

Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**Independent Regulatory
Review Commission

DEC - 9 2019

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(1) Agency
Department of Labor and Industry

IRRC Number: 3202

(2) Agency Number: 12
Identification Number: 106

(3) PA Code Cite: 34 Pa. Code Chapter 231

(4) Short Title: Overtime Pay *or* Amendments to 34 Pa. Code Chapter 231 regarding Overtime Pay

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

- ☐ Proposed Regulation
☒ Final Regulation
☐ Final Omitted Regulation

- ☐ Emergency Certification Regulation;
☐ Certification by the Governor
☐ Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Department of Labor and Industry (Department) is amending Chapter 231 of 34 Pa. Code to clarify the definitions of Executive, Administrative, and Professional (EAP) salaried workers who are exempt from receiving minimum wage and overtime pay. The final regulation updates the duties test to qualify for the EAP exemptions to be more consistent with current Federal regulations interpreting the Fair Labor Standards Act (FLSA). In addition, the Department is updating the salary threshold to qualify for the EAP exemptions. Finally, the final regulation allows incentive pay to count toward 10 percent of the salary threshold and includes a mechanism for the salary threshold to be adjusted on a triennial basis.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The Department proposes these rules under the authority contained in sections 5(a)(5) and 9 of the Minimum Wage Act of 1968 (MWA) (43 P.S. §§ 333.105(a)(5) and 333.109).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The MWA requires the Department to issue and update regulations defining the EAP exemptions from the minimum wage and overtime provisions of the MWA. The update is not mandated by federal law or any federal or state court order.

More specifically, the MWA provides, “Employment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity... (as such terms are defined and delimited from *time to time* by regulations of the secretary.)” 43 P.S. § 333.105(a)(5) (emphasis added). In addition, section 9 of the MWA provides, “The secretary shall make and, from *time to time*, revise regulations, with the assistance of the board, when requested by the secretary, which shall be deemed appropriate to carry out the purposes of this act and to safeguard the minimum wage rates thereby established. Such regulations may include, but are not limited to, regulations defining and governing bona fide executive, administrative, or professional employees.” 43 P.S. § 333.109 (emphasis added). Although the Department is required to update the regulations, that has not occurred since 1977 as the MWA does not prescribe a specific deadline to Act.

In addition to the MWA, the requirement to pay employees a minimum wage and overtime is found in the FLSA, 29 U.S.C. § 201, *et. seq.* The FLSA also contains the same EAP exemptions from its minimum wage and overtime provisions. 29 U.S.C. § 213(a)(1). The United States Department of Labor (USDOL) has also issued regulations defining these exemptions, 29 C.F.R. §§ 541.100 – 541.304, which creates a dual regulatory scheme. On September 27, 2019, USDOL published a final rule updating the FLSA’s EAP exemptions and effective January 1, 2020, the salary thresholds to qualify for the FLSA’s EAP exemptions will rise from \$455 to \$684 per week. 84 Fed Reg. 51230, 51306 (2019 (to be codified at 29 C.F.R. pt. 541)).

The FLSA permits states to adopt laws that provide employees greater protection: “No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter.” 29 U.S.C. § 218(a). “It is permissible for a state to enact more beneficial wage and hour laws. Indeed, the federal statute establishes only a national floor under which wage protections cannot drop, but more generous protections provided by a state are not precluded.” *Bayada Nurses, Inc. v. Dep’t of Labor and Indus.*, 8 A.3d 866, 883 (Pa. 2010). *See also Anderson v. Sara Lee Corp.*, 508 F.3d 181 (4th Cir. 2007) (FLSA contains a savings clause that allows states to adopt laws to provide a more generous minimum wage); *Rogers v. City of Richmond*, 851 F.Supp. 2d. 983 (E.D. Va.) (the more generous overtime policy embedded in the Virginia Law falls squarely within the “savings clause” of the FLSA); *Pacific Merchant Shipping Assoc.*, 918 F.2d 1409 (9th Cir. 2012) (the purpose behind the FLSA is to establish a national floor under which wage protections cannot drop, not to establish absolute uniformity in minimum wage and overtime standards nationwide at levels established in the FLSA).

There is one important Federal decision pertinent to this regulation. In *Nevada v. United States Department of Labor*, 275 F.Supp.3d 795 (E.D.Texas 2017), there was challenge to USDOL’s 2016 final rulemaking which purported to raise the weekly salary threshold to qualify for the EAP exemption to \$913. While the federal district court found nothing objectionable in the use of a salary threshold to identify those persons serving in executive, administrative or professional capacities, the Court held that USDOL raised the salary threshold to such an extent that large numbers of people performing exempt duties would nevertheless be non-exempt based solely on their salary.

The Department does not anticipate a similar legal challenge to its regulation, as its regulation differs from the rule struck down by the Texas federal district court in three significant ways: 1) the Department's increase in the salary threshold is smaller than the 2016 USDOL rulemaking and is phased in over two years; 2) the Department's increase in the salary threshold is part of a comprehensive effort to update the duties test to qualify for the EAP exemption, including eliminating the "long" and "short" tests; and 3) the Department used a different methodology specific to Pennsylvania to calculate the salary threshold than the federal government used to calculate its salary threshold.

Additionally, the decision of the Texas federal district court is inherently flawed. The standard imposed by the court in that case created a standard that would invalidate nearly any regulation that relied on a salary threshold. An examination of the decision shows that the judge not only misunderstood the operation of the rule at issue, but also based his decision on the fact that the regulation gave new overtime protections to workers whose jobs had not changed. The decision ignored the fact that the 2004 amendment to the federal rule similarly extended overtime protections to workers whose jobs had not changed. There is no precedent for deciding that a rule is invalid based solely on its impact.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The final regulation is needed because Pennsylvania's current regulation is obsolete and no longer is relevant to provide guidance to employers to properly classify employees as exempt, and to protect employees from employers who improperly misclassify them as exempt. The regulation is obsolete for two reasons. First, the duties test in the MWA's current regulation is out of date and no longer aligns with the USDOL duties test. Two different duties tests make it difficult for employers to accurately determine which employees are exempt from receiving overtime. Second, the salary threshold in the current regulation is obsolete as it has failed to keep pace with wage growth and thus applies to very few of the salaried employees it was intended to protect. The final rule is intended to update these regulations for easier comprehension and compliance by Pennsylvania's business community, and to provide protections to certain white-collar employees as per the intent of the MWA.

The duties and salary threshold tests in the MWA have not been updated since 1977. At that time, the duties and salary threshold aligned with the USDOL rules. Since 1977, the USDOL has updated the federal regulation twice, in 2004 and in 2019, and has significantly changed both the duties and salary threshold tests for the FLSA's salary exemptions

Updating Pennsylvania's duties test and the salary threshold is essential to meet the intent of the overtime exemption regulation. As the Department discovered during its stakeholder outreach, both employers and employees often misunderstand this regulation. There is confusion around Pennsylvania's antiquated use of both a short and long test for the Executive, Administrative, and Professional exemptions. Further, most individuals understand only the salary threshold portion of the regulation, and mistakenly assume that if they make over \$23,660 (USDOL's current threshold until the updated USDOL regulation takes effect on January 1, 2020), they are ineligible for overtime. However, under both the Department's regulation and USDOL's regulation, the individual must make over the salary threshold AND meet the duties test. The increase in the salary threshold will make employers and employees aware of the average salaries paid for employees who perform EAP duties; aligning Pennsylvania's duties test with the federal duties test will assist employers with compliance.

Updating the Duties Test for Easier Compliance for Employers and Employees

Pennsylvania's current regulation aligns with the federal law as it existed in 1977, and currently include a "long test" with a more restrictive duties test and a lower salary threshold, and a "short test" with a less stringent duties test and a higher salary threshold. In 2004, the USDOL simplified its duties test to reflect the less stringent duties in the "short test" and eliminated the "long test". However, no change was made to Pennsylvania's regulation. As such, the discrepancies between Pennsylvania's regulation and USDOL's regulation make it difficult for Pennsylvania employers to know if white-collar salaried employees are entitled to receive overtime. This was expressed by businesses during the ten roundtable discussions the Department organized in Spring 2019 and in various formal comments submitted. Aligning the duties test in the final regulation to duties test in the federal regulation will eliminate this burden, making it easier for employers to comply with the law and for employees to know if they should be classified as an exempt or non-exempt EAP employee.

Updating the Salary Threshold to Better Reflect Salaries of Bona Fide EAP Employees in Pennsylvania

Pennsylvania's EAP salary threshold has failed to keep pace with economic growth and the rising nominal salaries of exempt salaried workers, and no longer protects most EAP workers intended by this regulation to receive minimum wage and overtime pay. The salary threshold has not been updated since 1977 and is currently \$8,060 per year for Executive and Administrative employees under the long test. For Professional employees, the salary threshold is \$8,840 per year for the long test. For all the EAP exemptions, the annual salary threshold is \$13,000 per year for the short test. The purpose of the salary threshold is such that non-exempt workers should be unlikely to make more than the threshold, and exempt workers should be unlikely to make less than the threshold. Today in Pennsylvania, the average yearly salary of individuals in exempt occupations is \$82,480. As such, the current salary thresholds are irrelevant because virtually all white-collar workers make a higher salary than the salary threshold. This rulemaking sets the salary threshold for all EAP exemptions at the weighted average of 10th percentile wages for exempt occupations (the Department's methodology for determining salary threshold) and would be \$45,500 per year. This will act as a real threshold to ensure that salaried workers are properly classified.

According to the Economic Policy Institute (EPI), 82,000 Pennsylvania workers will be impacted by the final rule to raise the annual salary threshold to \$45,500. These workers could see average estimated increased earnings between \$20,257,417 - \$22,639,208 per year after full implementation of the salary threshold increase. Furthermore, the increase in pay of directly impacted salaried workers will increase consumer demand, create more jobs, and increase the economic multiplier effect on local economies in the Commonwealth. A positive unintended consequence of the expansion of overtime to additional lower-salaried employees is a reduction on the use of public assistance; a family of four with a sole earner and an annual income of \$35,568 or less qualifies for several public-assistance benefits including SNAP, free or reduced school lunch, WIC, and TANF.

<https://www.compass.state.pa.us/Compass.Web/Screening/DoIQualify#/SelectBenefits>

Income gains seen by lower-wage workers could lead to a reduction in use of public benefits.

Many workers could see their pay remain the same, but their hours capped at 40 per week, ending uncompensated time spent at work. The Department received comments citing examples of low-level supervisors in the retail, hospitality, and food service industries working 60 – 80 hours per week without any overtime pay, while making less than a living wage in a low-salary occupation. More free time for individuals can simply mean more for relaxation or time with family, but can also mean time for pursuing education goals or even a second job. Indeed, a potential opportunity cost not calculated by the

Department is individuals who may wish to work an additional job to supplement income but cannot because of required overtime for which they are not compensated.

Finally, raising the salary threshold extends protections to lower-paid salaried individuals as the MWA intended; without overtime protections, hours worked over 40 are essentially free to employers, which can substantially lower an employee's real hourly pay. For example, a salaried retail supervisor making \$36,000 per year has an hourly pay rate of \$17.31 per hour; if this employee works a 60-hour week during the holiday season, actual hourly pay drops to \$11.54 an hour. For context, \$11.45 is considered the living wage for a single adult residing in Pennsylvania. As one individual stated during the Department's stakeholder roundtables, "You're selling an hour of your life. What is it worth to you?"

Use of Bonus Language

The Notice of Proposed Rulemaking proposed to allow up to 10 percent of the salary threshold to be satisfied by nondiscretionary bonuses, incentives, and commissions, paid quarterly or more frequently. In its final rule, the Department's proposal regarding the percentage of the salary threshold remains at 10 percent; however, the final rule states that the payment may be an annual payment.

The intent of the Department in allowing a certain percentage of salary to be payable by bonus or other incentive payment was meant to reflect the way that certain industries, business models, and/or occupations structure their compensation package to employees, while at the same time not creating an undue hardship on employees, especially lower-salaried employees. For instance, an individual making \$36,000 a year would have a gross weekly salary of \$692; allowing 10 percent of that salary to be paid in a lump sum reduces weekly salary to \$623, a reduction of \$276 a month. For lower-income workers, any reduction in wages results in hardship.

While quarterly payments are the most beneficial to employees while still allowing the use of bonus/incentive payments to be counted towards the salary threshold, this creates an unnecessary administrative burden for employers and may not take into account certain sales occupations that rely on "busy seasons" for a majority of earnings. As such, allowing bonus or incentive pay to be calculated on a yearly basis is more appropriate. It is also more appropriate to allow the employer to choose whether a year is a calendar, fiscal or work anniversary year to provide employers with more flexibility. In addition, allowance of up to 10 percent of the salary threshold to be satisfied by a bonus or other incentive payment, to be paid annually, aligns with USDOL's 2019 rulemaking.

Inclusion of an Automatic Adjustment

As mentioned previously, the salary threshold has not been updated since 2004; prior to the USDOL's 2004 increase, Pennsylvania's workers have not enjoyed a salary threshold update since 1977. Today, the salary threshold stands at \$23,660, an amount that does not accurately reflect the 10th percentile of exempt worker wages. These sporadic increases in the past have led to comparatively large increases each time the salary threshold has been raised to meet the intent of the regulation. For example, in 2004, the increase in USDOL's salary threshold to \$23,660 represented an 82% increase from the short test and a 192% increase from the long test as used in 1975.

A failure to update the salary threshold dilutes the purpose of the regulation, namely, that individuals performing actual executive, administrative, or professional duties are exempt, while lower-paid white-collar workers are extended overtime protections. As discussed previously, a common misconception is that any individual making over the salary threshold is ineligible for overtime; therefore, the

effectiveness of the regulation is eroded when the salary threshold fails to be updated to reflect actual wages paid to executive, administrative, and professional employees.

As the effectiveness of the salary threshold erodes over time, workers may be mistakenly misclassified as exempt solely based on salary alone and not in concert with the duties test. Thus, when the salary threshold is again adjusted in a regulatory update, employers are faced with a situation in which a large number of previously exempted employees may not be non-exempt, either due to initial misclassification or due to the salary threshold being updated to reflect wages being paid to employees in the current labor market.

The Department has therefore indexed the adjustment of the salary threshold to the weighted average 10th percentile wage of all exempt occupations in Pennsylvania and will adjust the salary threshold in 2023 and then every three years thereafter. This measure meets the intent of the regulation, prevents future large increases that may be disruptive to employers, and in turn provides greater predictability for employers.

Methodology to Calculate the Automatic Adjustment

Using Pennsylvania's Occupational Employment Statistics (OES) data for 2018, the most recent year for which this data is available, the Department's Center for Workforce Information and Analysis (CWIA) identified the employment volume and 10th percentile wage for each exempt occupation. The 10th percentile wage was multiplied by total employment to create a weighted 10th percentile wage for each exempt occupation. CWIA then aggregated total employment across all exempt occupations, aggregated the weighted 10th percentile wages across all exempt occupations, and divided the aggregated weighted 10th percentile wage by aggregated employment to determine the average 10th percentile wage of all exempt wages, the lowest percentile for exempt occupations, which is \$45,533. This has been rounded to \$45,500 to allow a whole number for the weekly salary threshold (\$875).

Future adjustments will be calculated from the weighted average 10th percentile of wages from exempt occupations in 2023 and every three years thereafter, and therefore cannot be presently calculated. The Department did review this data set for previous years to determine what the change has been over time. The weighted average 10th percentile of all exempt wages in 2012 was \$41,491. Looking at the same data set in 2015 and 2018, the Department determined that this realized a 2.8% gain from 2012- 2015 and a 6.4% gain from 2015-2018.

The purpose of the adjustment is not to create a new pool of newly-exempt workers with each adjustment; rather, the salary threshold adjustment should continue to reflect the intent of the regulation and continue providing protections to non-exempt workers, while continuing to exempt those executive, administrative, and professional employees that the General Assembly intended to exempt.

| | 2015 | % change from 2012 | 2018 | % change from 2015 |
|--|----------|-----------------------|----------|-----------------------|
| \$41,491 starting wage, adj. for wage increases | \$42,640 | 2.8% | \$45,533 | 6.4% |

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are provisions in the Department's final regulation that are more stringent than federal standards. In one year, Pennsylvania will have a higher salary threshold than is required in USDOL's final rule. USDOL will require a minimum salary of \$684 to qualify for an EAP exemption. One year after publication in the *Pennsylvania Bulletin*, the minimum salary threshold to qualify for an EAP exemption will be \$780 per week; two years after publication the minimum salary threshold to qualify for an EAP exemption will be \$875 per week. Then, unlike USDOL's rule, the salary threshold will update three years after publication in the *Pennsylvania Bulletin* and every third year thereafter.

There is a compelling reason that the Department has a higher threshold than the federal regulation. Namely, the data underlying the regulation demands a higher salary threshold. In the final rulemaking, the Department appropriately used a different data methodology than USDOL used for its final rule. USDOL arrived at its salary threshold by setting it at 20% of the average wages paid to all salaried workers in its poorest geographic region, the South.

The Department rejects USDOL's methodology to set the salary threshold for two reasons. First, the Department uses data based on *exempt* full-time workers, rather than USDOL's methodology of using data based on *all* full-time salaried workers. Using wage data for only exempt classifications rather than all classifications more accurately sets a threshold for workers to qualify for an EAP exemption. The setting of the salary threshold at the lower end of the range of salaries for exempt occupations cannot be accurately carried out if the data used to determine a lower range includes data on all salaries. During the Department's review of 800 Standard Occupational Classification codes, 300 were deemed to have duties that meet the definition of exempt, while 500 were deemed to be potentially non-exempt. Further, exempt occupations, especially the "executive" category, employ fewer people than non-exempt occupations, as non-management employees generally outnumber management employees in most establishments. Therefore, including data on all salaried employees will water down the data set, providing a skewed lower end of the range of salaries than would be provided by considering only data on exempt occupations.

Second, the Department uses wage information that is specific to Pennsylvania to determine the salary threshold, rather than USDOL's methodology of setting the threshold using the 20th percentile of salaried workers in the nation's lowest wage region. USDOL's use of income percentile in the lowest wage region ensures the federal salary threshold meets the intent of the salary level test nationwide; that is, that the threshold, even if used in the lowest wage areas of the country, would be highly unlikely to include actual executive, administrative, and professional employees. However, the use of USDOL's threshold in Pennsylvania does not allow the Commonwealth to fulfill the intent of the salary level test, as it is not indicative of the wages paid to exempt Pennsylvania workers.

The Department has attached a list of the occupations considered including exempt and non-exempt titles.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The Department compared this final rulemaking with several other states. This rulemaking will positively affect the Commonwealth's ability to compete with other states because other states have lower salary thresholds for their white-collar workers.

Only New York and California have overtime thresholds above the federal level. New York is implementing a phased-in overtime threshold between \$48,750 and \$58,500, depending on region. California's threshold is currently \$49,920 for businesses with at least 26 employees and \$45,760 for those with fewer; both rates will increase to \$54,080 and \$49,920, respectively, on January 1, 2020. <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/employers-must-review-state-overtime-exemption-rules.aspx>. Other states, including Colorado and Washington, are considering similar proposals to raise their overtime salary thresholds. <https://www.npr.org/2019/09/24/763723397/1-3-million-more-workers-eligible-for-overtime-pay-but-some-say-rules-fall-short>

Increasing the overtime salary thresholds will allow Pennsylvania to attract and retain talent. Unemployment is at historic lows in Pennsylvania (3.9%) and nationally (3.7%). Meanwhile, employers across all industries in the Commonwealth continue to struggle to fill job openings with qualified workers. According to the Pennsylvania Chamber of Commerce's 2019 Pennsylvania Economic Survey, 22% of surveyed employers cited the lack of qualified applicants to fill job openings as the "single most important issue" impacting businesses today, a jump from 14% the previous year, as they also concurrently report record sales' growth. https://www.pachamber.org/assets/pdf/annual_economic_survey_2019.pdf In short, Pennsylvania-based companies are experiencing demand for their services and products but do not have the workforce capacity to fully meet that demand.

At the same time, salaried workers making at or below \$45,500, which is the salary threshold which will take effect in two years from the date of publication in the *Pennsylvania Bulletin* – represent a segment of the US labor market that is especially sensitive to small wage differences. As such, these workers are more likely to move to different employers, even for minimal pay differences. <https://www.cnbc.com/2016/12/26/obamas-overtime-law-failed-but-still-helped-thousands.html> Given these conditions, Pennsylvania's proposed overtime salary threshold would result in Pennsylvania's increased ability to compete for talent. Moreover, Pennsylvania will also be able to better compete for a skilled labor pool shared with states like New York that promises an overtime threshold of \$48,750 state-wide and \$58,500 within the New York City metropolitan area. Of the many proven strategies that employers can deploy to increase employer retention, providing better compensation, however small, has proven to be essential to retaining talent, especially for this segment of the market. <https://hbr.org/2017/03/why-do-employees-stay-a-clear-career-path-and-good-pay-for-starters>

Workers whose wages increase will contribute to expanding the size of the state's economy by spending their extra pay on Pennsylvania goods and services and producing direct, indirect, and induced benefits for the state's economy. This increase spending will increase tax revenue and put Pennsylvania in a better position to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This final rulemaking will not affect any other regulations of the Department or other commonwealth agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Prior to filing its proposed EAP rulemaking, the Department monitored USDOL's 2016 proposed rule to increase the salary threshold of its EAP exemptions and the public comments. In drafting the rulemaking, the Department sought the expertise of outside legal counsel, economists and policy analysts with extensive experience on the issue of overtime regulations. Among those who provided input were the former chief economist at USDOL from 2014 to 2017 and the former solicitor of labor at USDOL from 2010 to 2017. The Department also presented its proposal at a January 10, 2018 public meeting of the Minimum Wage Advisory Board and gave the Board members the opportunity to comment.

When the Department filed its proposed rulemaking on June 12, 2018, it acknowledged its intent to use the public comment period to solicit further input from the public. In fact, the Department extended its public comment period for an additional 30 days. The public comment period resulted in 917 unique comments from 898 commentators, including individuals, businesses, non-profits, schools, political subdivisions and various trade associations. The Department carefully reviewed each comment and took note of the points being made.

A general theme that arose from the public comment period was that the EAP exemptions are commonly misunderstood and misapplied. Political subdivisions provided comments despite not being subject to the MWA. Various businesses, non-profits, and organizations alluded to misapplying the EAP exemptions by solely considering an employee's salary and not the daily duties an employee performed. It was clear from the public comments that the Department needed to engage in active educational and regulatory outreach on its proposal to eliminate confusion, ensure compliance with the existing regulation, and to guarantee that the Department was receiving accurate and constructive feedback on its proposal.

In September 2018, the House Labor & Industry Committee held a public hearing on the topic of the Department's proposed regulation. The Secretary of Labor & Industry and the Deputy Secretary for Safety & Labor Management Relations, which oversees the program area that administers and enforces Pennsylvania's labor laws, participated in this public hearing by offering oral and written testimony and answering questions asked by committee members. Moreover, the public hearing offered a valuable opportunity to hear from a range of stakeholder groups. A significant takeaway from this public hearing was that many employers and individuals indicated a fundamental misunderstanding of eligibility and applicability of overtime exemptions for workers.

As a result of the known misapplication of the EAP exemptions and IRRC's request to engage in more stakeholder outreach, the Department worked closely with the Pennsylvania Chamber of Business & Industry (PA Chamber) and the Pennsylvania American Federation of Labor and Congress of Industrial Organizations (PA AFL-CIO) to organize 10 stakeholder roundtables (five business and five labor) across the state with the dual purposes of providing education concerning the current EAP exemptions and to solicit meaningful feedback on the proposed rulemaking's impact and gather suggestions to improve the proposal. Outside of the stakeholder roundtables, the Department contacted statewide associations that represent political subdivisions to advise them of their exclusion from the Act's requirement, including overtime standards.

In coordination with the PA Chamber, the Department sent an invitation to the following to participate at five business roundtables located in the regions of Erie, Pittsburgh, Harrisburg, Scranton and Philadelphia: Associated Builders and Contractors, Association of Independent Colleges and Universities of Pennsylvania, Hospital and Healthsystem Association of Pennsylvania, Insurance & Brokers Association, LeadingAge PA, National Federation of Independent Business, Pennsylvania Association of Community Banks, Pennsylvania Association of Community Health Centers, Pennsylvania Association of Nonprofit Organizations, Pennsylvania Bankers Association, Pennsylvania Builders Association, Pennsylvania Credit Union Association, Pennsylvania Food Merchants Association, Pennsylvania Homecare Association, Pennsylvania Institute of Certified Public Accountants, Pennsylvania Manufacturers' Association, Pennsylvania Restaurant and Lodging Association, Pennsylvania Retailers Association, and Rehabilitation & Community Providers Association. The Department, with the assistance of the PA Chamber, made arrangements with five regional chambers to host the roundtables and invite interested members of their respective chambers.

The business roundtables were hosted and held at the following dates and locations:

Harrisburg Regional Chamber & Capital Region Economic Development Corporation (3211 North Front Street, #201, Harrisburg)-May 21, 2019 at 8:15-10:15 a.m.

Erie Regional Chamber and Growth Partnership (208 East Bayfront Parkway, #100, Erie)-May 22, 2019 at 8:30-10:30 a.m.

Chester County Chamber of Commerce (1600 Paoli Pike, Malvern)-May 28, 2019 at 4-6 p.m.

Greater Pittsburgh Chamber of Commerce (11 Stanwix Street, 17th Floor, Pittsburgh)-June 5, 2019 at 9-11 a.m.

Scranton Chamber of Commerce (222 Mulberry Street, Scranton)-June 6, 2019 at 8:30-10:30 a.m.

Participants at these events included individuals representing the PA Chamber, Harrisburg Regional Chamber, PA Association of Community Bankers, Army Heritage Foundation, Ned Smith Nature Center, Skarlatos Zonarich, HACC, Perfectly Pennsylvania, RETTEW, Capital Blue Cross, Greater Reading Chamber Alliance, York County Economic Alliance, Hampton Inn, Herbert, Rowland, & Grubic, Inc., Insurance Agents and Brokers, Hershey Entertainment and Resorts, Dickinson College, PA Consortium for Liberal Arts, Erie Regional Chamber and Growth Partnership, County of Erie, Family House, Inc., Community Health Net, Knox Law, Erie Federal Credit Union, Community Resources for Independence, Achievement Center, North Country Brewing Company, Mercyhurst University, Abel Brothers Towing & Automotive, Inc., East Goshen Township, Aqua America, Miller's Insurance Agency, Inc., Chester County Chamber of Business & Industry, Endo International, Chester County Economic Development Council, Sojourn Philly, Desmond Hotel & Conference Center, Community Action Partnership of Lancaster County, Cozen O'Connor, Exton Regional Chamber of Commerce, Post & Schell, Wawa, Inc., Gawthrop Greenwood, P.C., Germantown Cricket Club, West Chester University, Greater Pittsburgh Chamber of Commerce, Allie Kiski Chamber of Commerce, Sodini & Company, African American Chamber of Commerce of Western Pennsylvania, Keep It Simple Training, Eat'N Park, SMC Business Controls, North Side/ North Shore Chamber of Commerce, Priory Hospitality, FamilyLinks, Duquesne University, Robert Morris University, Community Care Connect, MHY Family Services, Community Human Services, Standard Bank, Littler Mendelsohn, Greater Scranton Chamber of Commerce, Ufberg and Associates, Advocacy Alliance, Fidelity Bank, Commonwealth Health, Moses Taylor Hospital, Girl Scouts in the Heart of PA, Allied Services, Scranton Lackawanna Human Development Agency, UFCW Federal Credit Union, Institute for Human Resources and Services, Needle Law, Ben Franklin Technology Partners, Cori's Place, Pennsylvania Credit Union Association,

Franklin and Marshall College, and the offices of State Representatives Christina Sappey, Carolyn Commita, Danielle Friel, Robert Merski and State Senator Katie Muth.

In coordination with the PA AFL-CIO, the Department sent an invitation to the following groups to participate at five labor roundtables located in the regions of Erie, Pittsburgh, Harrisburg, Scranton, and Philadelphia: Keystone Research Center, SEIU 668, SEIU Healthcare, AFSCME Council 90, Communication Workers of America, Northwest Area Labor Federation, IBEW Local 56, Steamfitters Local 449, UFCW 1776, SEIU 32, Unite Here Local 54, AFSCME NUHHCE Local 1199, Philadelphia AFL-CIO, AFSCME Council 84, Allegheny County Central Labor Council, AFSCME Council 87, Community Legal Services, National Employment Law Project, Pathways PA, Women's Law Project, The Union News, PA Council of Churches, and UE Local 506. The Department, with the assistance of the PA AFL-CIO, made arrangements to host the roundtables at various labor organization headquarters.

The labor roundtables were hosted and held at the following dates and locations:

PA AFL-CIO Headquarters (600 North 2nd Street, Harrisburg)-May 21, 2019 at 6-8 p.m.

IBEW Local 56 Headquarters (185 Pennbriar Drive, Erie)-May 22, 2019 at 3-5 p.m.

UFCW Local 1776 Headquarters (3031-A Walton Road, Plymouth Meeting)-May 29, 2019 at 8:30-10:30 a.m.

AFSCME Council 84 Headquarters (680 Andersen Drive, Pittsburgh)-June 4, 2019 at 6-8 p.m.

AFSCME Council 87 Headquarters (1258 O'Neill Highway, Dunmore)-June 6, 2019 at 3-5 p.m.

Individuals from the labor organizations mentioned above attended these roundtables.

During the 10 roundtables, the Department provided a PowerPoint presentation that discussed the current EAP overtime exemption requirements, the proposed federal EAP overtime exemption rulemaking, and the Department's proposed EAP overtime exemption regulation. There was open discussion amongst the Department and the stakeholders. The Department listened, asked questions, took notes, answered any questions, and ultimately, took the feedback it received from the sessions into consideration when it re-evaluated its proposal to be submitted in its final form.

In addition to the stakeholder roundtables, in March 2019, the Department updated information on its website and created a fact sheet on the EAP overtime exemption as part of its initiative to educate the public and ensure that the exemption is being applied properly. Furthermore, the Department engaged in a social media campaign to disperse this information. EAP overtime exemption information was shared on posts on the Department's Facebook, Twitter and LinkedIn pages. This information received nearly 4,000 views.

Lastly, a Department Deputy Secretary wrote an article for the Manufacturer & Business Association magazine that discussed the proposed EAP overtime exemption rulemaking and stakeholder outreach roundtables. This was published on August 29, 2019. Website information for the Department was provided in the article.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Persons:

Pennsylvania's overtime salary threshold for salaried workers has not kept up with wages currently being paid by employers and, therefore, protects very few employees that the regulation intended to

include in overtime protections. While the USDOL 2019 final rule will affect 61,000 Pennsylvanians, the Department has not estimated the cost or impact of the Federal increase, as that increase will be effective independent of this rule-making. As noted in question 10, approximately 82,000 workers statewide will benefit from this updated regulation by January 1, 2022, by becoming newly eligible for overtime protections.

Depending on how their employer reacts to this regulation, these individuals and their families could benefit from increased income due to being paid for hours worked over 40 each week, and/or improved quality of work/family balance due to having hours worked capped at 40. However, business response to the regulation will vary depending on the characteristics of the business operations, current staffing structure, and current scheduling practices. To manage the potential increase in payroll costs, some employers may adjust their scheduling and compensation packages to allow affected workers to earn overtime but reduce their base pay or benefits. It is unlikely that employers will react to this regulation by reducing base pay or benefits; Pennsylvania currently has a 3.9% unemployment rate, which is considered by many economists to be full employment, and employers are competing to keep and attract employees. Indeed, some employers in Pennsylvania such as Sheetz - <https://www.ydr.com/story/news/2019/10/06/sheetz-increasing-minimum-wage-pay-rates-all-employees/3892636002/> and Target <https://corporate.target.com/article/2019/04/wage-update> are increasing wages to attract and retain workers.

Businesses including small businesses:

According to CWIA, Pennsylvania is home to 282,911 private employers. According to the U.S. Small Business Administration, 99.9% of businesses in the country are considered to be "small businesses." <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf> A small business is frequently defined as a business that employs fewer than 500 employees depending on the industry. https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf

CWIA created the following chart depicting the number of Pennsylvania businesses that employ workers in each employee size range. As indicated by the chart, an overwhelming majority of businesses in Pennsylvania are considered to be a small business. In fact, only one half of one percent (0.5%) of businesses in Pennsylvania employ 500 or more employees.

| | Employee Size Range per Employer | | | | | | | | | | |
|---|----------------------------------|--------|---------|--------|--------|--------|-------|---------|---------|---------|-------------|
| | Total | 0 | 1-4 | 5-9 | 10-19 | 20-49 | 50-99 | 100-249 | 250-499 | 500-999 | 1000 & Over |
| Total | 282,911 | 25,411 | 146,999 | 45,071 | 28,951 | 20,828 | 7,617 | 4,777 | 1,778 | 860 | 619 |
| Agriculture, Forestry, Fishing and Hunting | 2,217 | 187 | 1,086 | 426 | 259 | 169 | 59 | 24 | 5 | 2 | 0 |
| Mining | 1,002 | 85 | 386 | 161 | 127 | 117 | 61 | 48 | 8 | 7 | 2 |
| Utilities | 951 | 30 | 396 | 235 | 128 | 91 | 29 | 15 | 9 | 11 | 7 |
| Construction | 28,303 | 3,222 | 14,983 | 4,661 | 2,836 | 1,789 | 506 | 230 | 60 | 9 | 7 |
| Manufacturing | 13,193 | 481 | 3,737 | 2,299 | 2,146 | 2,226 | 1,042 | 807 | 294 | 107 | 54 |
| Wholesale Trade | 20,855 | 1,859 | 12,564 | 2,698 | 1,783 | 1,235 | 391 | 226 | 67 | 24 | 8 |
| Retail Trade | 24,640 | 1,511 | 12,170 | 5,162 | 2,732 | 1,697 | 713 | 384 | 129 | 62 | 80 |
| Transportation and Warehousing | 7,924 | 660 | 3,809 | 1,078 | 903 | 821 | 322 | 202 | 63 | 36 | 30 |
| Information | 4,043 | 442 | 2,095 | 563 | 364 | 321 | 115 | 89 | 37 | 14 | 3 |
| Finance and Insurance | 10,952 | 803 | 6,620 | 1,724 | 748 | 522 | 209 | 164 | 74 | 45 | 43 |
| Real Estate Rental and Leasing | 8,014 | 665 | 5,047 | 1,119 | 618 | 368 | 113 | 59 | 14 | 6 | 5 |
| Professional, Scientific, and Technical Services | 38,312 | 4,913 | 23,105 | 4,688 | 2,772 | 1,752 | 605 | 320 | 89 | 45 | 23 |
| Management of Companies and Enterprises | 2,559 | 241 | 1,405 | 290 | 230 | 202 | 90 | 53 | 27 | 12 | 9 |
| Admin. & Support & Waste Mgmt & Remediation Services | 15,285 | 2,334 | 7,054 | 2,477 | 1,434 | 1,078 | 407 | 282 | 121 | 60 | 38 |
| Educational Services | 4,879 | 476 | 1,687 | 607 | 490 | 495 | 333 | 336 | 226 | 157 | 72 |
| Health Care and Social Assistance | 39,459 | 2,779 | 22,648 | 5,204 | 3,492 | 2,635 | 1,076 | 944 | 372 | 158 | 151 |
| Arts, Education, and Recreation | 4,921 | 871 | 1,927 | 727 | 626 | 468 | 171 | 85 | 22 | 14 | 10 |
| Accommodation and Food Services | 22,576 | 1,852 | 7,199 | 4,495 | 4,193 | 3,386 | 963 | 313 | 86 | 48 | 41 |
| Other Services (except Public Administration) | 29,705 | 1,958 | 18,229 | 5,570 | 2,500 | 1,043 | 236 | 111 | 38 | 12 | 8 |
| Public Administration | 3,121 | 42 | 852 | 887 | 570 | 413 | 176 | 85 | 37 | 31 | 28 |

All businesses will have to become familiar with the new regulation. Regulatory familiarization costs have been calculated to determine the cost for all businesses in Pennsylvania to review the regulation, and are estimated at a one-time cost of \$13,922,050, at an average cost of \$49.21 per business. Costs are more fully described in question 19.

As there are 6.2 million Pennsylvanians in the labor force with 82,000 total affected individuals, and as there are over 280,000 business in Pennsylvania, there will be businesses that do not employ non-exempt employees and are therefore not affected by this regulation. In addition, certain employer types are exempt from the overtime regulation, including: federal entities; commonwealth agencies; cities, boroughs, and townships; state-related schools; public schools; conservation districts; port authorities; weekly, semiweekly, or daily newspapers with a circulation of less than four thousand, the major part of which circulation is within the county where published or counties contiguous thereto; and public amusement or recreational establishments, organized camps, or religious or nonprofit educational

conference centers, if they do not operate for more than seven months in any calendar year, or if during the preceding calendar year, their average receipts for any six months of such year were not more than thirty-three and one-third percent of its average receipts for the other six months of such year.

As not all Pennsylvania business entities will adjust operations to implement the regulation. Adjustment costs for initial implementation and ongoing managerial costs to adjust operations as needed have been calculated using the total number of affected workers, rather than the total number of Pennsylvania businesses. Adjustment costs are estimated to be \$2,091,425 in FY 2020-2021 and \$2,952,600 in FY 2021-2022 (average of \$61.51 per employee across two fiscal years). Managerial costs are estimated to be \$1,697,216 in FY 2020-2021, \$5,790,503 in FY 2021-2022, and \$8,186,574 (average of \$99.83 per employee) each year thereafter. Costs are more fully described in question 19.

The approximate increase in payroll cost to Pennsylvania businesses will be between \$3,565,467-\$3,984,681 in FY 2020-2021; between \$13,211,856-\$14,765,256 in FY 2021-2022; between \$19,871,561-\$22,207,985 in FY 2022-2023; and between \$20,450,344-\$22,854,819 in FY 2023-2024 and after, or an average of \$209.73 - \$278.72 per affected worker per year. Again, depending on how an employer reacts to this regulation, the cost per business will vary. Affected businesses will likely adapt to the regulation in the most cost neutral way possible. Small business response to the regulation will vary depending on the characteristics of the business operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

In addition to changing the salary threshold, the regulation updates Pennsylvania's duties test to align with USDOL's language. Commentators and roundtable attendees expressed that the current discrepancies between Pennsylvania's long and short duties test and USDOL's single test make it difficult for employers to understand who is truly an exempt employee. Aligning the duties test in Pennsylvania's regulation to the federal regulation will eliminate this burden, making it easier for employers to comply with the law and for employees to know if they should be classified as an exempt or non-exempt executive, administrative, or professional employee.

Non-profit organizations:

There are approximately 113,676 non-profit organizations within Pennsylvania; nonprofits employing individuals are included in the data for Pennsylvania employers.

<https://www.taxexemptworld.com/organizations/pennsylvania-counties.asp> Currently, the statistically significant data does not exist to accurately calculate the number of nonprofit organizations with non-exempt EAP employees at a state-level. There will be many nonprofits not be affected by this regulation as they do not employ any of the 82,000 non-exempt EAP employees.

During round table discussions, several non-profits indicated support for an increase to the overtime threshold, although they also expressed concerned about increased payroll costs. The two-year phase-in period provides nonprofits with the ability to plan and make necessary adjustments.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Approximately 82,000 EAP workers statewide will benefit from this updated regulation by January 1, 2022. Depending on how their employer reacts to this regulation, these individuals and their families could benefit from increased income and/or improved quality of work/family balance. However, business response to the regulation will vary depending on the characteristics of the business operations, current staffing structure, and current scheduling practices. To manage the potential increase in payroll costs, some employers may adjust their scheduling and compensation packages to allow affected workers to work overtime but reduce their base pay or benefits.

All of the approximately 277,992 non-exempt private employers within Pennsylvania will be required to comply with the regulation. According to the U.S. Small Business Administration, 99.9% of businesses in the country are considered to be "small businesses."

<https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf> All businesses will have to become familiar with the new regulation, however, most of these entities will not be affected by the proposed rules because they do not employ one of the 82,000 salaried white-collar employees who earn more than \$35,568 but less than \$45,500 per year.

As indicated in question 15, affected businesses will likely adapt to the regulation in the least costly way possible. Small business response to the regulation will vary depending on the characteristics of the business operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Pay some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Employers are not expected to react to this regulation by reducing base pay or benefits. Pennsylvania is currently experiencing 3.9% unemployment; employers are competing to attract and keep employees. Many employers, such as Sheetz <https://www.ydr.com/story/news/2019/10/06/sheetz-increasing-minimum-wage-pay-rates-all-employees/3892636002/> and Target <https://corporate.target.com/article/2019/04/wage-update> are increasing wages to attract and retain workers. The current salary threshold in Pennsylvania's overtime regulation has not kept up with the salaries currently being paid by employers and, therefore, does not currently protect salaried employees working fulltime in the Commonwealth.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The Department's updates to the overtime exemption regulation will align the duties test with the federal duties test and will increase the salary threshold. Approximately 82,000 working Pennsylvanians earn more than \$35,568 but less than \$45,500 per year and are therefore eligible for overtime protections.

Individuals

Financial Impact

The Department estimates that 82,000 workers will be newly eligible for overtime. Approximately 34,000 workers will be affected in FY 2020-2021, and an additional 48,000 will be affected in FY 2021-2022. The average income increase per affected worker is \$209.73 - \$278.72 per year, or a total each year as follows:

FY 2020-2021: \$3,565,467 - \$3,984,681 in increased worker wages
FY 2021-2022: \$13,211,856 - \$14,765,256 in increased worker wages
FY 2022-2023: \$19,871,561 - \$22,207,985 in increased worker wages
FY 2023-2024: \$20,450,344 - \$22,854,819 in increased worker wages
FY 2024-2025: \$20,450,344 - \$22,854,819 in increased worker wages

As stated previously, how employers respond – including choosing to pay overtime, choosing to cap hours at 40 per week, reducing pay and benefits but allowing for overtime, or raising salaries to ensure workers are exempt from overtime – will have a direct effect on how and if workers benefit from this regulation.

Additional financial gain may be realized by working Pennsylvanians who are currently non-exempt employees and therefore eligible for overtime, but who have been misclassified due to their employers misunderstanding of the duties test and salary threshold. The confusing long and short test in Pennsylvania have led many employers to believe that, regardless of duties, any employee making a salary over \$23,660 is automatically ineligible for overtime. The higher salary threshold will likely result in employers reviewing the duties of employees making at or below \$45,500, and therefore potentially paying workers overtime who have in fact already been non-exempt.

Economic Impact

CWIA uses the Impact Analysis for Planning (IMPLAN) tool to measure economic activity. IMPLAN is economic analysis system that analyzes inter-industry supply chains and linkages at the nation, state and county level using input-output accounting (I-O). The system is designed to assess the effects of a real or hypothetical economic event in a region. An economic event is a condition or initiative that increases or declines economic activity in a region as measured in output (sales), income, employment and taxes. Economic activity may be the creation or loss of jobs from a business opening or closing, or the increase or reduction of capital spending by a government grant or policy, or the setting up of a business incubator, to name a few examples.

The idea behind IMPLAN is that an initial change in economic activity results in other rounds of spending—for example, building a new road will lead to increased production of asphalt and concrete. The increased production of asphalt and concrete will lead to more mining. Workers hired due to the increase in economic activity will spend more in the region.

According to CWIA's IMPLAN model, for every \$1,000,000 in increased payroll to employees, \$549,000 in induced spending is created. This is consumer spending, including retail, restaurants, and goods and services. The estimated payroll increases will yield \$1,957,441 - \$2,187,590 in induced spending in FY 2020-2021; between \$7,253,309 - \$8,106,125 in FY 2021-2022; between \$10,909,487 -

\$12,192,184 in FY 2022-2023; and between \$11,227,239 - \$12,547,296 in FY 2023-2024 and each year after.

This induced spending can also be conveyed in number of jobs created, rather than total amount of induced spending. The IMPLAN model estimates that, for every \$1,000,000 in additional worker income, 6.3 jobs are created in Pennsylvania. Based on payroll increases, between 22 – 25 jobs would be created in FY 2020-2021; between 83-93 jobs in FY 2021-2022; between 125-140 in FY 2022-2023; and between 129-144 in FY 2023-2024 and each year after.

FY 2020-2021 Economic Impact: \$1,957,441 - \$2,187,590 in induced spending or 22 – 25 jobs created
FY 2021-2022 Economic Impact: \$7,253,309 - \$8,106,125 in induced spending or 83-93 jobs created
FY 2022-2023 Economic Impact: \$10,909,487 - \$12,192,184 in induced spending or 125-140 jobs created

FY 2023-2024 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending or 129-144 jobs created

FY 2024-2025 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending or 129-144 jobs created

Social Impact

The EPI estimates that, of the 82,000 workers affected by Pennsylvania's regulation, 51,000, or 63%, are women, and 15.8% are minorities. Beyond demographics, being paid fairly for hours worked beyond 40 hours a week is a positive social impact felt by all affected workers. Without overtime protections, hours worked after 40 hours per week are essentially free to employers. Several individuals from the banking, retail, and food services industries provided comments that, as a supervisory employee, they were paid a salary above the new federal threshold of \$35,568 but could work 60 – 80 hours a week and see no overtime compensation.

Many workers could see pay remain the same but hours capped at 40 per week, ending uncompensated time spent at work. Some commentators from business stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, employers can trap workers in a position where they have very little time to improve independently their economic situation by pursuing education goals or to work a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer; with no time outside of work to pursue other opportunities, they must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

Finally, a positive unintended consequence of the expansion of overtime to additional lower-salaried employees is a potential reduction on the use of public assistance. A family of four with a sole earner with an annual income of \$35,568 or less qualifies for several public-assistance benefits including SNAP, free or reduced school lunch, WIC, and TANF.

<https://www.compass.state.pa.us/Compass.Web/Screening/DoIQualify#/SelectBenefits>

Income gains seen by lower-wage workers could also lead to a reduction in use of public benefits.

Businesses/Small Business

Financial Impact

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025

FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347

FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359

FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558

FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393

FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This takes into consideration that all employers in the state will review the new regulation and that some will then realize they are exempt from the regulation due to being certain municipal, public, or non-profit employers (see question 15). It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers in FY 2020-2021 will be lower than the number of newly nonexempt workers in FY 2021-2022. Again, costs to employers will depend not only on if the employer is exempt and if the employer has any non-exempt workers currently on staff, but how they employer chooses to respond to the regulation. See question 19 for an in-depth explanation of the cost calculations to businesses.

In addition, certain employer types are exempt from the overtime regulation, including: federal entities; commonwealth agencies; cities, boroughs, and townships; state-related schools; public schools; conservation districts; port authorities; weekly, semiweekly, or daily newspapers with a circulation of less than four thousand, the major part of which circulation is within the county where published or

counties contiguous thereto; and public amusement or recreational establishments, organized camps, or religious or nonprofit educational conference centers, if they do not operate for more than seven months in any calendar year, or if during the preceding calendar year, their average receipts for any six months of such year were not more than thirty-three and one-third percent of its average receipts for the other six months of such year.

As discussed in question 12, employers who choose to respond to the regulation by increasing payroll costs will likely see an increase in employee retention. As Forbes writes "...replacement costs for workers can be anywhere from 30 to 150 percent of yearly pay."

<https://www.forbes.com/sites/derosetichy/2013/04/29/are-you-spending-more-by-paying-your-employees-less/#4ae03aae586e>

Further, a 2015 survey by EY found that too little pay and excessive overtime are among the most common reasons employees quit.

[https://www.ey.com/Publication/vwLUAssets/Global_generations_study/\\$FILE/EY-global-generations-a-global-study-on-work-life-challenges-across-generations.pdf](https://www.ey.com/Publication/vwLUAssets/Global_generations_study/$FILE/EY-global-generations-a-global-study-on-work-life-challenges-across-generations.pdf) A reduction in turnover can lead to saved time and money for employers, recruiters, and HR specialists. As referenced in question 15, at this time of 3.9% unemployment in Pennsylvania, many employers are already choosing to raise wages in order to retain workers.

Economic Impact

Direct fiscal impacts to business are discussed above and more fully explained in question 19. In more general economic terms, the increase in pay of directly impacted salaried workers will have modest effects on Pennsylvania's gross product. As discussed earlier, any increased payroll costs will result in induced spending, which can be measured in dollar amounts or by jobs created:

FY 2020-2021 Economic Impact: \$1,957,441 - \$2,187,590 in induced spending or 22 – 25 jobs created

FY 2021-2022 Economic Impact: \$7,253,309 - \$8,106,125 in induced spending or 83-93 jobs created

FY 2022-2023 Economic Impact: \$10,909,487 - \$12,192,184 in induced spending or 125-140 jobs created

FY 2023-2024 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending or 129-144 jobs created

FY 2024-2025 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending or 129-144 jobs created

Social Impact

Business commentators expressed that implementation of this regulation would be bad for employee morale. Individuals and businesses stated it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced.

All of these responses to the regulation are at the discretion of individual employers, and organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision. While any hours worked beyond 40 are required to be paid at one

and one half the salary for non-exempt employees, there is no portion of the regulation that requires those being paid overtime to be paid hourly rather than paid a salary.

Regarding requiring employees to punch a clock and track hours, it is left to each organization to determine the mechanism for ensuring non-exempt workers do not work more than 40 hours a week. Several commentators stated the loss of flexibility as bad for worker morale. Examples included that exempt workers can currently work longer hours on certain days to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators expressed that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek. For instance, an organization may allow an employee to work two additional hours at his or her workplace or at home on Monday, and then depart from work two hours early on Tuesday to attend a child's school program. Or, an individual could arrive at work early Monday - Thursday and leave early on a Friday afternoon.

Finally, commentators from business stated that "dividing employees" into exempt and non-exempt categories would be bad for employee morale, and that non-exempt employees may feel a stigma. However, labor organizations have stated that they have yet to hear this complaint from affected employees, and have also stated that employees rarely complain about being told they are now eligible for overtime. Notably, the Department received no comments from individual workers who were concerned that they might have to go from a salary rate to an hourly or have hours capped at 40 per week.

