



PENNSYLVANIA STATE ASSOCIATION OF BOROUGH'S

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#3202

August 15, 2018

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



Dear Director Smolock,

The Pennsylvania State Association of Boroughs (PSAB) respectfully submits the following comments on the proposed regulation to the **Pennsylvania Minimum Wage Act, IRR #3202**.

PSAB is a statewide, non-partisan, non-profit organization dedicated to serving 957 borough governments. Since 1911, PSAB has represented the interests of boroughs and helped to shape the laws that laid their foundation. The Association improves and assists local governments through legislative advocacy, research, education and other services. With more than 2.6 million Pennsylvanians residing in borough communities, our members strive to deliver quality leadership and service to citizens across the Commonwealth.

Delivering municipal services in our communities is expensive, and both wages and benefits are a significant factor. Controlling labor costs in municipal government is often challenging due to limited available resources. We are concerned that the proposed regulations regarding overtime will translate into higher municipal labor costs and less flexibility.

Historically, the Pennsylvania Minimum Wage Act (PMWA) has not been applicable to public employers. We originally had a clear exemption in the PMWA due to our coverage under the Fair Labor Standards Act (FLSA). However, this changed with subsequent amendments to the PMWA and the exemption was removed. Notwithstanding the removal, in 1976 Attorney General Robert Kane in Opinion 76-29 ruled the commonwealth and its political subdivisions were not under the PMWA. In his opinion, Attorney General Kane wrote that one could not interpret the commonwealth and its political subdivisions are included in the definition of the word "employer." Based on this opinion, PSAB urges you to codify this opinion into the regulations by explicitly exempting political subdivisions from the definition of employer.

If a specific exemption is not included, our members could be forced to comply with more complex regulations that do not recognize our specialized workforce. Municipalities have a unique labor force which the FLSA realizes and the PMWA does not. Specifically, we employ law enforcement and

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firefighters. The FLSA explicitly provides exemptions for certain employees in this class. In Section 13(b)(20) of the FLSA, the law provides a complete exemption from overtime pay for any public employee engaged in firefighting or law enforcement activities if the public agency employs during the workweek less than 5 employees of this nature. In addition, the FLSA allows public employers to use a longer work period for law enforcement and firefighters. Again, these more flexible exemptions are not in the PMWA.

Since employers would have to comply with the more restrictive provisions of the FLSA or the PMWA, we could see more overtime costs for our employees, specifically smaller boroughs that employ police. This is one of the reasons why public employers should only be covered under the FLSA.

We certainly commend you for wanting to update the regulations which have not been updated in decades. However, the increases to the Executive, Administrative, and Professional (EAP) salary thresholds are too much for small boroughs. The proposed increases represent a more than doubling of the federal salary threshold over a short two-year period. We are concerned that this dramatic increase will become the only factor in exempt status and render the duties test irrelevant.

As public employers, boroughs across the state are always striving to provide quality municipal services at a reasonable cost. Public employers are limited to mainly revenue from taxpayers and it is limited. If these regulations are applicable to public employers, our members would be forced to make tough choices which could result in higher taxes or less services. Therefore, we respectfully request the Department toll this regulation until the federal Department of Labor publishes its expected new rule on overtime or modify the proposal to recognize the unique nature of the public workforce.

Thank you for the opportunity to provide comments on this regulation.

Sincerely,



Ronald J. Grutza
Assistant Director of Government Affairs
Regulatory Affairs Coordinator