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20 August 2018

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

Re: Amendments to 34 Pa. Code Chapter 231 Regarding Overtime Pay

Dear Mr. Smolock,

PathWays PA is writing today to show our strong support for the regulation proposed by the Pennsylvania Department of Labor and Industry regarding the Executive, Administrative, and Professional (EAP) salaried worker exemptions. As an organization dedicated to the needs of women and families, we are committed to promoting fairness in the workplace and supporting the economic security of working families. Fairness cannot happen unless our workplace regulations keep pace with the cost and realities of living in Pennsylvania, and the prior regulation (set in 1977) has not done so.

We support the new regulations not only from a policy perspective but also from a Human Resources perspective. Simplifying the determination of exempt status will help us clarify our own rules and regulations and ensure that we continue to treat our employees fairly. Updating the rule demonstrates a commitment to and a keen understanding of what working people, businesses, and our economy need.

In Pennsylvania, there are an estimated 465,000 workers who currently fall into the EAP exemption, but would not be exempt under the proposed regulation. For these workers, the current exemption often means working 60 hours per week, with a few administrative duties and a fixed salary so their employers can avoid paying them overtime.

The impacted workers include shift supervisors at a McDonald's who mostly serve customers, assistant department managers at big box stores like Target or Walmart, accountants and paralegals overseen by high-paid executives and partners, office managers in small service firms, and team leaders in factories who spend most of their time doing production work. But these workers are not truly managerial employees and should be properly compensated for their time.

Under the current regulations in Pennsylvania, the minimum salary threshold for the EAP exemption is either \$8,060 or \$13,000, depending on job duties.<sup>1</sup> In 1977, this amount may have made sense, but 40 years later it is at or below the federal poverty level of \$12,140. The minimum salary threshold should be close to the average statewide wage, not the poverty level.<sup>2</sup> A retail store manager should not be able to work 10 hour days, 6 days per week, while earning poverty level wages that are potentially less than the minimum wage. Under the proposed threshold, women who have had to struggle to put food on the table even after working more than 40 hours a week will be more likely to receive fair pay for hours worked.

By clarifying the definitions of EAP employees and raising the minimum salary to reflect current wage levels, the proposed regulation would make it much more difficult for employers to misclassify workers in order to get around the overtime requirements. This would mean that workers are not called managers when they're not actually managers, and ensure that workers on the lower end of the wage spectrum are paid correctly for all of the hours they work.

This regulation would likely have two practical outcomes:

- (1) People who work over 40 hours per week will be paid more for their work by being compensated for overtime hours or by having their salaries raised if they are truly managerial workers; or
- (2) Employers who do not want to pay overtime will simply choose to hire more people to work the extra hours that are currently worked for free, giving hard-working salaried employees more time to spend with their families and creating new opportunities for unemployed and under-employed Pennsylvanians.

Either outcome would be good for workers and Pennsylvania on the whole, with more money in the pockets of working Pennsylvanians and their families. This additional income would be spent in local communities, providing a boon for businesses and higher tax revenues for the Commonwealth.

As an organization that focuses on the needs of women and families, we know that outdated overtime rules contribute to unfair pay, which can have harmful consequences for all workers—

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<sup>1</sup> For workers covered by the federal Fair Labor Standards Act (FLSA), the threshold is somewhat higher at \$23,660. But that amount has not been updated since 2004, and many small businesses are not covered by FLSA anyway.

<sup>2</sup> According to the Department of Labor and Industry, the Statewide Average Weekly Wage was \$1025.26 in fiscal year 2016, the most recent year with data. The average yearly wage was therefore \$53,313.52. *Statewide Average Weekly Wage (SAWW)*, Pennsylvania Department of Labor and Industry, [http://www.workstats.dli.pa.gov/Documents/SAWW/fiscal\\_year.pdf](http://www.workstats.dli.pa.gov/Documents/SAWW/fiscal_year.pdf).



including for the two-thirds of mothers who are breadwinners or co-breadwinners for their families.<sup>3</sup> Updating the threshold—which could mean hundreds of dollars in additional pay each week for affected workers<sup>4</sup>—is necessary for the economic security of women and their families. The current salary threshold is below the poverty level for a family of four; under the proposed threshold, women who have had to struggle to put food on the table even after working more than 40 hours a week will be more likely to receive fair pay for hours worked.

The proposed changes to the EAP exemption are long-overdue, and we commend the Department of Labor and Industry’s efforts to strengthen protections for Pennsylvania workers. The regulations that govern overtime pay have not been updated in a meaningful way in four decades. Working families cannot wait any longer.

Sincerely,

Brenda Dawson  
President/CEO  
PathWays PA

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<sup>3</sup> Glynn, S. (2014, June). *Breadwinner Mothers, Then and Now*. Center for American Progress publication. From <https://cdn.americanprogress.org/wp-content/uploads/2014/06/Glynn-Breadwinners-report-FINAL.pdf>.

<sup>4</sup> Hartmann, H. et al. (2015, August). *How the New Overtime Rule Will Help Women & Families*. Institute for Women’s Policy Research & MomsRising Publication. From <http://www.iwpr.org/publications/pubs/how-the-new-overtime-rule-will-help-women-families>.