Labor Communities

Financial Impact

The Department estimates that 82,000 workers will be newly eligible for overtime. Approximately 34,000 workers will be affected in FY 2020-2021, and an additional 48,000 will be affected in FY 2021-2022. The average income increase per affected worker in is \$209.73 - \$278.72 per year, or a total each year as follows:

FY 2020-2021: \$3,565,467 - \$3,984,681 in increased worker wages
FY 2021-2022: \$13,211,856 - \$14,765,256 in increased worker wages
FY 2022-2023: \$19,871,561 - \$22,207,985 in increased worker wages
FY 2023-2024: \$20,450,344 - \$22,854,819 in increased worker wages
FY 2024-2025: \$20,450,344 - \$22,854,819 in increased worker wages

Most Pennsylvania employers must comply with this regulation. However, data indicate that certain industries and occupations employ more affected workers than others. Industries most affected by this regulation are Educational and Health Services, Professional and Business Services, and Financial Services. Occupations most affected are Professional and Related Occupations; Management, Business, and Financial Occupations; and Sales and Related Occupations.

| Major Industry | Total affected workers | Workers with new protections | Workers with strengthened protections |
|---|------------------------|------------------------------|---------------------------------------|
| Agriculture, forestry, fishing, and hunting | 2,000 | - | 2,000 |
| Mining | 1,000 | - | - |
| Construction | 12,000 | 3,000 | 9,000 |
| Manufacturing | 18,000 | 5,000 | 13,000 |
| Wholesale and retail trade | 22,000 | 9,000 | 13,000 |
| Transportation and utilities | 11,000 | 3,000 | 8,000 |
| Information | 5,000 | 2,000 | 3,000 |
| Financial services | 22,000 | 11,000 | 11,000 |
| Professional and business services | 28,000 | 14,000 | 14,000 |
| Educational and health services | 49,000 | 24,000 | 25,000 |
| Leisure and hospitality | 9,000 | 3,000 | 6,000 |
| Other services | 15,000 | 4,000 | 11,000 |
| Public administration | 11,000 | 3,000 | 8,000 |

| Major Occupation | Total affected workers | Workers with new protections | Workers with strengthened protections |
|---|------------------------|------------------------------|---------------------------------------|
| Management, business, and financial occupations | 47,000 | 36,000 | 11,000 |
| Professional and related occupations | 53,000 | 31,000 | 22,000 |
| Service occupations | 19,000 | 1,000 | 18,000 |
| Sales and related occupations | 22,000 | 8,000 | 14,000 |
| Office and administrative support occupations | 37,000 | 6,000 | 31,000 |
| Farming, fishing, and forestry occupations | 2,000 | - | 2,000 |
| Construction and extraction occupations | 8,000 | - | 8,000 |
| Installation, maintenance, and repair occupations | 5,000 | - | 5,000 |
| Production occupations | 7,000 | - | 7,000 |
| Transportation and material moving occupations | 6,000 | - | 6,000 |

Economic Impact

As stated previously, how employers respond – including choosing to pay overtime, choosing to cap hours at 40 per week, reducing pay and benefits but allowing for overtime, or raising salaries to ensure

workers are exempt from overtime – will have a direct effect on how and if workers benefit from this regulation.

Additional financial gain may be realized by working Pennsylvanians who are currently non-exempt employees and therefore eligible for overtime, but who have been misclassified due to their employers misunderstanding of the duties test and salary threshold. The confusing long and short test in Pennsylvania have led many employers to believe that, regardless of duties, any employee making a salary over \$23,660 is automatically ineligible for overtime. The higher salary threshold will likely result in employers reviewing the duties of employees making at our below \$45,500, and therefore potentially paying workers overtime who have in fact already been non-exempt.

Nonprofit Organizations

Financial Impact

There are approximately 113,676 nonprofit organizations within Pennsylvania; nonprofits employing individuals are included in the data for Pennsylvania employers.

<https://www.taxexemptworld.com/organizations/pennsylvania-counties.asp> Currently, the statistically significant data does not exist to accurately calculate the number of nonprofit organizations with non-exempt EAP employees at a state-level. There will be many nonprofits not be affected by this regulation as they do not employ any of the 82,000 non-exempt EAP employees. The Department is not able to determine from its available labor market information which of Pennsylvania's 282,911 employers are nonprofit organizations; therefore, costs associated with compliance and associated with increased payroll are included with the "Business" impacts.

Nonprofit organizations, including human service organizations, provided comments on the proposed rulemaking that cited the financial hardship of adjusting their operations to this regulation. Several cited that their fee structure is tied to contracts with government organizations, and they therefore do not have the ability to increase revenue from year to year to cover cost increases, as the private sector can. These concerns have been seriously considered and it is recognized that many nonprofits depend on limited funds from foundations and government grants.

The request for exemption by nonprofit organizations and human service providers was considered. However, the Pennsylvania Minimum Wage Act does not exempt these organizations, signaling the intent of the General Assembly to include workers in such organizations in overtime protections.

Economic Impact

Like all affected organizations, affected nonprofits have several strategies they can use to adjust for the rule. Nonprofit employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

A two-year phase-in period has been proposed, which provides nonprofits with adequate time to become familiar with the regulation, identify whether they employ affected non-exempt EAP workers, and plan accordingly by making necessary adjustments to their organization.

Social Impact

Comments from nonprofit organizations stated that limiting non-exempt employees to 40 hours per week would put additional strain on exempt employees to carry-out these tasks and may increase turnover. Again, organizations have several ways in which to adjust for this regulation, some of which are cost neutral and others which may incur costs. Many organizations, including nonprofit organizations, have become accustomed to not paying salaried employees for hours worked beyond 40 hours per week, even though the General Assembly's intent was to include salaried workers who are not bona fide EAP employees in overtime protections, including those who work for nonprofit organizations.

Nonprofit organizations provide important services to the Commonwealth, and in many cases to vulnerable populations. However, the mission of an organization is not justification to exclude its workers from protections that the General Assembly intended to provide under the Pennsylvania Minimum Wage Act. Further, a new market rate is not being set for services by non-exempt employees via this regulation; rather, it is ensuring that non-exempt employees receive compensation for hours worked beyond 40 per week, as intended by both the Minimum Wage Act and the overtime exemption regulation.

Other Organizations

Financial Impact

State and local governments will see an increase in tax revenue. CWIA has calculated the state and local tax impact will be a gain of an estimated \$51,000 in taxes per \$1 million in additional worker income, for total state and local tax revenues as follows:

FY 2020-2021: \$181,839 – \$203,219 in state and local tax revenues
FY 2021-2022: \$673,805 - \$753,028 in state and local tax revenues
FY 2022-2023: \$1,013,450 - \$1,132,607 in state and local tax revenues
FY 2023-2024: \$1,042,968 - \$1,165,596 in state and local tax revenues
FY 2024-2025: \$1,042,968 - \$1,165,596 in state and local tax revenues

Economic Impact

As discussed previously, an increase in lower-salaried worker income could lead to a reduction in the use of public benefits. A family of four with a sole earner with an annual income of \$35,568 or less qualifies for several public-assistance benefits including SNAP, free or reduced school lunch, WIC, and TANF.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The benefits of this regulation include increased compliance with overtime laws, fair compensation for employees, increased competitiveness of Pennsylvania employers, economic benefits to Pennsylvania due to increased worker spending, discretionary time returned to employees, and job creation, outweighing the possible costs and adverse effects. As mentioned previously, employers will have several choices with regards to this new regulation: to pay non-exempt employees overtime; to limit employee hours to 40 hours a week; to allow for some overtime but reduce base pay or benefits; to raise the currently non-exempt employee salary to above the threshold, or a combination of the above.

Compliance Benefits

The regulation provides a straightforward way to achieve high rates of compliance with the requirement, already in the Pennsylvania law, that salaried employees who fail the duties tests must be paid minimum wage and overtime pay. A main benefit of the regulation is ensuring compliance with the law: workers who are not bona fide executive, administrative, or professional employees exempt from the state's overtime law will now receive the overtime pay to which they are legally entitled. The erosion of the minimum wage and overtime salary threshold since 1977 (and 2004) has created unnecessary and undesirable ambiguity regarding who is eligible to receive overtime. The USDOL's 2019 EAP salary threshold, although higher, does not raise the threshold to a sufficient salary for the regulated community in Pennsylvania. This final proposed regulation modernizes the Pennsylvania minimum wage and overtime threshold to match the reality of today's economy in the Commonwealth and allows employers and employees to rely on the simpler, more-straightforward duties test and salary-level test. Doing so will reduce ambiguity regarding who should receive overtime, making compliance with the law easier for business.

Increased Compensation for Employees

The Department estimates that 34,000 workers will be affected in Year 1, and an additional 48,000 will be affected in Year 2.

FY 2020-2021: \$3,565,467 - \$3,984,681 in increased worker wages
FY 2021-2022: \$13,211,856 - \$14,765,256 in increased worker wages
FY 2022-2023: \$19,871,561 - \$22,207,985 in increased worker wages
FY 2023-2024: \$20,450,344 - \$22,854,819 in increased worker wages
FY 2024-2025: \$20,450,344 - \$22,854,819 in increased worker wages

Increasing the Competitiveness of Pennsylvania Employers

As previously discussed, fair compensation of workers allows Pennsylvania business to be more competitive with surrounding states, including New York, where the overtime threshold will be \$48,750. In addition, non-exempt workers are in a wage range that is sensitive to small wage differences. As such, these workers are more likely to move to different employers, even for minimal pay differences.

More Money in Pennsylvania's Local Economies

According to CWIA's IMPLAN model, for every \$1,000,000 in increased payroll to employees, \$549,000 in induced spending is created. This is consumer spending, including retail, restaurants, and

goods and services. Induced spending can also be conveyed in terms of jobs created. The yearly estimated economic impact is as follows:

FY 2020-2021 Economic Impact: \$1,957,441 - \$2,187,590 in induced spending or 22 – 25 jobs created
FY 2021-2022 Economic Impact: \$7,253,309 - \$8,106,125 in induced spending or 83-93 jobs created
FY 2022-2023 Economic Impact: \$10,909,487 - \$12,192,184 in induced spending or 125-140 jobs created
FY 2023-2024 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending or 129-144 jobs created
FY 2024-2025 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending or 129-144 jobs created

State and local governments will also see an increase in tax revenue. CWIA has calculated the state and local tax impact will be a gain of an estimated \$51,000 in taxes per \$1 million in additional worker income, for total state and local tax revenues as follows:

FY 2020-2021: \$181,839 – \$203,219 in state and local tax revenues
FY 2021-2022: \$673,805 - \$753,028 in state and local tax revenues
FY 2022-2023: \$1,013,450 - \$1,132,607 in state and local tax revenues
FY 2023-2024: \$1,042,968 - \$1,165,596 in state and local tax revenues
FY 2024-2025: \$1,042,968 - \$1,165,596 in state and local tax revenues

Discretionary Time Returned to Employees

If an employer decides to keep a salaried employee's pay below the salary threshold, and thus is required to pay time and one-half their hourly wage for every hour worked over 40 hours per week, employers will have an incentive to limit the number of hours beyond 40 per week that employee works. Alternately, workers who may have been working un-compensated for hours beyond a 40-hour work week may no longer be required to do so. This provides individuals with more discretionary time, which they may use to pursue educational goals, spend time with family, or engage in part-time work if they wish to supplement their income.

Costs and Adverse Effects

The primary adverse effects cited by the employer community are increases to payroll costs and costs to come into compliance with the regulation, which employers have stated will harm competitiveness and is harmful to business. The Department has estimated the total direct cost to the regulated community in Pennsylvania to comply with this regulation across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359
FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558
FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

Over time, the total fiscal and economic benefits outweigh employer costs. Familiarization and adjustment “upfront” costs are one-time costs; the average of ongoing increased payroll and managerial costs are outweighed by the overall economic benefit to Pennsylvania, as evidenced below:

FY 2019-2020 Total Economic Benefit: \$0
FY 2020-2021 Total Economic Benefit: \$5,704,747 - \$6,375,489
FY 2021-2022 Total Economic Benefit: \$21,138,969 - \$23,624,409
FY 2022-2023 Total Economic Benefit: \$31,794,498 - \$35,532,775
FY 2023-2024 Total Economic Benefit: \$32,720,551 – \$36,567,710
FY 2024-2025 Total Economic Benefit: \$32,720,551 – \$36,567,710

Additional adverse effects cited by employers include negative impacts on employee morale due to moving employees from salary to hourly, the loss of flexibility regarding employee time, and the shifting of certain duties from non-exempt employees to exempt employees, thus creating higher turnover.

Perhaps the biggest benefit of this regulation, even beyond the overall economic benefit, is that Pennsylvania workers will be paid fairly for their time as intended by the Minimum Wage Act. In addition to paying workers fairly for hours worked beyond the standard 40-hour work week, this regulation returns unpaid time to Pennsylvanians. As stated previously, the Department is not able to calculate the opportunity cost of hours not worked at potential supplemental employment due to working unpaid overtime hours. Beyond potential supplemental employment hours, the value of hours spent with family, in educational pursuits, and in leisure time are not able to be calculated. This regulation ensures that Pennsylvanians are compensated for actual hours worked and are given their unpaid time back to pursue their goals and their happiness.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulated community includes all employers in the Commonwealth, as all employers will review the regulation. The exact cost and savings to each employer will vary based on specific circumstances, including but not limited to their decision-making around human resource allocation, timely compliance with the change in state regulation, and reduced uncertainty regarding the duties test. Given that most employers currently comply with federal and state labor laws and have processes for doing so, total direct costs to individual establishments to come into compliance will be relatively small.

Initial compliance costs to employers are based on Pennsylvania-specific wage data, number of establishments, and total number of affected EAP workers. The regulated community bears three types of total direct costs related to compliance: 1) regulatory familiarization, 2) adjustment, and 3) managerial costs. Regulatory familiarization and adjustment costs will occur primarily in Year 1 while managerial costs will be ongoing. These methodologies align with USDOL’s calculation of compliance costs in their 2004 and 2019 rulemakings.

It also should be noted that this rule does not impose a new regulation on the regulated community. The regulated community has been subject to a federal overtime rule since 1938 and thus has (or should have) borne compliance costs and maintained processes for compliance for over 80 years. This rule

simplifies and reduces the requirements for compliance with federal and state regulations by bringing the Pennsylvania duties test and definitions more in line with federal regulations.

Regulatory familiarization cost is the cost for an employer to review the new regulation. The regulatory familiarization cost to the regulated community in Pennsylvania in FY 2019-2020 is \$6,961,025 and in FY 2020-2021 is \$6,961,025 (based on a median hourly wage of \$30.19 for a human resources specialist in Pennsylvania plus benefits cost equaling 46% base salary plus overhead cost at 17% base salary multiplied by 1 hour multiplied by the total number of establishments in Pennsylvania, 282,911). This includes all employers in the Commonwealth, regardless of exempt status, as each entity will likely review this regulation.

Adjustment cost is the cost for an employer to determine how they will comply with the regulation and make one-time adjustments to scheduling, staffing, and/or payroll. The adjustment cost to the regulated community in Pennsylvania in FY 2019-2020 is zero and in FY 2020-2021 is \$2,091,425 (based on a median hourly wage of \$30.19 for a human resources specialist in Pennsylvania plus benefits cost equaling 46% base salary plus overhead cost at 17% base salary multiplied by 1.25 hours multiplied by the total number of affected workers in Year 1 of the phased-in salary threshold, 34,000).

Managerial cost is the cost for an employer to ensure compliance with the regulation during regular operations. The managerial cost to the regulated community in Pennsylvania in FY 2019-2020 is zero and in FY 2020-2021 is estimated at \$1,697,216. This is based on a median hourly wage of \$30.19 for a human resources specialist in Pennsylvania plus benefits cost equaling 46% plus overhead cost at 17% base salary multiplied that by 8.67 hours (the additional time—10 minutes per week per worker—spent annually by a manager to schedule and monitor each affected worker expected to be reclassified as nonexempt, overtime eligible because of the rule and whose hours are adjusted) and multiplied by the number of workers in FY 2020-2021 who have been re-classified due to the regulation and whose hours have been adjusted (7,956 based on CWIA/EPI calculations).

Since not every employer has a human resources representative, the total cost estimate reflects the average cost across all establishments—some establishments will have no newly exempt workers and therefore assume little to no costs and some will spend more time and resources on familiarization, adjustment, and management because of newly exempt workers or human resources staffing realities.

This regulation will produce certain costs in the form of transfers from employers to employees to comply with minimum wage law, wage and payment law, and the overtime regulation. The Department does not have the predictive economic modeling to simulate business decision-making by employers as a result of this regulation. Neither Pennsylvania-specific wage data that defines whether the wages paid were to a salaried worker or to an hourly worker nor Pennsylvania-specific data on whether hours worked were part of a 40-hour work week or in excess of 40 hours (overtime) is available. USDOL calculations were used in conjunction with available Pennsylvania-specific data to calculate estimated payroll costs to employers and payroll benefits to employees.

The regulated community in Pennsylvania will incur no or negligible transfer costs to comply with minimum wage standards. Workers whose annual wages fall between the 2019 federal threshold (\$35,568) and the Pennsylvania threshold (\$45,500) already make above the minimum wage and thus no or virtually no transfer costs will be incurred to meet the minimum wage standards for newly nonexempt workers (to exceed the federal salary threshold of \$35,568 and earn the minimum wage in Pennsylvania,

a worker would need to work over 94 hours every week for 52 weeks a year; in other words, work two full-time jobs and an additional 14 hours weekly at a third job with no overtime earnings).

The regulated community in Pennsylvania will incur some transfer costs related to overtime pay for newly nonexempt workers. However, as the USDOL notes, “[t]he size of the transfer will depend largely on how employers respond to the updated salary levels.” Employers could respond to an updated salary levels in one or in a combination several ways:

- (1) paying overtime premiums to affected workers;
- (2) reducing overtime hours of affected workers and potentially transferring some of these hours to other workers;
- (3) reducing the regular rate of pay for affected workers working overtime (provided that the reduced rates still exceed the minimum wage);
- (4) increasing affected workers’ salaries to the updated salary or compensation level to preserve their exempt status; or
- (5) using some combination of these responses.

USDOL modeled how employers might respond to reclassifying certain employees as overtime-eligible based on two studies it considered “the two most important papers” about how labor markets adjust to a change requiring reclassification of workers who are eligible for overtime. Pennsylvania is not able to replicate this economic modeling, and does not have access to state-specific data for the employer choice variables considered by USDOL.

Using the USDOL estimates of payroll cost of compliance from the 2016 rule and the 2019 rule, the Department estimated the average payroll cost of compliance per worker in Pennsylvania with lower and upper bounds proportionate to the 2019 and 2016 rule averages, respectively. To determine an average payroll cost of compliance for the federal overtime rule, the Department divided the estimated overtime payroll cost calculated in the final regulation by the total number of workers affected by the regulation. The same calculation was used for both 2019 and 2016 as both rules used the same methodology, though the 2016 rule would have affected far more workers. This generated a ratio of the new Pennsylvania threshold and the 2019 and 2016 federal thresholds to generate an approximation lower (2019) and upper (2016) bounds of the average payroll cost per affected worker in Pennsylvania.

Calculation for lower bound of average payroll cost per affected worker in Pennsylvania

$(\text{US Overtime Payroll Cost 2019})/(\text{US EAP Affected Workers 2019}) = (\text{US Cost Per Worker 2019})$

$(\text{PA Threshold})/(\text{US 2019 Threshold}) = (\text{PA Cost Per Worker})/(\text{US Cost Per Worker 2019})$

$\$40,560/\$35,568=X/183.92$ where X is (PA Cost Per Worker)

$X=209.73$

$\text{FY2020-2021 PA Overtime Payroll Cost (Lower Bound)} = (\text{PA Cost Per Worker}) (\text{PA EAP Affected Workers FY2020-2021})/2$

$\text{FY2020-2021 PA Overtime Payroll Cost (Lower Bound)} = (209.73*34000)/2=\$3,565,467$

(To calculate upper bound, the PA Cost Per Worker is \$234.39 based on US Cost Per Worker 2016 = \$274.36)

FY2020-2021 PA Overtime Payroll Cost (Lower Bound, based on US Cost Per Worker 2019) = \$3,565,467

FY2020-2021 PA Overtime Payroll Cost (Upper Bound based on US Cost Per Worker 2016) = \$3,984,681

The payroll cost is divided by two because the rate is only effective for half the fiscal year since the threshold increases occur on January 1 of 2021, 2022, and 2023 (the first adjustment). The Pennsylvania cost per worker is recalculated each time the threshold is adjusted to recalculate approximate payroll.

$$(\text{PA Threshold})/(\text{US 2019 Threshold}) = (\text{PA Cost Per Worker})/(\text{US Cost Per Worker 2019})$$

As the new federal salary threshold becomes effective January 1, 2020, employer response to the new salary threshold will be monitored and closely analyzed and that data will be used to inform future estimates of the ongoing transfer costs to the regulated community necessary to comply with the Pennsylvania regulation in 2021 and beyond.

The total direct costs (regulatory familiarization, adjustment, and managerial) and payroll transfer costs (to comply with the new overtime regulation) to establishments to comply with this Pennsylvania regulation will be also be small. Using Pennsylvania-specific data for median wage per hour, number of affected workers, and number of establishments, the total direct cost to the regulated community in Pennsylvania to comply with this regulation in FY 2019-2020 will be \$6,961,025, or an average of \$24.60 per establishment and in FY2020-2021 between \$14,315,133 and \$14,734,347 or an average between \$50.60 and \$52.08 per establishment. This considers that all employers in the state will review the new regulation and that some will then realize they are exempt from the regulation due to being certain municipal, public, or nonprofit employers. It also considers that given the salary threshold will be phased in to \$45,500 over time, the number of affected workers in Year 1 will be lower than the number of affected workers under the final salary threshold.

While transfer costs are classified here as a cost to employers, they should also be considered as a benefit to employees in the form of higher income and compensation for overtime work, especially those who have been misclassified as exempt when they were eligible for overtime pay or who were at risk of misclassification under the previous salary thresholds.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no additional compliance, legal or consulting costs or savings that are anticipated for local governments in their role as an employer. Under the Minimum Wage Act, the definition of employer is, "any individual, partnership, association, corporation, business trust, or any person or group of persons acting, directly or indirectly, in the interest of an employer in relation to any employee." 43 P.S. § 333.103(g). The definition specifically omits public employers. In *Huffman v. Borough of Millvale*, 591 A.2d 1137 (Pa. Cmwlth. 1991), the Commonwealth Court in interpreting the Wage Payment and Collection Law held that "in construing the statute, we must give effect to the legislature's intent as it

was expressed in the language of the statute and cannot supply an omission in a statute where it appears that the matter has been intentionally omitted. Municipal corporations such as the Borough are not included within the definition of “employer,” and we, as an appellate court, cannot expand the definition of “employer” to include them.” *Id.* at 1138–39. Similarly, since the General Assembly chose not to include the Commonwealth or any of its political subdivisions in the Minimum Wage Act’s definition of employer, the Department has interpreted this law to exclude them. The Office of the Attorney General has also opined that the Minimum Wage Act does not apply to public employees. 1976 Op.Atty.Gen. No. 29. However, it is important to note that the Fair Labor Standards Act explicitly includes public agencies in its definition of employer; thereby, making local governments subject to federal minimum wage requirements. 29 U.S.C. § 203(d).

The Department conducted outreach with associations representing political subdivisions to explain that this proposed regulation does not impact their obligations as employers. Furthermore, this information was presented at the Department’s stakeholder roundtables.

However, state and local governments will see an increase in tax revenue. CWIA has calculated the state and local tax impact will be a gain of an estimated \$51,000 in taxes per \$1 million in additional worker income, for total state and local tax revenues as follows:

FY 2020-2021: \$181,839 – \$203,219 in state and local tax revenues
FY 2021-2022: \$673,805 - \$753,028 in state and local tax revenues
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FY 2023-2024: \$1,042,968 - \$1,165,596 in state and local tax revenues
FY 2024-2025: \$1,042,968 - \$1,165,596 in state and local tax revenues

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no additional compliance, legal or consulting costs or savings that are anticipated for state government for its role as an employer. Under the Minimum Wage Act, the definition of employer is, “any individual, partnership, association, corporation, business trust, or any person or group of persons acting, directly or indirectly, in the interest of an employer in relation to any employee.” 43 P.S. § 333.103(g). The definition specifically omits public employers. In *Huffman v. Borough of Millvale*, 591 A.2d 1137 (Pa. Cmwlth. 1991), the Commonwealth Court in interpreting the Wage Payment and Collection Law held that “in construing the statute, we must give effect to the legislature’s intent as it was expressed in the language of the statute and cannot supply an omission in a statute where it appears that the matter has been intentionally omitted. Municipal corporations such as the Borough are not included within the definition of “employer,” and we, as an appellate court, cannot expand the definition of “employer” to include them.” *Id.* at 1138–39. Similarly, since the General Assembly chose not to include the Commonwealth or any of its political subdivisions in the Minimum Wage Act’s definition of employer, the Department has interpreted this law to exclude them. The Office of the Attorney General has also opined that the Minimum Wage Act does not apply to public employees. 1976 Op.Atty.Gen. No. 29. However, it is important to note that the Fair Labor Standards Act explicitly includes public agencies in its definition of employer; thereby, making local governments subject to federal minimum wage requirements. 29 U.S.C. § 203(d). However, it is important to note that the Fair Labor Standards

Act explicitly includes a public agency in its definition of employer; thereby, making local governments subject to federal minimum wage requirements. 29 U.S.C. § 203(d).

The Department conducted outreach with associations representing political subdivisions to explain that this proposed regulation does not impact their obligations. Furthermore, this information was presented at the Department's stakeholder roundtables.

The Department does not anticipate any savings from enforcement of the regulation. The Department does estimate it will spend up to \$125,000 to do a mass mailing to all Pennsylvania employers providing information about this rulemaking. In addition, the Department will provide educational sessions as part of its normal outreach activities to employers. There is no other state agency that has a role in enforcing this rulemaking.

However, state and local governments will see an increase in tax revenue. CWIA has calculated the state and local tax impact will be a gain of an estimated \$51,000 in taxes per \$1 million in additional worker income, for total state and local tax revenues as follows:

FY 2020-2021: \$181,839 – \$203,219 in state and local tax revenues
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FY 2024-2025: \$1,042,968 - \$1,165,596 in state and local tax revenues

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The proposed regulation does not require regulated groups or entities to complete any additional legal, accounting, or consulting procedures, nor does it require any new reporting, forms, or reports. However, the regulation may affect an employer's recordkeeping requirements depending on how they choose to address employees who are not paid the proposed minimum salary threshold.

The Department's current regulations already require employers to maintain records of an employee's full name, home address, hourly rate of pay, occupation, time and day of the workweek's beginning, number of hours worked daily and weekly, total wages due for hours worked during the workweek, overtime compensation for the workweek, additions to or deductions from wages, allowances, total wages paid each pay period, date of payment and pay period covered, and any special certificates for students and learners. 34 Pa. Code § 231.31. The regulations contain an exception to certain recordkeeping requirements for EAP exempt employees. For EAP exempt employees, employers do not have to maintain record of the regular hourly rate of pay, time and day of the workweek's beginning, number of hours worked daily and weekly, total wages due for hours worked during the workweek, and overtime compensation for the workweek.

As a result, an employer that changes an employee's payment status from salary to hourly will have to maintain additional information for that employee's work arrangement. The employer's inconvenience is minimized since an employer is already required to maintain this information for its hourly employees and should have a system in place to accommodate the new employees it would have to track.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

Fiscal Savings:

This regulation will lead to savings by Pennsylvania establishments because by raising the salary threshold it eliminates the need for employers to apply the duties test to determine whether employees above the threshold are exempt. Additionally, by updating the duties test for Pennsylvania to bring it in line with the duties test in the federal regulation, the regulated community will realize savings by being able to apply a single duties test for both state and federal regulations.

The higher salary threshold will also likely result in cost savings realized by a reduction in employees who are misclassified as exempt from overtime pay. USDOL in the 2019 regulation estimated that nationally 9.3% of exempt employees are misclassified and that the higher federal threshold (\$35,568) would make over 206,000 white collar workers who are eligible for overtime but misclassified by their employers clearly eligible by the salary test. A 2015 RAND Corporation study similarly found significant levels of misclassification of employee eligibility for overtime pay. The study found that 11.5% of workers were misclassified and 19% of workers were unpaid or underpaid (meaning they were paid less than the FLSA required 1.5 times pay for overtime hours worked).

<https://www.rand.org/blog/2015/09/one-in-five-hourly-employees-working-overtime-not-properly.html>

While it is difficult to quantify with an acceptable degree of certainty the number of Pennsylvania workers who are currently misclassified and who would be clearly be eligible for overtime under the new salary threshold, certain savings would be realized by the increase in clarity based on the salary test of who is eligible and who is ineligible for overtime.

Fiscal Costs:

As discussed in question 19, the regulated community will incur certain total costs to comply with the new regulation. These types of costs—regulatory familiarization, adjustment, and managerial—are of the same type as the regulated community incurs from adjustments to the USDOL regulation finalized in 2019. In FY 2019-2020, the regulated community will incur regulatory familiarization costs. In FY 2020-2021, when the regulation goes into effect, the regulated community will incur regulatory familiarization costs and establishments with newly nonexempt workers will incur adjustment and managerial costs for workers whose annual wages fall between the federal salary threshold and the first

step-up of Pennsylvania's salary threshold (\$40,560). In FY 2020-2021, the state will incur a one-time cost of \$125,000 to mail notification of the regulation to all establishments in Pennsylvania.

In FY2021-2022, the regulated community will incur adjustment costs for newly nonexempt workers whose wages fall between the first step-up of Pennsylvania's salary threshold (\$40,560) and the final threshold (\$45,500) as well as managerial costs for all nonexempt workers whose wages are between the federal salary threshold and the Pennsylvania salary threshold.

In FY2022-2023 and beyond, the regulated community will only incur managerial costs related to the nonexempt workers whose wages are between the federal salary threshold and the Pennsylvania salary threshold.

The Department does not anticipate any revenue losses by the regulated community or by state and local government. The regulated community has a range of options, outlined in question 19 and by USDOL, as to how an establishment may pay or schedule newly nonexempt workers and will make decisions based primarily on revenue considerations.

| | Fiscal Year 19- 20 | Fiscal Year 20-21 | Fiscal Year 21- 22 | Fiscal Year 22- 23 | Fiscal Year 23- 24 | Fiscal Year 24- 25 |
|----------------------------|--------------------------|--------------------------------|--|--|--|--|
| SAVINGS: | \$ | \$ | \$ | \$ | \$ | \$ |
| Regulated Community | Not Calculable | Not Calculable | Not Calculable | Not Calculable | Not Calculable | Not Calculable |
| Local Government | None | None | None | None | None | None |
| State Government | None | None | None | None | None | None |
| Total Savings | Not Calculable | Not Calculable | Not Calculable | Not Calculable | Not Calculable | Not Calculable |
| COSTS: | | | | | | |
| Regulated Community | \$6,961,025 | \$14,315,133 - \$14,734,347 | \$21,954,95 9 - \$23,508,35 9 | \$28,058,13 5 - \$30,394,55 8 | \$28,636,9 18 - \$31,041,3 93 | \$28,636,91 8 - \$31,041,39 3 |
| Local Government | 0 | 0 | 0 | 0 | 0 | 0 |
| State Government | 0 | \$125,000 | 0 | 0 | 0 | 0 |
| Total Costs | \$6,961,025 | \$14,440,133 - \$14,859,347 | \$21,954,95 9 - \$23,508,35 9 | \$28,058,13 5 - \$30,394,55 8 | \$28,636,9 18 - \$31,041,3 93 | \$28,636,91 8 - \$31,041,39 3 |
| REVENUE LOSSES: | 0 | 0 | 0 | 0 | 0 | 0 |
| Regulated Community | 0 | 0 | 0 | 0 | 0 | 0 |
| Local Government | 0 | 0 | 0 | 0 | 0 | 0 |
| State Government | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|-----------------------------|---|---|---|---|---|---|
| Total Revenue Losses | 0 | 0 | 0 | 0 | 0 | 0 |
|-----------------------------|---|---|---|---|---|---|

(23a) Provide the past three year expenditure history for programs affected by the regulation.

The Bureau of Labor Law Compliance (BLLC) has one budget for enforcing 12 different laws, including the Pennsylvania Minimum Wage Act of 1968. The table below thus lists the entire Bureau budget, which has not changed in the past several fiscal years.

BLLC's budget consists of \$4.2 million personnel costs and operations costs of \$600,000 for a total of \$4.8 million. In order to inform the regulated community of this amended regulation, the BLLC has requested one-time budget increase of \$125,000 to mail notice to the regulated community prior to implementation on January 1, 2021.

To put this into perspective, Minimum Wage Act enforcement accounts for the following percentage of the Bureau's workload:

| | FY 16-17 | FY 17-18 | FY 18-19 | TOTAL |
|--------------------------------|-----------------|-----------------|-----------------|--------------|
| Minimum Wage/Overtime | 388 | 382 | 322 | 1092 |
| All other cases | 4517 | 4923 | 4991 | 14431 |
| Percentage of Case load | 8% | 7% | 6% | 7% |

Minimum wage and Overtime cases compared to all cases received by the Bureau (All fiscal years combined)



| Program | FY -3 | FY -2 | FY -1 | Current FY |
|--------------------------------|---------------|---------------|---------------|-------------------|
| Bureau of Labor Law Compliance | \$4.8 million | \$4.8 million | \$4.8 million | \$4.8 million |

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(a) An identification and estimate of the number of small businesses subject to the regulation.

All businesses will have to become familiar with the new regulation. They will then have to determine whether they employ salaried EAP employees who are non-exempt.

According to CWIA, Pennsylvania is home to approximately 282,911 private employers. According to the U.S. Small Business Administration (SBA), 99.9% of businesses in the country are considered to be small businesses. <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf>. As defined in Section 3 of the Regulatory Review Act, Act 76 of 2012 virtually every Commonwealth business qualifies as a small business. [https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards Effective%20Aug%202019%2C%202019_Rev.pdf](https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards%20Effective%20Aug%202019%2C%202019_Rev.pdf)

CWIA created the following chart depicting the number of Pennsylvania businesses that employ workers in each employee size range. As indicated by the chart, the vast majority of businesses in Pennsylvania employ fewer than 500 or 1000 employees and are therefore considered to be a small business. In fact, only half of one percent of all businesses in Pennsylvania employ 500 or more employees.

| | Employee Size Range per Employer | | | | | | | | | | |
|---|----------------------------------|--------|---------|--------|--------|--------|-------|---------|---------|---------|-------------|
| | Total | 0 | 1-4 | 5-9 | 10-19 | 20-49 | 50-99 | 100-249 | 250-499 | 500-999 | 1000 & Over |
| Total | 282,911 | 25,411 | 146,999 | 45,071 | 28,951 | 20,828 | 7,617 | 4,777 | 1,778 | 860 | 619 |
| Agriculture, Forestry, Fishing and Hunting | 2,217 | 187 | 1,086 | 426 | 259 | 169 | 59 | 24 | 5 | 2 | 0 |
| Mining | 1,002 | 85 | 386 | 161 | 127 | 117 | 61 | 48 | 8 | 7 | 2 |
| Utilities | 951 | 30 | 396 | 235 | 128 | 91 | 29 | 15 | 9 | 11 | 7 |
| Construction | 28,303 | 3,222 | 14,983 | 4,661 | 2,836 | 1,789 | 506 | 230 | 60 | 9 | 7 |
| Manufacturing | 13,193 | 481 | 3,737 | 2,299 | 2,146 | 2,226 | 1,042 | 807 | 294 | 107 | 54 |
| Wholesale Trade | 20,855 | 1,859 | 12,564 | 2,698 | 1,783 | 1,235 | 391 | 226 | 67 | 24 | 8 |
| Retail Trade | 24,640 | 1,511 | 12,170 | 5,162 | 2,732 | 1,697 | 713 | 384 | 129 | 62 | 80 |
| Transportation and Warehousing | 7,924 | 660 | 3,809 | 1,078 | 903 | 821 | 322 | 202 | 63 | 36 | 30 |
| Information | 4,043 | 442 | 2,095 | 563 | 364 | 321 | 115 | 89 | 37 | 14 | 3 |
| Finance and Insurance | 10,952 | 803 | 6,620 | 1,724 | 748 | 522 | 209 | 164 | 74 | 45 | 43 |
| Real Estate Rental and Leasing | 8,014 | 665 | 5,047 | 1,119 | 618 | 368 | 113 | 59 | 14 | 6 | 5 |
| Professional, Scientific, and Technical Services | 38,312 | 4,913 | 23,105 | 4,688 | 2,772 | 1,752 | 605 | 320 | 89 | 45 | 23 |
| Management of Companies and Enterprises | 2,559 | 241 | 1,405 | 290 | 230 | 202 | 90 | 53 | 27 | 12 | 9 |
| Admin. & Support & Waste Mgmt & Remediation Services | 15,285 | 2,334 | 7,054 | 2,477 | 1,434 | 1,078 | 407 | 282 | 121 | 60 | 38 |
| Educational Services | 4,879 | 476 | 1,687 | 607 | 490 | 495 | 333 | 336 | 226 | 157 | 72 |
| Health Care and Social Assistance | 39,459 | 2,779 | 22,648 | 5,204 | 3,492 | 2,635 | 1,076 | 944 | 372 | 158 | 151 |
| Arts, Education, and Recreation | 4,921 | 871 | 1,927 | 727 | 626 | 468 | 171 | 85 | 22 | 14 | 10 |
| Accommodation and Food Services | 22,576 | 1,852 | 7,199 | 4,495 | 4,193 | 3,386 | 963 | 313 | 86 | 48 | 41 |
| Other Services (except Public Administration) | 29,705 | 1,958 | 18,229 | 5,570 | 2,500 | 1,043 | 236 | 111 | 38 | 12 | 8 |
| Public Administration | 3,121 | 42 | 852 | 887 | 570 | 413 | 176 | 85 | 37 | 31 | 28 |

(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

The exact cost and savings to each small business will vary based on specific circumstances, including but not limited to their decision-making around human resource allocation, timely compliance with the change in state regulation, and reduced uncertainty about the duties test. Total reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation are anticipated to be small since most employers currently comply with federal and state labor laws and have processes for doing so. The regulated community has been subject to a federal overtime rule since 1938 and thus has borne costs and maintained processes for compliance for over 80 years. This rule simplifies and reduces the requirements for compliance with federal and state regulations by bringing the Pennsylvania duties test and numerous definitions in line with the federal regulation. This rule ensures that the regulated

community must comply with only one overtime regulation, with one duties test and one salary threshold. This regulation may affect an employer's recordkeeping requirements depending on how it chooses to address employees who are not paid the proposed minimum salary threshold.

Initial compliance costs to employers are based on Pennsylvania-specific wage data, number of establishments, and total number of affected EAP workers. The regulated community bears three types of total direct costs related to compliance: 1) regulatory familiarization, 2) adjustment, and 3) managerial costs. All regulatory familiarization costs and most adjustment costs will occur in FY2020 and FY2021. Managerial costs will be ongoing. This methodology is in line with how USDOL calculates compliance costs in the 2019 overtime rule.

Additionally, the Department determined that a human resources specialist is the most likely type of worker to perform all the reporting, recordkeeping, and administrative duties required for compliance. The typical job skills of a human resource specialist, listed by the Department in the publicly available Labor Market Information System based on USDOL O*Net data, align closely with the work required to comply with this regulation. <https://paworkstats.geosolinc.com/vosnet/Default.aspx> Six of the top seven skills considered "typical" for human resource specialists speak directly to the compliance work required by this regulation:

- "Explain regulations, policies, or procedures"
- "Administer compensation or benefits programs"
- "Perform human resources activities"
- "Update knowledge of legal or regulatory environments"
- "Maintain data in information systems or databases"
- "Evaluate personnel practices to ensure adherence to regulations"

The managerial cost is based on a median hourly wage of \$30.19 for a human resources specialist in Pennsylvania plus benefits cost equaling 46% plus overhead cost at 17% base salary (adjusted rate: \$49.21) multiplied that by 8.67 hours (the additional time—10 minutes per week per worker—spent annually to schedule and monitor each affected worker expected to be reclassified as nonexempt, overtime eligible because of the rule and whose hours are adjusted and multiplied by the number of EAP affected workers.

In addition to managerial costs, other administrative costs of compliance with this regulation include regulatory familiarization and adjustment costs. The Department adopted all three from USDOL's methodology.

The regulatory familiarization cost is the cost for a business entity to review the new regulation. The regulatory familiarization cost is based on a median hourly wage of \$30.19 for a human resources specialist in Pennsylvania plus benefits cost equaling 46% base salary plus overhead cost at 17% base salary (adjusted rate: \$49.21) multiplied by 1 hour multiplied by the total number of establishments in Pennsylvania, 282,911. In calculating the regulatory familiarization cost, the Department included all establishments in the Commonwealth, regardless of exempt status, as each entity will likely review this regulation.

The adjustment cost is the cost for the business entity to determine how they will comply with the regulation and make one-time adjustments to scheduling, staffing, and/or payroll. The adjustment cost is based on a median hourly wage of \$30.19 for a human resources specialist in Pennsylvania plus

benefits cost equaling 46% base salary plus overhead cost at 17% base salary (adjusted rate: \$49.21) multiplied by 1.25 hours multiplied by the total number of EAP workers affected.

The Department adopted USDOL's methodology for estimating the time needed for completion of each compliance activity—1 hour, one time per business for regulatory familiarization, 1.25 hours, one time per affected worker for adjustment, and 10 minutes per week every week (8.67 hours annually) per newly nonexempt worker working overtime for management. Since not every establishment has a human resources representative, the total cost estimate reflects the average cost across all establishments—some establishments will have no newly exempt workers and therefore assume little to no costs and some will spend more time and resources on familiarization, adjustment, and management because of newly exempt workers or human resources staffing realities.

(c) A statement of probable effect on impacted small businesses.

Affected businesses will likely adapt to the regulation in the least costly way possible. Small business response to the regulation will vary depending on the characteristics of the business operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

There were no less intrusive or less costly alternative methods of achieving the purpose of the regulation. The Department's proposed rulemaking included a salary threshold of \$47,892, aligned with the 30th percentile of full-time salaried employees in the Northeast. Numerous commenters from the business community stated that the threshold was too high; at the same time, comments from many individuals and labor organizations voiced support for the proposed salary threshold or higher. The Department re-visited the intent of the regulation which was to protect Pennsylvania workers and thus determined the methodology of using the 10th percentile of exempt worker wages in Pennsylvania to determine the salary threshold was the best method to achieve the Department's purpose. Similarly, the use of the federal government's methodology of setting the salary threshold according to the salary data from the Southern region also does not protect Pennsylvania workers since, like the data in the Department's proposed regulation, the data is not reflective of salaries paid to Pennsylvania's workers.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

There are no special provisions for small businesses as the MWA's definition for employer does not distinguish between the size of the business. The final regulation benefits all employees including those who are minorities or elderly.

While this regulation contains no special provisions for farmers, the MWA already exempts labor on a farm from the MWA's minimum wage and overtime protections. 43 P.S. § 333.105(a)(1).

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The initial proposed rulemaking used the 30th percentile of all full-time salaried employees in the Northeast for the salary threshold, or \$47,892. The Department received comments that the proposed salary threshold of \$47,892 was excessive. Several commentators stated that the use of the 30th percentile of salaried individuals in the northeast census region put Pennsylvania in a region with high-wage states such as New York and Massachusetts, and did not consider economic factors specific to Pennsylvania. The Department then considered the intent of the overtime exemption regulation, and revisited past USDOL rulemakings on this topic, including the history of the salary threshold and how it has been set in previous rulemakings. Thus, the salary threshold has been set at the weighted average of 10th percentile exempt occupations in Pennsylvania, or \$45,500, which both fulfills the intent of the regulation while being less burdensome to employers.

USDOL's recent rulemaking set the federal salary threshold at the 20th percentile of salaried workers in the South, or \$35,568. The Department rejects USDOL's methodology in setting Pennsylvania's salary threshold for two reasons. First, the Department uses data based on *exempt* full-time workers, rather than USDOL's methodology of using data based on *all* full-time workers. In addition, the Department believes that using salary data for only exempt classifications rather than all classifications more accurately sets a threshold for workers to qualify for an EAP exemption. The setting of the salary threshold "at the lower end of the range of salaries" for exempt occupations cannot be accurately carried out if the data used to determine a lower range includes data on all salaries. During the Department's review of 800 Standard Occupational Classification codes, 300 were deemed to have duties that meet the definition of exempt, while 500 were deemed to be potentially non-exempt. Further, exempt occupations, especially the "executive" category, employ fewer people than non-exempt occupations, as non-management employees generally outnumber management employees in most establishments. Therefore, including data on all salaried employees will dilute the data set, providing a skewed lower end of the range of salaries than would be provided by considering only data on exempt occupations.

Second, the Department uses wage information that is specific to Pennsylvania to determine the salary threshold, rather than USDOL's methodology of setting the threshold using the 20th percentile of workers in the nation's lowest wage region. USDOL's use of income percentile in the lowest wage region ensures the federal salary threshold meets the intent of the salary level test nationwide; that is, that the threshold, even if used in the lowest wage areas of the country, would be highly unlikely to include actual executive, administrative, and professional employees. However, the use of USDOL's threshold in Pennsylvania does not allow the Commonwealth to fulfill the intent of the salary level test, as it is not indicative of the wages paid to exempt Pennsylvania workers.

The Department proposed to eliminate the use of the short and long duties test in the proposed rulemaking; however, the definitions proposed still differed from the federal definitions. The business community expressed confusion in understanding the differences between Pennsylvania's duties test and the federal duties test. The Department considered this feedback, reviewed the federal definitions, and has updated its final regulation to more closely align Pennsylvania's duties test with the federal duties test.

The Department proposed allowing up to 10 percent of the salary threshold to be met through discretionary bonus or incentive payments, paid no less than quarterly. Some commenters wrote that the payment of bonuses on a quarterly is cumbersome to employers and does not align with current business practices. The Department has changed this payment to a no less than an annual payment.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
 - b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
 - c) The consolidation or simplification of compliance or reporting requirements for small businesses;
 - d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
 - e) The exemption of small businesses from all or any part of the requirements contained in the regulation.
- a) The establishment of less stringent compliance or reporting requirements for small businesses;

The proposed regulation does not require the regulated community to complete any additional forms or reports. However, the regulation may affect an employer's recordkeeping requirements depending on how it chooses to address employees who are not paid the proposed minimum salary threshold.

Generally, employers must maintain records of an employee's full name, home address, hourly rate of pay, occupation, time and day of the workweek's beginning, number of hours worked daily and weekly, total wages due for hours worked during the workweek, overtime compensation for the workweek, additions to or deductions from wages, allowances, total wages paid each pay period, date of payment and pay period covered, and any special certificates for students and learners. 34 Pa. Code § 231.31. The regulations contain an exception to certain recordkeeping requirements for EAP exempt employees. For EAP exempt employees, employers do not have to maintain record of the regular hourly rate of pay, time and day of the workweek's beginning, number of hours worked daily and weekly, total wages due for hours worked during the workweek, and overtime compensation for the workweek.

As a result, an employer that changes an employee's payment status from salary to hourly will have to maintain additional information for that employee's work arrangement. The employer's inconvenience is minimized since an employer is already required to maintain this information for its hourly employees and should have a system in place to accommodate the new employees it would have to track.

- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

The initial salary threshold is \$684 per week. Effective January 1, 2020, small businesses who engage in any interstate commerce will already be required to comply with USDOL's rule raising their EAP salary thresholds to that amount. As such, the Department's rulemaking has no effect on these businesses. This rulemaking does not raise the salary threshold past USDOL's amount for one year after publication in the *Pennsylvania Bulletin*. The one-year implementation period provides small business with enough time to comply. The Department will conduct outreach sessions before the higher threshold goes into effect and will publish educational information on its website.

- c) The consolidation or simplification of compliance or reporting requirements for small businesses;

The final-form regulation does not require regulated entities to complete any additional forms or reports.

- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation;

Not applicable

- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The MWA does not exempt businesses from the minimum wage or overtime based on employer size.

28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Regarding the Estimated Number of Impacted Workers:

According to the Economic Policy Institute (EPI), 61,000 Pennsylvanian workers will be directly affected by the overtime protections under the 2019 USDOL EAP Overtime Exemptions rule.

95,000 Pennsylvanian workers will be directly affected by overtime protections under a Pennsylvania EAP overtime salary threshold of \$780 per week, or \$40,560 per year; of that 95,000, 34,000 workers make more than \$35,568 per year but less than \$40,560 per year.

143,000 Pennsylvanian workers will be directly affected by overtime protections under a Pennsylvania EAP overtime salary threshold of \$875 per week, or \$45,500 per year; of that 143,000, 82,000 workers make more than \$35,568 per year but less than \$45,500 per year.

EPI data is based on an analysis of pooled Current Population Survey Outgoing Rotation Group microdata, 2016-2018, following the methodology used in the USDOL's 2019 final rule. Pennsylvania does not have access to this data; however, the number of affected workers aligned with CWIA's projection of affected workers. In addition, the use of CPS data provides demographics information such as gender, ethnicity, and occupation and industry distribution of affected workers.

Regarding the Proposed Salary Threshold

The Department utilizes Occupational Employment Statistics (OES) survey data to determine the weighted average 10th percentile wage of all exempt occupations. The Occupational Employment Statistics (OES) survey is a semi-annual survey measuring employment and wage rates for more than 800 occupational classifications for wage and salary workers in nonfarm establishments throughout the nation. OES is a cooperative effort between the Bureau of Labor Statistics (BLS) and the State Workforce Agencies (SWAs). BLS funds the survey and provides the procedures and technical support, while the SWAs collect most of the data. OES estimates are constructed from a sample of about 1.2 million establishments nationally (about 45,000 in Pennsylvania) over a three-year period. Responses are obtained by mail, Internet or other electronic means, email, telephone, or personal visit.

While the OES data does not delineate who is a salary worker versus hourly worker, it is specific to Pennsylvania. Further, the Department's labor market information bureau, the Center for Workforce Information and Analysis (CWIA), looked at more than 800 Standard Occupational Classification (SOC) titles and determined that roughly 300 SOC titles have job duties that reasonably fall into the exempt executive, administrative, and professional categories.

Using Pennsylvania's Occupational Employment Statistics (OES) data for 2018, the most recent year for which this data is available, CWIA identified the employment volume and 10th percentile wage for each exempt occupation. The 10th percentile wage was multiplied by total employment to create a weighted 10th percentile wage for each exempt occupation. CWIA then aggregated total employment across all exempt occupations, aggregated weighted 10th percentile wages for total weighted 10th percentile wage across all exempt occupations, and divided the aggregated weighted 10th percentile wage by aggregated employment to determine the average 10th percentile wage of all exempt workers, which is \$45,533.

A spreadsheet including the 800 exempt and non-exempt occupations has been included with this submission, and includes the 10th percentile wage for each occupation.

Regarding Cost Estimates to Employers

The Department reviewed USDOL's methodology for calculating cost to employers regarding initial compliance and developed a parallel methodology using Pennsylvania-specific data whenever possible. For instance, in measures that uses the median salary for a specific occupation nation-wide, the Department has used the median salary for that occupation in Pennsylvania (Section VI.D.iii.2 of the USDOL regulation states that it assumed the median adjusted wage of a mid-level human resource worker to be \$43.38, however, in Section VI.D.iii.3 they refer to the same number (\$43.38) as the "average" adjusted wage of a mid-level human resource worker).

The regulatory familiarization cost to the regulated community in Pennsylvania is based on a median hourly wage of \$30.19 for a human resources specialist in Pennsylvania plus benefits cost equaling 46%

base salary plus overhead cost at 17% base salary multiplied by 1 hour multiplied by the total number of establishments in Pennsylvania, 282,911.

