



**Keystone
Research
Center**

March 18, 2022

Keystone Research Center Testimony on *Regulation #12-114: Minimum Wage*, regulatory updates for governing tipped employees and the clarification of how the base hourly rate for overtime of salaried employees is calculated.

To Whom it May Concern,

Keystone Research Center (KRC) is a research and policy organization the mission of which is to promote a more prosperous and equitable Pennsylvania economy. I am the executive director of KRC and hold a PhD in economics from the Massachusetts Institute of Technology.

We submit these comments to express our strong support for the Department of Labor and Industry's proposed updates to the Minimum Wage Regulations which relate to tipped employees and the calculation of overtime for salaried employees. The proposed final rule would especially benefit many of the lowest-paid workers in Pennsylvania, including those who work in the leisure and hospitality industries heavily impacted by the pandemic.

By clarifying who is a tipped worker, who can be in a tip pool, who is responsible for credit card fees, and how overtime pay is calculated for lower-paid salaried employees who receive it, the Department of Labor and Industry has taken steps to address the low-pay that is common throughout a Pennsylvania economy that is highly inequitable (as documented in KRC's annual "The State of Working Pennsylvania" report).

As detailed below, the changes in the new regulation are modest ones that will give lower-paid hourly and salaried workers a bit more income but impose no significant burden on employers.

Updating the tip threshold to \$135 per month. The current \$30 threshold per month means employers can take a tip credit for full-time workers earning as little as 16 cents per hour in tips within a 180-hour month. Even with the new threshold, which takes account of inflation since 1977, employers will still be able to take a tip credit for full-time workers earning more than 75 cents per hour in tips. The new threshold will ensure that low-paid workers in industries in which tips are occasional and a small supplement to hourly wages receive a predictable pay check each period.

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Codifying court decisions that establish that Pennsylvania workers cannot be paid the tipped minimum wage unless they spend at least 80% of their workday performing tipped work. This codification should somewhat reduce the number of workers illegally paid the \$2.83 per hour tipped minimum wage.

Limiting tip pooling (the group collection and equal redistribution of tips among workers) so that owners and supervisors (i.e., who spend less than 80% of their time performing tipped work) cannot receive a share of tips. More tips, as a result, will go lower-paid employees.

Prohibiting employers from deducting credit card processing fees from workers' tips.

Requiring employers to inform patrons what part of a bill is a tip/gratuity that goes to the worker and what part of the bill is a service fee that goes to the employer. This will help ensure that customers that want to reward the front-line tipped worker for quality service are able to do so and do not inadvertently give a portion of their tip to the business.

Clarifying that salaried employees who are entitled to overtime wages should be paid "time-and-half" overtime based on their salary and other compensation divided by 40 hours. Thus, if these employees work 44 hours they would receive the equivalent of 46 hours compensation—i.e., 15% more than if they worked only 40 hours.

By providing an additional element of fairness to lower-paid Pennsylvania workers, these changes will also benefit many employers by reducing rates of turnover and enabling businesses to reduce their number of unfilled vacancies. We applaud the Wolf Administration for developing the proposed final rule and urge the IRRC to implement the rule.

Sincerely,



Stephen Herzenberg
Executive Director