules that determine if an employee is required to be paid overtime. The full impact of the proposed rules will:

- Require a wage threshold for "exempt status" that is more than double the current rate set by the federal government;
- Significantly revise the "duties test," which is also used to determine eligibility for overtime; and
- Establish an automatic update to the salary threshold every three years beginning in 2023.

The Pennsylvania Association of Community Health Centers (PACHC) has reviewed these proposed rules with our membership, the largest network of primary health care providers in the Commonwealth. Our network of nearly 300 sites in 52 counties includes Community Health Centers, Rural Health Clinics and other like-mission providers serving over 870,000 vulnerable Pennsylvanians annually in underserved rural and urban areas. Services in our health centers include primary medical, dental, behavioral health, prenatal, substance abuse treatment, and more, guided by the needs of the communities they serve. Perhaps equally important is that every health center is required by federal law and mission to be open to any patient seeking care regardless of their insurance status or income.

Our health centers are committed to the mission of providing care to underserved patients that would otherwise lack access to these services. However, they are challenged by increasing difficulty recruiting and retaining clinicians and other key personnel in these underserved areas, particularly as they compete with ever-larger health systems that can offer more robust employee wages and benefits than our non-profits can offer, but not the affordability and accessibility for patients of the Community Health Center model. While this proposed regulation is well-intended, it has significant potential to make it even more challenging for health centers to effectively compete for the workforce that is essential to offer access to affordable and equitable quality primary medical, dental and behavioral health care to the 870,000 individuals who currently rely on a Pennsylvania community health center for care. We have real concerns about the unintended negative impact the regulations may have on non-profit organizations such as those we represent and consequently on the individuals they serve.

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Pennsylvania's proposal is very similar to the U.S. Department of Labor's 2015 proposal at the federal level which was struck down by U.S. District Judge Amos Mazzant. Respectfully, we urge caution as the Commonwealth's proposal is likely to face a similar legal hurdle. Furthermore, the current U.S. Department of Labor is expected to propose a new rule and Pennsylvania should hold off pursuing its own overtime update at least until the new federal rule is proposed.

Also, a key component of L&I's proposal is to change the "duties test" which is used in conjunction with the salary threshold to determine exempt status. In the proposed regulation, L&I expressed a desire to align Pennsylvania's "duties test" with federal regulations. This would be a welcome change among the broader employer community; unfortunately, the proposed rule falls short of the expressed goal. We encourage the administration to work with the employer community to find a compromise that meets this goal without federal legal challenge or adverse impact to employers.

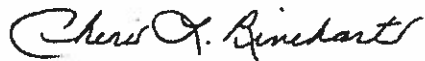
Community health centers employ over 4,000 healthcare professionals in underserved communities across the Commonwealth and need salary and benefit flexibility. The proposed changes have the potential to cause health centers to re-evaluate benefits packages and reconsider training opportunities to avoid exceeding hourly thresholds for clinicians and others.

As we reached out to our health centers to gauge the impact of Pennsylvania's current proposal, we have some initial impact assessments we can share with you:

- In year 3 of the proposed phase-in, Health Center 1 will have 55 employees affected and the cost to the organization will be \$276,179 for that year's payroll alone
- In year 3 of the proposed phase-in, Health Center 2 would have an impact of \$52,000 on their payroll which is significant to their health center's operations and their community as they serve their entire rural county

Thank you for considering our views on this important matter and the impact on the essential non-profit safety net providers we represent. We urge you to withhold the regulation. We also urge the administration to work with the legislature and employer community to establish a more modern "duties test" as a bipartisan collaboration with the guidance of the forthcoming federal rules. If you have any questions or we can provide more information, please contact our policy director, Jim Willshier at jim@pachc.org or (717) 761-6443, ext. 206.

Sincerely,



Cheri Rinehart
President & CEO