The adjustment cost to the regulated community in Pennsylvania is based on a median hourly wage of \$30.19 for a human resources specialist in Pennsylvania plus benefits cost equaling 46% base salary plus overhead cost at 17% base salary multiplied by 1.25 hours multiplied by the total number of affected workers in Year 1 (FY 2020-2021) of the phased-in salary threshold, 34,000. This calculation was replicated for FY 2021-2022 when 48,000 will be affected by the second phase of the threshold increase. The managerial cost to the regulated community in Pennsylvania is based on a median hourly wage of \$30.19 for a human resources specialist in Pennsylvania plus benefits cost equaling 46% plus overhead cost at 17% base salary multiplied that by 8.67 hours (the additional time—10 minutes per week per worker—spent annually by a manager to schedule and monitor each affected worker expected to be reclassified as nonexempt, overtime eligible because of the rule and whose hours are adjusted) and multiplied by the number of affected workers in FY 2021(7,956) determined by multiplying the number of affected workers by a constant developed through CWIA and EPI analysis. While USDOL used the median salary of a manager for this calculation, it is more likely that such managerial monitoring and scheduling would be done by a front-line supervisor such as a mid-level human resource professional. For this reason, the wage cost for each of the total direct costs is the same.

Using the USDOL estimates of payroll cost of compliance from the 2016 rule and the 2019 rule, the Department calculated estimates of the average payroll cost of compliance per worker in Pennsylvania with lower and upper bounds proportionate to the 2019 and 2016 rule averages, respectively. To come up with an average payroll cost of compliance for the federal overtime rule, the Department divided the estimated overtime payroll cost calculated in the final regulation by the total number of workers affected by the regulation, using the same method for both 2019 and 2016 since both rules used the same methodology. A ratio was generated of the new Pennsylvania threshold and the 2019 and 2016 federal thresholds to generate an approximation lower (2019) and upper (2016) bounds of the average payroll cost per affected worker in Pennsylvania.

Regarding the Estimated Economic Benefit to Pennsylvania

IMPLAN modeling was used to estimate the economic effects this regulation would have on Pennsylvania. IMPLAN is economic analysis system that analyzes inter-industry supply chains and linkages at the nation, state and county level using input-output accounting (I-O). The system is designed to assess the effects of a real or hypothetical economic event in a region. An economic event is a condition or initiative that increases or declines economic activity in a region as measured in output (sales), income, employment and taxes. Economic activity may be the creation or loss of jobs from a business opening or closing, or the increase or reduction of capital spending by a government grant or policy, or the setting up of a business incubator, to name a few examples.

(29) Include a schedule for review of the regulation including:

A. The length of the public comment period: 60 days

B. The date or dates on which any public meetings or hearings will be held:

For the proposed rulemaking, a meeting was held with the Minimum Wage Advisory Board on January 10, 2018. The

House held a hearing on September 5, 2018. The Department held stakeholder roundtable meetings on May 21, May 22, May 28, May 29, June 4, June 5 and June 6, 2019.

C. The expected date of delivery of the final-form regulation: October 17, 2019

D. The expected effective date of the final-form regulation: Date of publication in the *Pennsylvania Bulletin*.

E. The expected date by which compliance with the final-form regulation will be required: Date of publication in the *Pennsylvania Bulletin*.

F. The expected date by which required permits, licenses or other approvals must be obtained: Not applicable.

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department will closely review the overtime complaints it receives concerning the EAP exemptions for any unintended consequences and for any trends in misapplication. Also, the Department will conduct outreach and educational sessions after publication of the final rulemaking in the *Pennsylvania Bulletin*. During this outreach and educational sessions, the Department will solicit comments on the regulation and keep track of common themes or issues.

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|--|----------------------|-----------------------------|
| 00-0000 | Total, All Occupations | \$19,480 | N/A |
| 11-1011 | Chief Executives | \$110,300 | Exempt |
| 11-1021 | General & Operations Managers | \$52,970 | Exempt |
| 11-1031 | Legislators | NR | Exempt |
| 11-2011 | Advertising & Promotions Managers | \$52,760 | Exempt |
| 11-2021 | Marketing Managers | \$83,620 | Exempt |
| 11-2022 | Sales Managers | \$71,510 | Exempt |
| 11-2031 | Public Relations & Fundraising Managers | \$66,590 | Exempt |
| 11-3011 | Administrative Services Managers | \$65,060 | Exempt |
| 11-3021 | Computer & Information Systems Managers | \$90,540 | Exempt |
| 11-3031 | Financial Managers | \$79,120 | Exempt |
| 11-3051 | Industrial Production Managers | \$66,040 | Exempt |
| 11-3061 | Purchasing Managers | \$76,750 | Exempt |
| 11-3071 | Transportation, Storage, & Distribution Managers | \$70,050 | Exempt |
| 11-3111 | Compensation & Benefits Managers | \$80,810 | Exempt |
| 11-3121 | Human Resources Managers | \$74,560 | Exempt |
| 11-3131 | Training & Development Managers | \$71,560 | Exempt |
| 11-9013 | Farmers, Ranchers, & Other Agricultural Managers | \$60,000 | Exempt |
| 11-9021 | Construction Managers | \$53,510 | Exempt |
| 11-9031 | Education Administrators, Preschool & Childcare Center/Program | \$32,320 | Exempt |
| 11-9032 | Education Administrators, Elementary & Secondary School | \$67,040 | Exempt |
| 11-9033 | Education Administrators, Postsecondary | \$55,420 | Exempt |
| 11-9039 | Education Administrators, All Other | \$45,430 | Exempt |
| 11-9041 | Architectural & Engineering Managers | \$95,790 | Exempt |
| 11-9051 | Food Service Managers | \$40,250 | Exempt |
| 11-9061 | Funeral Directors | \$65,520 | Exempt |
| 11-9071 | Gaming Managers | \$57,800 | Exempt |
| 11-9081 | Lodging Managers | \$36,600 | Exempt |
| 11-9111 | Medical & Health Services Managers | \$53,360 | Exempt |
| 11-9121 | Natural Sciences Managers | \$59,080 | Exempt |
| 11-9131 | Postmasters & Mail Superintendents | \$65,910 | Exempt |
| 11-9141 | Property, Real Estate, & Community Association Managers | \$39,620 | Exempt |
| 11-9151 | Social & Community Service Managers | \$41,790 | Exempt |
| 11-9161 | Emergency Management Directors | \$41,500 | Exempt |
| 11-9199 | Managers, All Other | \$69,650 | Exempt |
| 13-1011 | Agents & Business Managers of Artists, Performers, & Athletes | \$38,670 | Exempt |
| 13-1020 | Buyers & Purchasing Agents (OES Aggregate) | \$40,050 | Exempt |
| 13-1031 | Claims Adjusters, Examiners, & Investigators | \$39,960 | Exempt |
| 13-1032 | Insurance Appraisers, Auto Damage | \$45,390 | Exempt |
| 13-1041 | Compliance Officers | \$39,650 | Exempt |
| 13-1051 | Cost Estimators | \$41,460 | Exempt |
| 13-1071 | Human Resources Specialists | \$39,000 | Exempt |
| 13-1075 | Labor Relations Specialists | \$23,800 | Exempt |
| 13-1081 | Logisticians | \$52,320 | Exempt |
| 13-1111 | Management Analysts | \$51,060 | Exempt |
| 13-1121 | Meeting, Convention, & Event Planners | \$26,240 | Exempt |
| 13-1131 | Fundraisers | \$36,050 | Exempt |
| 13-1141 | Compensation, Benefits, & Job Analysis Specialists | \$43,510 | Exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|--|----------------------|-----------------------------|
| 13-1151 | Training & Development Specialists | \$36,060 | Exempt |
| 13-1161 | Market Research Analysts & Marketing Specialists | \$35,000 | Exempt |
| 13-1199 | Business Operations Specialists, All Other | \$46,090 | Exempt |
| 13-2011 | Accountants & Auditors | \$43,920 | Exempt |
| 13-2021 | Appraisers & Assessors of Real Estate | \$30,140 | Exempt |
| 13-2031 | Budget Analysts | \$50,440 | Exempt |
| 13-2041 | Credit Analysts | \$48,440 | Exempt |
| 13-2051 | Financial Analysts | \$50,990 | Exempt |
| 13-2052 | Personal Financial Advisors | \$43,390 | Exempt |
| 13-2053 | Insurance Underwriters | \$43,800 | Exempt |
| 13-2061 | Financial Examiners | \$52,320 | Exempt |
| 13-2071 | Credit Counselors | \$35,240 | Exempt |
| 13-2072 | Loan Officers | \$34,520 | Exempt |
| 13-2081 | Tax Examiners & Collectors, & Revenue Agents | \$17,330 | Exempt |
| 13-2082 | Tax Preparers | \$19,100 | Non-exempt |
| 13-2099 | Financial Specialists, All Other | \$42,300 | Exempt |
| 15-1111 | Computer & Information Research Scientists | \$65,940 | Exempt |
| 15-1121 | Computer Systems Analysts | \$55,320 | Exempt |
| 15-1122 | Information Security Analysts | \$60,010 | Exempt |
| 15-1131 | Computer Programmers | \$51,440 | Exempt |
| 15-1132 | Software Developers, Applications | \$59,320 | Exempt |
| 15-1133 | Software Developers, Systems Software | \$65,890 | Exempt |
| 15-1134 | Web Developers | \$39,580 | Exempt |
| 15-1141 | Database Administrators | \$48,580 | Exempt |
| 15-1142 | Network & Computer Systems Administrators | \$49,210 | Exempt |
| 15-1143 | Computer Network Architects | \$60,350 | Exempt |
| 15-1151 | Computer User Support Specialists | \$32,670 | Exempt |
| 15-1152 | Computer Network Support Specialists | \$38,590 | Exempt |
| 15-1199 | Computer Occupations, All Other | \$47,050 | Exempt |
| 15-2011 | Actuaries | \$65,640 | Exempt |
| 15-2021 | Mathematicians | \$50,260 | Exempt |
| 15-2031 | Operations Research Analysts | \$52,000 | Exempt |
| 15-2041 | Statisticians | \$46,270 | Exempt |
| 15-2090 | Miscellaneous Mathematical Science (OES Aggregate) | NR | Exempt |
| 17-1011 | Architects, Except Landscape & Naval | \$46,020 | Exempt |
| 17-1012 | Landscape Architects | \$40,340 | Exempt |
| 17-1021 | Cartographers & Photogrammetrists | \$42,800 | Exempt |
| 17-1022 | Surveyors | \$34,920 | Exempt |
| 17-2011 | Aerospace Engineers | \$70,710 | Exempt |
| 17-2021 | Agricultural Engineers | \$54,310 | Exempt |
| 17-2031 | Biomedical Engineers | \$41,840 | Exempt |
| 17-2041 | Chemical Engineers | \$64,530 | Exempt |
| 17-2051 | Civil Engineers | \$54,330 | Exempt |
| 17-2061 | Computer Hardware Engineers | \$65,030 | Exempt |
| 17-2071 | Electrical Engineers | \$58,950 | Exempt |
| 17-2072 | Electronics Engineers, Except Computer | \$58,850 | Exempt |
| 17-2081 | Environmental Engineers | \$55,870 | Exempt |
| 17-2111 | Health & Safety Engineers, Except Mining Safety Engineers & Inspectors | \$63,990 | Exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|--|----------------------|-----------------------------|
| 17-2112 | Industrial Engineers | \$56,780 | Exempt |
| 17-2121 | Marine Engineers & Naval Architects | NR | Exempt |
| 17-2131 | Materials Engineers | \$54,640 | Exempt |
| 17-2141 | Mechanical Engineers | \$54,250 | Exempt |
| 17-2151 | Mining & Geological Engineers, Including Mining Safety Engineers | \$62,870 | Exempt |
| 17-2161 | Nuclear Engineers | \$80,780 | Exempt |
| 17-2171 | Petroleum Engineers | \$71,850 | Exempt |
| 17-2199 | Engineers, All Other | \$55,240 | Exempt |
| 17-3011 | Architectural & Civil Drafters | \$33,330 | Non-exempt |
| 17-3012 | Electrical & Electronics Drafters | \$39,190 | Non-exempt |
| 17-3013 | Mechanical Drafters | \$34,430 | Non-exempt |
| 17-3019 | Drafters, All Other | \$34,500 | Non-exempt |
| 17-3021 | Aerospace Engineering & Operations Technicians | NR | Non-exempt |
| 17-3022 | Civil Engineering Technicians | \$35,850 | Non-exempt |
| 17-3023 | Electrical & Electronics Engineering Technicians | \$33,190 | Non-exempt |
| 17-3024 | Electro-Mechanical Technicians | \$32,060 | Non-exempt |
| 17-3025 | Environmental Engineering Technicians | \$29,200 | Non-exempt |
| 17-3026 | Industrial Engineering Technicians | \$35,550 | Non-exempt |
| 17-3027 | Mechanical Engineering Technicians | \$34,460 | Non-exempt |
| 17-3029 | Engineering Technicians, Except Drafters, All Other | \$33,270 | Non-exempt |
| 17-3031 | Surveying & Mapping Technicians | \$27,580 | Non-exempt |
| 19-1011 | Animal Scientists | \$28,390 | Exempt |
| 19-1012 | Food Scientists & Technologists | \$46,130 | Exempt |
| 19-1013 | Soil & Plant Scientists | \$37,340 | Exempt |
| 19-1021 | Biochemists & Biophysicists | \$53,770 | Exempt |
| 19-1022 | Microbiologists | \$50,250 | Exempt |
| 19-1023 | Zoologists & Wildlife Biologists | \$44,160 | Exempt |
| 19-1029 | Biological Scientists, All Other | \$43,260 | Exempt |
| 19-1031 | Conservation Scientists | \$29,650 | Exempt |
| 19-1032 | Foresters | \$38,800 | Exempt |
| 19-1041 | Epidemiologists | \$42,300 | Exempt |
| 19-1042 | Medical Scientists | \$59,890 | Exempt |
| 19-1099 | Life Scientists, All Other | \$52,890 | Exempt |
| 19-2011 | Astronomers | | Exempt |
| 19-2012 | Physicists | \$56,080 | Exempt |
| 19-2021 | Atmospheric & Space Scientists | \$73,590 | Exempt |
| 19-2031 | Chemists | \$40,670 | Exempt |
| 19-2032 | Materials Scientists | \$62,290 | Exempt |
| 19-2041 | Environmental Scientists & Specialists | \$43,940 | Exempt |
| 19-2042 | Geoscientists | \$52,420 | Exempt |
| 19-2043 | Hydrologists | NR | Exempt |
| 19-2099 | Physical Scientists, All Other | \$75,270 | Exempt |
| 19-3011 | Economists | \$47,440 | Exempt |
| 19-3022 | Survey Researchers | \$30,970 | Exempt |
| 19-3031 | Clinical, Counseling, & School Psychologists | \$48,320 | Exempt |
| 19-3032 | Industrial-Organizational Psychologists | \$45,950 | Exempt |
| 19-3039 | Psychologists, All Other | \$43,020 | Exempt |
| 19-3041 | Sociologists | \$66,170 | Exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|---|----------------------|-----------------------------|
| 19-3051 | Urban & Regional Planners | \$40,610 | Exempt |
| 19-3091 | Anthropologists & Archeologists | \$38,450 | Exempt |
| 19-3092 | Geographers | \$38,810 | Exempt |
| 19-3093 | Historians | \$36,350 | Exempt |
| 19-3094 | Political Scientists | \$53,060 | Exempt |
| 19-3099 | Social Scientists & Related Workers, All Other | \$59,800 | Exempt |
| 19-4011 | Agricultural & Food Science Technicians | \$27,570 | Non-exempt |
| 19-4021 | Biological Technicians | \$30,800 | Non-exempt |
| 19-4031 | Chemical Technicians | \$29,230 | Non-exempt |
| 19-4041 | Geological & Petroleum Technicians | \$26,540 | Non-exempt |
| 19-4051 | Nuclear Technicians | \$69,950 | Non-exempt |
| 19-4061 | Social Science Research Assistants | \$28,160 | Non-exempt |
| 19-4091 | Environmental Science & Protection Technicians | \$27,970 | Non-exempt |
| 19-4092 | Forensic Science Technicians | \$33,310 | Non-exempt |
| 19-4093 | Forest & Conservation Technicians | \$33,220 | Non-exempt |
| 19-4099 | Life, Physical, & Social Science Technicians, All Other | \$29,960 | Non-exempt |
| 21-1012 | Educational, Guidance, School, & Vocational Counselors | \$34,100 | Exempt |
| 21-1013 | Marriage & Family Therapists | \$34,930 | Exempt |
| 21-1015 | Rehabilitation Counselors | \$23,590 | Exempt |
| 21-1018 | Substance Abuse, Behavioral Disorder & Mental Health Counselors (OES Aggregate) | \$29,140 | Exempt |
| 21-1019 | Counselors, All Other | \$34,840 | Exempt |
| 21-1021 | Child, Family, & School Social Workers | \$28,330 | Exempt |
| 21-1022 | Healthcare Social Workers | \$35,050 | Exempt |
| 21-1023 | Mental Health & Substance Abuse Social Workers | \$25,910 | Exempt |
| 21-1029 | Social Workers, All Other | \$39,550 | Exempt |
| 21-1091 | Health Educators | \$34,090 | Exempt |
| 21-1092 | Probation Officers & Correctional Treatment Specialists | \$38,790 | Exempt |
| 21-1093 | Social & Human Service Assistants | \$24,020 | Non-exempt |
| 21-1094 | Community Health Workers | \$27,530 | Non-exempt |
| 21-1099 | Community & Social Service Specialists, Other | \$24,170 | Exempt |
| 21-2011 | Clergy | \$23,960 | Exempt |
| 21-2021 | Directors, Religious Activities & Education | \$17,480 | Exempt |
| 21-2099 | Religious Workers, All Other | \$16,830 | Exempt |
| 23-1011 | Lawyers | \$53,980 | Exempt |
| 23-1012 | Judicial Law Clerks | \$26,750 | Exempt |
| 23-1021 | Administrative Law Judges, Adjudicators, & Hearing Officers | \$47,800 | Exempt |
| 23-1022 | Arbitrators, Mediators, & Conciliators | \$35,950 | Exempt |
| 23-1023 | Judges, Magistrate Judges, & Magistrates | \$43,410 | Exempt |
| 23-2011 | Paralegals & Legal Assistants | \$30,860 | Non-exempt |
| 23-2091 | Court Reporters | \$29,800 | Non-exempt |
| 23-2093 | Title Examiners, Abstractors, & Searchers | \$26,970 | Non-exempt |
| 23-2099 | Legal Support Workers, All Other | \$39,470 | Non-exempt |
| 25-1011 | Business Teachers, Postsecondary | \$31,530 | Exempt |
| 25-1021 | Computer Science Teachers, Postsecondary | \$36,250 | Exempt |
| 25-1022 | Mathematical Science Teachers, Postsecondary | \$35,710 | Exempt |
| 25-1031 | Architecture Teachers, Postsecondary | NR | Exempt |
| 25-1032 | Engineering Teachers, Postsecondary | \$39,860 | Exempt |
| 25-1041 | Agricultural Sciences Teachers, Postsecondary | \$56,680 | Exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|---|----------------------|-----------------------------|
| 25-1042 | Biological Science Teachers, Postsecondary | \$41,010 | Exempt |
| 25-1043 | Forestry & Conservation Science Teachers, Postsecondary | \$57,580 | Exempt |
| 25-1051 | Earth/Marine/Space Sciences Teachers, Postsecondary | \$40,500 | Exempt |
| 25-1052 | Chemistry Teachers, Postsecondary | \$42,040 | Exempt |
| 25-1053 | Environmental Science Teachers, Postsecondary | \$46,410 | Exempt |
| 25-1054 | Physics Teachers, Postsecondary | \$43,160 | Exempt |
| 25-1061 | Anthropology & Archeology Teachers, Postsecondary | \$48,270 | Exempt |
| 25-1062 | Area, Ethnic & Cultural Teachers, Postsecondary | \$37,900 | Exempt |
| 25-1063 | Economics Teachers, Postsecondary | \$51,350 | Exempt |
| 25-1064 | Geography Teachers, Postsecondary | \$39,010 | Exempt |
| 25-1065 | Political Science Teachers, Postsecondary | \$40,530 | Exempt |
| 25-1066 | Psychology Teachers, Postsecondary | \$38,440 | Exempt |
| 25-1067 | Sociology Teachers, Postsecondary | \$37,500 | Exempt |
| 25-1069 | Social Sciences Teachers, Postsecondary | \$34,180 | Exempt |
| 25-1071 | Health Specialties Teachers, Postsecondary | \$33,640 | Exempt |
| 25-1072 | Nursing Instructors & Teachers, Postsecondary | \$39,370 | Exempt |
| 25-1081 | Education Teachers, Postsecondary | \$27,540 | Exempt |
| 25-1082 | Library Science Teachers, Postsecondary | \$43,760 | Exempt |
| 25-1111 | Criminal Justice & Law Enforcement Teachers, Postsecondary | \$37,160 | Exempt |
| 25-1112 | Law Teachers, Postsecondary | \$18,650 | Exempt |
| 25-1113 | Social Work Teachers, Postsecondary | \$19,370 | Exempt |
| 25-1121 | Art, Drama & Music Teachers, Postsecondary | \$33,800 | Exempt |
| 25-1122 | Communications Teachers, Postsecondary | \$36,140 | Exempt |
| 25-1123 | English Language & Literature Teachers, Postsecondary | \$34,350 | Exempt |
| 25-1124 | Foreign Language & Literature Teachers, Postsecondary | \$34,920 | Exempt |
| 25-1125 | History Teachers, Postsecondary | \$39,210 | Exempt |
| 25-1126 | Philosophy & Religion Teachers, Postsecondary | \$39,140 | Exempt |
| 25-1191 | Graduate Teaching Assistants | \$20,260 | Non-exempt |
| 25-1192 | Home Economics Teachers, Postsecondary | NR | Exempt |
| 25-1193 | Recreation & Fitness Teachers, Postsecondary | \$33,710 | Exempt |
| 25-1194 | Vocational Education Teachers, Postsecondary | \$32,420 | Exempt |
| 25-1199 | Postsecondary Teachers, Other | NR | Exempt |
| 25-2011 | Preschool Teachers | \$19,730 | Non-exempt |
| 25-2012 | Kindergarten Teachers | \$35,930 | Exempt |
| 25-2021 | Elementary School Teachers | \$41,820 | Exempt |
| 25-2022 | Middle School Teachers | \$37,560 | Exempt |
| 25-2023 | Career/Technical Education Teachers, Middle School | \$50,230 | Exempt |
| 25-2031 | Secondary School Teachers | \$41,340 | Exempt |
| 25-2032 | Career/Technical Education Teachers, Secondary School | \$42,540 | Exempt |
| 25-2051 | Special Education Teachers, Preschool | \$36,220 | Exempt |
| 25-2052 | Special Education Teachers, Kindergarten & Elementary School | \$42,530 | Exempt |
| 25-2053 | Special Education Teachers, Middle School | \$42,830 | Exempt |
| 25-2054 | Special Education Teachers, Secondary School | \$41,490 | Exempt |
| 25-2059 | Special Education Teachers, All Other | \$52,510 | Exempt |
| 25-3011 | Adult Basic & Secondary Education & Literacy Teachers & Instructors | \$34,100 | Exempt |
| 25-3021 | Self-Enrichment Education Teachers | \$18,630 | Non-exempt |
| 25-3097 | Substitute Teachers | \$18,590 | Non-exempt |
| 25-3098 | Teachers & Instructors, All Other | \$18,880 | Exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|--|----------------------|-----------------------------|
| 25-4011 | Archivists | \$25,910 | Exempt |
| 25-4012 | Curators | \$20,090 | Exempt |
| 25-4013 | Museum Technicians & Conservators | \$23,870 | Exempt |
| 25-4021 | Librarians | \$30,750 | Exempt |
| 25-4031 | Library Technicians | \$19,540 | Non-exempt |
| 25-9011 | Audio-Visual & Multimedia Collections Specialists | \$32,400 | Exempt |
| 25-9021 | Farm & Home Management Advisors | \$40,900 | Exempt |
| 25-9031 | Instructional Coordinators | \$37,870 | Exempt |
| 25-9041 | Teacher Assistants | \$17,700 | Non-exempt |
| 25-9099 | Education, Training, & Library Workers, All Other | \$20,370 | Exempt |
| 27-1011 | Art Directors | \$51,230 | Exempt |
| 27-1012 | Craft Artists | NR | Non-exempt |
| 27-1013 | Fine Artists | NR | Exempt |
| 27-1014 | Multimedia Artists & Animators | \$37,440 | Exempt |
| 27-1019 | Artists & Related Workers, All Other | \$33,310 | Non-exempt |
| 27-1021 | Commercial & Industrial Designers | \$41,510 | Exempt |
| 27-1022 | Fashion Designers | \$26,620 | Exempt |
| 27-1023 | Floral Designers | \$18,460 | Non-exempt |
| 27-1024 | Graphic Designers | \$28,660 | Exempt |
| 27-1025 | Interior Designers | \$32,690 | Exempt |
| 27-1026 | Merchandise Displayers & Window Trimmers | \$17,630 | Non-exempt |
| 27-1027 | Set & Exhibit Designers | \$26,200 | Exempt |
| 27-1029 | Designers, All Other | \$22,990 | Exempt |
| 27-2011 | Actors | | Non-exempt |
| 27-2012 | Producers & Directors | \$33,470 | Exempt |
| 27-2021 | Athletes & Sports Competitors | \$17,310 | Exempt |
| 27-2022 | Coaches & Scouts | \$17,200 | Exempt |
| 27-2023 | Umpires, Referees, & Other Sports Officials | \$18,000 | Non-exempt |
| 27-2031 | Dancers | | Non-exempt |
| 27-2032 | Choreographers | \$24,140 | Non-exempt |
| 27-2041 | Music Directors & Composers | \$17,770 | Exempt |
| 27-2042 | Musicians & Singers | | Non-exempt |
| 27-2099 | Entertainers & Performers, Sports & Related Workers, All Other | NR | Non-exempt |
| 27-3011 | Radio & Television Announcers | \$17,210 | Exempt |
| 27-3012 | Public Address System & Other Announcers | \$18,630 | Non-exempt |
| 27-3021 | Broadcast News Analysts | NR | Exempt |
| 27-3022 | Reporters & Correspondents | \$21,600 | Exempt |
| 27-3031 | Public Relations Specialists | \$31,500 | Exempt |
| 27-3041 | Editors | \$30,540 | Exempt |
| 27-3042 | Technical Writers | \$41,550 | Exempt |
| 27-3043 | Writers & Authors | \$29,820 | Exempt |
| 27-3091 | Interpreters & Translators | \$31,210 | Exempt |
| 27-3099 | Media & Communication Workers, All Other | \$22,440 | Non-exempt |
| 27-4011 | Audio & Video Equipment Technicians | \$25,190 | Non-exempt |
| 27-4012 | Broadcast Technicians | \$17,660 | Non-exempt |
| 27-4013 | Radio Operators | NR | Non-exempt |
| 27-4014 | Sound Engineering Technicians | \$21,700 | Non-exempt |
| 27-4021 | Photographers | \$17,520 | Non-exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR Indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|---|----------------------|-----------------------------|
| 27-4031 | Camera Operators, Television, Video, & Motion Picture | \$18,360 | Exempt |
| 27-4032 | Film & Video Editors | \$32,510 | Exempt |
| 27-4099 | Media & Communication Equipment Workers, All Other | \$54,630 | Non-exempt |
| 29-1011 | Chiropractors | \$24,260 | Exempt |
| 29-1021 | Dentists, General | \$63,850 | Exempt |
| 29-1022 | Oral & Maxillofacial Surgeons | \$57,910 | Exempt |
| 29-1023 | Orthodontists | \$160,650 | Exempt |
| 29-1024 | Prosthodontists | | Exempt |
| 29-1029 | Dentists, All Other Specialists | \$61,000 | Exempt |
| 29-1031 | Dietitians & Nutritionists | \$34,860 | Exempt |
| 29-1041 | Optometrists | \$58,980 | Exempt |
| 29-1051 | Pharmacists | \$72,670 | Exempt |
| 29-1061 | Anesthesiologists | \$162,380 | Exempt |
| 29-1062 | Family & General Practitioners | \$95,370 | Exempt |
| 29-1063 | Internists, General | \$63,690 | Exempt |
| 29-1064 | Obstetricians & Gynecologists | \$91,300 | Exempt |
| 29-1065 | Pediatricians, General | \$92,920 | Exempt |
| 29-1066 | Psychiatrists | \$92,810 | Exempt |
| 29-1067 | Surgeons | \$109,790 | Exempt |
| 29-1069 | Physicians & Surgeons, Other | \$57,230 | Exempt |
| 29-1071 | Physician Assistants | \$67,580 | Exempt |
| 29-1081 | Podiatrists | \$45,690 | Exempt |
| 29-1122 | Occupational Therapists | \$54,330 | Exempt |
| 29-1123 | Physical Therapists | \$57,240 | Exempt |
| 29-1124 | Radiation Therapists | \$56,330 | Non-exempt |
| 29-1125 | Recreational Therapists | \$24,160 | Exempt |
| 29-1126 | Respiratory Therapists | \$41,950 | Non-exempt |
| 29-1127 | Speech-Language Pathologists | \$52,040 | Exempt |
| 29-1128 | Therapists, All Other | \$32,060 | Exempt |
| 29-1129 | Therapists, Other | \$34,020 | Exempt |
| 29-1131 | Veterinarians | \$56,210 | Exempt |
| 29-1141 | Registered Nurses | \$51,950 | Exempt |
| 29-1151 | Nurse Anesthetists | \$121,470 | Exempt |
| 29-1161 | Nurse Midwives | \$64,830 | Exempt |
| 29-1171 | Nurse Practitioners | \$66,920 | Exempt |
| 29-1181 | Audiologists | \$54,860 | Exempt |
| 29-1199 | Health Diagnosing & Treating Practitioners, All Other | \$51,690 | Exempt |
| 29-2010 | Clinical Laboratory Technologists & Technicians (OES Aggregate) | \$30,650 | Non-exempt |
| 29-2021 | Dental Hygienists | \$50,610 | Non-exempt |
| 29-2031 | Cardiovascular Technologists & Technicians | \$31,540 | Non-exempt |
| 29-2032 | Diagnostic Medical Sonographers | \$48,400 | Non-exempt |
| 29-2033 | Nuclear Medicine Technologists | \$52,130 | Non-exempt |
| 29-2034 | Radiologic Technologists & Technicians | \$36,920 | Non-exempt |
| 29-2035 | Magnetic Resonance Imaging Technologists | \$45,980 | Non-exempt |
| 29-2041 | Emergency Medical Technicians & Paramedics | \$21,180 | Non-exempt |
| 29-2051 | Dietetic Technicians | \$20,260 | Non-exempt |
| 29-2052 | Pharmacy Technicians | \$20,890 | Non-exempt |
| 29-2053 | Psychiatric Technicians | \$24,010 | Non-exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|---|----------------------|-----------------------------|
| 29-2054 | Respiratory Therapy Technicians | \$28,110 | Non-exempt |
| 29-2055 | Surgical Technologists | \$33,300 | Non-exempt |
| 29-2056 | Veterinary Technologists & Technicians | \$24,720 | Non-exempt |
| 29-2057 | Ophthalmic Medical Technicians | \$23,140 | Non-exempt |
| 29-2061 | Licensed Practical & Licensed Vocational Nurses | \$34,980 | Non-exempt |
| 29-2071 | Medical Records & Health Information Technicians | \$27,210 | Non-exempt |
| 29-2081 | Opticians, Dispensing | \$23,830 | Non-exempt |
| 29-2091 | Orthotists & Prosthetists | \$39,550 | Exempt |
| 29-2092 | Hearing Aid Specialists | \$29,190 | Non-exempt |
| 29-2099 | Health Technologists & Technicians, Other | \$27,760 | Non-exempt |
| 29-9011 | Occupational Health & Safety Specialists | \$41,620 | Exempt |
| 29-9012 | Occupational Health & Safety Technicians | \$33,540 | Non-exempt |
| 29-9091 | Athletic Trainers | \$33,330 | Exempt |
| 29-9092 | Genetic Counselors | \$39,620 | Exempt |
| 29-9099 | Healthcare Practitioner & Technical Workers, Other | \$36,050 | Non-exempt |
| 31-1011 | Home Health Aides | \$20,020 | Non-exempt |
| 31-1013 | Psychiatric Aides | \$23,510 | Non-exempt |
| 31-1014 | Nursing Assistants | \$23,680 | Non-exempt |
| 31-1015 | Orderlies | \$21,920 | Non-exempt |
| 31-2011 | Occupational Therapy Assistants | \$39,710 | Non-exempt |
| 31-2012 | Occupational Therapy Aides | \$22,390 | Non-exempt |
| 31-2021 | Physical Therapist Assistants | \$35,610 | Non-exempt |
| 31-2022 | Physical Therapist Aides | \$19,300 | Non-exempt |
| 31-9011 | Massage Therapists | \$21,350 | Non-exempt |
| 31-9091 | Dental Assistants | \$26,070 | Non-exempt |
| 31-9092 | Medical Assistants | \$24,310 | Non-exempt |
| 31-9093 | Medical Equipment Preparers | \$26,140 | Non-exempt |
| 31-9094 | Medical Transcriptionists | \$21,950 | Non-exempt |
| 31-9095 | Pharmacy Aides | \$17,260 | Non-exempt |
| 31-9096 | Veterinary Assistants & Laboratory Animal Caretakers | \$18,630 | Non-exempt |
| 31-9097 | Phlebotomists | \$26,420 | Non-exempt |
| 31-9099 | Healthcare Support Workers, Other | \$27,450 | Non-exempt |
| 33-1011 | First-Line Supervisors of Correctional Officers | NR | Exempt |
| 33-1012 | First-Line Supervisors of Police & Detectives | \$59,630 | Exempt |
| 33-1021 | First-Line Supervisors of Fire Fighting & Prevention Workers | \$59,370 | Exempt |
| 33-1099 | First-Line Supervisors of Protective Service Workers, All Other | \$28,140 | Exempt |
| 33-2011 | Firefighters | \$30,820 | Non-exempt |
| 33-2021 | Fire Inspectors & Investigators | \$36,320 | Non-exempt |
| 33-2022 | Forest Fire Inspectors & Prevention Specialists | | Non-exempt |
| 33-3011 | Bailiffs | \$17,810 | Non-exempt |
| 33-3012 | Correctional Officers & Jailers | \$38,480 | Non-exempt |
| 33-3021 | Detectives & Criminal Investigators | \$53,820 | Non-exempt |
| 33-3031 | Fish & Game Wardens | NR | Exempt |
| 33-3041 | Parking Enforcement Workers | \$22,680 | Non-exempt |
| 33-3051 | Police & Sheriff's Patrol Officers | \$35,650 | Non-exempt |
| 33-3052 | Transit & Railroad Police | NR | Non-exempt |
| 33-9011 | Animal Control Workers | \$22,060 | Non-exempt |
| 33-9021 | Private Detectives & Investigators | \$29,710 | Non-exempt |

