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**Kathy Cooper**

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**From:** Nicole O'Hara <info@email.actionnetwork.org>  
**Sent:** Tuesday, December 14, 2021 3:48 PM  
**To:** Smolock, Bryan  
**Subject:** [External] Comments on Regulation #12-114: Minimum Wage, updates to the regulations governing tipped employees, and the calculation of overtime for salaried employees

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Mr. Bryan Smolock,

Mr. Smolock,

I support the Department of Labor and Industry's proposed updates to the Minimum Wage regulations for tipped employees and the overtime calculation for salaried employees. As you may know tipped employees are among our most vulnerable and mistreated workers as a result of their reliance on customers and owners for their livelihood. Reducing this reliance will give them at least some power to control their earnings. As a consumer I had no idea that servers suffered as a result of my paying with a credit card and was dismayed to learn it. I am happy to bear the cost of payment processors, as it will likely be passed down from the businesses, but in any event it shouldn't be the lowest paid parties in the transaction who suffer.

Pennsylvania employees should be fairly compensated for their work, and the regulations they work under should be up to date, not based on wage levels from a half a century ago. The proposed changes and clarifications would help achieve these goals by modernizing regulations governing tipped workers, increasing workers' earnings, and ensuring that tips for those who work primarily as tipped workers are not unfairly siphoned off by businesses and managers.

Pennsylvania's woefully inadequate tipped minimum wage per hour currently tempts employers to count more workers as tipped employees so they can pay them a base wage of as little as \$2.83 per hour with tips bringing them up to PA's current minimum wage of \$7.25 per hour. These regulations would limit those who can be paid a base wage below \$7.25 per hour to workers earning a meaningful dollar amount in tips (\$135 per month rather than \$30

month, the first updating of this figure since 1977); and to who those who perform tipped duties most of the time (at least 80%).

These regulations would also limit erosion of tips for genuine tipped workers by prohibiting payment of credit card fees with tips and limiting "tip pooling" through which employers cover the regular minimum wage of non-tipped workers with tips. Other parts of this regulation provide additional protections for tipped workers.

A separate part of these regulations, involving the calculation of the regular rate for overtime for salaried employees, would deliver basic fairness to lower-paid, salaried employees entitled to overtime by paying their overtime based on their pay averaged over a 40-hour work week. These employees would receive a real time-and-a-half pay for their hours over 40—one based on an hourly rate equal to their salary divided by 40.

Before the pandemic, research showed that typical tipped workers in the United States do not work in high-end restaurants and bars but are paid low wages and subject to high rates of sexual harassment. Then, in the COVID-19 pandemic, thousands of Pennsylvania's tipped and service industry workers suffered a twofold blow, sometimes losing hours or jobs and other times exposed to risk of infection in restaurants, salons, hotels, and other occupations. These

long-overdue regulatory changes will modestly improve the pay of tipped workers and some lower-paid salary workers. These regulations could also benefit employers because employees will be more willing to return to work if workplaces offer fair treatment.

There is much more to be done—including eliminating the tipped minimum wage and restoring an increase in the Pennsylvania salary level below which salaried employees automatically receive overtime—but these regulations would positively impact Pennsylvania workers and should be enacted.

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