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| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|---|----------------------|-----------------------------|
| 33-9031 | Gaming Surveillance Officers & Gaming Investigators | \$31,510 | Non-exempt |
| 33-9032 | Security Guards | \$18,950 | Non-exempt |
| 33-9091 | Crossing Guards | \$17,040 | Non-exempt |
| 33-9092 | Lifeguards, Ski Patrol, & Other Recreational Protective Service Workers | \$16,550 | Non-exempt |
| 33-9093 | Transportation Security Screeners (Federal Only) | NR | Non-exempt |
| 33-9099 | Protective Service Workers, All Other | \$17,180 | Non-exempt |
| 35-1011 | Chefs & Head Cooks | \$33,660 | Exempt |
| 35-1012 | First-Line Supervisors of Food Preparation & Serving Workers | \$20,800 | Exempt |
| 35-2011 | Cooks, Fast Food | \$16,590 | Non-exempt |
| 35-2012 | Cooks, Institution & Cafeteria | \$20,060 | Non-exempt |
| 35-2013 | Cooks, Private Household | \$21,380 | Non-exempt |
| 35-2014 | Cooks, Restaurant | \$17,730 | Non-exempt |
| 35-2015 | Cooks, Short Order | \$18,700 | Non-exempt |
| 35-2019 | Cooks, All Other | \$17,330 | Non-exempt |
| 35-2021 | Food Preparation Workers | \$17,040 | Non-exempt |
| 35-3011 | Bartenders | \$16,540 | Non-exempt |
| 35-3021 | Combined Food Preparation & Serving Workers, Including Fast Food | \$16,450 | Non-exempt |
| 35-3022 | Counter Attendants, Cafeteria, Food Concession, & Coffee Shop | \$16,570 | Non-exempt |
| 35-3031 | Walters & Waitresses | \$16,870 | Non-exempt |
| 35-3041 | Food Servers, Nonrestaurant | \$16,970 | Non-exempt |
| 35-9011 | Dining Room & Cafeteria Attendants & Bartender Helpers | \$16,480 | Non-exempt |
| 35-9021 | Dishwashers | \$16,680 | Non-exempt |
| 35-9031 | Hosts & Hostesses, Restaurant, Lounge, & Coffee Shop | \$16,710 | Non-exempt |
| 35-9099 | Food Preparation & Serving Related Workers, All Other | \$19,880 | Non-exempt |
| 37-1011 | First-Line Supervisors of Housekeeping & Janitorial Workers | \$26,150 | Exempt |
| 37-1012 | First-Line Supervisors of Landscaping, Lawn Service, & Groundskeeping Workers | \$33,170 | Exempt |
| 37-2011 | Janitors & Cleaners, Except Maids & Housekeeping Cleaners | \$18,310 | Non-exempt |
| 37-2012 | Maids & Housekeeping Cleaners | \$17,170 | Non-exempt |
| 37-2019 | Building Cleaning Workers, All Other | NR | Non-exempt |
| 37-2021 | Pest Control Workers | \$26,590 | Non-exempt |
| 37-3011 | Landscaping & Groundskeeping Workers | \$19,480 | Non-exempt |
| 37-3012 | Pesticide Handlers, Sprayers, & Applicators, Vegetation | \$27,630 | Non-exempt |
| 37-3013 | Tree Trimmers & Pruners | \$18,530 | Non-exempt |
| 37-3019 | Grounds Maintenance Workers, All Other | \$41,670 | Non-exempt |
| 39-1010 | First-Line Supervisors of Gaming Workers (OES Aggregate) | \$22,990 | Exempt |
| 39-1021 | First-Line Supervisors of Personal Service Workers | \$24,920 | Exempt |
| 39-2011 | Animal Trainers | \$17,830 | Non-exempt |
| 39-2021 | Nonfarm Animal Caretakers | \$16,950 | Non-exempt |
| 39-3011 | Gaming Dealers | \$16,330 | Non-exempt |
| 39-3012 | Gaming & Sports Book Writers & Runners | \$18,400 | Non-exempt |
| 39-3019 | Gaming Service Workers, All Other | \$24,780 | Non-exempt |
| 39-3021 | Motion Picture Projectionists | \$16,470 | Non-exempt |
| 39-3031 | Ushers, Lobby Attendants, & Ticket Takers | \$16,400 | Non-exempt |
| 39-3091 | Amusement & Recreation Attendants | \$16,320 | Non-exempt |
| 39-3092 | Costume Attendants | \$21,420 | Non-exempt |
| 39-3093 | Locker Room, Coatroom, & Dressing Room Attendants | \$16,430 | Non-exempt |
| 39-3099 | Entertainment Attendants & Related Workers, All Other | \$17,280 | Non-exempt |
| 39-4011 | Embalmers | NR | Non-exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|--|----------------------|-----------------------------|
| 39-4021 | Funeral Attendants | \$17,500 | Non-exempt |
| 39-4031 | Morticians, Undertakers & Funeral Directors | \$26,420 | Non-exempt |
| 39-5011 | Barbers | \$17,390 | Non-exempt |
| 39-5012 | Hairdressers, Hairstylists, & Cosmetologists | \$16,720 | Non-exempt |
| 39-5091 | Makeup Artists, Theatrical & Performance | \$23,280 | Non-exempt |
| 39-5092 | Manicurists & Pedicurists | \$16,490 | Non-exempt |
| 39-5093 | Shampooers | \$16,380 | Non-exempt |
| 39-5094 | Skincare Specialists | \$19,760 | Non-exempt |
| 39-6011 | Baggage Porters & Bellhops | \$17,350 | Non-exempt |
| 39-6012 | Concierges | \$21,130 | Non-exempt |
| 39-7010 | Tour & Travel Guides (OES Aggregate) | \$17,210 | Non-exempt |
| 39-9011 | Childcare Workers | \$16,840 | Non-exempt |
| 39-9021 | Personal Care Aides | \$19,670 | Non-exempt |
| 39-9031 | Fitness Trainers & Aerobics Instructors | \$18,120 | Non-exempt |
| 39-9032 | Recreation Workers | \$17,080 | Non-exempt |
| 39-9041 | Residential Advisors | \$20,610 | Non-exempt |
| 39-9099 | Personal Care & Service Workers, All Other | \$17,740 | Non-exempt |
| 41-1011 | First-Line Supervisors of Retail Sales Workers | \$25,480 | Exempt |
| 41-1012 | First-Line Supervisors of Non-Retail Sales Workers | \$44,060 | Exempt |
| 41-2011 | Cashiers | \$16,580 | Non-exempt |
| 41-2012 | Gaming Change Persons & Booth Cashiers | \$18,350 | Non-exempt |
| 41-2021 | Counter & Rental Clerks | \$17,320 | Non-exempt |
| 41-2022 | Parts Salespersons | \$20,380 | Non-exempt |
| 41-2031 | Retail Salespersons | \$16,970 | Non-exempt |
| 41-3011 | Advertising Sales Agents | \$26,330 | Non-exempt |
| 41-3021 | Insurance Sales Agents | \$31,980 | Non-exempt |
| 41-3031 | Securities, Commodities, & Financial Services Sales Agents | \$34,240 | Exempt |
| 41-3041 | Travel Agents | \$18,600 | Non-exempt |
| 41-3099 | Sales Representatives, Services, All Other | \$29,490 | Non-exempt |
| 41-4011 | Sales Representatives, Technical & Scientific Products | \$42,940 | Exempt |
| 41-4012 | Sales Representatives | \$32,940 | Non-exempt |
| 41-9011 | Demonstrators & Product Promoters | \$19,640 | Non-exempt |
| 41-9012 | Models | \$33,110 | Non-exempt |
| 41-9021 | Real Estate Brokers | NR | Non-exempt |
| 41-9022 | Real Estate Sales Agents | \$30,300 | Non-exempt |
| 41-9031 | Sales Engineers | \$53,250 | Exempt |
| 41-9041 | Telemarketers | \$17,230 | Non-exempt |
| 41-9091 | Door-to-Door Sales Workers, News & Street Vendors, & Related Workers | \$20,610 | Non-exempt |
| 41-9099 | Sales & Related Workers, Other | \$20,730 | Non-exempt |
| 43-1011 | First-Line Supervisors of Office & Administrative Support Workers | \$35,390 | Exempt |
| 43-2011 | Switchboard Operators, Including Answering Service | \$19,120 | Non-exempt |
| 43-2021 | Telephone Operators | \$26,260 | Non-exempt |
| 43-2099 | Communications Equipment Operators, All Other | \$33,190 | Non-exempt |
| 43-3011 | Bill & Account Collectors | \$23,820 | Non-exempt |
| 43-3021 | Billing & Posting Clerks | \$27,040 | Non-exempt |
| 43-3031 | Bookkeeping, Accounting, & Auditing Clerks | \$24,800 | Non-exempt |
| 43-3041 | Gaming Cage Workers | \$21,800 | Non-exempt |
| 43-3051 | Payroll & Timekeeping Clerks | \$29,330 | Non-exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR Indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|---|----------------------|-----------------------------|
| 43-3061 | Procurement Clerks | \$27,440 | Non-exempt |
| 43-3071 | Tellers | \$22,070 | Non-exempt |
| 43-3099 | Financial Clerks, All Other | \$28,390 | Non-exempt |
| 43-4011 | Brokerage Clerks | \$34,930 | Non-exempt |
| 43-4021 | Correspondence Clerks | \$27,700 | Non-exempt |
| 43-4031 | Court, Municipal, & License Clerks | \$22,750 | Non-exempt |
| 43-4041 | Credit Authorizers, Checkers, & Clerks | \$27,680 | Non-exempt |
| 43-4051 | Customer Service Representatives | \$22,310 | Non-exempt |
| 43-4061 | Eligibility Interviewers, Government Programs | \$40,000 | Non-exempt |
| 43-4071 | File Clerks | \$21,140 | Non-exempt |
| 43-4081 | Hotel, Motel, & Resort Desk Clerks | \$16,990 | Non-exempt |
| 43-4111 | Interviewers, Except Eligibility & Loan | \$19,450 | Non-exempt |
| 43-4121 | Library Assistants, Clerical | \$16,910 | Non-exempt |
| 43-4131 | Loan Interviewers & Clerks | \$23,050 | Non-exempt |
| 43-4141 | New Accounts Clerks | \$30,050 | Non-exempt |
| 43-4151 | Order Clerks | \$18,580 | Non-exempt |
| 43-4161 | Human Resources Assistants, Except Payroll & Timekeeping | \$27,540 | Non-exempt |
| 43-4171 | Receptionists & Information Clerks | \$18,740 | Non-exempt |
| 43-4181 | Reservation & Transportation Ticket Agents & Travel Clerks | \$23,760 | Non-exempt |
| 43-4199 | Information & Record Clerks, All Other | \$30,840 | Non-exempt |
| 43-5011 | Cargo & Freight Agents | \$27,270 | Non-exempt |
| 43-5021 | Couriers & Messengers | \$20,740 | Non-exempt |
| 43-5031 | Police, Fire, & Ambulance Dispatchers | \$26,930 | Non-exempt |
| 43-5032 | Dispatchers, Except Police, Fire, & Ambulance | \$24,630 | Non-exempt |
| 43-5041 | Meter Readers, Utilities | \$24,500 | Non-exempt |
| 43-5051 | Postal Service Clerks | \$35,760 | Non-exempt |
| 43-5052 | Postal Service Mail Carriers | \$36,990 | Non-exempt |
| 43-5053 | Postal Service Mail Sorters, Processors, & Processing Machine Operators | \$35,220 | Non-exempt |
| 43-5061 | Production, Planning, & Expediting Clerks | \$30,670 | Non-exempt |
| 43-5071 | Shipping, Receiving, & Traffic Clerks | \$22,530 | Non-exempt |
| 43-5081 | Stock Clerks & Order Fillers | \$17,730 | Non-exempt |
| 43-5111 | Weighers, Measurers, Checkers, & Samplers, Recordkeeping | \$19,690 | Non-exempt |
| 43-6011 | Executive Secretaries & Executive Administrative Assistants | \$35,520 | Non-exempt |
| 43-6012 | Legal Secretaries | \$31,400 | Non-exempt |
| 43-6013 | Medical Secretaries | \$25,850 | Non-exempt |
| 43-6014 | Secretaries & Administrative Assistants, Except Legal, Medical, & Executive | \$21,700 | Non-exempt |
| 43-9011 | Computer Operators | \$28,760 | Non-exempt |
| 43-9021 | Data Entry Keyers | \$21,520 | Non-exempt |
| 43-9022 | Word Processors & Typists | \$27,870 | Non-exempt |
| 43-9031 | Desktop Publishers | \$23,770 | Non-exempt |
| 43-9041 | Insurance Claims & Policy Processing Clerks | \$29,900 | Non-exempt |
| 43-9051 | Mail Clerks & Mail Machine Operators, Except Postal Service | \$19,760 | Non-exempt |
| 43-9061 | Office Clerks, General | \$19,760 | Non-exempt |
| 43-9071 | Office Machine Operators, Except Computer | \$21,260 | Non-exempt |
| 43-9081 | Proofreaders & Copy Markers | \$23,000 | Exempt |
| 43-9111 | Statistical Assistants | \$32,360 | Exempt |
| 43-9199 | Office & Administrative Support Workers, Other | \$18,500 | Non-exempt |
| 45-1011 | First-Line Supervisors of Farming, Fishing, & Forestry Workers | \$34,890 | Exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR Indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|---|----------------------|-----------------------------|
| 45-2011 | Agricultural Inspectors | \$41,360 | Exempt |
| 45-2021 | Animal Breeders | NR | Non-exempt |
| 45-2041 | Graders & Sorters, Agricultural Products | \$17,620 | Non-exempt |
| 45-2091 | Agricultural Equipment Operators | \$17,320 | Non-exempt |
| 45-2092 | Farmworkers & Laborers: Crop, Nursery & Greenhouse | \$17,010 | Non-exempt |
| 45-2093 | Farmworkers: Farm & Ranch Animals | \$17,130 | Non-exempt |
| 45-2099 | Agricultural Workers, Other | \$22,700 | Non-exempt |
| 45-3011 | Fishers & Related Fishing Workers | | Non-exempt |
| 45-3021 | Hunters & Trappers | | Non-exempt |
| 45-4011 | Forest & Conservation Workers | \$42,860 | Non-exempt |
| 45-4021 | Fallers | \$22,980 | Non-exempt |
| 45-4022 | Logging Equipment Operators | \$20,060 | Non-exempt |
| 45-4023 | Log Graders & Scalars | \$25,380 | Non-exempt |
| 45-4029 | Logging Workers, All Other | NR | Non-exempt |
| 47-1011 | First-Line Supervisors of Construction Trades & Extraction Workers | \$45,250 | Exempt |
| 47-2011 | Boilermakers | \$54,450 | Non-exempt |
| 47-2021 | Brickmasons & Blockmasons | \$31,500 | Non-exempt |
| 47-2022 | Stonemasons | \$27,690 | Non-exempt |
| 47-2031 | Carpenters | \$31,080 | Non-exempt |
| 47-2041 | Carpet Installers | \$20,230 | Non-exempt |
| 47-2042 | Floor Layers, Except Carpet, Wood, & Hard Tiles | \$32,880 | Non-exempt |
| 47-2043 | Floor Sanders & Finishers | \$28,520 | Non-exempt |
| 47-2044 | Tile & Marble Setters | \$29,170 | Non-exempt |
| 47-2051 | Cement Masons & Concrete Finishers | \$31,960 | Non-exempt |
| 47-2053 | Terrazzo Workers & Finishers | \$32,730 | Non-exempt |
| 47-2061 | Construction Laborers | \$25,070 | Non-exempt |
| 47-2071 | Paving, Surfacing, & Tamping Equipment Operators | \$28,430 | Non-exempt |
| 47-2072 | Pile-Driver Operators | \$44,200 | Non-exempt |
| 47-2073 | Operating Engineers & Other Construction Equipment Operators | \$32,960 | Non-exempt |
| 47-2081 | Drywall & Ceiling Tile Installers | \$32,080 | Non-exempt |
| 47-2082 | Tapers | \$34,210 | Non-exempt |
| 47-2111 | Electricians | \$36,190 | Non-exempt |
| 47-2121 | Glaziers | \$31,840 | Non-exempt |
| 47-2131 | Insulation Workers: Floor, Ceiling & Wall | \$26,360 | Non-exempt |
| 47-2132 | Insulation Workers: Mechanical | \$55,070 | Non-exempt |
| 47-2141 | Painters, Construction & Maintenance | \$26,150 | Non-exempt |
| 47-2142 | Paperhangers | \$27,130 | Non-exempt |
| 47-2151 | Pipelayers | \$36,160 | Non-exempt |
| 47-2152 | Plumbers, Pipefitters, & Steamfitters | \$33,890 | Non-exempt |
| 47-2161 | Plasterers & Stucco Masons | \$27,370 | Non-exempt |
| 47-2171 | Reinforcing Iron & Rebar Workers | \$40,300 | Non-exempt |
| 47-2181 | Roofers | \$28,430 | Non-exempt |
| 47-2211 | Sheet Metal Workers | \$27,760 | Non-exempt |
| 47-2221 | Structural Iron & Steel Workers | \$33,730 | Non-exempt |
| 47-2231 | Solar Photovoltaic Installers | NR | Non-exempt |
| 47-3011 | Helpers--Brickmasons, Blockmasons, Stonemasons, & Tile & Marble Setters | \$25,350 | Non-exempt |
| 47-3012 | Helpers--Carpenters | \$22,380 | Non-exempt |
| 47-3013 | Helpers--Electricians | \$21,010 | Non-exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|---|----------------------|-----------------------------|
| 47-3014 | Helpers--Painters, Paperhangers, Plasterers, & Stucco Masons | \$17,730 | Non-exempt |
| 47-3015 | Helpers--Pipelayers, Plumbers, Pipefitters, & Steamfitters | \$22,790 | Non-exempt |
| 47-3016 | Helpers--Roofers | \$23,450 | Non-exempt |
| 47-3019 | Helpers, Construction Trades, All Other | \$24,160 | Non-exempt |
| 47-4011 | Construction & Building Inspectors | \$37,180 | Non-exempt |
| 47-4021 | Elevator Installers & Repairers | \$41,610 | Non-exempt |
| 47-4031 | Fence Erectors | \$27,250 | Non-exempt |
| 47-4041 | Hazardous Materials Removal Workers | \$32,940 | Non-exempt |
| 47-4051 | Highway Maintenance Workers | \$26,970 | Non-exempt |
| 47-4061 | Rail-Track Laying & Maintenance Equipment Operators | \$40,890 | Non-exempt |
| 47-4071 | Septic Tank Servicers & Sewer Pipe Cleaners | \$32,180 | Non-exempt |
| 47-4090 | Miscellaneous Construction Workers (OES Aggregate) | \$25,660 | Non-exempt |
| 47-5011 | Derrick Operators, Oil & Gas | \$35,180 | Non-exempt |
| 47-5012 | Rotary Drill Operators, Oil & Gas | \$30,270 | Non-exempt |
| 47-5013 | Service Unit Operators, Oil, Gas, & Mining | \$27,290 | Non-exempt |
| 47-5021 | Earth Drillers, Except Oil & Gas | \$31,760 | Non-exempt |
| 47-5031 | Explosives Workers, Ordnance Handling Experts, & Blasters | \$42,730 | Non-exempt |
| 47-5041 | Continuous Mining Machine Operators | \$29,360 | Non-exempt |
| 47-5042 | Mine Cutting & Channelling Machine Operators | \$37,620 | Non-exempt |
| 47-5049 | Mining Machine Operators, All Other | \$51,830 | Non-exempt |
| 47-5051 | Rock Splitters, Quarry | \$26,070 | Non-exempt |
| 47-5061 | Roof Bolters, Mining | \$54,660 | Non-exempt |
| 47-5071 | Roustabouts, Oil & Gas | \$24,610 | Non-exempt |
| 47-5081 | Helpers--Extraction Workers | \$28,780 | Non-exempt |
| 47-5099 | Extraction Workers, All Other | NR | Non-exempt |
| 49-1011 | First-Line Supervisors of Mechanics, Installers, & Repairers | \$43,160 | Exempt |
| 49-2011 | Computer, ATM & Office Machine Repairers | \$24,800 | Non-exempt |
| 49-2021 | Radio, Cellular, & Tower Equipment Installers & Repairs | \$43,570 | Non-exempt |
| 49-2022 | Telecommunications Equipment Installers & Repairers | \$28,620 | Non-exempt |
| 49-2091 | Avionics Technicians | \$47,160 | Non-exempt |
| 49-2092 | Electric Motor, Power Tool, & Related Repairers | \$30,580 | Non-exempt |
| 49-2093 | Electrical & Electronics Installers & Repairers, Transportation Equipment | \$40,630 | Non-exempt |
| 49-2094 | Electrical & Electronics Repairers, Commercial & Industrial Equipment | \$41,800 | Non-exempt |
| 49-2095 | Electrical & Electronics Repairers, Powerhouse, Substation, & Relay | \$54,280 | Non-exempt |
| 49-2096 | Electronic Equipment Installers & Repairers, Motor Vehicles | \$23,250 | Non-exempt |
| 49-2097 | Electronic Home Entertainment Equipment Installers & Repairers | \$26,770 | Non-exempt |
| 49-2098 | Security & Fire Alarm Systems Installers | \$31,470 | Non-exempt |
| 49-3011 | Aircraft Mechanics & Service Technicians | \$39,380 | Non-exempt |
| 49-3021 | Automotive Body & Related Repairers | \$27,670 | Non-exempt |
| 49-3022 | Automotive Glass Installers & Repairers | \$24,550 | Non-exempt |
| 49-3023 | Automotive Service Technicians & Mechanics | \$22,140 | Non-exempt |
| 49-3031 | Bus & Truck Mechanics & Diesel Engine Specialists | \$30,690 | Non-exempt |
| 49-3041 | Farm Equipment Mechanics & Service Technicians | \$24,610 | Non-exempt |
| 49-3042 | Mobile Heavy Equipment Mechanics, Except Engines | \$35,560 | Non-exempt |
| 49-3043 | Rail Car Repairers | \$41,140 | Non-exempt |
| 49-3051 | Motorboat Mechanics & Service Technicians | \$21,940 | Non-exempt |
| 49-3052 | Motorcycle Mechanics | \$22,460 | Non-exempt |
| 49-3053 | Outdoor Power Equipment & Other Small Engine Mechanics | \$21,520 | Non-exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR Indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|---|----------------------|-----------------------------|
| 49-3091 | Bicycle Repairers | \$17,830 | Non-exempt |
| 49-3092 | Recreational Vehicle Service Technicians | \$21,380 | Non-exempt |
| 49-3093 | Tire Repairers & Changers | \$20,620 | Non-exempt |
| 49-9011 | Mechanical Door Repairers | \$24,640 | Non-exempt |
| 49-9012 | Control & Valve Installers & Repairers | \$38,040 | Non-exempt |
| 49-9021 | Heating, A/C & Refrigeration Mechanics | \$31,350 | Non-exempt |
| 49-9031 | Home Appliance Repairers | \$26,830 | Non-exempt |
| 49-9041 | Industrial Machinery Mechanics | \$34,500 | Non-exempt |
| 49-9043 | Maintenance Workers, Machinery | \$30,410 | Non-exempt |
| 49-9044 | Millwrights | \$35,350 | Non-exempt |
| 49-9045 | Refractory Materials Repairers, Except Brickmasons | \$23,520 | Non-exempt |
| 49-9051 | Electrical Power-Line Installers & Repairers | \$53,580 | Non-exempt |
| 49-9052 | Telecommunications Line Installers & Repairers | \$34,550 | Non-exempt |
| 49-9061 | Camera & Photographic Equipment Repairers | \$19,240 | Non-exempt |
| 49-9062 | Medical Equipment Repairers | \$28,490 | Non-exempt |
| 49-9063 | Musical Instrument Repairers & Tuners | \$22,730 | Non-exempt |
| 49-9064 | Watch Repairers | NR | Non-exempt |
| 49-9069 | Precision Instrument & Equipment Repairers, All Other | \$43,790 | Non-exempt |
| 49-9071 | Maintenance & Repair Workers, General | \$22,650 | Non-exempt |
| 49-9081 | Wind Turbine Service Technicians | \$41,130 | Non-exempt |
| 49-9091 | Coin, Vending & Amusement Machine Servicers | \$16,980 | Non-exempt |
| 49-9092 | Commercial Divers | NR | Non-exempt |
| 49-9093 | Fabric Menders | NR | Non-exempt |
| 49-9094 | Locksmiths & Safe Repairers | \$33,850 | Non-exempt |
| 49-9095 | Manufactured Building & Mobile Home Installers | \$20,700 | Non-exempt |
| 49-9096 | Riggers | \$32,100 | Non-exempt |
| 49-9097 | Signal & Track Switch Repairers | \$52,650 | Non-exempt |
| 49-9098 | Helpers--Installation, Maintenance, & Repair Workers | \$18,160 | Non-exempt |
| 49-9099 | Installation, Maintenance & Repair Workers, Other | \$27,910 | Non-exempt |
| 51-1011 | First-Line Supervisors of Production & Operating Workers | \$37,880 | Exempt |
| 51-2011 | Aircraft Structure, Surfaces, Rigging, & Systems Assemblers | \$43,550 | Non-exempt |
| 51-2021 | Coil Winders, Tapers, & Finishers | \$21,010 | Non-exempt |
| 51-2028 | Electrical, Electronic, & Electromechanical Assemblers (OES Aggregate) | \$23,180 | Non-exempt |
| 51-2031 | Engine & Other Machine Assemblers | \$30,000 | Non-exempt |
| 51-2041 | Structural Metal Fabricators & Fitters | \$29,330 | Non-exempt |
| 51-2091 | Fiberglass Laminators & Fabricators | \$30,150 | Non-exempt |
| 51-2093 | Timing Device Assemblers & Adjusters | \$30,750 | Non-exempt |
| 51-2098 | Assemblers & Fabricators, All Other (OES Aggregate) | \$21,050 | Non-exempt |
| 51-3011 | Bakers | \$18,150 | Non-exempt |
| 51-3021 | Butchers & Meat Cutters | \$19,470 | Non-exempt |
| 51-3022 | Meat, Poultry, & Fish Cutters & Trimmers | \$22,150 | Non-exempt |
| 51-3023 | Slaughterers & Meat Packers | \$22,470 | Non-exempt |
| 51-3091 | Food & Tobacco Roasting, Baking, & Drying Machine Operators & Tenders | \$22,480 | Non-exempt |
| 51-3092 | Food Batchmakers | \$19,960 | Non-exempt |
| 51-3093 | Food Cooking Machine Operators & Tenders | \$20,350 | Non-exempt |
| 51-3099 | Food Processing Workers, Other | \$20,840 | Non-exempt |
| 51-4011 | Computer-Controlled Machine Tool Operators, Metal & Plastic | \$26,370 | Non-exempt |
| 51-4012 | Computer Numerically Controlled Machine Tool Programmers, Metal & Plastic | \$37,370 | Non-exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|---|----------------------|-----------------------------|
| 51-4021 | Extruding & Drawing Machine Setters, Operators, & Tenders, Metal & Plastic | \$23,270 | Non-exempt |
| 51-4022 | Forging Machine Setters, Operators, & Tenders, Metal & Plastic | \$28,460 | Non-exempt |
| 51-4023 | Rolling Machine Setters, Operators, & Tenders, Metal & Plastic | \$27,370 | Non-exempt |
| 51-4031 | Cutting, Punching, & Press Machine Setters, Operators, & Tenders, Metal & Plastic | \$25,500 | Non-exempt |
| 51-4032 | Drilling & Boring Machine Tool Setters, Operators, & Tenders, Metal & Plastic | \$21,520 | Non-exempt |
| 51-4033 | Grinding, Lapping, Polishing, & Buffing Machine Tool Setters, Operators, & Tenders, Metal & Plastic | \$24,450 | Non-exempt |
| 51-4034 | Lathe & Turning Machine Tool Setters, Operators, & Tenders, Metal & Plastic | \$27,620 | Non-exempt |
| 51-4035 | Milling & Planing Machine Setters, Operators, & Tenders, Metal & Plastic | \$29,730 | Non-exempt |
| 51-4041 | Machinists | \$28,800 | Non-exempt |
| 51-4051 | Metal-Refining Furnace Operators & Tenders | \$32,090 | Non-exempt |
| 51-4052 | Pourers & Casters, Metal | \$27,490 | Non-exempt |
| 51-4061 | Model Makers, Metal & Plastic | \$33,030 | Non-exempt |
| 51-4062 | Patternmakers, Metal & Plastic | \$30,670 | Non-exempt |
| 51-4071 | Foundry Mold & Coremakers | \$23,900 | Non-exempt |
| 51-4072 | Molding, Coremaking, & Casting Machine Setters, Operators, & Tenders, Metal & Plastic | \$20,840 | Non-exempt |
| 51-4081 | Multiple Machine Tool Setters, Operators, & Tenders, Metal & Plastic | \$25,000 | Non-exempt |
| 51-4111 | Tool & Die Makers | \$33,660 | Non-exempt |
| 51-4121 | Welders, Cutters, Solderers, & Brazers | \$29,400 | Non-exempt |
| 51-4122 | Welding, Soldering, & Brazing Machine Setters, Operators, & Tenders | \$27,040 | Non-exempt |
| 51-4191 | Heat Treating Equipment Setters, Operators, & Tenders, Metal & Plastic | \$26,420 | Non-exempt |
| 51-4192 | Layout Workers, Metal & Plastic | \$30,140 | Non-exempt |
| 51-4193 | Plating & Coating Machine Setters, Operators, & Tenders, Metal & Plastic | \$22,730 | Non-exempt |
| 51-4194 | Tool Grinders, Filers, & Sharpeners | \$31,740 | Non-exempt |
| 51-4199 | Metal Workers & Plastic Workers, All Other | \$23,830 | Non-exempt |
| 51-5111 | Prepress Technicians & Workers | \$27,350 | Non-exempt |
| 51-5112 | Printing Press Operators | \$22,740 | Non-exempt |
| 51-5113 | Print Binding & Finishing Workers | \$22,080 | Non-exempt |
| 51-6011 | Laundry & Dry-Cleaning Workers | \$17,290 | Non-exempt |
| 51-6021 | Pressers, Textile, Garment, & Related Materials | \$17,190 | Non-exempt |
| 51-6031 | Sewing Machine Operators | \$18,010 | Non-exempt |
| 51-6041 | Shoe & Leather Workers & Repairers | \$17,100 | Non-exempt |
| 51-6042 | Shoe Machine Operators & Tenders | \$17,020 | Non-exempt |
| 51-6051 | Sewers, Hand | \$18,980 | Non-exempt |
| 51-6052 | Tailors, Dressmakers, & Custom Sewers | \$21,580 | Non-exempt |
| 51-6061 | Textile Bleaching & Dyeing Machine Operators & Tenders | \$20,510 | Non-exempt |
| 51-6062 | Textile Cutting Machine Setters, Operators, & Tenders | \$21,040 | Non-exempt |
| 51-6063 | Textile Knitting & Weaving Machine Setters, Operators, & Tenders | \$21,840 | Non-exempt |
| 51-6064 | Textile Winding, Twisting, & Drawing Out Machine Setters, Operators, & Tenders | \$21,950 | Non-exempt |
| 51-6091 | Extruding & Forming Machine Setters, Operators, & Tenders, Synthetic & Glass Fibers | \$29,850 | Non-exempt |
| 51-6092 | Fabric & Apparel Patternmakers | \$26,170 | Non-exempt |
| 51-6093 | Upholsterers | \$21,330 | Non-exempt |
| 51-6099 | Textile, Apparel, & Furnishings Workers, All Other | \$20,040 | Non-exempt |
| 51-7011 | Cabinetmakers & Bench Carpenters | \$26,640 | Non-exempt |
| 51-7021 | Furniture Finishers | \$20,570 | Non-exempt |
| 51-7031 | Model Makers, Wood | NR | Non-exempt |
| 51-7032 | Patternmakers, Wood | \$34,870 | Non-exempt |
| 51-7041 | Sawing Machine Setters, Operators, & Tenders, Wood | \$22,190 | Non-exempt |
| 51-7042 | Woodworking Machine Setters, Operators, & Tenders, Except Sawing | \$22,410 | Non-exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|---|----------------------|-----------------------------|
| 51-7099 | Woodworkers, All Other | \$44,970 | Non-exempt |
| 51-8011 | Nuclear Power Reactor Operators | \$79,340 | Non-exempt |
| 51-8012 | Power Distributors & Dispatchers | \$52,880 | Non-exempt |
| 51-8013 | Power Plant Operators | \$43,620 | Non-exempt |
| 51-8021 | Stationary Engineers & Boiler Operators | \$36,220 | Non-exempt |
| 51-8031 | Water & Wastewater Treatment Plant & System Operators | \$30,880 | Non-exempt |
| 51-8091 | Chemical Plant & System Operators | \$43,900 | Non-exempt |
| 51-8092 | Gas Plant Operators | \$46,380 | Non-exempt |
| 51-8093 | Petroleum Pump System Operators, Refinery Operators, & Gaugers | \$42,400 | Non-exempt |
| 51-8099 | Plant & System Operators, All Other | \$34,720 | Non-exempt |
| 51-9011 | Chemical Equipment Operators & Tenders | \$30,900 | Non-exempt |
| 51-9012 | Separating, Filtering, Clarifying, Precipitating, & Still Machine Setters, Operators, & Tenders | \$25,640 | Non-exempt |
| 51-9021 | Crushing, Grinding, & Polishing Machine Setters, Operators, & Tenders | \$28,570 | Non-exempt |
| 51-9022 | Grinding & Polishing Workers, Hand | \$23,210 | Non-exempt |
| 51-9023 | Mixing & Blending Machine Setters, Operators, & Tenders | \$26,950 | Non-exempt |
| 51-9031 | Cutters & Trimmers, Hand | \$16,700 | Non-exempt |
| 51-9032 | Cutting & Slicing Machine Setters, Operators, & Tenders | \$23,140 | Non-exempt |
| 51-9041 | Extruding, Forming, Pressing, & Compacting Machine Setters, Operators, & Tenders | \$25,520 | Non-exempt |
| 51-9051 | Furnace, Kiln, Oven, Drier, & Kettle Operators & Tenders | \$28,430 | Non-exempt |
| 51-9061 | Inspectors, Testers, Sorters, Samplers, & Weighers | \$24,740 | Non-exempt |
| 51-9071 | Jewelers & Precious Stone & Metal Workers | \$24,960 | Non-exempt |
| 51-9081 | Dental Laboratory Technicians | \$25,520 | Non-exempt |
| 51-9082 | Medical Appliance Technicians | \$27,450 | Non-exempt |
| 51-9083 | Ophthalmic Laboratory Technicians | \$20,050 | Non-exempt |
| 51-9111 | Packaging & Filling Machine Operators & Tenders | \$21,700 | Non-exempt |
| 51-9121 | Coating, Painting, & Spraying Machine Setters, Operators, & Tenders | \$23,740 | Non-exempt |
| 51-9122 | Painters, Transportation Equipment | \$30,920 | Non-exempt |
| 51-9123 | Painting, Coating, & Decorating Workers | \$21,340 | Non-exempt |
| 51-9141 | Semiconductor Processors | \$27,510 | Non-exempt |
| 51-9151 | Photographic Process Workers & Processing Machine Operators | \$17,410 | Non-exempt |
| 51-9191 | Adhesive Bonding Machine Operators & Tenders | \$23,020 | Non-exempt |
| 51-9192 | Cleaning, Washing, & Metal Pickling Equipment Operators & Tenders | \$22,530 | Non-exempt |
| 51-9193 | Cooling & Freezing Equipment Operators & Tenders | \$22,130 | Non-exempt |
| 51-9194 | Etchers & Engravers | \$22,020 | Non-exempt |
| 51-9195 | Molders, Shapers & Casters | \$24,410 | Non-exempt |
| 51-9196 | Paper Goods Machine Setters, Operators, & Tenders | \$28,400 | Non-exempt |
| 51-9197 | Tire Builders | \$25,900 | Non-exempt |
| 51-9198 | Helpers--Production Workers | \$19,310 | Non-exempt |
| 51-9199 | Production Workers, Other | \$21,260 | Non-exempt |
| 53-1011 | Aircraft Cargo Handling Supervisors | \$36,520 | Exempt |
| 53-1048 | First-Line Supervisors of Transportation & Material-Moving Workers (OES Aggregate) | \$34,890 | Exempt |
| 53-2011 | Airline Pilots, Copilots, & Flight Engineers | \$74,230 | Exempt |
| 53-2012 | Commercial Pilots | \$46,730 | Non-exempt |
| 53-2021 | Air Traffic Controllers | \$63,920 | Exempt |
| 53-2022 | Airfield Operations Specialists | \$24,750 | Non-exempt |
| 53-2031 | Flight Attendants | \$41,720 | Non-exempt |
| 53-3011 | Ambulance Drivers & Attendants | \$19,190 | Non-exempt |
| 53-3021 | Bus Drivers: Transit & Intercity | \$21,090 | Non-exempt |

10th Percentile Occupational Wages for Pennsylvania Workers (2018)

(NR Indicates that the wage for that occupation is not releasable)

| SOC Code | Occupational Title | 10th Percentile Wage | Overtime Eligibility Status |
|----------|---|----------------------|-----------------------------|
| 53-3022 | Bus Drivers: School or Special Client | \$18,500 | Non-exempt |
| 53-3031 | Driver/Sales Workers | \$16,710 | Non-exempt |
| 53-3032 | Heavy & Tractor-Trailer Truck Drivers | \$31,660 | Non-exempt |
| 53-3033 | Light Truck or Delivery Services Drivers | \$17,740 | Non-exempt |
| 53-3041 | Taxi Drivers & Chauffeurs | \$17,700 | Non-exempt |
| 53-3099 | Motor Vehicle Operators, All Other | \$17,300 | Non-exempt |
| 53-4011 | Locomotive Engineers | \$50,390 | Non-exempt |
| 53-4012 | Locomotive Firers | NR | Non-exempt |
| 53-4013 | Rail Yard Engineers, Dinkey Operators, & Hostlers | \$34,930 | Non-exempt |
| 53-4021 | Railroad Brake, Signal, & Switch Operators | \$34,510 | Non-exempt |
| 53-4031 | Railroad Conductors & Yardmasters | \$44,670 | Non-exempt |
| 53-4041 | Subway & Streetcar Operators | NR | Non-exempt |
| 53-4099 | Rail Transportation Workers, All Other | \$25,400 | Non-exempt |
| 53-5011 | Sailors & Marine Oilers | \$29,180 | Non-exempt |
| 53-5021 | Captains, Mates & Pilots of Water Vessels | \$35,570 | Exempt |
| 53-5022 | Motorboat Operators | \$42,800 | Non-exempt |
| 53-5031 | Ship Engineers | \$45,650 | Non-exempt |
| 53-6011 | Bridge & Lock Tenders | \$17,530 | Non-exempt |
| 53-6021 | Parking Lot Attendants | \$17,560 | Non-exempt |
| 53-6031 | Automotive & Watercraft Service Attendants | \$17,560 | Non-exempt |
| 53-6041 | Traffic Technicians | \$39,520 | Non-exempt |
| 53-6051 | Transportation Inspectors | \$28,010 | Non-exempt |
| 53-6061 | Transportation Attendants, Except Flight Attendants | \$18,990 | Non-exempt |
| 53-6099 | Transportation Workers, All Other | \$22,910 | Non-exempt |
| 53-7011 | Conveyor Operators & Tenders | \$26,910 | Non-exempt |
| 53-7021 | Crane & Tower Operators | \$28,120 | Non-exempt |
| 53-7031 | Dredge Operators | \$33,900 | Non-exempt |
| 53-7032 | Excavating & Loading Machine & Dragline Operators | \$30,060 | Non-exempt |
| 53-7033 | Loading Machine Operators, Underground Mining | \$52,690 | Non-exempt |
| 53-7041 | Holst & Winch Operators | \$29,470 | Non-exempt |
| 53-7051 | Industrial Truck & Tractor Operators | \$26,970 | Non-exempt |
| 53-7061 | Cleaners of Vehicles & Equipment | \$17,490 | Non-exempt |
| 53-7062 | Laborers & Material Movers, Hand | \$20,740 | Non-exempt |
| 53-7063 | Machine Feeders & Offbearers | \$21,600 | Non-exempt |
| 53-7064 | Packers & Packagers, Hand | \$18,850 | Non-exempt |
| 53-7071 | Gas Compressor & Gas Pumping Station Operators | \$45,310 | Non-exempt |
| 53-7072 | Pump Operators | \$18,010 | Non-exempt |
| 53-7073 | Wellhead Pumpers | \$30,460 | Non-exempt |
| 53-7081 | Refuse & Recyclable Material Collectors | \$18,340 | Non-exempt |
| 53-7111 | Mine Shuttle Car Operators | \$52,770 | Non-exempt |
| 53-7121 | Tank Car, Truck, & Ship Loaders | \$28,390 | Non-exempt |
| 53-7199 | Material Moving Workers, All Other | \$22,170 | Non-exempt |

| | | Total salaried workers in the state | Threshold of \$781 per week | | | Threshold of \$875 per week | | | Threshold of \$921 per week | | |
|------------------|---|-------------------------------------|-----------------------------|------------------------------|---------------------------------------|-----------------------------|------------------------------|---------------------------------------|-----------------------------|------------------------------|---------------------------------------|
| | | | Total affected workers | Workers with new protections | Workers with strengthened protections | Total affected workers | Workers with new protections | Workers with strengthened protections | Total affected workers | Workers with new protections | Workers with strengthened protections |
| Gender | Male | All | 87,000 | 34,000 | 53,000 | 205,000 | 82,000 | 122,000 | 250,000 | 102,000 | 148,000 |
| | Female | All | 34,000 | 12,000 | 22,000 | 88,000 | 31,000 | 57,000 | 107,000 | 39,000 | 68,000 |
| Parental Status | Not a parent | All | 53,000 | 22,000 | 32,000 | 117,000 | 51,000 | 66,000 | 143,000 | 64,000 | 80,000 |
| | Father | All | 61,000 | 24,000 | 37,000 | 144,000 | 60,000 | 84,000 | 174,000 | 72,000 | 103,000 |
| Race/Ethnicity | Mother | All | 6,000 | 2,000 | 4,000 | 25,000 | 8,000 | 17,000 | 30,000 | 10,000 | 19,000 |
| | White | All | 20,000 | 8,000 | 12,000 | 36,000 | 15,000 | 22,000 | 46,000 | 20,000 | 26,000 |
| Age | Black | All | 8,000 | 3,000 | 5,000 | 16,000 | 6,000 | 9,000 | 20,000 | 8,000 | 11,000 |
| | Hispanic | All | 7,000 | 3,000 | 4,000 | 15,000 | 4,000 | 10,000 | 20,000 | 7,000 | 13,000 |
| Education | Asian | All | 5,000 | 2,000 | 3,000 | 7,000 | 3,000 | 4,000 | 16,000 | 6,000 | 11,000 |
| | Others | All | 1,000 | - | 1,000 | 4,000 | 1,000 | 3,000 | 10,000 | 3,000 | 6,000 |
| Major Industry | 16-24 | All | 5,000 | 1,000 | 3,000 | 17,000 | 8,000 | 9,000 | 4,000 | 1,000 | 3,000 |
| | 25-34 | All | 23,000 | 9,000 | 14,000 | 53,000 | 23,000 | 30,000 | 21,000 | 9,000 | 12,000 |
| Major Occupation | 35-44 | All | 15,000 | 5,000 | 10,000 | 42,000 | 15,000 | 27,000 | 51,000 | 18,000 | 33,000 |
| | 45-54 | All | 22,000 | 8,000 | 14,000 | 44,000 | 18,000 | 27,000 | 54,000 | 21,000 | 33,000 |
| Total | 55-64 | All | 18,000 | 8,000 | 10,000 | 37,000 | 14,000 | 23,000 | 43,000 | 17,000 | 25,000 |
| | 65+ | All | 4,000 | 2,000 | 2,000 | 11,000 | 4,000 | 7,000 | 13,000 | 5,000 | 8,000 |
| Education | Least than high school | All | 1,000 | - | 1,000 | 5,000 | - | 5,000 | 6,000 | 1,000 | 5,000 |
| | High school | All | 21,000 | 5,000 | 16,000 | 48,000 | 11,000 | 37,000 | 59,000 | 15,000 | 45,000 |
| Major Industry | Some college | All | 25,000 | 7,000 | 18,000 | 58,000 | 21,000 | 38,000 | 69,000 | 25,000 | 44,000 |
| | College degree | All | 28,000 | 14,000 | 13,000 | 70,000 | 36,000 | 34,000 | 86,000 | 43,000 | 43,000 |
| Total | Advanced degree | All | 13,000 | 8,000 | 5,000 | 22,000 | 13,000 | 9,000 | 30,000 | 18,000 | 12,000 |
| | Agriculture, forestry, fishing, and hunting | All | - | - | - | 2,000 | - | 2,000 | 2,000 | - | - |
| Major Occupation | Mining | All | 5,000 | 1,000 | 5,000 | 12,000 | 3,000 | 9,000 | 13,000 | 3,000 | 10,000 |
| | Construction | All | 5,000 | 2,000 | 3,000 | 18,000 | 5,000 | 13,000 | 21,000 | 5,000 | 15,000 |
| Total | Manufacturing | All | 8,000 | 3,000 | 5,000 | 22,000 | 9,000 | 13,000 | 29,000 | 12,000 | 17,000 |
| | Wholesale and retail trade | All | 6,000 | 2,000 | 4,000 | 11,000 | 3,000 | 8,000 | 13,000 | 4,000 | 9,000 |
| Major Industry | Transportation and utilities | All | 3,000 | 1,000 | 1,000 | 5,000 | 3,000 | 3,000 | 6,000 | 3,000 | 3,000 |
| | Information | All | 10,000 | 4,000 | 6,000 | 22,000 | 11,000 | 11,000 | 29,000 | 15,000 | 14,000 |
| Total | Financial services | All | 13,000 | 7,000 | 7,000 | 28,000 | 14,000 | 14,000 | 33,000 | 17,000 | 16,000 |
| | Professional and business services | All | 22,000 | 10,000 | 12,000 | 49,000 | 24,000 | 25,000 | 59,000 | 30,000 | 29,000 |
| Major Occupation | Educational and health services | All | 4,000 | 1,000 | 3,000 | 9,000 | 3,000 | 6,000 | 14,000 | 5,000 | 10,000 |
| | Leisure and hospitality | All | 8,000 | 2,000 | 5,000 | 15,000 | 4,000 | 11,000 | 18,000 | 5,000 | 13,000 |
| Total | Other services | All | 4,000 | 1,000 | 2,000 | 11,000 | 3,000 | 8,000 | 12,000 | 4,000 | 9,000 |
| | Public administration | All | 20,000 | 14,000 | 5,000 | 47,000 | 36,000 | 11,000 | 56,000 | 43,000 | 13,000 |
| Major Occupation | Management, business, and financial occupations | All | 24,000 | 13,000 | 11,000 | 53,000 | 31,000 | 22,000 | 62,000 | 36,000 | 25,000 |
| | Professional and related occupations | All | 8,000 | - | 8,000 | 19,000 | 1,000 | 18,000 | 23,000 | 2,000 | 21,000 |
| Total | Sales and related occupations | All | 16,000 | 3,000 | 5,000 | 22,000 | 8,000 | 14,000 | 29,000 | 12,000 | 17,000 |
| | Office and administrative support occupations | All | - | 3,000 | 13,000 | 37,000 | 6,000 | 31,000 | 49,000 | 10,000 | 39,000 |
| Major Occupation | Farming, fishing, and forestry occupations | All | 4,000 | - | 4,000 | 2,000 | - | 2,000 | 2,000 | - | 2,000 |
| | Construction and extraction occupations | All | - | - | - | 8,000 | - | 8,000 | 9,000 | - | 9,000 |
| Total | Installation, maintenance, and repair occupations | All | 2,000 | - | 2,000 | 5,000 | - | 4,000 | 6,000 | - | 5,000 |
| | Production occupations | All | 3,000 | - | 3,000 | 7,000 | - | 7,000 | 9,000 | - | 9,000 |
| Major Occupation | Transportation and material moving occupations | All | - | - | 2,000 | 6,000 | - | 6,000 | 6,000 | - | 6,000 |
| | Other occupations | All | 2,000 | - | 2,000 | 7,000 | - | 7,000 | 9,000 | - | 9,000 |

**"Due to rounding, some "Workers with strengthened protections"
and "Workers with new protections" cells may not equal the Total
Affected Workers for that row**

| | FY 2019-2020 | | FY 2020-2021 | | FY 2021-2022 | | FY 2022-2023 | | FY 2023-2024 | | FY 2024-2025 | |
|--|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| | Lower Est. | Upper Est. | Lower Est. | Upper Est. | Lower Est. | Upper Est. | Lower Est. | Upper Est. | Lower Est. | Upper Est. | Lower Est. | Upper Est. |
| Savings | | | | | | | | | | | | |
| Regulated Community | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable |
| Local Government | None | None | None | None | None | None | None | None | None | None | None | None |
| State Government | None | None | None | None | None | None | None | None | None | None | None | None |
| Total Savings | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable | Not calculable |
| Costs | | | | | | | | | | | | |
| Regulated Community | 6,961,025 | 6,961,025 | 14,315,133 | 14,734,347 | 21,954,959 | 23,508,359 | 28,058,135 | 30,394,558 | 28,636,918 | 31,041,393 | 28,636,918 | 31,041,393 |
| Regulatory Familiarization | 6,961,025 | 6,961,025 | 2,091,425 | 2,091,425 | 2,952,600 | 2,952,600 | 0 | 0 | 0 | 0 | 0 | 0 |
| Adjustment | 0 | 0 | 1,697,216 | 1,697,216 | 5,790,503 | 5,790,503 | 8,186,574 | 8,186,574 | 8,186,574 | 8,186,574 | 8,186,574 | 8,186,574 |
| Payroll (Minimum Wage) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Payroll (Overtime) | 0 | 0 | 3,565,467 | 3,984,681 | 13,211,856 | 14,765,256 | 19,871,561 | 22,207,985 | 20,450,344 | 22,854,819 | 20,450,344 | 22,854,819 |
| Local Government | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| State Government | 0 | 0 | 125,000 | 125,000 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Costs | 6,961,025 | 6,961,025 | 14,440,133 | 14,859,347 | 21,954,959 | 23,508,359 | 28,058,135 | 30,394,558 | 28,636,918 | 31,041,393 | 28,636,918 | 31,041,393 |
| Revenue Lost | | | | | | | | | | | | |
| Regulated Community | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Local Government | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| State Government | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Revenue Lost | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Number of PA Employer Establishments | | | | | | | | | | | | |
| A Human Resource Specialist- (hourly rate of 30.19 plus benefits cost of 46% of base salary (\$13.89) | | | | | | | | 282,911 | | | | |
| USDOL regulatory familiarization time estimate | | | | | | | | 49.21 | | | | |
| USDOL adjustment time estimate | | | | | | | | 1.25 | | | | |
| USDOL management time estimate/year | | | | | | | | 8.67 | | | | |
| Number of Affected EAP workers in PA with salary \$35,568-\$40,560 | | | | | | | | 34,000 | | | | |
| Number of Affected EAP workers in PA with salary \$40,560-\$45,500 | | | | | | | | 48,000 | | | | |
| Number of Affected EAP workers in PA with salary \$35,568-\$45,500 | | | | | | | | 82,000 | | | | |
| Constant to calculate number of affected AEP workers in PA requiring additional managerial supervisor | | | | | | | | 0.234 | | | | |
| USDOL 2019 Payroll cost per affected worker | | | | | | | | \$ 183.92 | | | | |
| USDOL 2016 Payroll cost per affected worker | | | | | | | | \$ 274.36 | | | | |
| PA Payroll cost per affected worker (2021 lower limit) | | | | | | | | \$ 209.73 | | | | |
| PA Payroll cost per affected worker (2021 upper limit) | | | | | | | | \$ 234.39 | | | | |
| PA Payroll cost per affected worker (2022 lower limit) | | | | | | | | \$ 235.28 | | | | |
| PA Payroll cost per affected worker (2022 upper limit) | | | | | | | | \$ 262.94 | | | | |
| PA Payroll Cost per affected worker in 2023 (lower limit, assumes 5.6% rate of change in 2022 OES data set used to determine PA salary threshold, based on historical data, 2012-2018) | | | | | | | | \$ 249.39 | | | | |
| PA Payroll Cost per affected worker in 2023 (upper limit, assumes 5.6% rate of change in 2022 OES data set used to determine PA salary threshold, based on historical data, 2012-2018) | | | | | | | | \$ 278.72 | | | | |
| 2020 Threshold (Federal) | | | | | | | | \$ 35,568 | | | | |
| 2021 Threshold | | | | | | | | \$ 40,560 | | | | |
| 2022 Threshold | | | | | | | | \$ 45,500 | | | | |
| Projected 2023 Threshold | | | | | | | | \$ 48,230 | | | | |
| USDOL Proposed 2016 Threshold | | | | | | | | \$ 47,476 | | | | |

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(AGENCY)

DOCUMENT/FISCAL NOTE NO. 12-106

DATE OF ADOPTION:

BY: W. Gerard Oleksiak
W. Gerard Oleksiak
TITLE: Secretary
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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BY: Marisa J. Z. Lerbo

10-16-2019

DATE OF APPROVAL

Deputy General Counsel
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

☐ Check if applicable. No Attorney General
approval or objection within 30 days after
submission.

NOTICE OF FINAL RULEMAKING

TITLE 34. LABOR AND INDUSTRY

PART XII. BUREAU OF LABOR LAW COMPLIANCE

CHAPTER 231. MINIMUM WAGE

NOTICE OF FINAL RULEMAKING

Title 34 Labor and Industry Regulations for Minimum Wage 34 Pa. Code, Part XII, Chapter 231

The Department of Labor and Industry (Department), by this order, amends 34 Pa. Code, Part XII, Chapter 231 (relating to regulations for minimum wage). The amendments are submitted in accordance with Sections 5(a)(5) and 9 of the Minimum Wage Act of 1968 (Act), 43 P.S. §§ 333.105(a)(5) and 333.109, Act of January 17, 1968, P.L. 11, No. 5, for the purpose of carrying out the Minimum Wage Act and to safeguard the minimum wage rates established thereby.

Statutory Authority

This proposed rulemaking is issued under the authority provided in Section 5(a) of the Act, 43 P.S. § 333.105(a)(5), which requires the Secretary of Labor and Industry (Secretary) to define the terms bona fide executive, administrative and professionals, and Section 9 of the Act, 43 P.S. § 333.109, which requires the Secretary to enforce the Act and to

make and, from time to time, revise regulations, with the assistance of the [Minimum Wage Advisory Board], when requested by the secretary, which shall be deemed appropriate to carry out the purposes of this act and to safeguard the minimum wage rates thereby established. Such regulations may include, but are not limited to, regulations defining and governing bona fide executive, administrative, or professional employees and outside salespersons, learners and apprentices, their number, proportion, length of learning period, and other working conditions; handicapped workers; part-time pay; overtime standards; bonuses; allowances for board, lodging, apparel, or other facilities or services customarily furnished by employers to employees; allowances for gratuities; or allowances for such other special conditions or circumstances which may be incidental to a particular employer-employee relationship.

The Act provides three exemptions from the minimum wage and overtime provisions of the Act for individuals employed in the following capacities: executive, administrative and professional. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5), authorizes the Secretary to define and delimit these exemptions by regulation.

Purpose

This final-form regulation amends the Department's existing minimum wage regulations in Title 34 at Sections 231.1 (relating to Definitions), 231.71 (relating to Procedure), 231.72 (relating to Conditions for granting certificate), 231.73 (relating to Special certificate), 231.74 (relating to Specifications of the certificate), 231.82 (relating to Executive), 231.83 (relating to Administrative) and 231.84 (relating to Professional).

This rulemaking provides a long overdue update of the definitions of the Executive, Administrative and Professional (EAP) employees who are exempt from the overtime and minimum wage provisions of the Act and modernizes the obsolete salary threshold for those workers. This rulemaking is consistent with the stated purpose of the Act: to protect employees from unreasonably low wages not fairly commensurate with the value of the services rendered. *See* 43 P.S. § 333.101. To the extent permissible and appropriate under Pennsylvania law, it more closely aligns with federal law, which provides more consistency for employers and lessens the burden of compliance with different federal and state standards. The amendments to the duties test for the EAP exemptions make the applicable test easier to understand and therefore will increase compliance. The rulemaking will result in less misclassification of workers, thus reducing litigation over an employee's status.

The update to the salary thresholds will protect Pennsylvania employees from being arbitrarily designated as exempt and required to work excessive overtime hours without additional compensation. The current federal salary threshold of \$23,660.00 over which an EAP employee does not have to be paid overtime is artificially low due to the passage of 15 years since the salary thresholds were updated and the lack of adjustment for inflation or the current economy. Although the federal threshold is scheduled to be increased on January 1, 2020, that threshold is based upon the earnings of the lowest-paid salaried employees in the nation and is not reflective of Pennsylvania's economy. This rulemaking uses a methodology that takes into account the economic realities in the Commonwealth, uses more relevant, Pennsylvania-specific data, and also utilizes that same methodology to adjust the salary threshold at regular intervals where the data supports an adjustment. It thus replaces infrequent, dramatic changes caused by sporadic rulemaking with more predictable and modest changes by maintaining the salary level at a fixed percentage of earnings to help ensure that the test continues to reflect actual wage conditions consistent with the duties of exempt employees, providing a gradual threshold adjustment between comprehensive rulemaking.

The rulemaking also gradually phases in the higher salary threshold, first adopting the new federal threshold and then incrementally adjusting to the Pennsylvania-appropriate threshold. This will allow time for employers to plan and adjust operations to determine how best to implement the rulemaking based on the individual needs of the business. This rulemaking need not have a detrimental impact on employers. As more fully explained herein, employers will have a range of options to choose from in implementing the new duties test and updated thresholds for their EAP employees, enabling employers to make these changes cost neutral for their operation.

Ensuring that workers are fairly compensated and paid a living wage will have an overall positive economic impact for the Commonwealth. In addition, increased competitiveness of Pennsylvania's employers to attract skilled labor, positive economic impact due to increased spending by affected workers, and discretionary time returned to employees are all benefits to the commonwealth.

This final-form rulemaking is in the public interest, is within the Department's statutory authority and is consistent with the legislative intent expressed in the Act. It takes into account the concerns of the various stakeholders and will have a positive economic impact on the Commonwealth without overly onerous requirements on businesses and it is all accomplished with a clear, feasible and reasonable regulatory scheme and provisions.

Background

The EAP exemptions (otherwise known as the "white-collar exemptions") signal the General Assembly's intention to exclude bona fide executive, administrative and professional employees from the Act's protections. The Act does not define these terms. Rather, the General Assembly specifically gave authority to the Department to define each of these exemptions through regulation.

In addition to the Act, the requirement to pay employees a minimum wage and overtime is found in the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. § 201, *et. seq.* The FLSA also contains similar EAP exemptions from its minimum wage and overtime requirements. 29 U.S.C. § 213(a)(1). The United States Department of Labor (USDOL) also issued regulations defining these exemptions, 29 C.F.R. §§ 541.100–541.304.

Under both the federal and Commonwealth regulations, there is a three-prong test that an employee must meet to be exempt from minimum wage and overtime requirements. First, the employee cannot be paid on an hourly basis; second, the employee must receive a salary at a threshold set by regulation; and third, the employee must perform specific duties set by regulations.

However, there are two significant differences between Pennsylvania's regulations implementing the Act and USDOL's regulations implementing the FLSA, which creates a dual regulatory scheme. First, the salary thresholds for the Act's EAP exemptions are much lower than the salary thresholds for the FLSA's EAP exemptions. Second, the duties test to qualify for the Act's EAP exemptions is different than the duties test to qualify for the FLSA's EAP exemptions.

The lower salary threshold has essentially rendered the Act inconsequential to protect employees from misclassification, because it is exceeded by the federal threshold for virtually all employees. The FLSA applies to all employers with gross sales of at least \$500,000 or who engage in interstate commerce. The term "interstate commerce" has been defined very broadly and, in fact, includes nearly every Pennsylvania employer. In addition, the current Pennsylvania regulations contain an outdated duties test and salary threshold to determine whether an EAP employee is exempt from payment of overtime for hours worked in excess of 40 per week. The current duties test for executive employees are set forth at 34 Pa. Code § 231.82; for administrative employees at 34 Pa. Code § 231.83; and for professional employees at 34 Pa. Code § 231.84. The current salary thresholds range from \$155 per week to \$250 per week, well below the hourly minimum wage. 34 Pa. Code §§ 231.82-231.84.

Pennsylvania's regulations have not been updated since 1977, which results in three issues.

First, many individuals are being improperly classified as exempt because the salary

thresholds found in Pennsylvania's current regulations are not reflective of the current salaries of individuals who are executives, administrative personnel or professionals. The salary thresholds established in the recently-superseded USDOL regulations defining the FLSA were established in 2004 and were also not reflective of the current salaries of employees serving in executive, administrative, or professional capacities. Only recently, on September 27, 2019, the USDOL issued a final rule raising the FLSA's salary thresholds for exempt EAP employees to \$684 per week effective January 1, 2020. See *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*, 84 Fed. Reg. 51230 (Sept. 27, 2019).

However, the data USDOL used to support the federal salary threshold was based upon workers in the lowest-wage region of the country (i.e., the South). Those wages are not reflective of wages paid to Pennsylvania's workers. Thus, a regulatory change is necessary to ensure that individuals who are not executive, administrative personnel or professionals are not improperly exempted from minimum wages and overtime under the Act.

Second, Pennsylvania's current regulations for the EAP exemptions contain two separate tests for employees to be exempt: the "short test" and the "long test." Under the short test, an employee is exempt if that employee performs one specific duty listed in the regulation governing the exemption and is compensated at or above the higher salary threshold listed in that regulation. Under the "long test," an employee is exempt if that employee performs all the duties found in the regulation governing the exemption and is compensated at or above the lower salary threshold listed in that regulation. This differs from the FLSA's regulations defining the EAP exemptions, which contain one standard duties test and one salary threshold for each exemption.

Third, the duties to qualify for each exemption have become outdated and need to be clarified to prevent the improper classification of employees and to be more consistent the duties for the EAP exemptions found in the FLSA's regulations defining the EAP exemptions.

The Department agrees with many commentators that making the Act's regulations consistent with the FLSA's regulations with regard to duties would make compliance easier for employers who would no longer have to make separate evaluations of an employee's duties to determine whether they are exempt under both the Act and the FLSA. As such, the Department has made an effort to harmonize its regulations with the Federal regulations to the extent permissible and appropriate under the Act.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Governor's Middle-Class Task Force held six meetings between September 29, 2017 and November 20, 2017. These meetings included workers and students, along with representatives of businesses, labor unions, workforce development programs, institutions of higher education and other post-secondary training. On several occasions, workers expressed concern about the inability to join the ranks of the middle class or maintain their middle-class status because of low or stagnant wages.

On January 10, 2018, the Department solicited input on a draft of the proposed rulemaking

from the Minimum Wage Advisory Board. The Department presented its intention to revise the regulations to the Minimum Wage Advisory Board (Board) at an open meeting and gave the Board members the ability to comment. The Minimum Wage Advisory Board is appointed by the Secretary pursuant to Section 6 of the Act to assist the Secretary to carry out the duties prescribed by the Act. *See* 43 P.S. § 333.106. The Board consists of three representatives of an established, recognized association of employers (including the PA Chamber of Business and Industry (PA Chamber)) and three representatives from the general public.

In its presentation, the Department informed the Board that it was clarifying the duties tests in the regulations including replacing the short and long tests with a standard duties test. In addition, the Department notified the members that it was raising the salary threshold to qualify for the executive, administrative and professional exemptions. The Board members were provided the opportunity to comment on the Department's intention to update the regulations. Some Board members expressed approval of the intention to update the regulations, and some members expressed concerns about such a large increase in the salary threshold. Department staff considered this feedback, and introduced a phase-in approach to raising the salary threshold over a three-year period.

The proposed rulemaking was published in the *Pennsylvania Bulletin* on June 23, 2018, with a 30-day public comment period (48 Pa.B. 3731). On July 21, 2018, the Department extended the public comment period for an additional 30 days (48 Pa.B. 4258). The public comment period closed on August 22, 2018.

During the public comment period, the Department received 917 unique comments from 898 commenters, including comments from the legislature. In total, the Department received 1,101 comments, some of which were submitted more than once by the same commentator. The Department also received comments from IRRC.

In response to comments related to the Department's outreach efforts, the Department hosted ten roundtable meetings throughout the Commonwealth to consult with the regulated community and obtain feedback on the proposed rulemaking. The Department, together with the Pennsylvania Chamber of Commerce and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), held five sessions with Pennsylvania businesses and local chambers of commerce, and five sessions with local labor organizations between May 20, 2019 and June 6, 2019. The agendas for these roundtable meetings provided that the goals were to educate stakeholders on the exemptions and the Department's application, and to engage stakeholders and elicit feedback. The Department specifically asked the stakeholders to discuss the impacts of the proposed rulemaking and provide recommendations for changes.

On May 20, 2019, the Department held a roundtable in Harrisburg, Pennsylvania, including the following participants: Keystone Research Center, Service Employees International Union (SEIU), Communications Workers of America, SEIU Healthcare and AFL-CIO.

On May 21, 2019, the Department held a roundtable in Harrisburg, Pennsylvania, including the following participants: Harrisburg Regional Chamber of Commerce, the Pennsylvania

Chamber of Commerce, Pennsylvania Association of Community Bankers, Army Heritage Foundation, Ned Smith Nature Center, HACC, Perfectly Pennsylvania, RETTEW, Capital Blue Cross, Greater Reading Chamber Alliance, York County Economic Alliance, Hampton Inn, Insurance Agents and Brokers, Hershey Entertainment and Resorts, Dickinson College and Pennsylvania Consortium for Liberal Arts.

On May 22, 2019, the Department held a roundtable in Erie, Pennsylvania for local businesses, including the following participants: Country Fair Stores, Family House, Inc., Community Health Net, Knox McLaughlin, Erie Federal Credit Union, Community Resources for Independence, Achievement Center, North Country Brewing Company and Mercyhurst.

On May 22, 2019, the Department held another roundtable in Erie, Pennsylvania for local labor organizations, including the following participants: AFL-CIO Northwest, IBEW 56, UE Local 506 (Wabtech) and UE Local 618 (Wabtech).

On May 28, 2019, the Department held a roundtable in Malvern, Pennsylvania, including the following participants: Abel Brothers Towing & Automotive, Inc., East Goshen Township, Aqua, Miller's Insurance Agency, Inc., CCCBI, Endo International, Chester County Economic Development Council, Sojourn Philly, Desmond Hotel & Conference Center, Community Action Partnership, Cozen O'Connor, Exton Regional Chamber of Commerce, Post & Schell, Chester County Economic Development Council, Wawa, Inc., Gawthrop Greenwood, PC, Germantown Cricket Club, National Bank of Ethiopia and West Chester University.

On May 29, 2019, the Department held a roundtable in Plymouth Meeting, Pennsylvania including the following participants: Philadelphia AFL-CIO, Pathways PA, Community Legal Services, Outten & Golden, Stephan Zouras, R., Winebrake and Santillo, Berger Montague and UFCW.

On June 2, 2019, the Department held a roundtable in Pittsburgh, Pennsylvania, including the following participants: USW and Mon Valley Unemployed Committee.

On June 5, 2019, the Department held another roundtable in Pittsburgh, Pennsylvania, including the following participants: Allie Kiski Chamber of Commerce, Sodini & Company, African American Chamber of Commerce of Western Pennsylvania, Keep It Simple Training, Eat'N Park, SMC Business Controls, North Side / North Shore Chamber of Commerce, Priory Hospitality, HR-FamilyLinks, Duquesne, Robert Morris, Community Care Connect, MHY Family Services, Community Human Services, Standard Bank, Littler Mendelsohn and Family House.

On June 6, 2019, the Department held a roundtable in Scranton, Pennsylvania for local businesses, including the following participants: Greater Scranton Chamber, Ufberg Law, Advocacy Alliance, Fidelity Bank, Commonwealth Health/Moses Taylor Hospital, Girl Scouts in the Heart of PA, Allied Services, SLHDA, UFCW federal credit union, Institute for HR & Services, Needle Law, Greater Scranton Chamber and Ben Franklin Technology Partners. Also,

on June 6, 2019, the Department held another roundtable for local labor organization in Scranton, Pennsylvania including the following participants: AFSCME and Labor Law Compliance.

In these roundtable sessions, Pennsylvania businesses and local chambers of commerce commented that the proposed rulemaking's departure from the federal rule creates confusion, especially for employers in multiple states, and that it is challenging for employers to know whether they are in compliance with federal and state law. Pennsylvania businesses expressed concern about the proposed rulemaking's use of data from the Northeast census region to develop the exempt salary thresholds, arguing that Pennsylvania is the lowest wage-earning state within that region. Employers suggested that this proposed rulemaking will require employers to terminate positions, cease funding health insurance and move salaried positions to hourly positions. Employers also suggested that employees will lose the flexibility in their schedules to meet "crunch times" when overtime is needed and to offset times when work is less plentiful.

Pennsylvania businesses commented that the increase from year 1 to year 3 is a big increase and recommended raising the wage at a slower rate. Lastly, the local chambers of commerce expressed a concern about the Commonwealth's ability to compete in the other states with lower salary thresholds. They recommend that the Department adopt a rulemaking that adopts the federal rules and adds the exceptions.

Nonprofit organizations commented that they are not able to absorb this increase in costs or to budget for overtime. They noted that events and programs are often scheduled in the evening and that employees at nonprofit organizations do not have standard working hours. Nonprofit organizations also expressed concerns about increasing costs and not knowing whether there will be an increase in government contracts that help fund their operations. They recommended that employees be exempt from overtime if they average 40 hours over a two-week pay period.

The local labor organizations commented that the proposed rulemaking will properly compensate workers and is an integral part of raising the minimum wage. They also commented that the existing law places managerial expectations on employees at small businesses that are not actually managers. The local labor organizations recommended more public outreach on this rulemaking, noting that many employees are not aware that they are entitled to overtime and that the law contains exemptions for overtime.

The local labor organizations supported the rulemaking and commented that social workers, case managers and secretaries may now be eligible for overtime and that these changes are an integral part of raising the minimum wage. They also commented that the incremental increases make this rulemaking easier for the employer. These local labor organizations believed it was appropriate to use data from the Northeast census region which includes Pennsylvania. They also recommend a pay schedule for other than salaried workers, and asked the Department to consider that an employee may be employed by two employers under the same umbrella organization and, for that reason, not collect overtime.

The Department considered the comments from the local businesses, local chambers of commerce and the local labor organizations in the development of the final-form rulemaking. In particular, the Department considered how nonprofit organizations will be affected, especially those reimbursed at a formula rate by state and federal government. As a result of these comments, the Department is considering outlining best practices for employers to allow employers to consider options to implement this final-form rulemaking. In addition, the Department will engage in outreach activities and establish educational sessions to ensure that stakeholders are informed of the EAP exemptions' new duties tests and salary threshold and the differences between state and federal requirements. Once the final regulation is approved, the Department will hold educational sessions for all stakeholders in Harrisburg, Scranton, Pittsburgh, Altoona, Philadelphia, and Erie. The Department will work with the Regional Chambers and associations to distribute fact sheets and offer assistance. The Department will ensure that those organizations have the Bureau's toll-free number and the email address of a resource account created specifically for this issue so that questions will be answered timely and consistently.

Summary of Comments and Responses on the Proposed Rulemaking

The proposed rulemaking published at 48 Pa.B. 3731 (June 23, 2018). Public comments on the proposed rulemaking were accepted through August 23, 2018. The Department received comments from 898 commentators during the public comment period and the Independent Regulatory Review Commission (IRRC). The comments were considered and are addressed in the comment and response document that accompanies this final-form rulemaking. A summary of major comments and responses is set forth below. The remaining comments are addressed in the comment and response document attached to this final-form rulemaking.

IRRC Comments

1. Efforts to Reach Consensus

IRRC commented that the proposed rulemaking had not achieved consensus and that the Department should engage in dialogue with individuals and representatives of those programs and employment sectors that were part of the initial Governor's Middle-Class Task Force meeting. In response, the Department engaged in an extensive public outreach campaign.

The Middle-Class Task Force held six sessions between September 29, 2017 and November 20, 2017 and engaged 74 participants who served as representatives of regional chambers, businesses, educational institutions, non-profit groups, labor organizations and the general public. In response to IRRC's direction to engage in stakeholder outreach and engage in dialogue with representatives of the Governor's Middle-Class Task Force meetings, the Department held 10 stakeholder roundtable sessions across the state between May 20, 2019 and June 6, 2019, as detailed extensively above. Five regional chambers hosted the business stakeholder roundtables and five labor organizations hosted the labor stakeholder roundtables. The Department invited and met with participants spanning each sector at the roundtable meetings to provide education on the current application of the EAP exemptions, explain the Department's proposed rulemaking, and listen to attendees' feedback on how the proposed rulemaking would

impact their lives, businesses, or organizations. The business roundtables were attended by members of the business community, educational institutions, non-profit groups and lawyers who represent employers. The labor roundtables were attended by labor organizations, members of the general public, and attorneys who represent employees.

The purpose of the roundtables and the extensive review of comments that the Department undertook was intended to find areas of agreement between vastly opposed interests. Although it is not possible to achieve total consensus, the Department has carefully evaluated the concerns of all affected groups.

There is no dispute that the current Pennsylvania salary threshold is obsolete and needs to be updated. Although it will be superseded by a new federal threshold to become effective on January 1, 2020, the federal threshold of \$23,660 has been in place since 2004 and was likewise obsolete. The long-term failure to adjust the salary threshold dilutes the purpose of the regulation; namely, that the duties test and salary threshold differentiate between exempt individuals performing actual, executive, administrative or professional duties, while lower paid white-collar workers are extended overtime protections. Such a failure demands an appropriate increase in the salary threshold.

The Department also heeded the commentators who urged the Department to await publication of the federal rule and to more closely align with the federal standards. As discussed at length herein, the Department has taken substantial steps to more closely align with the federal standards, to the extent consistent with its statutory authority. As described herein, there are some federal exemptions that the Act simply does not empower the Department to adopt.

The Department has also revised its methodology, as is discussed in detail herein, based on comments regarding the use of salary and wage data information for the Northeast region of the country. Instead, it has developed its salary threshold figures for this final-form rulemaking strictly from Pennsylvania data, so that it accurately reflects economic realities in the Commonwealth.

2. Legislative Comments

In its comment, IIRC specifically identified two legislative concerns: whether the legislative process should be used instead of the regulatory process; and whether the Department should wait for the Federal government to issue its overtime rule. IIRC also encouraged the Department to work with the standing committees and state lawmakers to address their issues as the final rulemaking is developed.

The Department received the following legislative comments that also suggested use of the legislative process over the regulatory process: Senator Lisa Baker, Senator Kim Ward, Representative Robert Kauffman, and members of the House Labor and Industry Committee (Representatives Ryan Mackenzie, Jesse Topper, Jim Cox, Cris Dush, Sheryl Delozier, Mark Gillen, Seth Grove, Dawn Keefer, Fred Keller, Kate Klunk, David Maloney, John McGinnis, Steven Mentzer, Eric Nelson and Jack Rader). The Department also received comments expressing a similar concern from Mr. Michael Lawson and from Ms. Gail Landis, on behalf of the Greater Reading Chamber of Commerce.

The Department also received comments supporting the Department's use of the regulatory process to increase salary thresholds and revise definitions from the following legislators: Representative John Galloway, Senator Christine Tartaglione and members of the House Labor and Industry Committee (Representatives John Galloway, Leanne Krueger, Morgan Cephas, Daniel Deasy, Maria Donatucci, Jeanne McNeill, Dan Miller, Gerald Mullery, Ed Neilson, Adam Ravenstahl, and Pam Snyder).

Under section 5(a)(5) of the Act, the Secretary is authorized to define and delimit employment in a bona fide "executive, administrative or professional capacity." 43 P.S. § 333.105(a)(5). While the Department acknowledges the legislature's ability to address such issues through the legislative process, as the law exists at this time, the Department's use of the regulatory process to increase salary thresholds, revise definitions, and update the duties tests for executive, administrative and professional employees is squarely within the Department's statutory authority.

In response to IRRC's concern and numerous other comments asking the Department to wait for the publication of the final USDOL rulemaking, the Department postponed publication of its final-form rulemaking package until the USDOL rulemaking was published. The USDOL promulgated its final rule on September 27, 2019 at 84 Fed. Reg. 51230, establishing a new salary threshold for employees performing in EAP capacities effective on January 1, 2020. In USDOL's final rulemaking, USDOL updated its current salary threshold to qualify for the EAP exemptions from \$455 per week to \$684 per week for all employees except for employees who are not employed by the Federal government and who work in the Northern Mariana Islands, Guam, Puerto Rico, the U.S. Virgin Islands or American Samoa. The USDOL's final rule also updated the salary threshold for employees who are highly compensated employees, work in educational establishments and computer employees. In its final rule, the USDOL clarified that a weekly salary rate may be translated into an equivalent amount for periods longer than a week, and amended its rule to allow ten percent of the salary amount to be satisfied by the payment of nondiscretionary bonuses, incentives and commissions paid annually or more frequently instead of quarterly or more frequently.

The Department has more closely aligned this final-form rulemaking with the federal regulations, including the new federal rule effective on January 1, 2020. A detailed explanation of the federal rule and the Department's efforts to align with that rule appears herein, in response IRRC's fifth comment.

The Department engaged with the legislature after the proposed regulatory package was submitted to IRRC. First, in July 2018, the Department met with staff of the Department's legislative oversight committees, which are Labor & Industry Committees of the House of Representatives and the Senate. The meeting offered an overview of and an opportunity to answer questions about the Department's proposed regulations to modernize overtime regulations. Of particular note, majority committee staff from both the House and Senate expressed concerns about the new salary threshold and questioned why exemptions and technical language were not being updated to align more with federal regulations.

In September 2018, the House Labor & Industry Committee held a public hearing regarding the Department's proposed regulations. The Secretary of Labor & Industry and the Deputy Secretary for Safety & Labor Management Relations, who oversee the program area that administers and enforces Pennsylvania's labor laws, participated in this public hearing by offering oral and written testimony and answering questions asked by committee members. The public hearing offered a valuable opportunity to hear from a range of stakeholder groups. A significant takeaway from this public hearing was that many employers and individuals indicated a fundamental misunderstanding of eligibility and applicability of current overtime exemptions for workers. For example, some employers believe any salaried employee is automatically exempt from overtime.

Lastly, the Department received the written comments referenced above from legislators and standing committees during the regulatory review process, which have been taken into consideration and are addressed herein.

3. The Regulation is in the Public Interest

IRRC commented that the Department should provide more detailed information for each section of the final-form regulation in the Preamble and should explain why the amendments are required. The Department has done so herein on pages 38-44 of the preamble, under "*Summary of Amendments.*"

In enacting the Minimum Wage Act, the General Assembly established the public policy direction underpinning the Department's exercise of its authority under the Act:

Employees are employed in some occupations in the Commonwealth of Pennsylvania for wages unreasonably low and not fairly commensurate with the value of the services rendered. Such a condition is contrary to public interest and public policy commands its regulation. Employees employed in such occupations are not as a class on a level of equality in bargaining with their employers in regard to minimum fair wage standards, and "freedom of contract" as applied to their relations with their employers is illusory. Judged by any reasonable standard, wages in such occupations are often found to bear no relation to the fair value of the services rendered. In the absence of effective minimum fair wage rates for employees, the depression of wages by some employers constitutes a serious form of unfair competition against other employers, reduces the purchasing power of the workers and threatens the stability of the economy. **The evils of unreasonable and unfair wages as they affect some employees employed in the Commonwealth of Pennsylvania are such as to render imperative the exercise of the police power of the Commonwealth for the protection of industry and of the employees employed therein and of the public interest of the community at large.**

43 P.S. § 333.101 (emphasis added). The legislature has determined that the protection of workers from unreasonably low wages is in the public interest.

The final regulation is in the public interest because Pennsylvania's current regulation is obsolete and no longer is relevant to provide guidance to employers to properly classify employees as exempt and to protect employees from employers who improperly misclassify them as exempt. The regulation is obsolete for two reasons. First, the duties test in the current regulations is out of date and no longer aligns with the USDOL duties test as it once did. The two different duties tests prescribed by federal and state law make it difficult for employers to accurately determine which employees are exempt from receiving overtime. Second, the salary threshold in the Department's current regulation has failed to keep pace with current wages and thus applies to very few of the salaried employees it was intended to protect. The Department's final rule is intended to update these regulations for easier comprehension and compliance by Pennsylvania's business community, and to provide protections to certain white-collar employees consistent with the express intent of the Act.

The duties and salary threshold tests in the Act have not been updated since 1977. At that time, the duties and salary threshold aligned with the USDOL rules. Since 1977, the USDOL has updated the federal regulations twice, in 2004 and in 2019, and have significantly changed both the duties and salary threshold tests for the FLSA's salary exemptions. Although the federal salary threshold will be updated on January 1, 2020, that threshold was calculated based on salary data for the Southern region of the United States—a region with the lowest wages nationally. The Department will initially align with the federal threshold and take a graduated approach to achieving a threshold that is representative of the Pennsylvania economy.

Updating Pennsylvania's duties test and the salary threshold is essential to meet the intent of the overtime exemption regulation. As the Department discovered during its stakeholder outreach, both employers and employees often misunderstand this regulation. There is confusion around Pennsylvania's antiquated use of both a short and long test for EAP exemptions. Further, most individuals understand only the salary threshold portion of the regulation, and mistakenly assume that if they make over \$23,660 (USDOL's current threshold until the updated USDOL regulation takes effect on January 1, 2020), they are ineligible for overtime. However, under both the Department's regulation and USDOL's regulation, the individual must make over the salary threshold AND meet the duties test. The increase in the salary threshold will better align the average salaries paid for employees who perform EAP duties with those duties; aligning Pennsylvania's duties test with the Federal duties test will assist employers with compliance.

Even opponents of the proposed rulemaking acknowledge that the existing regulation is outdated and the salary thresholds are obsolete. The methodology used by the Department to arrive at a fair and realistic salary threshold and the alignment of the duties test with the federal regulation is in the public interest.

4. Economic or Fiscal Impacts of the Regulation; Protection of the Public Health, Safety and Welfare

IRRC commented that the Department should explain the reasonableness of the proposed salary thresholds in light of the fact that the national average for salary increases has been about three percent and that, even with the three-year phase in, the Department's proposed salary increase is significant. IRRC summarized a number of the public comments, which are addressed more

fully in the attached comment and response document that accompanies this final form rulemaking. IRRC's comment expressed concern with the cost of compliance for non-profit and educational institutions, as well as local governments. It asked the Department to consult with the regulated community to "gain a thorough understanding of the fiscal impacts of this proposal."

As set forth in detail herein, the Department consulted at length with the regulated community in an effort to understand concerns and to appreciate the impact of the regulation on both businesses and employees. As a result of that outreach, the Department has revised its methodology to take into account concerns with the geographic reach of the data set selected. As outlined above, the revised salary threshold in the final form rulemaking is based on Pennsylvania Occupation Employment Statistics data. This data better reflects economic realities in Pennsylvania and has, in fact, resulted in a salary threshold that is more than \$2,000.00 lower than the salary level the Department proposed last year.

Business response to the salary threshold will vary depending on the characteristics of the business's operations, current staffing structure and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours per week, and therefore respond to the regulation in a way that may increase payroll costs. To adjust for the rule, employers may pursue one or a combination of options: pay non-exempt employees overtime; limit non-exempt employee hours to 40 hours a week to avoid overtime costs; allow for some overtime but reduce base pay or benefits; or raise non-exempt employee salaries to above the threshold.

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359
FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558
FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This takes into consideration that all employers in the state will review the new regulation and that some will recognize that they are exempt from the regulation due to being certain municipal, public or limited types of non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over two years, the number of newly non-exempt workers in the first year will be lower than the number of newly non-exempt workers upon full implementation.

In addition to the fiscal and economic impact on the business community, there will be a fiscal and economic impact for affected workers and for Pennsylvania communities. Approximately 82,000 EAP workers statewide will benefit from these updated

regulations by January 1, 2022. Depending on how their employer reacts to these regulations, these individuals and their families could benefit from increased income and/or improved quality of work/family balance.

FY 2020-2021: \$3,565,467 - \$3,984,681 in increased worker wages
FY 2021-2022: \$13,211,856 - \$14,765,256 in increased worker wages
FY 2022-2023: \$19,871,561 - \$22,207,985 in increased worker wages
FY 2023-2024: \$20,450,344 - \$22,854,819 in increased worker wages
FY 2024-2025: \$20,450,344 - \$22,854,819 in increased worker wages

These additional wages to workers create “induced spending” in the community; this is consumer spending on retail establishments, restaurants, and other goods and services. Estimated induced spending is as follows:

FY 2020-2021 Economic Impact: \$1,957,441 - \$2,187,590 in induced spending
FY 2021-2022 Economic Impact: \$7,253,309 - \$8,106,125 in induced spending
FY 2022-2023 Economic Impact: \$10,909,487 - \$12,192,184 in induced spending
FY 2023-2024 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending
FY 2024-2025 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending

Finally, additional wages and induced spending creates an increase in tax revenue for state and local governments. Estimated additional tax revenues are as follows:

FY 2020-2021: \$181,839 – \$203,219 in state and local tax revenues
FY 2021-2022: \$673,805 – \$753,028 in state and local tax revenues
FY 2022-2023: \$1,013,450 - \$1,132,607 in state and local tax revenues
FY 2023-2024: \$1,042,968 - \$1,165,596 in state and local tax revenues
FY 2024-2025: \$1,042,968 - \$1,165,596 in state and local tax revenues

5. Clarity, Feasibility and Reasonableness; Possible Conflict with or Duplication of Statutes or Existing Regulations

The IRRC commented that the proposed rulemaking did not fully align with federal regulations. It pointed out that exemptions exist in federal regulations for highly compensated employees, outside sales, certain computer employees, business owners and employees of educational establishments and reiterated the concern that omission of these provisions will contribute to inconsistencies and complicate compliance.

As an initial matter, “the FLSA does not supersede state law; Pennsylvania may enact and impose more generous overtime provisions than those contained under the FLSA which are more beneficial to employees.” *Bayada Nurses, Inc. v. Com., Dep’t of Labor & Indus.*, 8 A.3d 866, 883 (2010). In *Bayada*, the Pennsylvania Supreme Court noted that other courts confronting related issues have held that the FLSA does not prohibit state regulation of wages and overtime if the

state's standards are more beneficial to workers. *Id.* at 883 (citing *Pettis Moving Co., Inc. v. Roberts*, 784 F.2d 439, 441 (2d Cir. 1986) ("Section 218(a) of the FLSA explicitly permits states to set more stringent overtime provisions than the FLSA.")). *See also Knepper v. Rite Aid Corp.*, 675 F.3d 249, 262 (3d Cir. 2012) (FLSA's saving clause evinces a clear intent to preserve rather than supplant state law and undermines any suggestion that Congress intended to occupy the field of wage and hour regulation).

Thus while the FLSA's purpose is to establish a national floor under which wage protections cannot drop, the FLSA does not supersede a state's minimum wage laws, require that states adopt minimum wage and overtime standards at levels established in the FLSA, nor prohibit a state's provision of more stringent protections.

Computer Employee exemption

The Department cannot create a computer exemption because that exemption does not exist in the Act. While the FLSA specifically exempts "any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker" and defines the relevant duties and compensation rate, *see* 29 U.S.C. § 213(a)(17), this exemption does not exist anywhere in the Act. The Department cannot add an entirely different category of exempt employee through regulation where the legislature has not so provided. *See, e.g. Nationwide Mut. Ins. Co. v. Foster*, 580 A.2d 436, 442 (Pa. Cmwlth. 1990) (agencies cannot add substantive terms to statutes which do not exist in the statute).

Other Exemptions

The Department's current regulations implementing the Act contain an exemption for outside sales but do not contain exemptions for highly compensated employees, business owners and employees of educational establishments. Moreover, the Department's proposed rulemaking did not address updating or creating these exemptions and, due to that lack of notice, the Department received no comments from labor organizations regarding whether the outside sales exemption should be updated, or a new exemption created. As such, it would be more appropriate to address these issues in a future rulemaking where the Department can conduct outreach and receive input from all interested parties.

Other commentators recommended that the Department mirror Federal law and adopt an 8/80 rule for the health care industry. In order for the Department to adopt this rule, the Department would need to amend 34 Pa. Code § 231.42, which implements the Act and defines the term "workweek" as a period of 7 consecutive work days. This amendment also would be better addressed in a future rulemaking to provide all interested parties an opportunity to review and comment on any proposed changes.

Other commentators noted the absence of a concurrent duties test and key definitions such as primary duty and salary basis. While the Department has more closely aligned its regulations with federal regulations, the Department has not adopted all federal definitions. However, the Department does look to federal law for guidance for interpreting its regulations. The Department

will continue to review federal regulations and may address any additional inconsistencies in future rulemaking.

Federal Overtime Rule

IRRC observed that many commentators, including members of the legislature, noted that the USDOL was in the process of promulgating a federal overtime rule. Specifically, that comment was submitted by Representative Robert Kauffman, Senator Kim Ward, members of the House State Government Committee (Representatives Daryl Metcalfe, Matt Dowling, Cris Dush, Seth Grove, Kristin Hill, Jerry Knowles, Brett Miller, Brad Roae, Frank Ryan, Rick Saccone, Tommy Sankey, Craig Staats, Justin Walsh, Judy Ward, and Jeff Wheeland), members of the House Labor and Industry Committee (Representatives Ryan Mackenzie, Jesse Topper, Jim Cox, Cris Dush, Sheryl Delozier, Mark Gillen, Seth Grove, Dawn Keefer, Fred Keller, Kate Klunk, David Maloney, John McGinnis, Steven Mentzer, Eric Nelson and Jack Rader), suggesting that the Department should await the USDOL rulemaking process. There were also a number of public comments to that effect, which are addressed more fully in the attached comment and response document that accompanies this final form rulemaking.

In fact, the Department heeded the suggestion that it await the final USDOL rulemaking. The USDOL promulgated its final rule on September 27, 2019 at 84 Fed. Reg. 51230, establishing a new salary threshold for employees performing in EAP capacities effective on January 1, 2020. In USDOL's final rulemaking, USDOL updated its current salary threshold to qualify for the EAP exemptions from \$455 per week to \$684 per week for all employees except for employees who are not employed by the Federal government and who work in U.S. territories. The USDOL's final rule also updated the salary threshold for employees who are highly compensated employees, work in educational establishments and computer employees. In its final rule, the USDOL clarified that a weekly salary rate may be translated into an equivalent amount for periods longer than a week, and amended its rule to allow ten percent of the salary amount to be satisfied by the payment of nondiscretionary bonuses, incentives and commissions paid annually or more frequently instead of quarterly or more frequently.

After reviewing the USDOL's final rulemaking, in its final regulations, the Department adjusted its initial salary threshold to \$684 per week and amended the language allowing the payment of quarterly bonuses to allow the payment of yearly bonuses. The Department's final regulations will also let employers decide whether to use a calendar year, fiscal year or anniversary of hire year for calculating and paying bonuses.

Applicability

IRRC commented on the concerns of public employers. It noted the comments from public employers, which are addressed more fully in the attached comment and response document that accompanies this final form rulemaking, that public employers would incur compliance costs. As explained below, the Department's overtime regulations have been and continue to be inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The final-form rulemaking does nothing to change that status. Instead, the FLSA, which

expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The Act defines the term “employer” as “any individual, partnership, association, corporation, business trust, or any person or group of persons acting, directly or indirectly, in the interest of an employer in relation to any employee.” 43 P.S. § 333.103(g). The term specifically omits public employers. The omission of public employers from the Act’s definition of “employer” indicates the intent of the General Assembly to exclude public employers from coverage under the Act. Neither courts nor agencies can add requirements to a statute by interpretation. *See, e.g., Kegerise v. Delgrande*, 183 A.3d 997, 1005 (Pa. 2018) (courts “must not add, by interpretation, a requirement not included by the legislature”); *Shapiro v. State Bd. of Accountancy*, 856 A.2d 864, 877 (Pa. Cmwlth. 2004) (court may not insert a word the legislature failed to supply into a statute). In construing the Wage Payment and Collection Law, the Commonwealth Court held that it “must give effect to the legislature’s intent as it was expressed in the language of the statute and cannot supply an omission in a statute where it appears that the matter has been intentionally omitted. Municipal corporations such as the Borough are not included within the definition of “employer,” and we, as an appellate court, cannot expand the definition of “employer” to include them.” *Huffman v. Borough of Millvale*, 591 A.2d 1137, 1138-39 (Pa. Cmwlth. 1991). Likewise, an agency cannot supply a term that appears to have been intentionally omitted from a statute through an interpretative rule. *See, e.g., Nationwide Mut. Ins. Co. v. Foster*, 580 A.2d 436, 442 (Pa. Cmwlth. 1990) (agencies cannot add terms to statutes which do not exist in the statute).

Although no Pennsylvania court has specifically addressed whether the Act applies to public employers, in 1976 the Attorney General opined that the Minimum Wage Act does not apply to public employees. Office of Attorney General, Official Opinion No. 76-29, Applicability of Minimum Wage Act to Public Employes, 1 Pa. D.&C. 33 (Pa. A.G.), 1976 WL 401515 (October 18, 1976). The Attorney General traced the parallel development of the definition of “employer” in the Act and the FLSA. The Attorney General noted that the FLSA was amended on April 8, 1974, P.L. 93-259, 88 Stat. 62 to specifically include public agencies within the definition of “employer” in 29 U.S.C. §203(d), and to remove the exemption previously afforded the States and their political subdivisions. Since 1974, the FLSA has defined “employer” as “any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency,” 29 U.S.C. § 203(d), and provided a definition of “employee” applicable to individuals employed by a public agency which generally includes “any individual employed by a State, political subdivision of a State, or an interstate governmental agency.” 29 U.S.C. § 203(e)(2)(C).

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of “employer” in 1974, but has not altered the definition of “employer” to include public entities. The General Assembly’s clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act’s definition of employer, the Department has properly interpreted the Act to exclude them. This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

IRRC suggested that the Department explicitly identify the types of employers which are exempt from the requirements of the Act and, thus, the Department's regulations implementing the Act.

The following employers are exempt from the Act by virtue of their omission from the text of the Act: Commonwealth agencies, counties, cities, boroughs, townships, state-related schools, Penn State University, public schools, conservation districts and port authorities. Additionally, there is a specific exemption in the Act for weekly, semiweekly or daily newspapers with a circulation of less than four thousand, the major part of which circulation is within the county where published or counties contiguous thereto. 43 P.S. § 333.105(a)(4). There is also a specific exemption in the act for public amusement or recreational establishments, organized camps, or religious or non-profit educational conference centers, if they do not operate for more than seven months in any calendar year, or if during the preceding calendar year, their average receipts for any six months of such year were not more than thirty-three and one-third percent of its average receipts for the other six months of the year. 43 P.S. § 333.105(a)(9). The Department is also constitutionally precluded from enforcing the Act against federal entities. "Of course, under fundamental tenets of our Republic the Commonwealth of Pennsylvania has no power to make the federal government subject to any of its laws and regulations." *Hughes v. WCAB (Salem Transp. Co., Inc.)*, 513 A.2d 576, 578 (Pa. Cmwlth. 1986).

6. Reasonableness of Requirements, Implementation Procedures and Timetables for Compliance by the Public and Private Sectors

IRRC next commented that the Department should explain how the implementation schedule provides sufficient time for compliance and for employers to make necessary adjustments to business practices, as well as a communication strategy. It noted a comment from Representative John Galloway that suggested that the Department consider delaying the initial implementation for a period of time to allow notification to employers.

Because the Department waited for the publication of the federal regulation, and aligned the threshold for the first year with the federal threshold which becomes effective on January 1, 2020, the final-form rule has little impact until January 1, 2021. The regulated community is already on notice of the increased federal threshold and will have a year before the first of two graduated steps to bring the exempt salary threshold to the level warranted by Pennsylvania-specific data becomes effective.

The Department will engage in outreach activities and establish educational sessions to ensure that stakeholders are informed of the EAP exemptions' new duties tests and salary threshold and provide clarity on the differences between state and federal requirements. Following approved of the final regulation, the Department plans to hold educational sessions for all stakeholders in Harrisburg, Scranton, Pittsburgh, Altoona, Philadelphia and Erie. In addition, the Department will work with the State and Regional Chambers and associations to distribute fact sheets and offer assistance. The Department will ensure that those organizations have the Bureau's toll-free number and the email address of a resource account created specifically for this issue so that questions will be answered timely and consistently.

7. Whether Regulation is Supported by Acceptable Data; Reasonableness of Requirements, Implementation Procedures and Timetables for Compliance; Statutory Authority; Whether the Regulation Represents a Policy Decision of Such a Substantial Nature that it Requires Legislative Review

Salary Threshold Phase-In

Many commenters expressed concern about the salary threshold's large increase from phase in through final amount, thereby potentially creating many newly non-exempt workers. IRRC pointed to commenters' statements that the average salary increases each year at 3%. However, the Department notes that the salary threshold has not increased for 15 years and on the state level for 42 years. The increase from the phase in amount to final amount is intended to compensate for the lack of appropriate updates to the salary threshold for many years.

Further, the Department's proposed increase aligns with or is less than salary threshold increases in previous state and federal rulemakings. The Department has heeded the comments of the employer community that it cannot accommodate sharp increases to the salary threshold, and will therefore establish a Pennsylvania-specific salary threshold over three years and implement an automatic review and escalation mechanism every three years to avoid sharply increasing the salary threshold in the future.

| Year | Weekly Salary Threshold | % Increase from Previous Threshold |
|---------------------------------------|---|--|
| 1975 (previous rulemaking in 1970) | Short Test: \$250 Long-Test for Exec & Admin: \$155 Long-Test for Prof: \$170 | Short Test: 25% increase Long Test, E&A: 24% increase Long Test, Prof: 21% increase |
| 2004 USDOL | \$455 (\$23,660 annually) | 82% increase from Long Test 192% increase from Executive/Administrative Test 168% increase from Short Test |
| 2020 USDOL | \$684 (\$35,568 annually) | 50% from 2004 |
| 2021 PAL&I | \$780 (\$40,560 annually) | 14% from 2020 USDOL |
| 2022 PAL&I | \$875 (\$45,500 annually) | 12% from PAL&I 2021 |

Since the proposed regulation was published, the federal government has issued a rule establishing a new salary threshold for EAP employees. The Department has aligned the state threshold for the first year with the federal threshold that will become effective on January 1, 2020. Therefore, there is no impact to employers from the Pennsylvania-specific salary threshold until January 1, 2021, when the incremental increase in the threshold would diverge from the federal threshold. Therefore, employers will have time to prepare and adjust, and the Department will

undertake a communication and educational campaign, described above, to ensure that employers are aware of the changes and their obligations under this regulation.

Automatic Review and Adjustment Mechanism

The final regulations also include a mechanism to automatically review and adjust the exempt salary threshold every three years where the data establishes that it is necessary to prevent an erosion of its effectiveness. “Experience has shown that fixed earning thresholds become substantially less effective over time. Additionally, lengthy delays between updates necessitate disruptively large increases when overdue updates finally occur.” See USDOL Wage and Hour Division” Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemptions for Executive, Administrative and Professional Employees (September 2019). This has been the experience in Pennsylvania where the salary threshold has eroded over the passage of 15 years during which no adjustment was made for economic growth or inflation, resulting in an artificially low threshold that allows employees working in EAP capacities to be designated as exempt and required to work often excessive overtime hours without additional compensation. In addition to the misalignment of the exempt salary level and EAP duties, sporadic large increases lead to the employer community having to play “catch up” each time the salary threshold is increased. Several commenters noted that difficulty of attempting to level-set wages in a three-year period after so many years of regulatory inaction.

The final regulations will provide a mechanism to review and adjust the salary threshold every three years using the same Pennsylvania-specific data-set and methodology used to establish the Pennsylvania salary level for Year 3 of the three-year phase-in period (\$875/week or \$45,500 annual pay). This is a change from the proposed regulations which proposed to use data based on the 30th percentile of weekly earnings of full-time non-hourly workers in the Northeast region. As noted above, the Department agreed with commenters that the Northeast region, which includes Pennsylvania wages at the low end of high-wage eastern seaboard cities, was not the appropriate measure for the Commonwealth. Instead, the final regulations provide for a triennial adjustment of the salary threshold—based on the 10th percentile of wages in the exempt occupations in Pennsylvania. based on the data. The triennial salary level adjustment would be reviewed by the Minimum Wage Advisory Board and published in the *Pennsylvania Bulletin* at least 30 days in advance of the effective date, giving the employer community adequate time to adjust to the smaller, more predictable salary level adjustments. In times of economic downturn, when wages are not expected to rise, it is unlikely that the then-current data will support an increase to the salary threshold.

The Department has the statutory authority to promulgate the automatic adjustment mechanism of the regulations. Pennsylvania courts have long recognized the power of an administrative agency to administer a statutorily-mandated program and under the Act, has expressly delegated authority to the Department to “define and delimit” the EAP terms in Section 5(a) of the Act, 43 P.S. § 333.105(a) and left it to the Department’s discretion how to do so. This is the same broad delegation of authority underpinning the Department’s use of a salary threshold as a characteristic to define the EAP exemption in 1977, the exercise of which authority has never been challenged in Pennsylvania. The Department has made other significant changes to the way the Act is implemented under the same broad authority to define the EAP categories by deleting

the long and short tests in the EAP exemptions, by allowing bonuses to count towards the salary amount and by aligning the duties more closely with the federal regulation.

Under the automatic adjustment mechanism, salary level changes will occur at regular, three-year intervals using the same methodology and data used to establish the original Pennsylvania-specific salary threshold. This mechanism will benefit employers and employees by replacing infrequent, and this more drastic salary level changes with gradual changes occurring at predictable intervals. The automatic adjustment mechanism was part of the Department's proposed rulemaking which established a salary threshold that adequately distinguishes between who may meet the duties requirements of the EAP exemptions and those who likely do not. The automatic review and adjustment provision merely recalculates this salary threshold every three years using current data and the same methodology used to establish the initial Pennsylvania EAP salary threshold. Because the methodology and dataset remain the same, the automatic adjustment mechanism merely keeps the salary threshold accurate considering changing salary levels in the Pennsylvania workplace. It does not change the duties test, salary level test, or the methodology used to calculate the salary

The Department has considered the input and feedback of the regulated community in establishing the new Pennsylvania salary threshold. The automatic adjustment provision does not change the salary level test set in the Department's final regulations and which requires that exempt employees be paid a salary equal to at least the weighted average 10th percentile of wages for exempt occupations in Pennsylvania. The weighting reflects the relative number of individuals employed in the particular exempt occupations. Using the automatic adjustment provision does not substantively change the salary level test or duties test, but merely adjusts the salary threshold based on current data in the same data-set used to establish the Pennsylvania-specific salary level established in this final rulemaking. Thus, the automatic adjustment provision is not a new rulemaking. The standard and process for calculating the adjustment is being set in this final-form rulemaking. It is merely a mechanism to preserve the accuracy and continuing effectiveness of the salary level test. The triennial adjustment mechanism, which will be based on current data, will ensure that the salary test continues to reflect the same salary threshold based on the weighted average 10th percentile of wages for exempt occupations in Pennsylvania.

As the effectiveness of the salary threshold erodes over time, workers may be mistakenly misclassified as exempt solely based on salary alone and not in concert with the duties test. Thus, when the salary threshold is again adjusted in a regulatory update, employers are faced with a situation in which a large number of previously exempted employees may now be non-exempt, either due to initial misclassification or due to the salary threshold being updated to reflect wages being paid to employees in the current labor market.

The Department has therefore indexed the adjustment of the salary threshold to the weighted average 10th percentile wage of all exempt workers in Pennsylvania and will update the salary threshold in 2023 and then every three years thereafter.

The automatic review and adjustment mechanism allows the regulation to be carried out as intended: there would be few instances of an employee being exempt prior to a regulatory update and subject to overtime upon update due to a large increase in the salary threshold to reflect current

wages. Periodic small adjustments to the salary threshold allow the salary threshold to continue to meet the intent of the regulation without causing upheaval to the employer community.

Federal district court litigation over 2016 federal rulemaking

The IRRC asked how the Department's rulemaking differs from a federal regulation that was rejected by a district court in Texas on the grounds that the salary level was so high that it rendered the duties test for the EAP exemptions irrelevant and whether the Department considered another methodology. As explained herein, the Department has revised its methodology in its final rulemaking and that methodology differs significantly from that used in the Texas case.

In May 2016, the USDOL published a regulation which raised the minimum salary level for exempt employees under the FLSA from \$455 per week to \$913 per week. The new salary level was based on the 40th percentile of weekly earnings of full-time salaried workers in the lowest wage region of the United States (the South), and also created an automatic updating mechanism that adjusts the minimum salary level every three years starting in 2020.

In response, the State of Nevada and 20 other states sued the USDOL challenging the overtime regulation. The parties challenging the federal regulation asserted that revisions to the minimum salary threshold exceeded USDOL's authority under Section 213(a)(1) and was inconsistent with the intent of the FLSA because the regulation increased the minimum salary threshold to so high a level that it was no longer a plausible proxy for the job duties of an executive, administrative, or professional capacity employee. The USDOL countered that the regulation is within its delegated authority because Section 213(a)(1) explicitly grants authority to the Department to define and delimit the terms "bona fide executive, administrative, or professional capacity," and, therefore, the court should defer to the USDOL's interpretation of the statute.

The federal district court held the USDOL regulation implementing a salary increase to the FLSA's exemptions invalid. *Nevada v. United States Dep't of Labor*, 275 F.Supp.3d 795 (E.D. Texas 2017). The federal district court noted that the USDOL has the authority to implement a salary threshold to identify those persons serving in executive, administrative or professional capacities and thus exempt from overtime pay, because the salary threshold serves as a defining characteristic when determining who, in good faith, performs actual EAP duties. The federal district court determined, however, that because the regulation more than doubled the previous minimum salary level, making overtime status depend predominately on a minimum salary level, and thereby supplanting an analysis of an employee's job duties. The court noted that entire categories of previously exempt employees who perform "bona fide executive, administrative, or professional capacity" duties would now qualify for the exemption based on salary alone. The court held that because the FLSA unambiguously indicated Congress's intent that employees doing "bona fide executive, administrative, or professional capacity" duties to be exempt from overtime pay, the USDOL exceeded its authority by using a salary-level test that effectively eliminates the duties-focused test prescribed under the FLSA.

The federal district court decision is neither precedential nor is particularly applicable to the Department's final rule-making because of significant factual dissimilarities between the 2016 USDOL final rule and the Department's final regulations. The final regulations implementing the

Minimum Wage Act differ in material respects from the 2016 federal regulation, including the methodology, which relies upon Pennsylvania-specific data regarding exempt employees, and resulting exempt salary thresholds that are reflective of the existing Commonwealth workforce of exempt employees.

More specifically, the Department's regulation differs from the 2016 USDOL regulation invalidated by the Texas federal district court in the at least three significant ways.

First, the Department's increase is smaller than the 2016 USDOL rule and is phased in over two years rather than immediately effective. In the *Nevada* case, the federal district court based its decision that USDOL's regulation violated the FLSA in part on the fact that USDOL immediately doubled the salary threshold, from \$455 to \$913 per week, which in the court's view effectively eliminated the test based on the employee's duties. Under the Department's regulation, the salary level immediately resets to \$684, to be consistent with the salary threshold set in the USDOL's new rule, which becomes effective on January 1, 2020. The Pennsylvania-specific salary threshold gradually rises to the Year 2 intermediate salary threshold of \$780 (a 14% increase of the salary level effective on January 1, 2020) and in the following year to the Year 3 salary threshold of \$875 (a 12% increase over the Year 2 salary level). This gradual phase-in avoids what was perceived to be a disruptively large increase.

Second, unlike the USDOL's 2016 rulemaking, which focused exclusively on the salary level of exempt employees in the EAP categories, the increase in the salary threshold is part of the larger effort to update the EAP definitions to make the more relevant in the modern marketplace and more consistent with the federal exemptions. The Department's rulemaking also updated the duties test to qualify for the EAP exemption, including eliminating the "long" and "short" tests, establishing that the duties remain the focus of the exempt analysis. The Department's comprehensive overhaul of the Commonwealth's EAP regulations undercuts the notion that the salary threshold is intended to be or will be determinative of an employee's status, in disregard of an analysis of the employee's job duties. In *Nevada*, the court noted that the USDOL's 2016 rulemaking stated that white collar employees earning less than \$913 per week would be eligible for overtime "irrespective of their job duties and responsibilities." 275 F. Supp. 3d at 806 (quoting 81 Fed. Reg. 32391, 32405 (May 23, 2016)). In this final-form rulemaking, the Department both modernized its definitions and developed a salary threshold that is consistent with EAP duties, calculated using the data of exempt Pennsylvania employees.

Third, the Department used a different methodology to calculate the salary threshold than the USDOL used in 2016 to calculate its salary threshold. Pennsylvania's EAP salary threshold has failed to keep pace with the rising nominal salaries of exempt salaried workers, and no longer protects most EAP workers intended by this regulation to receive minimum wage and overtime pay. The salary threshold has not been updated since 1977 and is currently \$8,060 per year for Executive and Administrative employees under the long test. For Professional employees the salary threshold is \$8,840 per year for the long test. For all the EAP exemptions, the annual salary threshold is \$13,000 per year for the short test. The purpose of the salary threshold is such that non-exempt workers should be unlikely to make more than the threshold, and exempt workers should be unlikely to make less than the threshold. Today in Pennsylvania, the average yearly salary of individuals in exempt occupations is \$82,480. As such, the current salary thresholds are

irrelevant because virtually all white-collar workers make a higher salary than the salary threshold. This rulemaking sets the salary threshold for all EAP exemptions at the weighted average of 10th percentile exempt wages (the Department's methodology for determining salary threshold) and would be \$45,500 per year. This will act as a real threshold to ensure that salaried workers are properly classified as exempt.

Moreover, the decision of the Texas federal district court is inherently flawed. The standard imposed by the court in that case created a standard that would invalidate nearly any regulation that relied on a salary threshold. An examination of the decision shows that the judge not only misunderstood the operation of the rule at issue, he based his decision on the fact that the regulation gave new overtime protections to workers whose jobs had not changed. The decision ignored the fact that the 2004 amendment to the federal rule similarly extended overtime protections to workers whose jobs had not changed, as does the new USDOL rule, which estimates that 1.2 million workers who would otherwise be exempt under the current salary level will qualify for overtime based on the change in the salary threshold alone. *See* 84 Fed. Reg. 51238. There is no precedent for deciding that a rule is invalid based solely on its impact.

The federal district court in Nevada did not analyze the legal validity of the automatic adjustment provision in the 2016 USDOL rulemaking, instead finding that because the salary level set in the rulemaking was invalid, so too was the automatic adjustment of that salary level.

Basis for salary increase in final regulations

There was a split in commentary from legislators who believed that the salary threshold increase proposed in the Department's proposed rulemaking was sufficiently high as to be inconsistent with the definitions of the EAP duties, and others who did not.

Representative Robert Kauffman conceded the need to update the salary threshold, but commented that the Department's proposed rulemaking increased it so significantly that the exemptions were more heavily dependent on a salary test than a duties test. Senator Kim Ward likewise conceded that the salary thresholds should be updated, but that the proposed increase exceeded a reasonable level and in some cases, would make the duties test irrelevant. Senator Lisa Baker commented that the regulations would be subject to legal challenge.

However, some legislative comments were supportive of the salary threshold. Representative John Galloway noted the severe need for improvements to minimum wage and overtime rules and estimated that when fully enacted, the threshold would expand overtime protection to 455,000 Pennsylvanians. Senator Christine Tartaglione commented that the national mandatory overtime threshold of \$23,660 is too low and results in someone who makes \$11.38 per hour not qualifying for mandatory overtime pay. The members of the House Labor and Industry Committee (Representatives John Galloway, Leanne Krueger, Morgan Cephas, Daniel Deasy, Maria Donatucci, Jeanne McNeill, Dan Miller, Gerald Mullery, Ed Neilson, Adam Ravenstahl, and Pam Snyder) also supported the threshold to provide "meaningful and tangible wage protections for low-wage and middle-class workers."

IRRC requested that the Department explain the reasonableness of the final option pursued and how its methodology differs from the USDOL's methodology in deriving the exempt salary level in the now-superseded 2016 federal rulemaking. After carefully considering the public comments and the feedback that the Department received from its roundtable discussions, the Department adjusted the methodology and data-set that it used to arrive at its salary level.

Feedback provided to the Department was also sharply split. The Department reviewed more than 1,000 public comments and hosted ten stakeholder roundtables across the state. Businesses overwhelmingly stated that \$47,892 is too high for the salary threshold, and workers, labor organizations, and others stated that \$47,892 is adequate or is too low.

In conjunction with its review of these comments, the Department reexamined the intent of the General Assembly in exempting executive, administrative and professional employees from the minimum wage and salary provisions of the Act, and the purpose of the salary level test, which serves as a defining characteristic when determining who, in good faith, performs executive, administrative, or professional duties. Defining characteristics of the current overtime exemptions are as follows:

- The individual must be paid a salary, versus an hourly wage; and
- The individual is employed in an executive, administrative, and professional capacity – under the respective duties tests; and
- The individual must be compensated at a salary basis of a certain amount – the salary threshold (not less than \$250 a week per Pennsylvania's current regulation; in current practice \$455 a week as per the USDOL Fair Labor Standards Act update in 2004).

Duties Test

Regarding the duties test, the Department is in agreement with many commentators that Pennsylvania's duties test should align with the federal regulations. Pennsylvania's current regulations align with the federal law as it existed in 1977, which included the long and short duties test. At the time, federal regulations included a "long test" with a more restrictive duties test and a lower salary threshold, and a "short test" with a less stringent duties requirements and a higher salary threshold. In 2004 the duties test was simplified to reflect the less stringent duties in the "short test" and eliminated the "long test."

The duties test in the Department's proposed rulemaking still differed from the USDOL duties test. In its final regulations, the Department has mirrored the general duties test set forth in the federal regulations, acknowledging that consistently-expressed concern of employers that the discrepancies between Pennsylvania's regulations and USDOL regulations make it difficult for employers to know if they are in compliance with the duties test. Aligning the duties test more closely to the federal duties will provide increased clarity to both employers and employees as to who is and is not an exempt employee.

Salary Threshold

Regarding the salary threshold, the Department believes that the threshold should be set at an amount that allows the Department to enforce the intent of the Act exemptions: that individuals performing actual executive, administrative, or professional duties are exempt, while lower-paid white-collar workers are extended overtime protections.

The Department considered the salary thresholds that USDOL set in its previous rulemakings. Historically, USDOL examined data on actual wages paid to exempt employees, and then set the salary level at an amount slightly lower than might be indicated by data. In 1940 and 1949, USDOL looked at the average salary paid to the lowest level of exempt employee. In 1949, the USDOL created the new “short test,” which differed from the initial duties test, now the “long test. The most significant difference between the short test and long test was that the long test limited the amount of time an exempt employee could spend on nonexempt duties, while the short test did not include a specific limit on nonexempt work. 69 Fed. Reg. 22122, 22165.

Beginning in 1958, USDOL set salary levels for the long test to exclude approximately the lowest-paid 10 percent of *exempt* salaried employees.

The salary tests have thus been set for the country as a whole . . . with appropriate consideration given to the fact that the same salary cannot operate with equal effect as a test in high-wage and low-wage industries and regions, and in metropolitan and rural areas, in an economy as complex and diversified as that of the United States. Despite the variation in effect, however, it is clear that the objectives of the salary tests will be accomplished if the levels selected are set at points near the lower end of the current range of salaries for each of the categories. Such levels will assist in demarcating the “bona fide” executive, administrative, and professional employees without disqualifying any substantial number of such employees.

Id. at 22166. Throughout the regulatory history of USDOL using both a short and long test, the short test threshold was significantly higher than the long test threshold (see table below).

| Year | Executive | Administrative | Professional | Short Test |
|------|-----------|----------------|--------------|------------|
| 1938 | \$30 | \$30 | None | None |
| 1940 | \$30 | \$50 | \$50 | None |
| 1949 | \$55 | \$75 | \$75 | \$100 |
| 1958 | \$80 | \$95 | \$95 | \$125 |
| 1963 | \$100 | \$100 | \$115 | \$150 |
| 1970 | \$125 | \$125 | \$140 | \$200 |
| 1975 | \$155 | \$155 | \$170 | \$250 |

Id. at 22165.

However, in 2004, USDOL departed from this methodology in its final rulemaking, streamlining the long and short duties test into a single test, as well as moving from the previous salary threshold methodology to the use of the 20th percentile of *all* salaried employees in the South. *Id.* at 22167.

USDOL justified this departure from previous methodology in two ways. First, USDOL stated that the change in salary threshold methodology was due to the change from the short and long test structure. Second, USDOL stated that “this adjustment (from use of exempt workers to all salaried workers) achieved much the same purpose as restricting the analysis to a lower percentage of exempt employees. Assuming that employees earning a lower salary are more likely non-exempt, both approaches are capable of reaching exactly the same endpoint.” 69 Fed. Reg. 22167.

This logic underpinning the USDOL’s 2004 change in methodology was flawed for two significant reasons. First, the 10th percentile of exempt workers was the method traditionally used for the long test, and as per information from previous rulemakings, the long test threshold was historically set significantly lower than the short test threshold. Therefore, when eliminating the two different tests and moving to one standard test, it would have been reasonable and logical for the USDOL to have sought a salary threshold that was more inclusive of lower-salaried workers, rather than “reaching exactly the same endpoint.” Second, the setting of the salary threshold “at the lower end of the range of salaries” for exempt occupations cannot be accurately carried out if the data used to determine a lower range includes data on all salaries—exempt or otherwise. Further, exempt occupations, especially the “executive” category, employ fewer people than non-exempt occupations, as non-management employees generally outnumber management employees in most establishments. Therefore, including data on all salaried employees will “water down” the data set, providing a skewed “lower end of the range of salaries” than would be provided by considering only data on exempt occupations.

This flawed analysis was the basis for the recent federal rulemaking that established \$684 per week as the salary threshold to qualify for the EAP exemptions. However, the purpose of setting a salary threshold is to assist the Department in identifying employees that the General Assembly intended to be exempt. The use of salary data of employees who work in non-exempt job classifications does not align to this purpose.

For the Department to fulfill the intent of the General Assembly in enacting the overtime exemption into law, the Department chose a methodology for determining the salary threshold that differs from the USDOL’s methodology in two distinct ways. First, the Department used data based on exempt full-time workers, rather than the USDOL’s methodology of using data based on all full-time workers. Second, the Department used wage information that is specific to Pennsylvania to determine the salary threshold, rather than the USDOL’s methodology of setting the threshold using the 20th percentile of workers in the nation’s lowest wage region. The USDOL’s use of income percentile in the lowest wage region is intended to ensure that the federal salary threshold is useable in every area of the nation—that is, that the threshold, even if used in the lowest wage areas of the country, would be highly unlikely to include actual executive, administrative, and professional employees.

Pennsylvania’s Methodology

In response to public comment, the Department changed the methodology in the final rule from the methodology used in the proposed rulemaking. In the proposed rulemaking, the Department set the salary threshold at 30% of all salaried workers in the Northeast Region.

Commentators accurately pointed out that this data included wage data from high income areas such as New York City, Boston and other northeast metropolitan areas. In consideration of this concern, the Department revised the methodology to limit the calculation of the salary threshold to Pennsylvania-specific data.

The Department's labor market information bureau, the Center for Workforce Information and Analysis (CWIA), reviewed more than 800 Standard Occupational Classification (SOC) titles and determined that 300 SOC titles have job duties that reasonably fall into the exempt executive, administrative, and professional categories, while 500 were deemed to be potentially non-exempt. Using Pennsylvania's Occupational Employment Statistics (OES) data for 2018, the most recent year for which this data is available, CWIA identified the employment volume and 10th percentile wage for each exempt occupation. The 10th percentile wage for each occupation was multiplied by total employment in the same occupation to create a weighted 10th percentile wage for each exempt occupation. CWIA then aggregated total employment across all exempt occupations, aggregated the weighted 10th percentile wages for total weighted 10th percentile wage across all exempt occupations, and divided the aggregated weighted 10th percentile wage by aggregated employment to determine the average 10th percentile wage of all exempt workers, which is \$45,500.

To set its final salary three-step implementation process, the Department raised its initial salary threshold to \$684 per week which is consistent with USDOL's newly-issued salary level. That salary threshold will be effective as of the date of publication in the *Pennsylvania Bulletin*. The Department dropped its proposed salary threshold of \$921 per week to the final \$875 per week, which will be effective two years after publication of the initial salary threshold in the *Pennsylvania Bulletin*. The Department's intermediate or second step increase is now \$780 per week, which is halfway between the initial salary threshold and the final salary threshold and is effective one year from publication of the initial salary threshold in the *Pennsylvania Bulletin*: \$684 on date of publication, \$780 one year after publication, \$875 two years after publication.

Whether this Regulation Represents a Policy Decision of Such a Substantial Nature that it Should Receive Legislative Review

The IRRC again commented that the Department should clarify to what extent it has engaged the legislature in developing the regulation. As noted above, the Department engaged with the legislature after the proposed regulatory package was submitted to IRRC.

First, in July 2018, the Department met with staff of the Department's legislative oversight committees, which are Labor & Industry Committees of the House of Representatives and Senate. The meeting offered an overview of and an opportunity to answer questions about the Department's proposed regulations to modernize overtime regulations. Of particular note, majority committee staff from both the House and Senate expressed concerns about the new salary threshold and questioned why exemptions and technical language were not being updated to align more with federal regulations.

Secondly, in September 2018, the House Labor & Industry Committee held a public hearing on the topic of the Department's proposed regulations. The Secretary of Labor & Industry

and the Deputy Secretary for Safety & Labor Management Relations, which oversees the program area that administers and enforces Pennsylvania's labor laws, participated in this public hearing by offering oral and written testimony and answering questions asked by committee members. Moreover, the public hearing offered a valuable opportunity to hear from a range of stakeholder groups. A significant takeaway from this public hearing was that many employers and individuals indicated a fundamental misunderstanding of eligibility and applicability of overtime exemptions for workers. Lastly, the Department received written comments from legislators and standing committees during the regulatory review process, which have been taken into consideration and are addressed herein.

The Department's authority to adopt regulations defining and delimiting the EAP exemptions of the Act is clear. The General Assembly has already made a basic policy decision and indicated, in enacting the Act, that it intended to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulation. Section 5(a) of the Act, 43 P.S. § 333.105(a) provides that "[e]mployment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: (5) In a bona fide executive, administrative, or professional capacity... (as such terms are defined and delimited from time to time by regulations of the secretary)." Therefore, this rulemaking is not required to be the subject of legislation.

Inclusion of Bonus Pay

IRRC next commented on the inclusion of bonus pay. It cited a public comment submitted by Ms. Anna Caporuscio on behalf of Sheetz, Inc., which noted the burden on employers of making quarterly adjustments for every exempt employee for which a non-discretionary bonus, incentive or commission is used to satisfy the salary threshold. IRRC requested that the Department explain its determination that 10 percent was an appropriate cap for bonus pay and provide its rationale for establishing a percentage cap as part of the salary level test.

In the Notice of Proposed Rulemaking, the Department proposed to allow up to ten percent of the salary threshold to be satisfied by nondiscretionary bonuses, incentives, and commissions, paid quarterly or more frequently. In its final rule, the Department's proposal regarding the percentage of the salary threshold remains at 10 percent; however, the final rule states that the payment may be an annual payment. The Department selected a 10 percent cap for bonus pay to align with the federal regulation. This is also reflective of business operations without creating an undue hardship on employees.

The intent of the Department in allowing a certain percentage of salary to be payable by bonus or other incentive payment was meant to reflect the way that certain industries, business models, and/or occupations structure their compensation package to employees, while at the same time not creating an undue hardship on employees, especially lower-salaried employees. For instance, an individual making \$36,000 a year would have a gross weekly salary of \$692; allowing 10% of that salary to be paid in a lump sum reduces weekly salary to \$623, a reduction of \$276 a month. For lower-income workers, any reduction in wages results in hardship.

While the Department believes that requiring bonuses to be paid on at least a quarterly basis is the most beneficial to employees, it has also taken into consideration comments from employers that this creates an unnecessary administrative burden and may not take into account certain sales occupations that rely on “busy seasons” for a majority of earnings. As such, the Department’s final rulemaking provides that bonuses may now count towards the salary threshold if they are paid on an annual basis. This is consistent with USDOL’s September 2019 final rule.

8. Clarity, Feasibility and Reasonableness; Possible Conflict with or Duplication of Statutes or Existing Regulation

The IRRC commented that the existing regulations use the phrase “customarily and regularly” to describe the discretion and independent judgment that an individual working in an administrative capacity must possess to qualify for an exemption from the overtime rule and noted that this phrase does not appear in the federal regulation. *See* 34 Pa. Code § 231.83(a)(2). The IRRC indicated that several commentators expressed concern that the Department did not amend this provision in its proposed regulation. One commentator who expressed this concern applauded the Department’s efforts to align the duties test with the Federal regulations. After reviewing these comments and considering IRRC’s recommendation, the Department has removed this language from its final form regulations and replaced it with language that mirrors the language in the USDOL’s regulation defining the administrative exemption. *See* 29 CFR 541.200.

9. Miscellaneous

The IRRC commented regarding the use of the term “handicapped worker” in § 231.1. IRRC urged the Department to update the term to “worker with a disability.” The Department agrees with IRRC that this term is an outdated term that should be updated. The Department also made appropriate amendments in § 231.71-231.74.

Additional Legislative Comments

In addition to the comments that were referenced or adopted by IRRC, there were other comments from state lawmakers that are addressed below.

Representative Robert Kauffman commented that the proposed salary thresholds are so high that they reduce the importance of the duties test. Senator Kim Ward, while conceding that the salary threshold should be updated, expressed that the duties of the individual should be the main deciding factor.

The final-form regulation does not inappropriately reduce the importance of the duties test. The duties test is not, as some commentators suggested, rendered irrelevant. In fact, as discussed above, the Department acknowledges the importance of a duties by amending its regulations to more closely align with the federal duties test.

Representative Kauffman also expressed concern that the ability of the Commonwealth and counties to provide cost-effective health care and human services will be impaired by imposing these requirements on provider agencies. However, the General Assembly has already made a

basic policy decision and indicated, in enacting the Act, that it intended to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to the possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

There has been a federal minimum wage since 1938 and business have found more efficient ways to operate. They can hire additional employees to supplement the work of non-exempt employees. They can cap employees’ hours to avoid the extra cost of overtime. They can switch employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers, particularly at a level that makes their employees eligible for public assistance benefits. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

Senator Kim Ward, along with other public commentators, raised the federal district court decision in Texas that invalidated the USDOL’s 2016 federal regulation which promulgated a salary threshold under the FLSA for EAP employees. The public commentators that echoed this concern are listed and addressed in the comment and response document that accompanies this final form regulation. In fact, the final form regulation is distinguishable from the federal regulation at issue in the Texas case.

The Department’s regulation differs from the rule struck down by the Texas federal district court in a number of material ways. The Department’s increase is smaller than the 2016 USDOL rulemaking and is phased in over two years rather than immediately effective. The Department’s rulemaking is a comprehensive update that also updates the duties test to qualify for the EAP exemption to align more closely with USDOL regulations. This includes eliminating the “long” and “short” tests. Most significantly, the Department used a different methodology to calculate the salary threshold than the Federal government used to calculate its salary threshold, using Pennsylvania-specific data for exempt workers rather than a nationwide lowest common denominator based on the region of the United States with lowest wages.

Additionally, the decision of the Texas federal district court is inherently flawed. The standard imposed by the court in that case created a standard that would invalidate nearly any

regulation that relied on a salary threshold. An examination of the decision shows that the judge not only misunderstood the operation of the rule at issue, he based his decision on the fact that fact that the regulation gave new overtime protections to workers whose jobs had not changed. The decision ignored the fact that the 2004 amendment to the federal rule similarly extended overtime protections to workers whose jobs had not changed. There is no precedent for deciding that a rule is invalid based solely on its impact.

Senator Ward also questions whether increasing the threshold will result in less flexibility for employees. There is nothing in the rulemaking that would prohibit employers from offering employees flexibility of hours. Employers can choose to provide flexible shifts to employees previously classified as exempt. The only difference would be that employers would be required to make sure employees understand that they cannot work past 40 hours per week or pay overtime when it is necessary for employees to work more than 40 hours per week. Employers opting to provide less flexibility to employees may find themselves at a competitive disadvantage in attracting and retaining employees.

Senator Ward further commented that she was concerned with the impact to nonprofit organizations, as well as local and state government. As explained above, local and state governments are excluded from coverage under the Minimum Wage Act and therefore the final rulemaking does not increase labor costs for public sector employers. State and local governments would not be required to raise taxes or cut programs due to higher labor costs. The Department has no authority to exempt non-profits from the scope of the Act, as that basic policy decision has already been made by the General Assembly by not exempting them from the Act's definition for "employer." 43 P.S. § 333.103(g). Employees of non-profits should enjoy the same right to a fair wage as other employees. And as discussed herein, employers will have a range of options to achieve compliance. They will not automatically be required to increase labor costs.

Members of the House State Government Committee (Representatives Daryl Metcalfe, Matt Dowling, Cris Dush, Seth Grove, Kristin Hill, Jerry Knowles, Brett Miller, Brad Roae, Frank Ryan, Rick Saccone, Tommy Sankey, Craig Staats, Justin Walsh, Judy Ward, and Jeff Wheeland) expressed concern that the rule will require employers to engage in additional timekeeping and other recordkeeping to comply. In fact, employers are already obligated to keep such records. The Act specifically directs that employers keep "a true and accurate record of the hours worked by each employee and the wages paid to each." 43 P.S. § 333.108. The Act does not require that such records be kept only for hourly employees. There should be no impact on recordkeeping requirements, as those requirements already exist.

Senator Lisa Baker urged the Department to support legislation that she has proposed rather than promulgate regulations. However, the bill proposed by Senator Baker, which was significantly different from the Department's proposed regulation, did not move out of committee last session and, although it has been reintroduced, it remains in committee. Senator Baker indicated in her comments that she sought closer alignment with the federal regulations. As discussed in detail above, this final form regulation represents significantly closer alignment with the federal regulations.

The Department also received comments supportive of the proposed rulemaking from a number of legislators. Representative John Galloway noted that the rulemaking was consistent with the intent of the Minimum Wage Act and would benefit Pennsylvania workers and communities. He noted that wages have been stagnant, despite low unemployment and increased demand for labor and that wealth disparities between upper-income and lower- and middle-income families have been increasing.

Senator Christine Tartaglione expressed her “ardent” support for the proposed regulations, pointing out that in the mid-1970s, more than 60 percent of salaried workers qualified for overtime, but that currently, the ratio is less than one in 10. She stated that approval of the regulations would benefit not only workers but the economy, as workers are also consumers and fair pay increases spending power.

Members of the House Labor and Industry Committee (Representatives John Galloway, Leanne Krueger, Morgan Cephas, Daniel Deasy, Maria Donatucci, Jeanne McNeill, Dan Miller, Gerald Mullery, Ed Neilson, Adam Ravenstahl, and Pam Snyder) expressed support for the proposed rulemaking, noting that simplifying the duties test would facilitate compliance and reduce inquiries. They also noted that modernizing the salary threshold would provide meaningful and tangible wage protections for low-wage and middle-class workers.

Other Significant Public Comments

The Department received a large number of public comments, which were fairly divided. Public comments were considered and, due to the volume, are addressed in the comment and response document that accompanies this final-form rulemaking. However, some of the common comments are addressed here.

Geographic Considerations

A number of commentators expressed concern over the use of the 30th percentile of weekly earnings for full-time salaried employees in the Northeast. As discussed at length herein, the Department has revised its methodology to use Pennsylvania-specific data. However, there were also comments that expressed concern over the differences between urban and rural areas within the state. Several commentators asserted that an increase to the salary threshold would impact rural areas disproportionately.

County-level data demonstrates that the exempt salary threshold of \$45,500 is below most other county’s median household income, including those in high-population and rural areas. Counties with some of the state’s most significant populations – Allegheny, Lehigh, Erie, Dauphin, Lackawanna, and Lancaster – have median household income levels of 6 to 35% above \$45,500. Only Philadelphia had a median household income that was lower (-11%). Counties with some of the state’s sparsest populations in rural areas – Fulton, Elk, and Mercer – have median household income levels of 4 to 10% above the proposed overtime threshold.

Furthermore, when drilling down to the average annual occupational wages by county, certain occupations, regardless of county, will be lower or higher than the proposed OT threshold. Occupations that we expect to be the most impacted by the proposed overtime threshold by volume alone include Management, Business and Financial Operations, and Office and Administrative Support.

The average annual wage for Management; Business and Financial Operations; Construction and Extraction; and Installation, Maintenance, and Repair occupations was generally significantly higher than \$45,500 across the state, including rural areas. For example, average wage levels for the Management occupation, included those in rural regions that were above 45% (Cameron), 140% (Fulton), 127% (Elk), 83% (Forest), 147% (Fayette), and 144% (Mercer). Occupations under the Office and Administrative Support; Sales and Related; Production; and Transportation and Material Moving categories typically had lower average wages than the proposed overtime threshold. Other categories, such as Community and Social Services were more mixed, depending on the county.

Employee Morale/Flexibility

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. Examples included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee that needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

Some businesses stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while “working their way up the ladder.” Indeed, these workers become beholden to their current employer, with minimal time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason that the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

Impact on Small Business

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025
FY 2020-2021 Total Employer Cost: \$ 14,315,133 - \$14,734,347
FY 2021-2022 Total Employer Cost: \$ 21,954,959 - \$23,508,239
FY 2022-2023 Total Employer Cost: \$ 28,058,135 - \$30,394,558
FY 2023-2024 Total Employer Cost: \$ 28,636,918 - \$31,041,393
FY 2024-2025 Total Employer Cost: \$ \$28,636,918 - \$31,041,393

This takes into consideration that all employers in the state will review the new regulation and that some will then realize they are exempt from the regulation due to being certain municipal, public, or limited non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers will be lower initially than the number of newly nonexempt workers upon full implementation of the new salary threshold. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

Comments in Favor of Rulemaking

The Department also received comments supportive of the proposed rulemaking. In addition to the comments that are more fully addressed in the comment and response document that accompanies the final-form rulemaking, the Department received extensive comments from the following entities.

Community Legal Services, Inc (CLS) submitted both extensive legal and policy comments on behalf of their low wage clients in support of the Department's proposed rulemaking for amending and clarifying the overtime exemptions for EAP employees under the Act. CLS also submitted a separate comment in support of the rulemaking on behalf of itself as a non-profit employer.

CLS explained that it supports the proposed changes because they would update the salary threshold to reflect current wage levels and keep pace with the cost of living in Pennsylvania and clarify the duties test to reduce misclassification and unnecessary litigation that are a burden on both employers and employees. Moreover, CLS noted that the regulation complies with the Regulatory Review Act since the Department has the authority to make the proposed changes, it aligns with the intent of the Act and the proposal will be a net gain to the Commonwealth providing a positive effect on public health and welfare and clarity and reasonableness to existing regulations. CLS commented that the proposed rulemaking would benefit over 37,000 workers in Philadelphia alone and reduce costly litigation, for business, especially small business, by making the overtime regulations less complex and vague and more straightforward and precise.

The Women's Law Project (WLP) pointed out that clarifying the definition EAP employees and "raising the minimum salary to reflect current wage levels" would mean that the number of misclassified workers would decrease, and that employers would find it much more difficult to improperly "get around" the overtime requirements and "workers on the lower end of the wage spectrum are paid correctly." WLP explained that "employers who do not want to pay overtime will simply choose to hire more people to work extra hours that are currently worked for free".

The Pennsylvania AFL-CIO submitted comments in support of the proposed rulemaking, commenting that the proposed regulations, which would clarify the definition of EAP employees and raise the minimum salary to reflect current wage levels, are long overdue after 40 years and would make it difficult for employers to misclassify employees in order to get around the overtime requirements. In the end, the AFL-CIO noted that the regulations would provide much needed relief to workers who have fallen behind the cost of living but at the same time, even with the necessary changes, would not impose much of a hardship on employers since 465,000 workers who currently fall into the EAP exemption would still remain exempt from overtime under proposed regulation.

The Philadelphia Unemployment Project (PUP), a non-profit employer, submitted comments strongly supporting the Department's proposed changes to the overtime regulations. PUP viewed the overtime regulations as one way to provide workers with a much-needed increase in wages while employers remain reluctant to raise wages despite generous corporate tax cuts, tight labor markets and a robust economic expansion. More significantly, PUP stated that "as a small non-profit", it is "willing to live with these increases on overtime pay" for its staff and urged adoption of these regulations.

Pennsylvania Council of Churches (PCofC), a non-profit entity, submitted comments in support of the Department's regulation regarding EAP salaried worker exemptions noting that the prior regulation has been in place since 1977 and "has not kept pace with the cost of living and housing in Pennsylvania, or with the realities of our workplace." PCofC viewed the proposed regulation as effectively addressing the fundamental question of worker fairness.

The International Brotherhood of Electrical Workers (IBEW) commented that employers have constantly taken advantage of the 40-year-old obsolete regulations to misclassify workers and pay sub-standard wages. IBEW goes on to note that by updating the regulations, as proposed by the Department, employers would be discouraged from misclassifying workers and job classifications and as a result, numerous Pennsylvania workers would benefit by bringing them overtime protection and additional income which would multiply into benefits throughout the Commonwealth.

The National Employment Law Project (NELP), submitted extensive comments in support of the Department's proposed regulations. NELP noted that the Department's proposed regulation

defining EAP exemptions reinforces and advances the purposes of the Minimum Wage Act's overtime provisions and the bright-line salary test creates an effective, efficient and predictable means to define and delimit the EAP exemptions. NELP commented that the Department's salary threshold proposal is within the low range for today's labor market and its proposal for indexing the salary threshold is sound since it is a fair, predictable and efficient way to ensure that the scope of exemptions continues to keep pace with the Act's intended reach. NELP supported the proposed rulemaking because it is in the public interest, complies with the agency's statutory authority and legislative intent, and will have a positive economic impact on the Commonwealth, which NELP noted is all accomplished with a clear, feasible and reasonable regulatory provisions.

Summary of Amendments

In response to IRRC's comment asking for more detailed explanation as to why amendments are needed and why they are in the public interest, the Department provides the following explanations regarding its amendments.

Many of the Department's amendments are based upon the Department's stated goal of more closely aligning the duties test with Federal regulations. The Department recognizes that discrepancies between the Pennsylvania's regulations and Federal regulations make it difficult for employers to know if they are in compliance with the duties test. This was expressed by businesses during the ten roundtable discussions the Department organized in Spring of 2019 and in various formal comments submitted. Commentators suggest, and the Department agrees that aligning the duties test more closely to the Federal duties test will provide increased clarity to both employers and employees as to who is and is not an exempt employee, reduce misclassification, will decrease litigation arising from misclassification issues.

34 Pa. Code § 231.1. Definitions.

In the proposed regulation, the Department amended section 231.1 to add a definition of "general operation." The Department proposed this definition to align with the Federal regulations. *See*, 29 CFR 541.201(b) (relating to directly related to management or general business operations). As suggested by IRRC and many commentators, adopting definitions that align with Federal regulations will assist the Department, employers, and employees in properly and consistently determining whether employees are exempt under the administrative exemption. In the final-form rulemaking, the Department removed the term "general operation" from the definitional section and added it to 34 Pa. Code § 231.83 since that term exclusively applies to the section. In addition, the Department revised the term "general operation" to "directly related to management or general business operations" so that the term is consistent with Federal regulatory language. Changing the definitional term does not substantively impact the definition or the application of the definition. Further, the Legislative Reference Bureau (LRB) edited the definition to conform with the Pennsylvania Code & Bulletin Style Manual. However, the Department has determined that to the extent practicable, mirroring the Federal regulatory language is of the utmost importance to limit confusion and create consistency. Therefore, the Department included the following amendments in the final-form rulemaking: at the beginning of the definition, the addition of the phrase, "To include, but is not limited to"; replaced the commas with semi-colons; and used lower case for the term "internet." The Department also amended the

proposed definition by deleting the phrase “and similar activities,” which is located at the end of the definition. The Department deletes this phrase because it is redundant given the inclusion of the language “includes but is not limited to” within the definition of “directly related to management or general business operations”. As such, the Department added the word “and” before “legal and regulatory compliance” since that is now the last item in the list of duties. The amendments in the final-form rulemaking do not substantively impact the definition of directly related to general business operations or the application of the definition.

The Department also proposed adding a definition for the term “management.” The Department proposed adding this definition to align with the Federal regulations. *See* 29 CFR 541.102 (relating to management). As suggested by IRRC and many commentators, adopting definitions that align with Federal regulations will assist the Department, employers, and employees in properly and consistently determining whether employees are exempt. In the final-form rulemaking, the Department removed the term “management” from the definitional section and added it to 34 Pa. Code § 231.82 since that term exclusively applies to the section. In addition, the Department amended the proposed definition by deleting the phrase “and similar activities,” which is located at the end of the definition. The Department deletes this phrase because it is not a phrase used in the Federal definition. The Department also amends the final-form regulations to add the phrase, “to include, but is not limited to,” which LRB deleted. The Department amends the regulation in this way in order to mirror the federal regulatory language. The Department submits that the phrase “including, but is not limited to” might be construed as being broader than “and similar activities.” The Department made a minor grammatical edit to conform to the Federal regulation by adding a comma in the phrase, “interviewing, selecting, and training of employees.” The Department also changes the word “and” to “or” in the phrase “providing for the safety and security of the employees or the property” to mirror the Federal regulatory definition of management. *Id.*

The Department added a definition for “Minimum Wage Advisory Board” to add clarity given the reference to the Board at §§ 231.82(4); 231.83(3); and 231.84(2).

The Department removed the defined term “Handicapped Worker” and replaced it with the defined term “Worker with a disability” at the suggestion of IRRC and to update outdated language. While the defined term has changed, the substance of the definition remains the same. The Department further made this terminology change in 34 Pa. Code §§ 231.71, 231.72, 231.73 and 231.74.

34 Pa. Code § 231.82. Executive

Duties Test

In the proposed regulation, the Department amended section 231.82(1) by replacing the phrase “consists of” with “is.” The Department proposed this amendment to improve the readability of the section. Additionally, the definition in the proposed rulemaking is the verbatim language from the Federal regulation. *See* 29 C.F.R. 541.100 (relating to general rule for executive employees). Therefore, consistent with the Department’s overall goal to align its regulations with Federal regulations where practicable, the Department’s final-form regulation includes this

amendment. As noted earlier, the Department creates a new subparagraph 231.82(1)(i) to define the term “management.”

The Department proposed deleting section 231.82(5) in the proposed rulemaking. Section 231.82(5) includes different wage requirements for individuals whose primary duties are executive and individuals who spend up to 20% performing non-executive duties. This duty requirement is inconsistent with Federal regulations with regard to executive employees. *See* 29 C.F.R. § 541.100. The Department’s final-form rulemaking includes this amendment in order to align with the correlating Federal regulation.

The Department received numerous comments supporting the Department’s efforts to more closely align with correlating Federal regulations, but commentators underscored the importance of amending other inconsistencies to align with Federal regulations. In response to this concern, the Department reviewed the Executive exemption to determine if it should make other amendments to further align the Department’s regulations to the correlating Federal regulation. The Department therefore includes in its final-form amendment changes to subsection 231.82(3) which adds a comma after “hiring”; deletes the word “or” before firing; adds a comma after the word “firing”; deletes the phrase “and as to the” before advancement”; deletes the word “and” before “promotion”; and replaces the phrase “will be” with “are.” These changes mirror the language in federal regulation.

In addition, the Department includes in its final-form regulation the deletion of section 231.82(4), which includes a requirement that the individual “customarily and regularly exercises discretionary powers.” In deleting this provision, the Department aligns the executive duties test with the correlating Federal regulations. The Department does not believe the deletion of this provision will have a substantive impact on the implementation of the executive exemption because the concept of customarily and regularly exercising discretionary powers is captured in the definition of management as adopted in the final-form rulemaking.

As a result of the deletion of section 231.82(4), the Department renumbered section 231.82(5) to 231.82(4) and section 231.82(6) to 231.82(5).

34 Pa. Code § 231.83. Administrative.

Duties Test

In the proposed regulation, the Department amended section 231.83(1) by replacing the phrase “consists of” with “is.” The Department proposed this amendment to improve the readability of the section. Additionally, the definition in the proposed rulemaking is the verbatim language from the Federal regulation. *See* 29 C.F.R. 541.200 (relating to general rule for administrative employees). Therefore, consistent with the Department’s overall goal to align its regulations with Federal regulations where practicable, the Department’s final-form regulation includes this amendment in order to align with the correlating Federal regulation. In the final-form rulemaking at section 231.83(1), the Department also amends the term from “general operation” to “directly related to management or general business operations” to align with the terminology used in Federal regulations. *See* 29 C.F.R. 541.201 (relating to directly related to management or

general business operations). As noted earlier, the Department creates a new subparagraph 231.83(1)(i) to define the term “directly related to management or general business operations.”

In the proposed regulation, the Department amended section 231.83(2) by including the phrase, “with respect to matters of significance.” The Department proposed this amendment to clarify that administrative personnel must regularly exercise judgment and discretion in matters of significance and to also align with the Federal regulations. *See* 29 C.F.R. 541.200(a)(3). The phrase “with respect to matters of significance” is the verbatim language from the Federal regulation. *Id.* Consistent with the Department’s overall goal to more closely align with Federal regulations, the Department makes one further amendment in the final-form rulemaking. The Department amends section 231.82(2) to mirror the Federal regulatory language in 29 C.F.R. 541.200(a)(3) by replacing “who customarily and regularly exercises” with “whose primary duty includes the exercise of” discretion and independent judgment with respect of matters of significance. This change will provide greater clarity to employers that employees are not exempt under the administrative exemption unless they have the ability to exercise discretion on important matters.

In the proposed regulation, the Department deleted section 231.83(3) to ensure that employees who only assist other executives and administrative personnel or who only perform work requiring specialized training, experience or knowledge or who only perform specialized tasks or assignments are no longer classified as exempt. The Department deleted section 231.83(4), which contains wage requirements for individuals whose primary duties are administrative and individuals who spend up to 20% performing non-administrative duties. These amendments were adopted in the proposed rulemaking to align Pennsylvania’s regulation with Federal regulations at 29 C.F.R. 541.200. The Department includes these amendments in its final-form rulemaking in order to align with the correlating Federal regulation. Aligning the regulatory language with the correlating Federal regulation will provide Pennsylvania employers with only one duties test to determine whether an employee is exempt from the minimum wage and overtime pursuant to the Administrative exemption.

34 Pa. Code § 231.84. Professional.

Duties Test

In the proposed regulation, the Department amended section 231.84(1) by replacing the phrase “consists of” with “is.” The Department proposed this amendment to improve the readability of the section. Additionally, the definition in the proposed rulemaking is the verbatim language from the Federal regulation. *See* 29 C.F.R. 541.300 (relating to general rule for professional employees). The Department also made minor clarifications in the proposed rulemaking to conform to proper regulatory style under the *Pennsylvania Code & Bulletin Style Manual*. Therefore, consistent with the Department’s overall goal to align its regulations with Federal regulations where practicable, the Department’s final-form regulation includes the proposed amendments in order to align with the correlating Federal regulation.

In addition, the Department replaced the language “the performance of work that is original and creative in character in a recognized field of artistic endeavor” with “invention, imagination,

originality or talent in a recognized field of artistic or creative endeavor.” This language mirrors the language in the federal regulation.

In the proposed regulation, the Department deleted section 231.84(4), which contains wage requirements for individuals whose primary duties are professional and individuals who spend up to 20% performing non-professional duties. This amendment was adopted in the proposed rulemaking to align Pennsylvania’s regulation with Federal regulations at 29 C.F.R. 541.300. The Department includes this amendment in its final-form rulemaking in order to align with the correlating Federal regulation. Aligning the regulatory language with the correlating Federal regulation will provide Pennsylvania employers with only one duties test to determine whether an employee is exempt from the minimum wage and overtime pursuant to the Professional exemption.

In the final-form regulation, the Department deletes sections 231.84(2) and (3). These changes align the Department’s final-form regulation with the correlating Federal regulation. Aligning the regulatory language with the correlating Federal regulation will provide Pennsylvania employers with only one duties test to determine whether an employee is exempt from the minimum wage and overtime pursuant to the Professional exemption.

As a result of the deletion of sections 231.84(2) and (3), the Department renumbered section 231.84(4) to 231.84(2) and section 231.84(5) to 231.84(3).

Short and Long Duties Tests and Salary Threshold for Executive, Administrative and Professional Exemptions

Pennsylvania’s existing regulations align with the federal law as it existed 1977, which included the long and short duties test. *See* 34 Pa. Code §§ 231.82(6) (renumbered in final-form regulation as § 231.82(4)), 231.83(5) (renumbered in final-form regulation as § 231.83(3)), and 231.84(5) (renumbered in final-form regulation as § 231.84(3)). The “long test” includes a more restrictive duties test and a lower salary threshold, and the “short test” at includes a less stringent duties requirements and a higher salary threshold. *Id.*

In 2004, Federal regulations eliminated the short and long duties test and adopted less stringent duties in the “short test.” *See* 69 Federal Register 22122 (April 23, 2004). However, the Department did not make a change to its regulations. As such, the discrepancies between the Department’s regulations and USDOL’s regulations make it difficult for Pennsylvania employers to know if white-collar salaried employees are entitled to receive overtime. This was expressed by businesses during the ten roundtable discussions the Department organized in Spring 2019 and in various formal comments submitted. Aligning the duties test in the final regulations to duties test in the federal regulations will eliminate this burden, making it easier for employers to comply with the law and for employees to know if they should be classified as an exempt or non-exempt EAP employee. Accordingly, the Department’s proposed amendments eliminated the long duties test found in sections 231.82(6) (renumbered in the final-form rulemaking as 231.82(4)) and 231.83(5) (renumbered in the final-form rulemaking as 231.83(3)), and 231.84(5) (renumbered in the final-form rulemaking as 231.84(2)). The Department includes this amendment in its final-form rulemaking in order to align with the correlating Federal regulation.

In the proposed rulemaking, at sections 231.82(5)(i)-(iv)(renumbered in the final-form regulation as 231.82(4)(i)-(iv)); 231.83(3)(i)-(iv)(renumbered in the final-form regulation as 231.83(3)(i)-(iv)); and 231.84(4)(i)-(iv)(renumbered in the final-form regulation as 231.84(2)(i)-(iv)), the Department's salary thresholds increased the minimum salary amount to \$610 per week effective the date of publication of the final form regulation; to \$766 per week effective one year after the date of publication of the final form regulation; to \$921 per week effective two years after the date of publication of the final form regulation. In proposing these figures, the Department reviewed data regarding salaried workers in the Northeast region. The Department also proposed, effective three years after the date of publication of the final form regulation and January 1st of every third year thereafter, an increase at a rate equal to the 30th percentile of weekly earnings of full-time non-hourly workers in the Northeast Census region in the second quarter of the prior year as published by the USDOL, Bureau of Labor Statistics. As more fully discussed earlier in this preamble, the Department amends the salary thresholds in the final-form rulemaking to \$684 per week effective the date of publication of the final form regulation; to \$780 per week effective one year after the date of publication of the final form regulation; and to \$875 per week effective two years after the date of publication of the final form regulation. The Department also modified its methodology for subsequent three-year adjustments as more fully discussed elsewhere in this preamble. These adjustments will be published three years after the date the final-form rulemaking is published in the *Pennsylvania Bulletin* and every three years thereafter.

Finally, in the final-form rulemaking, the Department amended the editor notes at 231.82(4)(i)-(iv); 231.83(3)(i)-(iv); and 231.84(2)(i)-(iv) to ensure the effective dates of the salary thresholds are clear. LRB modified the editor notes to read, "The blank refers to the effective date of the adoption of this proposed rulemaking." The Department intends for the effective date to begin as of the date of the publication of the final form rulemaking. To avoid confusions regarding effective dates, the Department amends the editor notes to reference the date of publication of the final-form rulemaking instead of the proposed rulemaking. The Department also amends the number of days to numbers of years in order to allow for easier comprehension.

In addition, in the final-form rulemaking the Department added a role for the Minimum Wage Advisory Board. At least 90 days prior to the publication required by §§ 231.82(4)(iv), 231.83(3)(iv) and 231.84(2)(iv), the Department must present the adjusted weekly salary rate and supporting information to the Board. At a meeting to be held no later than 60 days prior to the effective date, the Board will have the opportunity to advise and consult the Secretary regarding the adjusted weekly salary rate. At least 30 days prior to the effective date for the adjusted weekly salary rate, the Department will be required to publish this figure on its web site and in the *Pennsylvania Bulletin*. The Minimum Wage Advisory Board consists of three representatives of established recognized associations of labor organizations, three representatives of established recognized associations of employers and three members from the general public. 43 P.S. § 333.106(b). The Department makes this change because the Minimum Wage Advisory Board is representative of the communities affected by the adjusted weekly salary rate. As such, it is able to advise the Department on whether the data the Department will use to set the adjusted weekly salary rate is complete and accurate.

Bonuses, Incentives, and Commissions or Executive, Administrative and Professional Exemptions

Finally, in the proposed regulations, the Department added additional provisions at sections 231.82(6) (renumbered in the final-form regulation as 231.82(5)), 231.83(4), and 231.84(2) (renumbered in the final-form regulation as 231.84(4)), which allows up to 10% of the salary amount to be paid by non-discretionary bonuses, incentives or commissions. Under the proposed regulations, bonuses, incentives or commissions must be paid on at least a quarterly basis. If by the last quarter, the salary and bonuses, incentives or commissions do not equal at least 13 times the weekly salary threshold, then the employer must make a one-time payment equal to the amount of the underpayment by the end of the next pay period of the next quarter. This one-time payment only counts towards the payment requirements of the previous quarter. The Department proposed this regulation in order to align with Federal regulations that were published in 2016 and later enjoined.

The USDOL's recently published a new final rule updating and revising the regulations issued under the FLSA implementing the exemptions from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. *See* 84 Federal Register 51230, 51235 (September 27, 2019). The new Federal regulations become effective on January 1, 2020, and include an updated approach to considering bonuses, incentives or commissions. Under the new Federal regulations, up to 10 percent of the salary amount may be satisfied by the payment of nondiscretionary bonuses, incentives and commission payments, that are paid annually or more frequently. *Id.* at 51307. Additionally, the employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply. If by the last pay period of the 52-week period the sum of the employee's weekly salary plus nondiscretionary bonus, incentive, and commission payments received is less than 52 times the weekly salary amount required by the applicable Federal regulation, the employer may make one final payment sufficient to achieve the required level no later than the next pay period after the end of the year. Any such final payment made after the end of the 52-week period may count only toward the prior year's salary amount and not toward the salary amount in the year it was paid. *Id.*

In an effort to align the Department's regulations with the Federal regulations, the Department adopted the standards as promulgated by the USDOL as set forth in the Federal Register. *Id.* While quarterly payments are the most beneficial to employees while still allowing the use of bonus/incentive payments to be counted towards the salary threshold, this creates an unnecessary administrative burden for employers and may not take into account certain sales occupations that rely on "busy seasons" for a majority of earnings. As such, allowing bonus to count for a salary as they are paid on a yearly basis is more appropriate. It is also more appropriate to allow the employer to choose whether a year is a calendar, fiscal or work anniversary year to provide employers with more flexibility.

Miscellaneous Clarity

In the final-form regulation, the Department also amended the regulations to delete the use of the word "his" and insert a gender-neutral reference. None of the amendments are substantive

in nature. *See*, 34 Pa. Code §§ 231.1 (pertaining to definition of domestic services); 231.82(4) (relating to executive); 231.83(1) and (3) (relating to administrative); 231.84(2) (relating to professional).

Fiscal Impact

There is minimal impact to the Department in enforcing the changes in the regulation. The potential fiscal impact to employers is detailed more fully in response to comments from IRRC about economic and fiscal impact, as well as in response to comments regarding costs to small business. This potential impact is largely dependent on which of the multitude of available options an employer chooses in response to this rulemaking.

Affected Persons

This regulation will affect all Pennsylvania employers covered by the Act and all individuals who are employed by these entities.

Reporting, Recordkeeping and Paperwork Requirements

This regulation will not require the creation of new forms and reporting requirements.

Sunset Date

A sunset date is not appropriate for this regulation because the Department believes that the regulation is necessary to carry out its statutory duty under the Act. However, the Department will continue to monitor the impact and effectiveness of the regulation.

Effective Date

This proposed regulation will take effect on upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

Contact Person

The contact person for this final-form rulemaking is Jennifer Berrier, Deputy Secretary for Safety and Labor-Management Relations, 651 Boas Street, Room 1701, Harrisburg, Pennsylvania, 17121, (717) 787-8665, or by electronic mail to jeberrier@pa.gov within 30 days of publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 12, 2018, the Department submitted a copy of the notice of proposed rulemaking, published at 48 Pa.B. 3731, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House

and Senate Labor and Industry Committees for review and comment. Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

On October 17, 2019, the Department delivered the final-form rulemaking to IRRC, and the Chairpersons of the House and Senate Labor and Industry Committees. The Department withdrew this regulation on November 21, 2019 to add clarifying language to Sections 231.82(4)(iv), 231.83(3)(iv) and 231.84(2)(iv) and to fix typographical and spelling errors.

On December 9, 2019, the Department re-delivered the final-form rulemaking to IRRC, and the Chairpersons of the House and Senate Labor and Industry Committees. Under section 5.1(j.2) of the Regulatory Review Act, on _____, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____ and approved the final-form rulemaking.



W. Gerard Oleksiak
Secretary

Comment and Response Document

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|--------|--|----|
| I. | COORDINATION WITH FEDERAL RULE/IMPACT OF USDOL RULE..... | 2 |
| II. | DUTIES TEST..... | 6 |
| III. | GEOGRAPHICAL CONSIDERATION..... | 12 |
| IV. | GENERALLY OPPOSED..... | 15 |
| V. | IMPACTS TO BUSINESS..... | 31 |
| VI. | INCREASED THRESHOLDS..... | 42 |
| VII. | AUTOMATIC THRESHOLDS..... | 43 |
| VIII. | PHASE IN..... | 47 |
| IX. | IMPACTS TO EMPLOYEES..... | 48 |
| X. | IMPACTS TO LOCAL GOVERNMENT..... | 54 |
| XI. | IMPACTS ON COMMONWEALTH ECONOMY..... | 59 |
| XII. | IMPACTS TO NON-PROFIT ORGANIZATIONS..... | 61 |
| XIII. | FEDERAL RULE STRUCK DOWN..... | 72 |
| XIV. | IMPACTS TO SMALL BUSINESS..... | 74 |
| XV. | LEGISLATIVE PROCESS..... | 93 |
| XVI. | REGULATORY REVIEW ACT..... | 94 |
| XVII. | IMPACTS TO HIGHER EDUCATION..... | 94 |
| XVIII. | INSUFFICIENT PUBLIC OUTREACH..... | 95 |

I. COORDINATION WITH FEDERAL RULE/IMPACT OF USDOL RULE

a. Comment:

Commentators stated that discrepancies between the state and federal requirements would be increased if the Department did not wait first for the federal regulations to be promulgated before the Department promulgated its regulations (121,179, 871, 895, 896).

Department response:

The Department heeded the suggestion by stakeholders, legislators, and commentators to wait for the USDOL final rule. USDOL promulgated its final rule at 84 Fed. Reg. 51230 on September 27, 2019. In USDOL's final rulemaking, USDOL updated its current salary threshold to qualify for the Executive, Administrative and Professional (EAP) exemptions from \$455 per week to \$684 per week for EAP-covered employees except for certain employees in the US territories. The USDOL's final rulemaking also updated the salary thresholds for employees who are highly compensated employees, work in educational establishments and computer employees. It also clarified that weekly salary rate may be translated into an equivalent amount for periods longer than a week. USDOL's final rulemaking also amended its rule that allows ten percent of the salary amount to be satisfied by the payment of nondiscretionary bonuses, incentives and commissions that are paid annually or more frequently instead of quarterly or more frequently. The USDOL's new salary threshold and related amendments become effective on January 1, 2020.

After reviewing the USDOL's final rulemaking, the Department adjusted its initial salary threshold to \$684 per week and amended the language allowing the payment of quarterly bonuses to allow the payment of yearly bonuses to align with the USDOL's final rule. The Department's final regulations will also let employers decide whether to use a calendar year, fiscal year or anniversary of hire year in calculating and paying bonuses.

b. Comment:

Commentators stated that it would be confusing to have too many standards among state and federal laws (697, 701, 703, 706, 709, 710, 712, 713, 714, 715, 717, 720, 721, 723).

Department response:

The Department cannot simply adopt all Federal regulations because there are differences between the Department's enabling legislation, the Minimum Wage Act (Act), and the Federal Fair Labor Standards Act under which the Federal regulations are promulgated.

The Department has made significant efforts to more closely align with Federal regulations. The Department recognizes the importance of providing more consistency for employers and employees. The Department believes aligning more closely with the Federal regulations will result in less misclassification of workers, thus reducing litigation over an employee's status.

To the extent permissible and appropriate under Pennsylvania law, the duties tests for the EAP exemptions have been aligned with the applicable Federal standards, creating one standard for employers to administer. The amendments to the duties test for the EAP

exemptions will make the applicable tests easier to understand and therefore will increase compliance.

While the Department has more closely aligned its regulations with Federal regulation, the Department has not adopted all Federal definitions. However, the Department considers Federal law for guidance in interpreting provisions of the Minimum Wage Act that are similar to those in USDOL regulations. The Department will continue to review Federal regulations and may address any further inconsistencies in a future rulemaking.

The Department has also aligned the initial salary threshold, which will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*, with the Federal threshold for 2020 to give employers an opportunity to adjust to that increase before incrementally increasing the threshold to one that appropriately reflects economic conditions in Pennsylvania.

c. Comment:

Commentator stated that the Department should incorporate Federal regulations by reference (866).

Department response:

The Department cannot simply adopt all Federal regulations because there are differences between the Department's enabling legislation, the Minimum Wage Act, and the Federal Fair Labor Standards Act under which the Federal regulations are promulgated.

To the extent permissible and appropriate under Pennsylvania law, the duties tests have been aligned with the applicable federal standards, creating one standard for employers to administer.

While the Department has more closely aligned its regulations with Federal regulation, the Department has not adopted all Federal definitions. However, the Department considers Federal law for guidance in interpreting provisions of the Minimum Wage Act that are similar to those in USDOL regulations. The Department will continue to review Federal regulations and may address any further inconsistencies in a future rulemaking.

The Department has also aligned the initial salary threshold, which will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*, with the Federal threshold for 2020 to give employers an opportunity to adjust to the increase before incrementally increasing the threshold to one that appropriately reflects economic conditions in Pennsylvania.

d. Comment:

Commentators stated that the final rulemaking should be consistent with the federal law (801,807, 829, 867).

Department response:

The Department cannot simply adopt all Federal regulations because there are differences between the Department's enabling legislation, the Minimum Wage Act, and the Federal Fair Labor Standards Act under which the Federal regulations are promulgated.

To the extent permissible and appropriate under Pennsylvania law, the duties tests have been aligned with the applicable federal standards, creating one standard for employers to administer.

While the Department has more closely aligned its regulations with Federal regulation, the Department has not adopted all Federal definitions. However, the Department considers Federal law for guidance in interpreting provisions of the Minimum Wage Act that are similar to those in USDOL regulations. The Department will continue to review Federal regulations and may address any further inconsistencies in a future rulemaking.

The Department has also aligned the initial salary threshold, which will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*, with the Federal threshold for 2020, to give employers an opportunity to adjust to the increase before incrementally increasing the threshold to one that appropriately reflects economic conditions in Pennsylvania.

The commentators specifically suggested the adoption of the computer exemption. The Department cannot create a computer exemption because that exemption does not exist in the Act. The FLSA specifically exempts "any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is (A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; (B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or (D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour." 29 U.S.C. § 213(a)(17). This exemption does not exist anywhere in the Act. The Department cannot add a categorical exemption through regulation that does not exist in the Act. *Nationwide Mut. Ins. Co. v. Foster*, 580 A.2d 436, 442 (Pa. Cmwlth. 1990).

e. Comment:

Commentators stated that the Department should adopt federal standards, including the computer profession exemption (201,870).

Department response:

The Department cannot simply adopt all Federal regulations because there are differences between the Department's enabling legislation, the Minimum Wage Act, and the Federal Fair Labor Standards Act under which the Federal regulations are promulgated.

To the extent permissible and appropriate under Pennsylvania law, the duties tests have been aligned with the applicable federal standards, creating one standard for employers to administer.

While the Department has more closely aligned its regulations with Federal regulation, the Department has not adopted all Federal definitions. However, the Department considers Federal law for guidance in interpreting provisions of the Minimum Wage Act that are similar to those in USDOL regulations. The Department will continue to review Federal regulations and may address any further inconsistencies in a future rulemaking.

The Department has also aligned the initial salary threshold, which will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*, with the Federal threshold for 2020, to give employers an opportunity to adjust to the increase before incrementally increasing the threshold to one that appropriately reflects economic conditions in Pennsylvania.

The commentators specifically suggested the adoption of the computer exemption. The Department cannot create a computer exemption because that exemption does not exist in the Act. The FLSA specifically exempts "any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is (A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; (B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or (D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour." 29 U.S.C. § 213(a)(17). This exemption does not exist anywhere in the Act. As noted earlier, the Department cannot adopt a categorical exemption through regulation that does not exist in the Act. *Nationwide Mut. Ins. Co. v. Foster*, 580 A.2d 436, 442 (Pa. Cmwlth. 1990).

f. Comment:

Commentators stated that the Commonwealth should not propose its own overtime rules (134,186).

Department response:

The Department is required by the Minimum Wage Act to promulgate regulations to implement minimum wage and overtime regulations. The Act provides that the secretary shall make and, from time to time, revise regulations, with the assistance of the board, when requested by the secretary, which shall be deemed appropriate to carry out the purposes of this act and to safeguard the minimum wage rates thereby established. Such regulations may include, but are not limited to, regulations defining and governing bona

fide executive, administrative, or professional employees . . .” 43 P.S. § 333.109 (emphasis added).

g. Comment:

A commentator stated that the proposed regulation would be more onerous than federal law (201).

Department response:

To the extent permissible and appropriate under Pennsylvania law, the Department has aligned this final-form rulemaking with Federal law. The Department has aligned the initial salary threshold with the Federal threshold for 2020. However, the Federal threshold, which is based on earnings in the Southern region of the country, which has the lowest wages in the United States, is not representative of the Pennsylvania economy. Thus, after an adjustment period, the threshold will be incrementally adjusted to appropriately reflect Pennsylvania’s economic conditions.

II. DUTIES TEST

a. Comment:

A commentator stated that the outside sales exemption is too high (801).

Department response:

The Department’s current regulations interpreting the Act contain an exemption for outside sales. The Department did not propose any changes to the outside sales exemption and received no comments from labor organizations regarding whether the outside sales exemption should be updated, or a new exemption created. As such, it would be more appropriate to address these issues in a future rulemaking where the Department can conduct outreach and receive input from all interested parties.

b. Comment:

Numerous commentators stated that the duties test does not reach the goal of aligning with Federal regulation (12, 13, 14, 30, 31, 32, 33, 34, 35, 36, 37, 38, 44, 46, 47, 48, 49, 52, 53, 59, 60, 61, 63 64, 69, 70, 72, 95, 97, 99, 100, 101, 107, 114, 116, 123, 127, 129, 132, 133, 158, 163, 166, 181, 200, 229, 266, 268, 354, 360, 406, 801, 813).

Department response:

The Department agrees that Pennsylvania’s duties test should align with the Federal regulations. Pennsylvania’s current regulations align with the Federal law as it existed 1977, which included the long and short duties test. At the time, Federal regulations included a “long test” with a more restrictive duties test and a lower salary threshold, and a “short test” with a less stringent duties requirements and a higher salary threshold. In 2004, the Federal duties test was simplified to reflect the less stringent duties in the “short test” and eliminated the “long test.”

Discrepancies between Pennsylvania’s regulations and USDOL regulations make it difficult for employers to know if they comply with the duties test. The Department has

much more closely aligned the duties test to the Federal regulations in the final-form rulemaking, including by eliminating the “short” and “long” duties tests and more closely aligning the definitions. Aligning the duties test more closely with those in the Federal regulations will provide increased clarity to both employers and employees as to who is and is not an exempt employee.

c. Comment:

A commentator asked the Department to provide clearer guidance on the duties test (400).

Department response:

The final-form rulemaking significantly simplifies the duties test by the elimination of the “short” and “long” duties tests and by more closely aligning the standards with the those found in the Federal regulations.

d. Comment:

A commentator stated that the Governor is placing HR professionals in a very odd position and should allow employers to have the opportunity to invest in their employees and evaluate an appropriate salary for employees based on their education, experience and skills (127).

Department response:

The Department agrees that employees should be paid an appropriate salary for their education, experience and skills, which is the reason that the Department revised its salary threshold methodology to rely on data that reflects actual salaries paid in Pennsylvania. An appropriate salary is one that does not have an employee working unlimited overtime hours, such that that the employee is effectively paid an hourly rate below the minimum wage.

e. Comment:

Commentators have stated that they disagree that the Department’s duties test aligns with Federal rule (147, 231, 233, 241, 268, 285, 834).

Department response:

The Department agrees that Pennsylvania’s duties test should align with the Federal regulations. Pennsylvania’s current regulations align with the Federal law as it existed 1977, which included the “long” and “short” duties test. At the time, Federal regulations included a “long test” with a more restrictive duties test and a lower salary threshold, and a “short test” with a less stringent duties requirements and a higher salary threshold. In 2004, the Federal duties test was simplified to reflect the less stringent duties in the “short test” and eliminated the “long test.”

Discrepancies between Pennsylvania’s regulations and USDOL regulations make it difficult for employers to know if they comply with the duties test. The Department has much more closely aligned the duties test to the Federal rules in the final-form rulemaking, including eliminating the “short” and “long” duties tests and more closely aligning the standards. Aligning the duties test more closely with those in the Federal regulations will

provide increased clarity to both employers and employees as to who is and is not an exempt employee.

f. Comment:

A commentator stated that using the 40th percentile standard will render the duties test superfluous and that the Department has no federal authority to propose an automatic increase. (834)

Department response:

Neither the proposed nor the final-form regulation provides for the use of a 40th percentile standard in setting a salary threshold. The Department's final-form rulemaking provides for the salary threshold to be set based on the 10th percentile of salaries of Pennsylvania workers who work in exempt classifications.

The Department's authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5) provides that "[e]mployment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary)." This grants the Department broad authority to define exempt EAP employees, including adopting a salary threshold tied into wages paid to those employees, which will adjust at appropriate intervals. The Department does not require authorization from Congress to enact regulations under a Pennsylvania statute.

g. Comment:

Commentator stated that the Department provided insufficient notice of proposed rulemaking for the duties test and the Department did not propose any specific changes in the proposed rulemaking. Commentator asked whether the final regulation goes outside scope of proposed rulemaking (834).

Department response:

The final-form rulemaking is not outside the scope of the proposed regulation and the Department provided sufficient notice in its proposed rulemaking. The proposed regulation specifically included amendments to the duties test. Additionally, the Department received numerous public comments regarding the amendments to the proposed duties test. The amendments to the duties test in the final-form rulemaking reflect the Department's consideration of those comments. In the final-form regulation, the Department has sought to more closely align the duties test with the existing Federal regulations in order to reduce confusion and inconsistent application.

h. Comment:

Commentator states that the final regulation will turn duties test into a salary test (871)

Department response:

Confusion exists around Pennsylvania's antiquated use of both a "short" and "long" test for the EAP exemptions. Many individuals understand only the salary threshold portion of the regulation, and mistakenly assume that if they make over \$23,660 (USDOL's current threshold until the updated USDOL regulation takes effect on January 1, 2020), they are ineligible for overtime. However, under both the Department's regulations and USDOL's regulations, the individual must make over the salary threshold AND meet the duties test. The increase in the salary threshold will make employers and employees aware of the average salaries paid for employees who perform EAP duties; aligning Pennsylvania's duties test with the Federal duties test will assist employers with compliance.

i. Comment:

A commentator stated that the Commonwealth should not update the duties test to make this increase. The first year is consistent with wage growth in Pennsylvania over the last 14 years. The second and third increases are annual increases of 3.1% and 4.0%, which are far beyond the pace of wage growth. Rates are set by DHS and cannot pass the increased cost to the customer. The Psychiatric Residential Treatment Facility per diem rate was last adjusted in 2006. In 2004, the weekly salary limit was 25.52% above the federal poverty line. After three years, the threshold is raised to 125.52% of the 2004 limit (353).

Department response:

There is general agreement that the existing salary threshold is obsolete and that the current Federal threshold needs to be updated. While the Department recognizes that the salary threshold increases are higher than the percentages of wage growth, the threshold has not been updated in fifteen years. The salary threshold must align with the salaries of the workers it was intended to protect. In the final form rulemaking, the Department revised its methodology for calculating the salary threshold to take into account the actual earnings of Pennsylvania workers and economic conditions in the Commonwealth.

These concerns have been seriously considered and it is recognized that many nonprofits depend on limited funds from foundations and government grants.

Like all affected organizations, affected nonprofits have several strategies they can use to adjust for the rule. Nonprofit employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

A two-year phase-in period has been proposed, which provides nonprofits with adequate time to become familiar with the regulation, identify whether they employ affected non-

exempt EAP workers, and plan accordingly by making necessary adjustments to their organization.

Nonprofit organizations provide important services to the Commonwealth, and in many cases to vulnerable populations. However, the mission of an organization is not justification to exclude its workers from protections that the General Assembly intended to provide under the Pennsylvania Minimum Wage Act. Further, a new market rate is not being set for services by non-exempt employees via this regulation; rather, it is ensuring that non-exempt employees receive compensation for hours worked beyond 40 per week, as intended by both the Minimum Wage Act and the overtime exemption regulation.

j. Comment:

Commentator believes regulations may be *ultra vires* like the 2016 Federal regulations because increasing the minimum salary to a high level made the duties tests irrelevant which is inconsistent with FLSA (and Act). (813)

Department response:

The Department's authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5) provides that "[e]mployment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary)."

In May 2016, the USDOL published a regulation which raised the minimum salary level for exempt employees under the FLSA from \$455 per week to \$913 per week. The new salary level was based on the 40th percentile of weekly earnings of full-time salaried workers in the lowest wage region of the country (the South), and also created an automatic updating mechanism that adjusts the minimum salary level every three years starting in 2020. A Federal district court in Texas invalidated and enjoined the 2016 USDOL regulation implementing a salary increase to the FLSA's exemptions on the basis that because the regulation more than doubled the previous minimum salary level, it made exempt status depend predominately on a minimum salary level and thereby supplanted an analysis of an employee's job duties. *Nevada v. United States Dep't of Labor*, 275 F.Supp.3d 795 (E.D. Texas 2017). The court held that doing so was inconsistent with congressional intent and thus was outside the scope of the USDOL rulemaking authority. *Id.*

The final regulations implementing the Minimum Wage Act differ in material respects from the 2016 USDOL regulation in at least three significant ways.

First, the Department's increase is smaller than the 2016 USDOL rule and is phased in over two years rather than immediately effective. In the Texas case, the Federal district court based its decision that USDOL's regulation violated the FLSA in part on the fact that USDOL immediately doubled the salary threshold, from \$455 per week to \$913 per week, which in the court's view effectively eliminated the test based on the employee's duties. Under the Department's regulation, the salary level immediately resets to \$684 to be consistent with the salary threshold set in the USDOL's new rule which becomes effective on January 1, 2020. The Pennsylvania-specific salary threshold gradually rises to the Year 2 intermediate salary threshold of \$780 (a 14% increase over the salary level effective on January 1, 2020), and in the following year to the Year 3 salary threshold of \$875 (a 12% increase over the Year 2 salary level).

Second, unlike the USDOL's 2016 rulemaking, which focused exclusively on the salary level of exempt employees in the EAP categories, the increase in the salary threshold in the final regulation is part of the Department's comprehensive effort to update the EAP definitions to make them more relevant in the modern marketplace and more consistent with the Federal exemptions. The Department's rulemaking also updates the duties test to qualify for the EAP exemption including eliminating the "long" and "short" tests, establishing that the duties remain the focus of the exempt analysis. The Department's comprehensive overhaul of the Commonwealth's EAP regulations undercuts the notion the salary threshold is intended to be or will be determinative of an employee's status in disregard of an analysis of an employee's job duties. In the Texas case, the court noted that the USDOL's 2016 rulemaking stated that white collar employees earning less than \$913 per week would be eligible for overtime "irrespective of their job duties and responsibilities." 275 F.Supp.3d at 806 (quoting 81 Fed. Reg. 32,391, 32405 (May 23, 2016)). In contrast, in its final regulations, the Department both modernized its definitions and developed a salary threshold that is consistent with EAP duties, calculated using salary data of exempt Pennsylvania employees.

Third, the Department used a different methodology to calculate the salary threshold than the USDOL used in 2016 to calculate its salary threshold. Pennsylvania's EAP salary threshold has failed to keep pace with economic growth and the rising nominal salaries of exempt salaried workers, and no longer protects most EAP workers intended by this regulation to receive minimum wage and overtime pay. The salary threshold has not been updated since 1977 and is currently \$8,060 per year for Executive and Administrative employees under the long test. For Professional employees the salary threshold is \$8,840 per year for the long test. For all the EAP exemptions, the annual salary threshold is \$13,000 per year for the short test. The purpose of the salary threshold is such that non-exempt workers should be unlikely to make more than the threshold, and exempt workers should be unlikely to make less than the threshold. Today in Pennsylvania, the average yearly salary of individuals in exempt occupations is \$82,480. As such, the current salary thresholds are irrelevant because virtually all white-collar workers make a higher salary than the salary threshold. The final regulation sets the salary threshold for all EAP exemptions at the weighted average of 10th percentile exempt wages (the Department's methodology for determining salary threshold) and would be \$45,500 per year. This will act as a real threshold to ensure that salaried workers are properly classified as exempt.

Moreover, confusion exists around Pennsylvania's antiquated use of both a "short" and "long" test for the EAP exemptions. Many individuals understand only the salary threshold portion of the regulation, and mistakenly assume that if they make over \$23,660 (USDOL's current threshold until the updated USDOL regulation takes effect on January 1, 2020), they are ineligible for overtime. However, under both the Department's regulation and USDOL's regulation, the individual must make over the salary threshold AND meet the duties test. The increase in the salary threshold will make employers and employees aware of the average salaries paid for employees who perform EAP duties; aligning Pennsylvania's duties test with the Federal duties test will assist employers with compliance.

III. GEOGRAPHICAL CONSIDERATION

a. Comment:

Commentators state that it is inappropriate for the Department to base the threshold on the Northeast region because salaries differ greatly in Pennsylvania (163, 173, 202, 718, 808, 807, 828, 834, 865, 866, 876, 893, 900).

Department response:

The Department carefully considered this comment and, as a result, revised its methodology for calculating the salary threshold. The final-form rulemaking contains a salary threshold that is calculated based on data specific to Pennsylvania workers and therefore reflects the economic realities of the Commonwealth.

b. Comment:

Commentator states that Clarion County cannot compete with the North East region census data and will have to raise property taxes if the Commonwealth does not provide more funding for the programs. The regulations will affect employees or cut services that they provide (888).

Department response:

The Department decided to change the methodology in the final rule from the methodology used in the proposed rulemaking. In the proposed rulemaking, the Department set the salary threshold at 30% of all salaried workers in the Northeast Region. Commentators accurately pointed out that this data included wage data from high income areas such as New York City, Boston and other northeast metropolitan areas. In consideration of this concern, the Department revised the methodology to limit the calculation of the salary threshold to Pennsylvania specific data.

Using Pennsylvania's Occupational Employment Statistics (OES) data for 2018, the most recent year for which this data is available, Center for Workforce Information and Analysis (CWIA) identified the employment volume and 10th percentile wage for each exempt occupation. The 10th percentile wage was multiplied by total employment to create a weighted 10th percentile wage for each exempt occupation. CWIA then aggregated total employment across all exempt occupations, aggregated weighted 10th percentile wages for

total weighted 10th percentile wage across all exempt occupations, and divided the aggregated weighted 10th percentile wage by aggregated employment to determine the average 10th percentile wage of all exempt workers, which is \$45,500.

The Department adapted a methodology that was previously used by the Federal government but adjusted it to take into account only Pennsylvania data and wages.

c. Comment:

Commentator states that all businesses and locations across PA are not the same. For example, Philadelphia is not in the same situation as Fayette County businesses (808).

Department response:

County-level data demonstrates that the proposed overtime threshold of \$45,500 is below most other county's median household income, including those in high-population and rural areas. Counties with some of the state's most significant populations – Allegheny, Lehigh, Erie, Dauphin, Lackawanna, and Lancaster – have median household income levels of 6 to 35% above \$45,500. Only Philadelphia had a median household income that was lower (-11%). Counties with some of the state's sparsest populations in rural areas – Fulton, Elk, and Mercer – have median household income levels of 4 to 10% above the proposed overtime threshold.

Furthermore, when drilling down to the average annual occupational wages by county, certain occupations, regardless of county, will be lower or higher than the proposed OT threshold. Occupations that we expect to be the most impacted by the proposed overtime threshold in terms of greatest number of affected employees include Management, Business and Financial Operations, and Office and Administrative Support.

The average annual wage for Management; Business and Financial Operations; Construction and Extraction; and Installation, Maintenance, and Repair occupations was generally significantly higher than \$45,500 across the state, including rural areas. For example, average wage levels for the Management occupation, included those in rural regions that were above 45% (Cameron), 140% (Fulton), 127% (Elk), 83% (Forest), 147% (Fayette), and 144% (Mercer). Occupations under the Office and Administrative Support; Sales and Related; Production; and Transportation and Material Moving categories typically had lower average wages than the overtime threshold established by these regulations. Other categories, such as Community and Social Services were more mixed, depending on the county.

d. Comment:

Commentator stated that the Department should take geography into account; concern about rural areas (357).

Department response:

County-level data demonstrates that the proposed overtime threshold of \$45,500 is below most other county's median household income, including those in high-population and rural areas. Counties with some of the state's most significant populations – Allegheny,

Lehigh, Erie, Dauphin, Lackawanna, and Lancaster – have median household income levels of 6 to 35% above \$45,500. Only Philadelphia had a median household income that was lower (-11%). Counties with some of the state's sparsest populations in rural areas – Fulton, Elk, and Mercer – have median household income levels of 4 to 10% above the proposed overtime threshold.

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e. Comment:

Commentator stated that the regulation does not consider the cost of living per market or part of the country and will have to employ more part time employees to make up for the missed overtime (873).

Department response:

The Department decided to change the methodology in the final rule from the methodology used in the proposed rulemaking. In the proposed rulemaking, the Department set the salary threshold at 30% of all salaried workers in the Northeast Region. Commentators accurately pointed out that this data included wage data from high income areas such as New York City, Boston and other northeast metropolitan areas. In consideration of this concern, the Department revised the methodology to limit the calculation of the salary threshold to Pennsylvania specific data.

Using Pennsylvania's Occupational Employment Statistics (OES) data for 2018, the most recent year for which this data is available, CWIA identified the employment volume and 10th percentile wage for each exempt occupation. The 10th percentile wage was multiplied by total employment to create a weighted 10th percentile wage for each exempt occupation. CWIA then aggregated total employment across all exempt occupations, aggregated weighted 10th percentile wages for total weighted 10th percentile wage across all exempt occupations, and divided the aggregated weighted 10th percentile wage by aggregated employment to determine the average 10th percentile wage of all exempt workers, which is \$45,500.

The Department adapted a methodology that was previously used by the Federal government but adjusted it to take into account only Pennsylvania data and wages.

IV. GENERALLY OPPOSED

a. Comment:

Commentator stated that the regulation will result in higher costs to consumers (31).

Department response:

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359
FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558
FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or limited non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly non-exempt workers initially will be lower than the number of newly non-exempt workers upon full implementation. Costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

Whether employers incur costs or pass those costs on to their customers will be a function of how the employer chooses to implement the regulation. However, the General Assembly has already made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

b. Comment:

Commentator stated that the Commonwealth should not be hostile like New York towards business (168).

Department response:

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101. In addition, employers will have flexibility in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the

business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Additionally, the Department has provided for an incremental approach to increasing the salary threshold, in order to give businesses time to adjust. This will permit businesses to explore the above options, or a combination thereof, to determine how to achieve compliance with a minimal impact on operations.

c. Comment:

Commentator suggested that the Commonwealth should look at the California model, because it increased the wage and businesses failed (169).

Department response:

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101. In addition, employers will have flexibility in determining how to implement the final-form regulation. Employers can choose cost neutral options to comply, if they choose.

d. Comment:

Commentator stated that health care providers will have an inability to pay due to reimbursement issues (231).

Department response:

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101. In addition, employers will have flexibility in determining how to implement the final-form regulation. Employers may implement cost neutral options to comply, if they choose.

These concerns have been seriously considered and it is recognized that many nonprofits depend on limited funds from foundations and government grants. Like all affected organizations, affected nonprofits have several strategies they can use to adjust for the rule. Nonprofit employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;

- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

A two-year phase-in period has been proposed, which provides nonprofits with adequate time to become familiar with the regulation, identify whether they employ affected non-exempt EAP workers, and plan accordingly by making necessary adjustments to their organization.

Nonprofit organizations provide important services to the Commonwealth, and in many cases to vulnerable populations. However, the mission of an organization is not justification to exclude its workers from protections that the General Assembly intended to provide under the Pennsylvania Minimum Wage Act. Further, a new market rate is not being set for services by non-exempt employees via this regulation; rather, it is ensuring that non-exempt employees receive compensation for hours worked beyond 40 per week, as intended by both the Minimum Wage Act and the overtime exemption regulation.

e. Comment:

Commentator stated that the regulation will result in negative impact to PA residents and taxpayers--higher taxes and fewer services (357).

Department response:

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of "employer" in 1974, but has not altered the definition of "employer" to include public entities. The General Assembly's clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act's definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

f. Comment:

Commentators stated that the regulation will render the minimum wage the sole arbiter of deciding exempt status for most positions (740, 744, 745, 752, 758, 867, 890).

Department response:

Confusion exists around Pennsylvania's antiquated use of both a "short" and "long" test for the EAP exemptions. Many individuals understand only the salary threshold portion of the regulation, and mistakenly assume that if they make over \$23,660 (USDOL's current threshold until the updated USDOL regulation takes effect on January 1, 2020), they are ineligible for overtime. However, under both the Department's regulation and USDOL's regulation, the individual must make over the salary threshold AND meet the duties test. The salary threshold is based only on EAP worker salaries, so the duties of exempt workers are reflected in the calculation of the threshold amount. The increase in the salary threshold will make employers and employees aware of the weighted average 10th percentile salaries paid for employees who perform EAP duties; aligning Pennsylvania's duties test with the Federal duties test will assist employers with compliance.

g. Comment:

Commentator stated that he is opposed to any minimum wage (170).

Department response:

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

h. Comment:

Commentator stated that Department does not have the authority to set wages or salaries for employees that alone exclude them from the exempt classification (866).

Department response:

The Department's authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5) provides that "[e]mployment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary)."

Confusion exists around Pennsylvania's antiquated use of both a "short" and "long" test for the EAP exemptions. Many individuals understand only the salary threshold portion of the regulation, and mistakenly assume that if they make over \$23,660 (USDOL's current threshold until the updated USDOL regulation takes effect on January 1, 2020), they are ineligible for overtime. However, under both the Department's regulation and USDOL's regulation, the individual must make over the salary threshold AND meet the duties test. The increase in the salary threshold will make employers and employees aware of the average salaries paid for employees who perform EAP duties; aligning Pennsylvania's duties test with the Federal duties test will assist employers with compliance.

i. Comment:

Commentator stated that he is opposed to any changes (11).

Department response:

The commentator did not provide any rationale for his opposition to the regulation. The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

j. Comment:

Commentator asked the Department to allow private companies to handle their problems (244).

Department response:

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

k. Comment:

Commentator stated that the proposed regulation is well intended but employer and employees should agree to what works for circumstances, and does not believe we need a one size fits all policy (71).

Department response:

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101. The commentator indicated a fundamental misunderstanding of eligibility and applicability of current overtime exemptions for workers and appears to believe that any salaried employee is automatically exempt from overtime.

l. Comment:

Commentators caution Department not to rely on one-sided studies and political rhetoric (22, 23, 33, 34, 35, 39, 59, 60, 61, 63, 95, 97, 99, 100, 173, 364).

Department response:

The Department's revised methodology uses objective wage data for Pennsylvania employees.

m. Comment:

Commentator stated that the state has no further business regulating overtime and the Department should be rolling back regulations, not adding to them (167)

Department response:

The Department's authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5) provides that "[e]mployment in the

following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary)."

n. Comment:

Commentator stated that excessive regulation creates a drag on economic growth and hurts not only employers but also employees (167).

Department response:

The Department's authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5) provides that "[e]mployment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary)."

Ensuring that workers are fairly compensated and paid a living wage will have an overall positive economic impact for the Commonwealth. Employees who are compensated appropriately for their work will be more productive. And paying overtime where appropriate will provide income that employees will use to spend on goods and services.

o. Comment:

Commentator stated that overtime should be on all work beyond a 40-hour week. Overtime should be applied to anytime a shift goes more than a normal 8-hour period unless the agreed shift is set up for 4-10 or 3-12 hour shifts (16).

Department response:

The Act does not require overtime for any shift in excess of eight hours, only for hours in excess of 40 per week for non-exempt employees.

p. Comment:

Commentator questioned whether this rulemaking was truly altruistic in nature to help and build the middle class or simply a way to increase the public coffers in Harrisburg by increased income tax revenues at the expense of the private sector. This is bad public policy and should be dropped. This proposal could cause "brain drain" in PA. The proposed rate is extreme and double the current minimum salary requirement (136).

Department response:

The Department's initial salary threshold aligns with the new Federal salary threshold for 2020, and therefore causes no additional impact. Thereafter, the Department has taken an

incremental approach to a salary threshold that is based on Pennsylvania-specific data and will accurately reflect economic conditions in the Commonwealth.

Fairly compensating workers will incentivize them to remain in Pennsylvania, rather than to leave.

q. Comment:

Commentator stated that unfunded mandates are a significant burden to human service providers. Services are not able to be automated like fast food. Raising the wages will put people out of work if a business wants to keep the price of a product the same. Fiscal impact: FY 19/20 = \$403,560, FY 20/21 = \$741,504, FY 21/22 = \$1,140,024. There are no additional funds for these providers as well. If this increase happens, there will not be anyone to care for the children. This is not creating jobs, it is decreasing the amount of jobs available. (171)

Department response:

The General Assembly has already made a basic policy decision in enacting the Minimum Wage to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to the possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. To the extent the human services provider is a non-profit, the General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

r. Comment:

Commentator stated that his company is looking to relocate headquarters to NJ, DE, MD, VA, or WV. Regulations will have a large impact on company and state in form of lost revenue. The newest regs do not include Computer Employee exemption for highly skilled computer workers that the Federal government has. State should set salary limit at \$455 a week to comply with USDOL and surrounding states (201).

Department response:

The Department cannot create a computer exemption because that exemption does not exist in the Act. The Federal FLSA specifically exempts "any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is (A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; (B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or (D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour." 29 U.S.C. § 213(a)(17). The Act does not provide this exemption, and the Department cannot add a categorical exemption through regulation that does not exist in the Act. See *Nationwide Mut. Ins. Co. v. Foster*, 580 A.2d 436, 442 (Pa. Cmwlth. 1990).

Additionally, the USDOL has promulgated a new rule raising the salary threshold to \$683 and the Department has aligned with that salary for the first year. However, the Federal threshold, which is based on earnings in the Southern region of the country, the area with the lowest wages in the US, is not representative of the Pennsylvania economy. Therefore, the Department has adapted its methodology for calculating the salary threshold to incrementally adopt a threshold that is based on Pennsylvania-specific data.

s. Comment:

Commentator stated that he represents 300 health and human service members serving 1 million people with disabilities in PA. Has heard of significant concerns that proposed regulation will have direct impact on individuals living and working with disability. RCPA is 100% supportive of an increase to wages, but has serious concerns about the regulation because of fiscal impact on members. Overtime increase will be unfunded mandate. Human service providers will be forced to make salaried employees hourly. Concern about impact on individuals living and working with a disability; the Department should balance the priority of ensuring adequate compensation for all workers and ensuring that the services and supports that individuals with disabilities rely on remain intact. unintended consequences for many health and human service providers (228).

Department response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." See 43 P.S. § 333.101. That

employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without changing duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

t. Comment:

The regulation will result in increased costs to consumers (403).

Department response:

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359
FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558
FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or limited non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation. Again, whether an employer's costs increase under the new regulation

will depend factors such as whether any of its employees are overtime exempt as well as how the employer chooses to respond to the regulation.

Whether employers incur or absorb any additional costs or elect to pass those costs on to their customers will be a function of how the employer chooses to implement the regulation. However, the General Assembly has already made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

u. Comment:

Commentator stated that regulation will have a negative impact on career advancement and employee flexibility (812).

Department response:

There is nothing in the rulemaking that would prohibit employers from offering employees flexibility of hours or career advancement. Employers can choose to provide flexible shifts to employees previously classified as exempt. By promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, employers can trap workers in a position where they have very little time to improve independently their economic situation by pursuing education goals or to work a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer; with no time outside of work to pursue other opportunities, they must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The Commentator implies that loss of flexibility is bad for worker morale. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

v. Comment:

Commentator stated that regulations should address outside sales exemption; computer professional exemption; highly compensated employee exemption; administrative exemption for education establishments; health care limited exemption (880).

Department response:

The Department cannot create a computer employee exemption because that exemption does not exist in the Act. The Federal FLSA specifically exempts "any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is (A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; (B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (C) the design, documentation, testing, creation, or modification of computer programs related to machine operating

systems; or (D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour." 29 U.S.C. § 213(a)(17). Contrary to the FLSA, the Act does not include this exemption. As noted above, the Department cannot add a categorical exemption through regulation that does not exist in the Act. *See Nationwide Mut. Ins. Co. v. Foster*, 580 A.2d 436, 442 (Pa. Cmwlth. 1990).

The Department's current regulations interpreting the Act contain an exemption for outside sales but do not contain exemptions for highly compensated employees, business owners and employees of educational establishments. Moreover, the proposed regulation did not address updating or creating these exemptions. As such, the Department received no comments from labor organizations regarding whether the outside sales exemption should be updated, or a new exemption created. As such, it would be more appropriate to address these issues in a future rulemaking where the Department can conduct outreach and receive input from all interested parties.

Other commentators recommended that the Department mirror Federal law and adopt an 8/80 rule for the health care industry. In order for the Department to adopt this rule, the Department would require an amendment to 34 Pa. Code § 231.42, which states that a weekend is a period of 7 consecutive work days. This amendment would also be better addressed in a future rulemaking to provide all interested parties an opportunity to review and comment on any proposed changes.

Other commentators noted the absence of a concurrent duties test and key definitions such as primary duty and salary basis. While the Department has more closely aligned its regulations with federal regulations, the Department has not adopted all federal definitions. However, the Department considers Federal law for guidance in interpreting provisions of the Act that are similar. The Department will continue to review federal regulations and may address additional inconsistencies between Federal and state provisions in future rulemaking.

w. Comment:

Commentator stated that industries governed by Medicaid regulations and who are wholly dependent on government for funding, cannot implement the regulation without a reciprocal increase in rates and related appropriations unless it cuts benefits, training and infrastructure maintenance (833).

Department response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." *See* 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the

business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give it the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profit employers from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

x. Comment:

Commentator asks the Department to allow the free market to function without additional regulations (299).

Department response:

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. 43 P.S. § 333.101.

y. Comment:

Commentator stated that regulation will result in increased administrative and operations costs; limited career advancement; disruption of employee use of mobile devices and remote electronic access to workplace resources; increase litigation based on off the clock work claims. (890)

Department response:

The regulation will not impose any new or additional recordkeeping requirements on businesses that would create increased administration costs. In fact, employers are already obligated to keep such records. The Act currently specifically directs that employers keep "a true and accurate record of the hours worked by each employee and the wages paid to each." 43 P.S. § 333.108. The Act does not require that such records be kept only for hourly employees.

The regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. For example, an employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening.

Capping employee work hours at forty per week does not prohibit an employee from pursuing advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their economic situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly-paid workers and will be compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages to reduce their costs likely will have difficulty retaining their employees, especially given a tight labor market.

z. Comment:

Commentator suggests exempting municipal governments (357).

Department response:

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of "employer" in 1974, but has not altered the definition of "employer" to include public entities. The General Assembly's clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act's definition of employer, the Department has properly interpreted the Act to exclude them.

aa. Comment:

Commentator stated that regulation will result in increased FLSA litigation (892).

Department response:

The final-form rulemaking more closely aligns with federal law, which provides more consistency for employers and lessens the burden of compliance with different federal and state standards. The rulemaking will result in less misclassification of workers, thus reducing unnecessary litigation over an employee's status.

bb. Comment:

Commentator stated that the regulation would be too expensive to implement because of increased legal and operational costs, including administrative costs (892).

Department response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." See 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. The Department cannot anticipate whether employers will choose to incur legal expenses in response to the regulation.

cc. Comment:

Commentator disagrees with "customarily and regularly exercise discretionary powers" language. States SB 587 would align PA duties test with the Federal regulation. Other states have done this. Suggests having one standard as outlined in bill (893).

Department Response:

In the final-form rulemaking, the Department removed "customarily and regularly" from the duties test. SB 587 was significantly different from the Department's proposed

regulation and did not move out of committee last session. Although it has been reintroduced, it remains in committee. Senator Baker, the bill's sponsor, indicated in her comments that she sought closer alignment with the federal regulations. As discussed in detail, in response to comment I(b) above, this final form regulation represents significantly closer alignment with the federal regulation.

dd. Comment:

Commentator stated that business will be negatively impacted, benefits and career opportunities for employees reduced (903).

Department response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." See 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

Capping employee work hours at forty per week does not prohibit an employee from pursuing advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their economic situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments

from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages in order to reduce their costs likely will have difficulty retaining their employees, especially given a tight labor market.

cc. Comment:

Commentator stated that the regulation will lead to less affordable housing options for consumers (903).

Department response:

The Department sees no correlation between the regulation and affordable housing options. In fact, increased compensation leads to increased spending by consumers. In addition, increased wages to employees creates more spending in local economies. The Department estimates the following induced spending will result from this regulation.

FY 2020-2021 Economic Impact: \$1,957,441 - \$2,187,590 in induced spending
FY 2021-2022 Economic Impact: \$7,253,309 - \$8,106,125 in induced spending
FY 2022-2023 Economic Impact: \$10,909,487 - \$12,192,184 in induced spending
FY 2023-2024 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending
FY 2024-2025 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

ff. Comment:

Includes comments about the USDOL's proposed overtime rule. The International Franchise Association has grave concerns regarding the catastrophic impact of the proposed regulations. (834)

Department response:

The comments submitted were in response to overtime regulations proposed by USDOL 2016 proposed overtime rule, and did not address the Department's proposed regulation.

V. IMPACTS TO BUSINESS

a. Comment:

Commentators stated the regulation will create burdensome recordkeeping for businesses (233,801).

Department Response:

There should be no impact on recordkeeping requirements, as those requirements already exist. The Act specifically directs that employers keep "a true and accurate record of the hours worked by each employee and the wages paid to each." *See* 43 P.S. § 333.108. The Act does not require that such records be kept only for hourly employees.

b. Comment:

Commentators stated some businesses will have to reduce services due to the regulation (64, 115, 753, 759, 760, 830, 869, 887, 888, 898).

Department Response:

Employers will not be required to reduce services, but will have a range of options to consider in determining how to best implement the regulation. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." *See* 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to

supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

c. Comment:

Commentator stated that business might have to cut workforce size and cut programs that benefit their business and workers. Follow the CPI-W index and the MSA model. Business already follows a lot of regulations and the Chamber does not believe that the regulation timeline is long enough or transparent (828).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." See 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate so as to maintain service levels to customers and constituents. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

The Department has aligned the salary threshold with the new federal salary threshold for 2020, so there will be negligible impact on employers for a year. The Department has incrementally increased the salary threshold thereafter, using a methodology that reflects economic realities in Pennsylvania.

d. Comment:

Commentator stated there will be an increased cost to the employer having to constantly examine their employees (890).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not

fairly commensurate with the value of the services rendered.” See 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

The Department did examine managerial costs associated with the rule-making and factored these costs into the overall cost to employers. Managerial costs were determined to be ten minutes per affected employee per week, to take into consideration time spent to minimize the costs of overtime.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

e. Comment:

Commentator stated that the regulation will decrease productivity (865).

Department Response:

Ensuring that workers are fairly compensated and paid a living wage will have an overall positive economic impact for the Commonwealth. Employees who are compensated appropriately for their work will be more productive. And paying overtime where appropriate will provide income that employees will use to spend on goods and services.

f. Comment:

Commentators stated that the regulation would dramatically increase labor costs (155, 355, 690, 691, 692, 693, 694, 696, 699, 704, 705, 708, 716, 718, 719, 722, 724, 725, 731, 732, 740, 741, 743, 744, 747, 752, 762, 764, 818, 825, 867, 876, 896).

Department Response:

To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

For employers that choose to maintain business operations by scheduling employees for overtime, approximate additional payroll costs, Commonwealth-wide, are as follows:

FY 2020-2021: \$3,565,467 - \$3,984,681 in increased worker wages
FY 2021-2022: \$13,211,856 - \$14,765,256 in increased worker wages
FY 2022-2023: \$19,871,561 - \$22,207,985 in increased worker wages
FY 2023-2024: \$20,450,344 - \$22,854,819 in increased worker wages
FY 2024-2025: \$20,450,344 - \$22,854,819 in increased worker wages

g. Comment:

Commentator stated Convenience industry has seen other expenses such as gasoline tax increase and cigarette and vapor taxes and businesses cannot absorb such a large increase. The regulation will force businesses to close. Most businesses provide livable wages. If the federal law did not pass, why would state officials think it is a good idea (40).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” See 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

h. Comment:

Commentator stated that the regulation will increase cost of doing business in the Commonwealth (201).

Department Response:

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359
FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558
FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or limited non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly non-exempt workers initially will be lower than the number of newly non-exempt workers upon full implementation. Costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

Whether employers incur costs or pass those costs on to their customers will be a function of how the employer chooses to implement the regulation. However, the General Assembly has already made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

i. Comment:

Commentators stated regulation negatively impacts employee morale, which will in turn affect business reputation (161, 162, 172).

Department Response:

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly wages is entirely an employer's decision.

Several commentators stated the loss of flexibility is bad for worker morale. The regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This rulemaking will not prevent employers from providing flexibility to their employees. For example, an employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted from salaried to hourly wage positions. Even if an employer chooses to convert an employee to an hourly wage position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages likely will have difficulty retaining their employees, especially given a tight labor market.

j. Comment:

Commentator stated that regulation will drive remaining business out of PA. Why has Governor decided to be anti-business (182)?

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." See 43 P.S. § 333.101. Ensuring that workers are fairly compensated and paid a living wage will have an overall positive economic impact for the Commonwealth. Employees who are compensated appropriately for their work will be more productive and paying overtime where appropriate will provide income that employees will use to spend on goods and services.

k. Comment:

Commentator stated that extreme increase poses a significant threat to credit union operations and consumer access to financial services (893).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." See 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;

- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

l. Comment:

Commentator stated any changes will just reduce hours to eliminate overtime. Changes should not be made in trucking sector because they are paid by the mile or the load they deliver. Workers who are salaried with be made hourly which would cause employees to lose benefits. It would hurt Pennsylvania's ability to compete (8).

Department Response:

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101. While the Department is not aware of the individual commentator's business structure, in general, truck drivers are not covered by these exemptions. Truck drivers generally do not meet the duties test and are usually not salaried employees.

m. Comment:

Commentator stated employers will adjust to new rule that minimizes impact on costs to reduce workers hours or increases workers salary to just above threshold or to pay workers overtime (8).

Department Response:

The Department agrees that employers will have several options to respond to the new rulemaking. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

n. Comment:

Commentator stated regulation will affect business quality and reputation; will cut back on hours of employees. Can't afford reduced flexibility (681).

Department Response:

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become

compliant with the regulation. The shift from salary to hourly wages is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. The regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This rulemaking will not prevent employers from providing flexibility to their employees. For example, an employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly wage from salaried employment. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages to reduce costs likely will have difficulty retaining their employees, especially given a tight labor market.

o. Comment:

Commentator stated regulation would be too expensive to implement (23, 265, 267, 271).

Department Response:

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359
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FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the

salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

Whether employers incur costs or pass those costs on to their customers will be a function of how the employer chooses to implement the regulation. However, the General Assembly has already made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

p. Comment:

Commentator stated negative impact for businesses because of less flexibility for employees and burdensome recordkeeping (241).

Department Response:

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly wage is entirely an organizational decision.

Commentators stated the loss of flexibility is bad for worker morale. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment also seems to assume that employees must have a set schedule or that they must be on the employer's premises to be considered as working. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. For example, an employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly wages. Even if an employer chooses to convert an employee from salary to an hourly wage, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

Capping employee work hours at 40 per week does not prevent an employee from pursuing advancement opportunities. By promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement

income while “working their way up the ladder.” Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their economic situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

The regulation will not impose any new or additional recordkeeping requirements on businesses that would create increased administration costs. In fact, employers are already obligated to keep such records. The Act specifically directs that employers keep “a true and accurate record of the hours worked by each employee and the wages paid to each.” 43 P.S. § 333.108. The Act does not require that such records be kept only for hourly employees.

q. Comment:

Commentator stated that the regulation will have a heavy impact on their operating budget. Will create a deficit for their operating budget and they would need to request an increase in their rates from the state (894).

Department Response:

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359
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FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation.

Again, whether an employer's costs increase under the new regulation will depend on factors such as whether any of its employees are overtime exempt as well as how the employer chooses to respond to the regulation.

Whether employers incur or absorb increased costs or pass those costs on to their customers will be a function of how the employer chooses to implement the regulation. However, the General Assembly has already made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

r. Comment:

Will cause significant job losses and have severe impacts on business, especially non-profits. Business might have to cut workforce size and cut programs that benefit their business and workers. Follow the CPI-W index and the MSA model. Business already follows a lot of regulations and the Chamber does not believe that the regulation timeline is long enough or transparent (828).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate so as to maintain service levels to customers and constituents. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

The Department has aligned the salary threshold with the new federal salary threshold for 2020, so there will be negligible impact on employers for a year. The Department has incrementally increased the salary threshold thereafter, using a methodology that reflects economic realities in Pennsylvania.

s. Comment:

Commentator stated it has 30 full-time, part-time, and seasonal employees. Works for 40 townships, boroughs, and municipal authorities in Western PA. 65% of revenue comes from municipal engineering services. This would have negative impact because of the revenue stream of the company comes from local government. This could lead to lay-offs in the company (407).

Department Response:

There is no effect on the stream of revenue to the Commentator because these overtime rules are inapplicable to public employers, including state-affiliated entities; counties, municipalities, and public-school systems. The Minimum Wage Act specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of "employer" in 1974, but has not altered the definition of "employer" to include public entities. The General Assembly's clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act's definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

t. Comment:

Commentator stated that while an update to minimum wage is long overdue, increasing the minimum wage for salaried exempt employees to \$47,000 is just too much. It will create hardship on business (367).

Department Response:

The commentator mistakenly believed the Department was raising the minimum wage for all employees to \$47,000. However, the Department is only raising the salary thresholds for exempt EAP employees.

VI. INCREASED THRESHOLDS

a. Comment:

Commentator stated that threshold increase is too drastic (874).

Department Response:

The update to the salary thresholds will protect Pennsylvania employees from being arbitrarily designated as exempt and required to work excessive overtime hours without additional compensation. The current federal salary threshold of \$23,660, over which an

EAP employee does not have to be paid overtime is artificially low because 15 years have passed since the salary thresholds were updated. This threshold has not even been adjusted for inflation. Although the federal threshold is scheduled to be increased on January 1, 2020, that threshold is based upon the earnings of the lowest-paid salaried employees in the nation and is not reflective of Pennsylvania's economy. This rulemaking uses a methodology that takes into account the economic realities in the Commonwealth, using more relevant, Pennsylvania-specific data and uses that same methodology to adjust the salary threshold at regular intervals where warranted by current data. This process replaces infrequent, dramatic changes that would result if the threshold were unaddressed for long periods of time, with predictable and gradual changes.

By ensuring that workers are fairly compensated and paid a living wage, this rulemaking will have an overall positive economic impact for the Commonwealth. Employees who are compensated appropriately for their work will be more productive. And paying overtime where appropriate will provide income that employees will use to spend on goods and services.

The rulemaking also gradually phases in a higher salary threshold, first adopting the new federal threshold and then incrementally adjusting to the Pennsylvania-appropriate threshold. This will allow time for employers to plan and adjust operations to determine how best to implement the rulemaking, based on the individual needs of the business. This rulemaking need not have a detrimental impact on employers. Employers will have a range of options by which to implement the new duties test and updated thresholds for their EAP employees. Employers will have the ability to make these changes cost neutral for their operation.

b. Comment:

Commentator stated that the Commonwealth overreached by updating threshold to nearly 150% inflation while essentially turning the duties test into a salary test (871).

Department Response:

The Department has reduced the salary threshold from the proposed rulemaking. The increase in the salary threshold is based upon wages paid to Pennsylvania employees who perform EAP duties. Under both the Department's regulation and USDOL's regulation, the individual must make over the salary threshold AND meet the duties test.

This rulemaking uses a methodology that uses more relevant, Pennsylvania-specific data and uses the same methodology to adjust the salary threshold at regular intervals where warranted by current data. This process allows for more predictable and gradual adjustments, and replaces infrequent, dramatic changes that result when the threshold goes unaddressed for long periods of time.

VII. AUTOMATIC THRESHOLDS

a. Comment:

Commentator stated that automatic raises do not allow for employer input (874).

Department Response:

The final-form rulemaking provides that before the salary threshold is adjusted, the Minimum Wage Advisory Board will have the opportunity to review and comment on any adjustment. Employer groups are represented on the Board.

b. Comment:

Commentator stated that automatic increases will hurt business because it doesn't account for economic realities. L&I should not rely on the data and opinion of the Economic Policy Institute (EPI) for reasons explained in the letter (875).

Department Response:

The automatic adjustments are based on salaries paid to EAP workers in Pennsylvania, not on EPI data. Using Pennsylvania specific wage data allows the Department ensures that the salary threshold will reflect the current economic reality of the Commonwealth. Sporadic increases in the salary threshold lead to the employer community having to play "catch up" each time the salary threshold is increased at an arbitrary time. In contrast, the automatic adjustment mechanism allows the regulation to be carried out as intended: there would be few instances of an employee being exempt prior to a regulatory update and subject to overtime upon update due to a large increase in the salary threshold to reflect current wages. Periodic small adjustments to the salary threshold allow the salary threshold to continue to meet the intent of the regulation without causing upheaval to the employer community.

The Department is not relying on EPI data to set the automatic adjustment. Rather, the data used will be collected by the Department and represents Pennsylvania-specific wage data.

c. Comment:

Commentator stated that automatically raising the threshold hurts business because they will have to constantly reevaluate their employees (889).

Department Response:

The purpose of the automatic adjustment is not to create a pool of newly-exempt workers with each adjustment; rather, the salary threshold adjustment should continue to reflect the intent of the regulation and continue providing protections to non-exempt workers, while continuing to exempt those executive, administrative, and professional employees that the General Assembly intended to exempt.

Sporadic increases in the salary threshold lead to the employer community having to play "catch up" each time the salary threshold is increased at an arbitrary time. In contrast, the automatic adjustment allows the regulation to be carried out as intended: there would be few instances of an employee being exempt prior to a regulatory update and subject to overtime upon update due to a large increase in the salary threshold to reflect current wages. Periodic small adjustments to the salary threshold allow the salary threshold to continue to meet the intent of the regulation without causing upheaval to the employer community.

d. Comment:

Commentator stated that Automatic increases will hurt business because they will not be allowed to have input into the level. Proposal should be more open to non-discretionary bonuses and the such (866).

Department Response:

The final-form rulemaking provides that before the salary threshold is adjusted, the Minimum Wage Advisory Board will have the opportunity to review and comment on any adjustment. Employer groups are represented on the Board.

The Department amended the provisions of the final-form rulemaking regarding bonuses to align with the federal regulations.

e. Comment:

Commentator stated that automatic threshold would create obstacles in business planning (233).

Department Response:

The automatic adjustment is calculated based on the weighted average of the 10th percentile of wages in exempt occupations. Beginning in 2023, once adjusted, the salary threshold will be in place for three years. This will provide employers with predictability and stability.

f. Comment:

Commentator quotes DOL preamble from 2004--where DOL says adopting automatic increase is contrary to congressional intent and inappropriate (834).

Department response:

The Department is promulgating these regulations under the Minimum Wage Act enacted by the General Assembly. The Minimum Wage Act differs from the Fair Labor Standards Act, under which Federal rules are promulgated.

The Department has the statutory authority to promulgate the automatic adjustment provision of the regulations. Pennsylvania courts have long recognized the power of an administrative agency to administer a statutorily-mandated program and under the Act, has expressly delegated authority to the Department to "define and delimit" the EAP terms in Section 5(a) of the Act, 43 P.S. § 333.105(a) and left it to the Department's discretion how to do so. This is the same broad delegation of authority that has underpinned the Department's use of a salary threshold as a characteristic to define the EAP exemption since 1977, which remains effective in Pennsylvania.

g. Comment:

Commentator stated that automatic adjustments require a more thorough analysis of the economic consequences (817).

Department Response:

The automatic adjustment, like the initial salary threshold, will be based on Pennsylvania-specific wage data and will reflect the economic realities in Pennsylvania at the time.

h. Comment:

Commentator stated that recommends basing automatic increase on CPI-W index; establish a cap of 3 percent increase (828)

Response:

The Department has revised its methodology for calculating future salary thresholds and is no longer relying on the CPI-U index. Instead, salary thresholds will be adjusted based on Pennsylvania-specific wage data of EAP workers.

i. Comment:

Oppose the automatic increase; this creates an unsustainable floor; no evidence that the legislature intended that the salary level test for exemption be indexed. (866)

Department Response:

The Secretary has authority to issue regulations that safeguard the minimum wage rates that are established. 43 P.S. § 333.109. In order to ensure that the salary thresholds are based on wages actually paid to EAP workers, the Department will adjust the salary threshold in accordance with the final-form rulemaking.

The automatic adjustment is calculated based on the weighted average of the 10th percentile of wages in exempt occupations. Beginning in 2023, once adjusted, the salary threshold will be in place for three years. This will provide employers with predictability and stability.

Arbitrary and sporadic increases lead to the employer community having to play “catch up” each time the salary threshold is increased. In contrast, the automatic adjustment allows the regulation to be carried out as intended: there would be few instances of an employee being exempt prior to the automatic adjustment and subject to overtime upon update, as any increase in the salary threshold reflects current wages. Periodic small adjustments to the salary threshold allow the salary threshold to continue to meet the intent of the regulation without causing upheaval to the employer community.

j. Comment:

Commentator stated that against automatic increase and suggests an automatic review. (893)

Department Response:

The Secretary has authority to issue regulations that safeguard the minimum wage rates that are established. 43 P.S. § 333.109. In order to ensure that the salary thresholds are based on wages actually paid to EAP workers, the Department will adjust the salary threshold in accordance with the final-form rulemaking.

Arbitrary and sporadic increases lead to the employer community having to play “catch up” each time the salary threshold is increased. In contrast, the automatic adjustment allows the regulation to be carried out as intended: there would be few instances of an employee being exempt prior to the automatic adjustment and subject to overtime upon update, as any increase in the salary threshold reflects current wages. Periodic small adjustments to the salary threshold allow the salary threshold to continue to meet the intent of the regulation without causing upheaval to the employer community.

k. Comment:

Commentator stated that their biggest concern is the automatic reset in future years. There are estimates that the minimum threshold will be \$72,000 in five years and they do not plan on offering that salary to lower managers. If they had to service prices would be increased and it would just become a cycle for all companies that would be affected. This would cause businesses to close and people would lose their jobs. (757)

Department Response:

The Department has revised its methodology for calculating future salary thresholds and is no longer relying on the CPI-U index, so the figure quoted by the commentator is inaccurate. Instead, salary thresholds will be adjusted based on Pennsylvania-specific wage data of EAP workers.

Arbitrary and sporadic increases lead to the employer community having to play “catch up” each time the salary threshold is increased. Indeed, the automatic adjustment allows the regulation to be carried out as intended: there would be few instances of an employee being exempt prior to the automatic adjustment and subject to overtime upon update, as any increase in the salary threshold reflects current wages. Periodic small adjustments to the salary threshold allow the salary threshold to continue to meet the intent of the regulation without causing upheaval to the employer community.

VIII. PHASE-IN

a. Comment:

Commentator requested the Department to reconsider the speed of the phase-in period (400).

Department Response:

The Department has revised the salary threshold implementation to align with the new federal salary threshold that becomes effective on January 1, 2020. Therefore, businesses will have a full year before there is any impact of the revised salary threshold, as Pennsylvania’s threshold will not diverge from the federal threshold until January 1, 2021. Given the revised federal regulation, the Department believes the phase-in period is reasonable.

b. Comment:

Commentator stated that increases should be phased in with adequate notice (834).

Department Response:

The Department has revised the salary threshold implementation to align with the new federal salary threshold that becomes effective on January 1, 2020. Therefore, businesses will have a full year before there is any impact of the revised salary threshold, as Pennsylvania's threshold will not diverge from the federal threshold until January 1, 2021. Given the revised federal regulation, the Department believes the phase-in period is reasonable.

Information regarding future adjustments will be reviewed with the Minimum Wage Advisory Board no less than 90 days before the effective date. Future adjustments will be published in the *Pennsylvania Bulletin* at least 30 days prior to the effective date.

c. Comment:

Commentator stated that the regulation does not provide a reasonable time to comply (828).

Department Response:

The Department has revised the salary threshold implementation to align with the new federal salary threshold that becomes effective on January 1, 2020. Therefore, businesses will have a full year before there is any impact of the revised salary threshold, as Pennsylvania's threshold will not diverge from the federal threshold until January 1, 2021. Given the revised federal regulation, the Department believes the phase-in period is reasonable.

IX. IMPACTS TO EMPLOYEES

a. Comment:

Employers would have to let employees go and switch salaried workers to hourly which is bad for morale. (893).

Department Response:

The commentator expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. Examples provided included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. For example, an employee who is out of the office on one day may be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

b. Comment:

Commentator stated that employers will control the employee hours more tightly which will limit training, travel, and advancement (875).

Department Response:

The commentator stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

c. Comment:

Commentators stated that the regulation will limit flexibility on hours, benefits, and pay (94, 96, 102, 103, 105, 106, 111, 113, 128, 130, 138, 142, 143, 148, 149, 152, 153, 155, 156, 161, 162, 168, 169, 170, 172, 185, 188, 199, 226, 231, 234, 235, 241, 269, 270, 297, 298, 302, 355, 366, 656).

Department Response:

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility

would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. Examples provided by commentators included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

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Some businesses stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason that the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

d. Comment:

Commentators stated that the regulation will negatively affect morale by forcing employees back to punching in on a time clock (94, 96, 102, 103, 105, 106, 111, 113, 128, 130, 138, 142, 143, 148, 149, 152, 153, 155, 156, 161, 162, 168, 169, 170, 172, 185, 188, 199, 226, 231, 234, 235, 241, 269, 270, 297, 298, 302, 355, 366, 656).

Department Response:

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

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Some businesses stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary

raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

e. Comment:

Commentator states that people will also make less if they don't hit the 40-hour mark (756).

Department Response:

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

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and that internal advancement is available, as that is the only feasible way they will improve their current situation.

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- f. **Comment:** Commentator states that it will be difficult for workers to adjust to different situations. (690, 691, 692, 693, 694, 696, 699, 704, 705, 708, 716, 718, 719, 722, 724, 725, 731, 732, 740, 741, 743, 744, 747, 752, 764, 818, 825, 867, 876, 896).

Department Response:

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

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managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while “working their way up the ladder.” Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

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X. IMPACTS TO LOCAL GOVERNMENT

a. Comment:

Commentator states that PSATS is a nonprofit that represents the interests of officials from 1400 townships. PSATS objects to changes. There is a 200% jump in salary requirements. Will disproportionately affect municipal employers with rural populations, will increase or raise taxes, and will eliminate services to townships (357).

Department Response:

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act of 1968 (Act) specifically omits public employers from its definition of “employer,” indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of “employer” in 1974, but has not altered the definition of “employer” to include public entities. The General Assembly’s clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act’s definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

b. Comment:

Commentator urges the state to work with counties on the proposal (888).

Department Response:

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act of 1968 (Act) specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

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This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

c. Comment:

Commentator states that Municipal Government Employers will be negatively impacted (357).

Department Response:

These overtime rules are inapplicable to public employers, including state affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act of 1968 (Act) specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of "employer" in 1974, but has not altered the definition of "employer" to include public entities. The General Assembly's clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act's definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

d. Comment:

Commentator states that Berks County cannot compete with the NE census states and will have to raise property taxes if the state does not provide more funding for the programs and employees that will be affected by the regulations or cut services that they provide. It will also take significant man power to for the duties of the employees that will be affected to be reviewed. Urges the state to work with counties on the proposal and wait until USDOL updates their regulations (898).

Department Response:

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act of 1968 (Act) specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of "employer" in 1974, but has not altered the definition of "employer" to include public entities. The General Assembly's clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act's definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

e. Comment:

Commentator desires language that explicitly states that political subdivisions are exempt. The abilities of counties to deliver services will be affected because they have already lost funding so they cannot pick up the slack of paying the extra increases. It will take significant time and effort to review employee positions and job descriptions to examine if they will be exempt or not. The one-size fits all approach does not work for PA. PA should work with the counties to come up with a proposal that works for everyone (887).

Department Response:

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act of 1968 (Act) specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of "employer" in 1974, but has not altered the definition of "employer" to include public entities. The General Assembly's clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act's definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

f. Comment:

Commentator states that Franklin County cannot compete with the NE census states and will have to raise property taxes if the state does not provide more funding for the programs and employees that will be affected by the regulations or cut services that they provide. It will also take significant man power to for the duties of the employees that will be affected to be reviewed. Urges the state to work with counties on the proposal and wait until USDOL updates their regulations (869).

Department Response:

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act of 1968 (Act) specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of "employer" in 1974, but has not altered the definition of "employer" to include public entities. The General Assembly's clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act's definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

g. Comment:

Commentator states that Lancaster County will have to raise property taxes if the state does not provide more funding for the programs and employees that will be affected by the regulations or cut services that they provide. It will also take significant man power to for the duties of the 63 of the 390 exempt employees that will be affected to be reviewed. Urges the state to work with counties on the proposal (830).

Department Response:

These overtime rules are inapplicable to public employers, including state affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of "employer" in 1974, but has not altered the definition of "employer" to include public entities. The General Assembly's clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act's definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

h. Comment:

Commentator states that Forest County will have to raise property taxes if the state does not provide more funding for the programs and employees that will be affected by the regulations or cut services that they provide. 30 employees will be eligible for overtime and urges the state to work with counties on the proposal (755, 759, 760).

Department Response:

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of "employer" in 1974, but has not altered the definition of "employer" to include public entities. The General Assembly's clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act's definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

i. **Comment:**

Commentator states that Lycoming County will have to raise property taxes if the state does not provide more funding for the programs and employees that will be affected by the regulations or cut services that they provide. It will also take significant man power to for the duties of the 33 employees that will be affected to be reviewed. Urges the state to work with counties on the proposal (753).

Department Response:

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of "employer" in 1974, but has not altered the definition of "employer" to include public entities. The General Assembly's clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act's definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

XI. IMPACTS ON COMMONWEALTH ECONOMY

a. **Comment:**

Commentator stated that the regulation will harm Commonwealth's ability to compete and attract business; Commonwealth will also become less attractive to business because surrounding states have regulations that mirror the FLSA (716, 746).

Department Response:

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359
FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558
FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers in year one will be lower than the number of newly nonexempt workers in Year 2. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

Whether employers incur costs or pass those costs on to their customers will be a function of how the employer chooses to implement the regulation. However, the General Assembly has already made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. 43 P.S. § 333.101.

Additionally, New York has adopted a salary threshold higher than the FLSA, so not all surrounding states use the Federal salary threshold.

b. Comment:

Commentator stated that the flexibility in the long run will hurt the recruitment and retention efforts of the business (696).

Department Response:

Several commentators stated the loss of flexibility is bad for worker morale. Examples included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee that needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Having a higher salary threshold will assist employers in recruiting and retaining employees. Workers who are fairly compensated for their work are less likely to seek other opportunities and are likely to be more productive.

c. Comment:

Commentator urges for no cap in the percentage allowed for nondiscretionary bonuses and incentive payments (874).

Department Response:

The Department aligned the provisions for nondiscretionary bonuses and incentive payments with the Federal regulation to avoid confusion.

d. Comment:

Commentator stated that the Commonwealth should be working to reduce regulations, not create more (697, 698, 702, 703, 706, 709, 710, 712, 713, 714, 717, 720, 721, 723).

Department Response:

The Department's authority to adopt regulations is clear. The General Assembly has already made a basic policy decision and indicated, in enacting the Act, that it intended to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the Executive, Administrative and Professional exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5) states, "Employment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary)."

XII. IMPACTS TO NON-PROFIT ORGANIZATIONS

a. Comment:

Commentator stated that the regulation will cause significant job losses and have severe impacts on business, especially non-profits. Business might have to cut workforce size and cut programs that benefit their business and workers. Follow the CPI-W index and the MSA model. Business already follows a lot of regulations and the Chamber does not believe that the regulation timeline is long enough or transparent (828).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

The Department has aligned the salary threshold with the new Federal salary threshold for 2020, so there will be negligible impact on employers for a year. The Department has incrementally increased the salary threshold thereafter, using a methodology that reflects economic realities in Pennsylvania.

b. Comment:

Commentator stated that as a non-profit foster care agency she is already reliant on DHS dollars to hire staff. The increased threshold would force us to cut staff and put employees back to hourly workers, and all her employees hated this when it was in the proposed Obama-era regulations. Employees considered it a demotion - especially young professionals. It is not uncommon for employees in non-profits to work less than 40 hours in a week. Even if employees are changed to hourly, there is still not enough money to pay them overtime. This would result in a loss in pay to employees. Would support raising the threshold to \$30,000 per year and then index it over time. Recommends making an exemption for non-profits (62).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to

supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

c. Comment:

Commentator stated that regulation will hurt non-profits because they must spend more money on staffing which takes away the funding available for care and services, in this case. They cannot increase revenue because seniors have limited income. It is too great of a jump for the overtime salary increase and the shift for salaried workers to become hourly will be burdensome. It will be hard for the members to recruit committed employees because they will have to compete with the higher wages. States that it is not fair to base PA wages off Northeast states because there are many differences in lifestyle in pay already. Salaried workers will lose benefits if switched to salary such as vacation and a sense of trust (701).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

The Department decided to change the methodology in the final rule from the methodology used in the proposed rulemaking. In the proposed rulemaking, the Department set the salary threshold at 30% of all salaried workers in the Northeast Region. Commentators accurately pointed out that this data included wage data from high income areas such as New York City, Boston and other northeast metropolitan areas. In consideration of this concern, the Department revised the methodology to limit the calculation of the salary threshold to Pennsylvania specific data.

Using Pennsylvania's Occupational Employment Statistics (OES) data for 2018, the most recent year for which this data is available, CWIA identified the employment volume and 10th percentile wage for each exempt occupation. The 10th percentile wage was multiplied by total employment to create a weighted 10th percentile wage for each exempt occupation. CWIA then aggregated total employment across all exempt occupations, aggregated weighted 10th percentile wages for total weighted 10th percentile wage across all exempt occupations, and divided the aggregated weighted 10th percentile wage by aggregated employment to determine the average 10th percentile wage of all exempt workers, which is \$45,533.

The Department adapted a methodology that was previously used by the Federal government, but adjusted it to take into account only Pennsylvania data and wages.

d. Comment:

Commentator stated that as a Non-profit, the regulations will result in higher costs which we cannot recoup. Will result in fewer services (53).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
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supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

e. Comment:

Commentator is legal counsel for several non-profit exempt health entities. The proposal runs counter to public interest. The threshold is so high that it reduces the importance of the duties test. Proposal does not consider inflation and is well beyond what the rate of inflation has been since 1977. Makes this more of a salary test than a duties test. Differing Federal and state minimum wage and overtime can be very confusing. Federal government provides definitions for highly compensated, computer employees and exempt business owners under executive exemption. Also says no outside sales or use of fluctuating workweek. This is an unfunded mandate on non-profits. Clients will have to increase prices to offset the costs. Employee salaries will be lowered to adjust. Will hurt employee morale to change to hourly. Clients may have to lay off employees. Clients may be forced to discipline dedicated employees that respond to work emails from home, or complete reports on the weekends. (411)

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
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- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services

should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

Confusion exists around Pennsylvania's antiquated use of both a short and long test for the Executive, Administrative, and Professional exemptions. Many individuals understand only the salary threshold portion of the regulation, and mistakenly assume that if they make over \$23,660 (USDOL's current threshold until the updated USDOL regulation takes effect on January 1, 2020), they are ineligible for overtime. However, under both the Department's regulation and USDOL's regulation, the individual must make over the salary threshold AND meet the duties test. The increase in the salary threshold will make employers and employees aware of the average salaries paid for employees who perform EAP duties; aligning Pennsylvania's duties test with the Federal duties test will assist employers with compliance.

The Department cannot simply adopt all Federal regulations, because the Department's enabling legislation, the Minimum Wage Act, is different from the Fair Labor Standards Act, under which the Federal regulations are promulgated.

The Department has made significant efforts to more closely align with Federal regulations. The Department recognizes the importance of providing more consistency for employers and employees. The Department believes aligning more closely with the Federal regulations will result in less misclassification of workers, thus reducing unnecessary litigation over an employee's status.

The amendments to the duties test for the EAP exemptions make the applicable test easier to understand and therefore will increase compliance. To the extent permissible and appropriate under Pennsylvania law, these tests have been aligned with the applicable Federal definitions, creating one standard for employers to administer.

While the Department has more closely aligned its regulations with Federal regulation, the Department has not adopted all Federal definitions. However, the Department considers Federal law for guidance in interpreting provisions of the Minimum Wage Act that are similar to those in USDOL regulations. The Department will continue to review Federal regulations and may address any further inconsistencies in future rulemaking.

The Department has also aligned the salary threshold with the Federal threshold for 2020, to give employers an opportunity to adjust to the increase before incrementally increasing the threshold to one that appropriately reflects economic conditions in Pennsylvania. Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become

compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. Examples included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee that needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

f. Comment:

Commentator stated that regulation is bad for non-profit employer. 70 percent of the current budget already goes to salaries and benefits of current employees. Currently, 98 percent of revenue is brought in through pre-determined fees-for-service. This regulation would put a strain on the business and many other non-profits. This would reduce the amount of funding for direct care services. This regulation would impact the most vulnerable people in our society. Services for vulnerable people will be reduced (115).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

g. Comment:

Commentator stated that non-profits should be exempt from the proposed current regulations. The increase should not be more than \$100 per week. Many people choose to work for non-profits because they want to do charitable work in the community. That is something that is part of the "non-monetary" compensation. Cites an EPI article that the average non-profit CEO pay is \$100,000 compared to \$15 million of the top 350 firms in the USA. 30% of program directors are paid less than \$47,892 (80% of assistant directors). These individuals are still executives. Salary thresholds should be set lower in the non-profit world (242).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

h. Comment:

Commentator stated that regulation will impact nonprofits and medical providers the most; these sectors cannot raise prices to absorb cost of the increased salary levels (866).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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i. Comment:

Commentator stated that regulation will have a major negative impact to nonprofit organizations (890, 891).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases

is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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j. Comment:

Commentator does not support nonprofit exemption, but rather, suggests studying the process and potential solutions, and phase-in so that businesses have time to adjust. Suggests that mandated increases to the exempt threshold should only be raised with an increase in human services funding because many non-profits that offer those kinds of services are already having trouble making ends meet. Understands the suggestion of making non-profits exempt but in the end, it would just make their services less competitive in the job market and will negatively impact human services providers. It is well documented that a staffing crisis exists in the human service field in PA (891).

Department Response:

The Department has aligned the salary threshold with the Federal threshold for 2020, to give employers an opportunity to adjust to the increase before incrementally increasing the threshold to one that appropriately reflects economic conditions in Pennsylvania. The Department has no ability to influence human services funding.

Raising the salary threshold may assist non-profits in recruitment and less the staffing crisis in the human services field.

k. Comment:

Commentator stated that its non-profit would not be able to sustain itself under greater personnel costs as they get limited money from the government. If rules are implemented allow non-profits to option a waiver. Includes numbers as to their budget (763).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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The Department has no authority under the law to grant waivers.

Comment:

Commentator stated that non-profits have limited funds for personnel costs and people take jobs with them understanding that. The proposed threshold is too high (699).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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XIII. FEDERAL RULE STRUCK DOWN

a. Comment:

Numerous commentators stated that a Federal court already struck down the Obama-era rule that proposed to do the same thing. (12-14, 30-32, 36-38, 44, 46-49, 52, 53, 64, 69, 70, 72, 94, 96, 102, 103, 105, 106, 111, 113, 128, 130, 138, 142, 143, 147, 148, 149, 152, 153, 155, 156, 161, 162, 168, 169, 170, 172, 185, 188, 199, 226, 227, 231, 234, 235, 241, 269, 270, 297, 298, 302, 344, 345, 346, 347, 349, 350, 354, 356, 355, 363, 366, 651, 652, 654, 655, 681, 656, 759, 801, 803, 813, 828, 829, 865-868, 871, 889, 890, 982, 983).

Department Response:

In May 2016, the USDOL published a regulation which raised the minimum salary level for exempt employees under the FLSA from \$455 per week to \$913 per week. The new salary level was based on the 40th percentile of weekly earnings of full-time salaried workers in the lowest wage region of the country (the South), and also created an automatic updating mechanism that adjusts the minimum salary level every three years starting in 2020. A Federal district court in Texas invalidated and enjoined the 2016 USDOL regulation implementing a salary increase to the FLSA's exemptions on the basis that the regulation more than doubled the previous minimum salary level and it made exempt status depend predominately on a minimum salary level; thereby supplanting an analysis of an employee's job duties. *Nevada v. United States Dep't of Labor*, 275 F.Supp.3d 795 (E.D.Texas 2017). The court held that doing so was inconsistent with congressional intent and thus was outside the scope of the USDOL rulemaking authority. *Id.*

The final regulations implementing the Minimum Wage Act differ in material respects from the 2016 USDOL regulation in at least three significant ways.

First, the Department's increase is smaller than the 2016 USDOL rule and is phased in over two years rather than immediately effective. In the Texas case, the Federal district court

based its decision that USDOL's regulation violated the FLSA in part on the fact that USDOL immediately doubled the salary threshold, from \$455 per week to \$913 per week, which in the court's view effectively eliminated the test based on the employee's duties. Under the Department's regulation, the salary level immediately resets to \$684 to be consistent with the salary threshold set in the USDOL's new rule which becomes effective on January 1, 2020. The Pennsylvania-specific salary threshold gradually rises to the Year 2 intermediate salary threshold of \$780 (a 14% increase over the salary level effective on January 1, 2020), and in the following year to the Year 3 salary threshold of \$875 (a 12% increase over the Year 2 salary level).

Second, unlike the USDOL's 2016 rulemaking, which focused exclusively on the salary level of exempt employees in the EAP categories, the increase in the salary threshold in the final regulation is part of the Department's comprehensive effort to update the EAP definitions to make them more relevant in the modern marketplace and more consistent with the Federal exemptions. The Department's rulemaking also updates the duties test to qualify for the EAP exemption including eliminating the "long" and "short" tests, establishing that the duties remain the focus of the exempt analysis. The Department's comprehensive overhaul of the Commonwealth's EAP regulations undercuts the notion the salary threshold is intended to be or will be determinative of an employee's status in disregard of an analysis of an employee's job duties. In the Texas case, the court noted that the USDOL's 2016 rulemaking stated that white collar employees earning less than \$913 per week would be eligible for overtime "irrespective of their job duties and responsibilities." 275 F.Supp.3d at 806 (quoting 81 Fed. Reg. 32,391, 32405 (May 23, 2016)). In contrast, in its final regulations, the Department both modernized its definitions and developed a salary threshold that is consistent with EAP duties, calculated using salary data of exempt Pennsylvania employees.

Third, the Department used a different methodology to calculate the salary threshold than the USDOL used in 2016 to calculate its salary threshold. Pennsylvania's EAP salary threshold has failed to keep pace with economic growth and the rising nominal salaries of exempt salaried workers, and no longer protects most EAP workers intended by this regulation to receive minimum wage and overtime pay. The salary threshold has not been updated since 1977 and is currently \$8,060 per year for Executive and Administrative employees under the long test. For Professional employees the salary threshold is \$8,840 per year for the long test. For all the EAP exemptions, the annual salary threshold is \$13,000 per year for the short test. The purpose of the salary threshold is such that non-exempt workers should be unlikely to make more than the threshold, and exempt workers should be unlikely to make less than the threshold. Today in Pennsylvania, the average yearly salary of individuals in exempt occupations is \$82,480. As such, the current salary thresholds are irrelevant because virtually all white-collar workers make a higher salary than the salary threshold. The final regulation sets the salary threshold for all EAP exemptions at the weighted average of 10th percentile exempt wages (the Department's methodology for determining salary threshold) and would be \$45,500 per year. This will act as a real threshold to ensure that salaried workers are properly classified as exempt.

Additionally, the decision of the Texas Federal district court is inherently flawed. The standard imposed by the court in that case created a standard that would invalidate nearly any regulation that relied on a salary threshold. An examination of the decision shows that the judge not only misunderstood the operation of the rule at issue, he based his decision on the fact that the regulation gave new overtime protections to workers whose jobs had not changed. The decision ignored the fact that the 2004 amendment to the Federal rule similarly extended overtime protections to workers whose jobs had not changed. There is no precedent for deciding that a rule is invalid based solely on its impact.

b. Comment:

Commentator is aware of the Obama-era overtime regulations, however, is confused and/or does not know that these regulations were struck down in the courts (193).

Department Response:

The Department thanks the commentator for the comment.

XIV. IMPACTS TO SMALL BUSINESS

a. Comment:

Commentators state that proposal underestimates the burden it will place on small businesses (9, 94, 96, 102, 103, 105, 106, 111, 113, 128, 130, 138, 142, 143, 148, 149, 152, 153, 155, 156, 161, 162, 168, 169, 170, 172, 185, 188, 199, 226, 231, 234, 235, 241, 269, 270, 297, 298, 302, 355, 364, 366, 656).

Department Response:

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359
FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558
FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

b. Comment:

Commentator states that these regulations are bad for small business (269, 270, 298, 299, 364, 818, 819, 828, 834, 903).

Department Response:

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347
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c. Comment:

Commentator states that this regulation would tell small business owners “we only want big box stores in PA instead of small Pennsylvania owned companies” (5).

Department Response:

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
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This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

d. Comment:

Commentator states that the regulation would have negative impact on his business; is already paying storm water fee, which is reaching thousands of dollars (6).

Department Response:

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

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FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347
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e. Comment:

Commentator states that the cost of doing business will increase and impact clients. Will negatively harm competitiveness; will force small businesses to shift from full time salaried employees to full time hourly employees creating a rigid work schedule and fewer training opportunities and lower morale. It will be a burden to track time and will affect morale (7).

Department Response:

The commentator expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. Organizations have several ways in which to comply with the regulation. The shift from salary to hourly is entirely an organizational decision. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Several commentators stated the loss of flexibility is bad for worker morale. Examples provided by commentators included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

Some businesses stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other

opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. The Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

f. Comment:

Commentator states that the regulation will hurt employees because small businesses will have to cut back hours and pay (226).

Department Response:

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to comply with the final-form regulation.

Affected businesses, including small businesses, will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

To adjust for the rule, employers may pursue one or a combination of several options:

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This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

g. Comment:

Commentator employs 100 people in 9 locations. Concerned that proposed regulations would hinder flexibility of what they offer and create a quality of life issue for many, even a scenario under which many may not be able to work. Convenience industry has seen other expenses such as gasoline tax increase and cigarette and vapor taxes and businesses cannot absorb such a large increase. Will force business to close. Most businesses provide livable wages (40).

Department Response:

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

The array of compliance alternatives allows employers to choose the option that best works for their business, without closing their doors.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. The Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin

being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

Although many businesses do pay a livable wage, the General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. This regulation ensures that all employees are minimally protected against overtime hours for which they are not fairly compensated.

h. Comment:

Commentator states that many government regulations ignore the realities of the agriculture sector. Labor is very market driven, and wages are based on the demand for labor. Prior to setting a salary, job requirements are carefully measured so that "extra" time is already accounted for in the employment agreement. There is a negative association from going from salaried to an hourly employee. This will hinder flexibility as a small business and an employer (179).

Department Response:

Employers of all sizes have a range of options to respond to the possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

i. Comment:

Commentator states proposal underestimates the burden it will place on small businesses. It will ultimately increase labor costs. Over 50% of the employees have been there for over 20 years. The image of them using a time clock every day is demoralizing. Insurance agencies work on commissions and are not able to set any pricing for anything--dependent on insurance companies (355).

Department Response:

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to comply with the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

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This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

Several commentators stated the loss of flexibility is bad for worker morale. Commentators asserted that flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each

organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. The Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

Commentator commented that his employees should be exempt as professional employees. The Department cannot comment on the exempt status of any particular employee.

j. Comment:

Commentator, as owner of a funeral home, states that he is already subject to taxes, fees and requirements that make it difficult to keep his head above water. Proposal will force small businesses to cut back the hours and pay of employees. Morale of employees will be impacted by punching time clock. (359)

Department Response:

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

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Several commentators stated the loss of flexibility is bad for worker morale. Commentators asserted that flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. The Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

k. Comment:

Commentator states that regulation will cause slower construction, and less affordable housing (405).

Department Response:

The Department sees no correlation between the regulation and affordable housing options. In fact, increased compensation leads to increased spending by consumers. In addition, increased wages to employees creates more spending in local economies. The Department estimates the following induced spending will result from this regulation.

FY 2020-2021 Economic Impact: \$1,957,441 - \$2,187,590 in induced spending
FY 2021-2022 Economic Impact: \$7,253,309 - \$8,106,125 in induced spending
FY 2022-2023 Economic Impact: \$10,909,487 - \$12,192,184 in induced spending
FY 2023-2024 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending
FY 2024-2025 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to the possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

I. Comment:

Commentator represents 14,000 small businesses in PA. There will be increased costs for compliance for small businesses. The economic impact on employees is overstated, while the negative impact on small businesses are greatly underestimated. It will negatively affect morale, quality, customer service, and a business's reputation. Businesses with fewer than 50 employees spend 30% more on regulatory compliance per employee, each year, than large businesses. Small businesses will be impacted disproportionately because they lack personnel. Converting employees to hourly will curb benefits of being exempt such as paid time off. Small businesses lose their appeal of flexibility (682).

Department Response:

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Several commentators stated the loss of flexibility is bad for worker morale. Commentators asserted that flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

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The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. The Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

m. Comment:

Commentator states that businesses with under 100 employees should be exempt (808).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. The Department does not have authority to exempt specific groups of employers from the Act.

n. Comment:

Commentator considers himself a Republican, but just wants something done about the "illegals" that get everything and citizens are second class. There are reasons that every country has borders (656).

Department Response:

The Department does not have jurisdiction over immigration matters.

o. Comment:

Commentator states it would create an undue burden on his business (653).

Department Response:

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to the possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them and therefore the rulemaking will not impose an undue burden.

p. Comment:

Commentator states that as a small business owner, this change would hurt his business financially due to the cost of my salary workers (303).

Department Response:

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359
FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558
FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers in upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

q. Comment:

Commentator states that the dramatic increase in the wage requirement to qualify for exempt status will force many employers to convert salaried employees to hourly status, which entails a more rigid work schedule, less flexibility, burdensome record-keeping, and

fewer training opportunities and benefits. Hourly workers risk less take-home pay if they work fewer than 40 hours in a week (365, 368).

Department Response:

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. Examples included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

Some businesses stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will

become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

The regulation will not impose any new or additional recordkeeping requirements on businesses that would create increased administration costs. In fact, employers are already obligated to keep such records. The Act specifically directs that employers keep “a true and accurate record of the hours worked by each employee and the wages paid to each.” 43 P.S. § 333.108. The Act does not require that such records be kept only for hourly employees.

r. Comment:

Commentator, a small business owner, states regulation will hurt business quality, customer service and reputation. Higher costs will result in cut in pay (98).

Department Response:

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

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FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558

FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393

FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers in upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

s. Comment:

Commentator represents nearly 400 employers from Columbia and Montour counties. The Board of Directors of the Columbia Montour Chamber of Commerce opposes these changes. The proposed regulations are excessive and burdensome. Small businesses and non-profits do not have the ability to adjust to the regulations in three years. Market conditions are already driving up wages and benefits for employees in many sectors. The government should allow the free market to provide this growth (178).

Department Response:

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

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This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers in upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

The General Assembly has already made a basic policy decision, in enacting the Act, to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage.

XV. LEGISLATIVE PROCESS

a. Comment:

Commentator stated that fundamental changes like this should be handled by the legislature and not through executive action (411, 875).

Department Response:

The Department’s authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate

with the value of the services rendered.” 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5), provides that “[e]mployment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary).” This change need not be the subject of legislation.

b. Comment:

Commentator states that this process should be handled through legislative process (813, 832, 871).

Department Response:

The Department’s authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5), provides that “[e]mployment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary).” This change need not be the subject of legislation.

XVI. REGULATORY REVIEW ACT

a. Comment:

Commentator states that the Department failed to comply with section 5 of the Regulatory Review Act in several ways, including failing to identify the costs and financial impact to small businesses (866).

Department Response:

The Department has extensively addressed the impact of this final-form rulemaking on small businesses in the Regulatory Analysis Form.

XVII. IMPACTS TO HIGHER EDUCATION

a. Comment:

Majority of revenue is generated through tuition. Non-market driven increases in compensation will add pressure to raise tuition and fees for prospective students. Along with this increase, Haverford will not be only college or university that has negative consequences. All colleges and universities in the Commonwealth will be at a competitive disadvantage with higher education outside the state. College employs 600 people, many are already in exempt positions.

Department response:

Employers have a range of options to respond to the possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them to minimize or eliminate the impact on tuition.

XVIII. INSUFFICIENT PUBLIC OUTREACH

a. Comment:

By the Department's own admission, there was "no effort to meet with the thousands of owners in this Commonwealth to obtain feedback and no consideration given to the geographical makeup and different costs of living" (101, 104, 110, 112, 119, 120, 124, 126, 131, 141, 151, 154, 159, 160, 164, 202).

Department response:

In response to comments related to the Department's outreach efforts, the Department elected to host ten roundtable meetings throughout the Commonwealth to consult with the regulated community and obtain feedback on the proposed rulemaking. The Department, together with the Pennsylvania Chamber of Commerce and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), held five sessions with Pennsylvania businesses and local chambers of commerce, and five sessions with local labor organizations between May 20, 2019 and June 6, 2019. The agendas for these roundtable meetings provided that the goals were to educate stakeholders on the existence and the Department's interpretation of the EAP exemptions, and to engage stakeholders and elicit feedback. The Department specifically asked the stakeholders to discuss the impacts of the proposed rulemaking and provide recommendations for changes.

On May 20, 2019, the Department held a roundtable in Harrisburg, Pennsylvania, including the following participants: Keystone Research Center, Service Employees International Union (SEIU), Communications Workers of America, SEIU Healthcare and AFL-CIO.

On May 21, 2019, the Department held a roundtable in Harrisburg, Pennsylvania, including the following participants: Harrisburg Regional Chamber of Commerce, the Pennsylvania Chamber of Commerce, Pennsylvania Association of Community Bankers, Army Heritage

Foundation, Ned Smith Nature Center, HACC, Perfectly Pennsylvania, RETTEW, Capital Blue Cross, Greater Reading Chamber Alliance, York County Economic Alliance, Hampton Inn, Insurance Agents and Brokers, Hershey Entertainment and Resorts, Dickinson College and Pennsylvania Consortium for Liberal Arts.

On May 22, 2019, the Department held a roundtable in Erie, Pennsylvania for local businesses, including the following participants: Country Fair Stores, Family House, Inc., Community Health Net, Knox McLaughlin, Erie Federal Credit Union, Community Resources for Independence, Achievement Center, North Country Brewing Company and Mercyhurst.

On May 22, 2019, the Department held another roundtable in Erie, Pennsylvania for local labor organizations, including the following participants: AFL-CIO Northwest, IBEW 56, UE Local 506 (Wabtech) and UE Local 618 (Wabtech).

On May 28, 2019, the Department held a roundtable in Malvern, Pennsylvania, including the following participants: Abel Brothers Towing & Automotive, Inc., East Goshen Township, Aqua, Miller's Insurance Agency, Inc., CCCBI, Endo International, Chester County Economic Development Council, Sojourn Philly, Desmond Hotel & Conference Center, Community Action Partnership, Cozen O'Connor, Exton Regional Chamber of Commerce, Post & Schell, Chester County Economic Development Council, Wawa, Inc., Gawthrop Greenwood, PC, Germantown Cricket Club, National Bank of Ethiopia and West Chester University.

On May 29, 2019, the Department held a roundtable in Plymouth Meeting, Pennsylvania including the following participants: Philadelphia AFL-CIO, Pathways PA, Community Legal Services, Outten & Golden, Stephan Zouras, R., Winebrake and Santillo, Berger Montague and UFCW.

On June 2, 2019, the Department held a roundtable in Pittsburgh, Pennsylvania, including the following participants: USW and Mon Valley Unemployed Committee.

On June 5, 2019, the Department held another roundtable in Pittsburgh, Pennsylvania, including the following participants: Allie Kiski Chamber of Commerce, Sodini & Company, African American Chamber of Commerce of Western Pennsylvania, Keep It Simple Training, Eat'N Park, SMC Business Controls, North Side / North Shore Chamber of Commerce, Priory Hospitality, HR-FamilyLinks, Duquesne, Robert Morris, Community Care Connect, MHY Family Services, Community Human Services, Standard Bank, Littler Mendelsohn and Family House.

On June 6, 2019, the Department held a roundtable in Scranton, Pennsylvania for local businesses, including the following participants: Greater Scranton Chamber, Ufberg Law, Advocacy Alliance, Fidelity Bank, Commonwealth Health/Moses Taylor Hospital, Girl Scouts in the Heart of PA, Allied Services, SLHDA, UFCW Federal credit union, Institute for HR & Services, Needle Law, Greater Scranton Chamber and Ben Franklin Technology Partners.

Also, on June 6, 2019, the Department held another roundtable for local labor organization in Scranton, Pennsylvania including the following participants: AFSCME and Labor Law Compliance.

| ID | Name | Affiliation | Address |
|----|------------------------|----------------------------------|---|
| 1 | IRRC | | |
| 2 | Mr. Simon | <u>simonradecki@gmail.com</u> by | <u>email only</u> |
| 3 | Mr. Janet Wheeler | | 629 Barbra Drive Eagleville PA 19403 |
| 4 | Ms. Debra Antol | Sweet Street Desserts | 722 Hiesters Lane Reading PA 19605 |
| 5 | Mr. Chuck Bickel | Ace FixIt Hardware | 827 Route 764, PO Box 249 Duncansville PA 16635. |
| 6 | Mr. Dave Blouch Sr | Blouch Fuel Service | 440 South 9th St Lebanon PA 17042 |
| 7 | Ms. Patricia Bryner | Reyna ITS | 590 Centerville Rd #179 Lancaster PA 17601 |
| 8 | Mr. Joseph Butzer | Advantage Nationalease | 1 Mark V Drive, Po Box 190 Lititz PA 17543-0190 |
| 9 | Mr. Charles Cole | Quality Services Inc | 559 Rodi Rd Pittsburgh PA 15235 |
| 10 | Mr. Marty Eichelberger | Letort Trust | 3130 Morningside Drive Camp Hill PA 17011 |
| 11 | Mr. David Graciano | dgraciano@eba209.com | |
| 12 | Mr. Brian Kaiser | | 1010 Western Ave, Suite 500 Pittsburgh PA 15233 |
| 13 | Ms. David Thompson | Thompson Mailing Corp | 21 Naus Way, PO BOX 150 Bloomsburg PA 17815 |
| 14 | Mr. Diane Tutich | | 7650 State Route 30 Irwin PA 15642 |
| 15 | Mr. Joe Westhoff | Alantic Concrete Products | 8900 Old Route 13, PO Box 129 Tullytown PA 19007 |
| 16 | Mr. Jim Blanski | jmb@blankienergy.com | |
| 17 | Mr. Kelth Foust | Susquehanna Fire Equipment CO | 2122 Main St Dewart PA 17730 |
| 18 | Mr. Carol Rogers | | 4912 Knox Street Philadelphia PA 19144 |
| 19 | Mr. Leonard Rich | Director, Lawrence County CTC | 750 Phelps Way New Castle PA 16101 |
| 20 | Mr. Bonnie Yoder | | 136 Quince Lane Charlottesvill VA 22902 |

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| 21 | Ms. Liz Ferry | The Chamber of Commerce for Greater Philadelphia | 200 South Broad St Suite 700 Philadelphia PA 19102-3813 |
| 22 | Mr. Curtis Shulman | Hotel State College & Co | 100 W College Ave State College PA 16801 |
| 23 | Ms. Jennifer Zangrilli | Dante's Restaurants Inc | 138 Moses Thompson Lane State College PA 16801 |
| 24 | Ms. Adrienne Morgado | | 844 Wortington Mill Road Newtown PA 18940 |
| 25 | Ms. Cheryl Peters | | 303 Edgeboro Drive Newtown PA 18940 |
| 26 | Mr. Patricia Porter | pporter321@yahoo.com | (by email only) |
| 27 | Mr. Eileen Reed | | 1 Ebony Court Newtown PA 18940 |
| 28 | Mr. Molly Smith | | 5925 Wayne Ave Philadelphia PA 19144 |
| 29 | Mr. Robin Sowards | | 7239 Whipple Street Pittsburgh PA 15218 |
| 30 | Mr. Chester Amick | | 661 Robinwood Drive Pittsburgh PA 15216 |
| 31 | Ms. Pamela Brogen- Spacht | | 5351 Jacycee Ave Suite B Harrisburg PA 17112 |
| 32 | Ms. Julia Brulia | | 16563 Lincoln Highway Breezewood PA 15533 |
| 33 | Mr. Robert Commero | Press Room Restaurant and Barr | 41 Weaver Ave Ephrata PA 17522 |
| 34 | Mr. Eric Corneilson | Wingate by Wyndham Hotel | 22 Brimmer Ave New Holland PA 17557 |
| 35 | Mr. John Delozier | Windsor Twp | 105 Surrey Lane York PA 17402 |
| 36 | Mr. John Fanelli | | 202 Tower Rd Avonmore PA 15618 |
| 37 | Mr. Thomas Florini | | 5000 Hanoverville Rd Bethlehem PA 18017 |
| 38 | Ms. Ward McMasters | | 115 W Germantown Pike, Suite 200 Norristown PA 19401 |
| 39 | Mr. Robert Trotta | | 100 Adams Ave Scranton PA 18503 |
| 40 | Ms. Lisa Dell'Alba | Square One Markets | 2432 Emrick Blvd Bethlehem PA 18020 |
| 41 | Ms. Linda Billley | Green Township Supervisor | 9333 Tate Rd Erie PA 16509 |

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| 42 | Mr. Denise Hall | | 83 Sauerman Road Doylestown PA 18901 |
| 43 | Ms. Richard Williams | | 82 S Main Wilkes Barre PA 18701 |
| 44 | Mr. Richard Beech | | 629 W Main St Grove City PA 16127 |
| 45 | Mr. Patrick Castellani | | 2300 Adams Ave Scranton PA 18509 |
| 46 | Mr. Cliff Ellis | | 1807 Serene Way Lancaster PA 17602 |
| 47 | Ms. Mary Gaiski | Pennsylvania Manufactured Housing Association | 315 Limekiln Rd New Cumberland PA 17070 |
| 48 | Mr. Andrew Gehman | | 178 Muddy Creek Church Rd Denver PA 17517 |
| 49 | Mr. David Martin | | PO Box 818 Chadds Ford PA 19317 |
| 50 | Mr. Kenneth Trippet | | 187 N Old Turnpike Rd Drums PA 18222 |
| 51 | Ms. Allison McDowell | | 852 North 24th Street Philadelphia PA 19130 |
| 52 | Mr. Michael Anderson | American Specialty System | 2590 Monroe St York PA 17404 |
| 53 | Ms. Nancy Fulmer | Community Care Connections Inc | 114 Skyline Drive Butler PA 16001 |
| 54 | Ms. Tony Knepp | Masonic Village | One Masonic Drive Elizabethtown PA 17022 |
| 55 | Mr. Seth Lyons | | 5355 Knox Street Philadelphia PA 19144 |
| 56 | Mr. Maria Rosen | | 704 Honey Run Road Ambler PA 19002 |
| 57 | Ms. Lisa Santer | | 435 Gaskill Street Philadelphia PA 19147 |
| 58 | Ms. Donna Abbonizio | McDonalds | 962 Liberty Lane Warrington PA 18976 |
| 59 | Ms. Betrand Artigues | Cloud 9 Wine Bar & Restaurant | 3315 Raspberry St Erie PA 16508 |
| 60 | Mr. Jeff Detzi | Detzi's Tavern | 314 N Lobb Ave Pen Argyl PA 18072 |
| 61 | Ms. Kimberly Greenwalt | McDonalds | 12 N Market St Millerstown PA 17062 |
| 62 | Mr. Susan Miklos | Bair Foundation | 241 High Street New Wilmington PA 16124 |

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| 63 | Ms. Lisa Rager, Executive Director | Johnstown Convention & Vistors Bureau | 2026 Belton St Jonhstown PA 15904 |
| 64 | Mr. Aaron Smalley | | 2755 Krilia Rd Hermitage PA 16148 |
| 65 | Ms. Mark Volk | Lackawanna College | VolkM@lackawanna.edu |
| 66 | Mr. Naomi Littell | <u>yowsxza@yahoo.com</u> | |
| 67 | Ms. Carolyn Rafferty | | 135 Liberty Drive Newtown PA 18940 |
| 68 | Mr. StephanieAnne Thompson | | 2561 Hill Road Sellersville PA 18960 |
| 69 | Ms. Carla Luthke | | 4101 Post Road Marcus Hook PA 19061 |
| 70 | Sister Clark McHenry | | 584 Poplar Road Honey Brook PA 19344 |
| 71 | Ms. David Souders | | 19 Ash Street Mont Alto PA 17237 |
| 72 | Rev. Matthew Stuckey | | 500 Broad Street, PO Box 489 Holidaysburg PA 16648 |
| 73 | Ms. Elizabeth Greim | | 539 Diamond Street Sellersville PA 18960 |
| 74 | Ms. Ann Henderson | | P.O. Box 46, 97 Geigel Hill Road Erwinna PA 18920 |
| 75 | Mr. Megan Horn | | 14 Pond Lane Levittown PA 19054 |
| 76 | Mr. Darrin Kelly | Allegheny County Labor Council | 1459 Woodruff Street Pittsburgh PA 15220 |
| 77 | Mr. Alfred Kovnat | | 2616 Woodsvlew Dr. Bensalem PA 19020 |
| 78 | Ms. Scott Kristoff | | PO Box 72 Madison PA 15663 |
| 79 | Mr. MaryAnn Lawler- Rees | | 208 Tanager Court Warrington PA 18976 |
| 80 | Mr. Bobbi Linksens | wrightba77@gmail.com | (By email only) |
| 81 | Mr. Lars Merk | | 140 Wrights Road Newtown PA 18940 |
| 82 | Ms. Athur Miller | | One Dorset Pl Newtown PA 18940 |
| 83 | Mr. Christine Parker | | 650 Fir Ave Langhorne PA 19047 |
| 84 | Ms. Pat Randolph | | 800 Austin Drive Fairless Hills PA 19030 |
| 85 | Mr. Carl Ruzicka | | 18 North Lancaster Ln Newtown PA 18940 |

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| 86 | Mr. Leslie Silva | | 5234 Schuyler Street Philadelphia PA 19144 |
| 87 | Mr. Amanda Sirine | | 201 N Warminster Rd Hatboro PA 19040 |
| 88 | Ms. Ashleigh Strange | | 815 S. Front Street Allentown PA 18103 |
| 89 | Ms. Nicole Temons | | 626 Anderson Ferry Rd Mount Joy PA 17552 |
| 90 | Ms. Lorrie Topolin | | One Middle Rd New Hope PA 18938 |
| 91 | Mr. Rebecca Zemach | | 106 Pebble Valley Ct Doylestown PA 18901 |
| 92 | Mr. Vladimir Zykov | | 440 W. Sedgwick Street, Apt. C218 Philadelphia PA 19119 |
| 93 | Ms. | xanderfirefly@gmail.com | (by email only) |
| 94 | Ms. Natalie Confront | | 1067 East National Pike Washington PA 15301 |
| 95 | Mr. David Aungst | High Hotels LTD | 108 Chelsea Loop Lancaster PA 17602 |
| 96 | Ms. Judy Bennett | | 2656 Apple Way Chambersburg PA 17202 |
| 97 | Mr. Steven Bretherick | Horst Realty | 205 Granite Run Drive Lancaster PA 17601 |
| 98 | Ms. Marie Brown | | 1219 South Main Street Old Forge PA 18518 |
| 99 | Mr. Trudy Carrington | | 25 Eastbrook Rd Ronks PA 17572 |
| 100 | Mr. Christopher Clifford | Pancoast & Clifford | 206 Carter Drive West Chester PA 19382 |
| 101 | Mr. Jack Cohen | President, Butler County Tourism | 310 E Grandview Ave Zelienople PA 16063 |
| 102 | Mr. Larry Cole | | 17422 Rout 957 Bear Lake PA 16402 |
| 103 | Mr. Matthew Cole | | 8971 Harmony Drive Pittsburgh PA 15237 |
| 104 | Mr. Dave Craig ,PGA - COO / GM | Chester Valley Golf Club | 212 Skylar Lane Wayne PA 19087 |
| 105 | Mr. John Driver | | 441 North 10th Street Lewisburg PA 17837 |
| 106 | Ms. Sharon Faux | | 1 Liberty Blvd. Malvern PA 19355 |
| 107 | Mr. Chris Gabriel | MidAtlantic Family | 2745 Terwood Rd Willow Grove PA 19090 |

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| 108 | Mr. Derek Giacomontonlo | McDonalds | 205 Easton Road Horsham PA 19044 |
| 109 | Ms. Staci Goodspeed | Watson Inn | 100 Main St Watsontown PA 17777 |
| 110 | Ms. Meg Heinlein | Residence Inn by Marriott Pittsburgh | 131 Priscilla Drive Pittsburgh PA 15229 |
| 111 | Mr. Pat Herring | | 4253 Glades Pike Somerset PA 15501 |
| 112 | Mr. Joseph Hoover | Appalachian Brewery Company | 50 N Cameron St Harrisburg PA 17101 |
| 113 | Mr. Jay Horning | | 405 West Metzler Road Ephrata PA 17522 |
| 114 | Mr. Robert Hughes | McDonalds | 2264 Chablis Dr Macungie PA 18062 |
| 115 | Mr. William Iseman | KidsPeace | 4085 Independence Drive Schnecksville PA 18078 |
| 116 | Mr. David Jacobi | Adventure Sports | PO Box 1372 Marshalls Creek PA 18335 |
| 117 | Mr. Mukesh Kadhiwala | | 755 N 38th St Allentown PA 18104 |
| 118 | Mr. Patrick Kahle | Zacherl Motor Truck Sales | PO Box 686, 795 Greenville Pike Clarion PA 16214 |
| 119 | Ms. Maria Kaminski | VFW Country Club | 303 S 6th St Indiana PA 15701 |
| 120 | Ms. Jennifer Katke | Hampton Inn & Suites | 380 E Main St Ephrata PA 17522 |
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| 123 | Ms. Laurie Kerkering | | 1331 Ship Rd West Chester PA 19380 |
| 124 | Mr. Barry Kidd | Country Inn of Lancaster | 1141 Nissley Rd Lancaster PA 17601 |
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| 126 | Mr. Robert Kirkpatrick | | 52 Timber Wood Drive Danville PA 17821 |
| 127 | Mr. Natasha Kline-Hughes | | 21 Naus Way, PO BOX 150 Bloomsburg PA 17815 |
| 128 | Mr. Tim Koch | | 28 Terrace Cir Orwigsburg PA 17961 |
| 129 | Mr. Keith Komon | High Hotels LTD | 4 Fortuna Lane Enola PA 17025 |

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| 131 | Mr. Paul Kornfield | Chester Valley Golf Club | 430 Swedesford Rd Malvern PA 19355 |
| 132 | Ms. Debra Krelow | | 220 Beacon Rd Renfrew PA 16053 |
| 133 | Mr. Dennis Liegey | Denny's Beer Barrel Pub | 216 Northview Dr Clearfield PA 16830 |
| 134 | Mr. David Little | | 108 Rose Lane Perkiomenville PA 18074 |
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| 144 | Mr. Victor Paolicelli | Alternative Staffing Inc | 111 Fairway Circle Pittsburgh PA 15241 |
| 145 | Mr. Devang Parikh | Two Franchise Hotels | 55 S 3rd Ave Reading PA 19611 |
| 146 | Mr. Michael Passalacqua | Angelo's Restaurant | 204 Waynesburg Rd Washington PA 15301 |
| 147 | Mr. Linda Perin | | 1033 Blue Valley Drive Pen Argyl PA 18072 |
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| 149 | Ms. Shirley Prasko | | 198 Account Lane Hastings PA 16646 |
| 150 | Mr. Philip Reck | | 54 S Beaver Street York PA 17401 |
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| 160 | Mr. Chris Sirianni | The Brewerie at Union Station | 123 W 14th St Erie PA 16501 |
| 161 | Mr. Steven Spohn | | 494 East Lincoln Ave Myerstown PA 17067 |
| 162 | Mr. David Stern | | 250 S 9th Street DuBois PA 15801 |
| 163 | Ms. Jennifer Steward | Steward Group Mgmt | 658 Parkwood Dr York PA 17404 |
| 164 | Ms. Elwin Stewart | Happy Valley Vineyard and Winery | 576 S Foxpointe Dr State College PA 16801 |
| 165 | Ms. Melissa Tambellini | Joseph Tambellini Restaurant | 2196 Chardonnay Circle Gibsonia PA 15044 |
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| 168 | Mr. Randy Warren | | 100 Brookhollow Downingtown PA 19335 |
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| 759 | Commissioner Robert Snyder, Jr. | Forest County Commissioner | 526 Elm Street, Box 3 Tionesta PA 16353 |
| 760 | Commissioner Norman Wimer | Forest County Commissioner | 526 Elm Street, Box 3 Tionesta PA 16353 |
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Annex A

TITLE 34. LABOR AND INDUSTRY

PART XII. BUREAU OF LABOR LAW COMPLIANCE

CHAPTER 231. MINIMUM WAGE

GENERAL PROVISIONS

§ 231.1. Definitions.

* * * * *

- (b) In addition to the provisions of subsection (a), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Department—The Department of Labor and Industry of the Commonwealth.

Domestic services—Work in or about a private dwelling for an employer in ~~his~~ THE capacity as a householder, as distinguished from work in or about a private dwelling for such employer in the employer's pursuit of a trade, occupation, profession, enterprise or vocation.

~~*General operation*—Work in functional areas such as tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations, computer network, Internet and database administration, legal and regulatory compliance, and similar activities.~~

~~*Handicapped worker*—An individual whose earning capacity for the work to be performed is impaired by physical or mental deficiency or injury~~

Hotel or motel—An establishment which as a whole or part of its business activities offers lodging accommodations for hire to the public, and services in connection therewith or incidental thereto.

* * * * *

Lodging—A housing facility available for the personal use of the employee at all hours.

~~*Management*—Activities such as interviewing, selecting and training of employees; setting and adjusting employees' rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising~~

~~employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used to perform work; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees and the property; planning and controlling the budget, and monitoring or implementing legal compliance measures; and similar activities.~~

MINIMUM WAGE ADVISORY BOARD—A BOARD CREATED IN THE DEPARTMENT OF LABOR AND INDUSTRY UNDER SECTION 6 OF THE ACT, 43 P.S. 333.106 (RELATING TO MINIMUM WAGE ADVISORY BOARD).

Nonprofit organization—A corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

* * * * *

Week—A period of 7 consecutive days starting on any day selected by the employer.

WORKER WITH A DISABILITY – AN INDIVIDUAL WHOSE EARNING CAPACITY FOR THE WORK TO BE PERFORMED IS IMPAIRED BY PHYSICAL OR MENTAL DEFICIENCY OR INJURY.

§ 231.71. Procedure.

- (a) An employer who wishes to employ ~~handicapped~~ workers **WITH A DISABILITY** at less than the prescribed minimum wage shall complete an application on forms furnished by the Secretary.
- (b) The application shall set forth the following information:
 - (1) The nature of the disability in detail.
 - (2) A description of the occupation at which the ~~handicapped~~ worker **WITH A DISABILITY** is to be employed.
 - (3) The wage the employer proposes to pay the ~~handicapped~~ worker **WITH A DISABILITY** per hour.
 - (4) Other information as may be required by the Secretary.

- (c) The application shall be signed jointly by the employer and the **handicapped** worker **WITH A DISABILITY** for whom such application is being made, except as otherwise authorized by the Secretary.

§ 231.72. Conditions for granting certificate.

A certificate may be issued if the application is in proper form and sets forth facts showing that:

- (1) The **handicap** **DISABILITY** impairs the earning capacity of the worker for the work the employee is to perform.
- (2) The proposed minimum wage is commensurate with the production capacity of the employee.

§ 231.73. Special certificate.

If the application and other available information indicate that the requirements of these §§ 231.71—231.76 (relating to employment of **handicapped** workers **WITH A DISABILITY**) are satisfied, the Secretary will issue a certificate. If issued, copies of the certificate will be mailed to the employer and the **handicapped** worker **WITH A DISABILITY**, and if the certificate is not issued, the employer and the **handicapped** worker **WITH A DISABILITY** will be given written notice of the denial.

§ 231.74. Specifications of the certificate.

- (a) A certificate will specify, among other things, the name of the **handicapped** worker **WITH A DISABILITY**, the name of the employer, the occupation in which the **handicapped** worker **WITH A DISABILITY** is to be employed, the authorized subminimum wage rate and the period of time during which such wage rate may be paid.
- (b) A certificate shall be effective for a period to be designated by the Secretary. The **handicapped** worker **WITH A DISABILITY** employed under the certificate may be paid subminimum wages only during the effective period of the certificate.
- (c) The wage rate set in the certificate will be fixed at a figure designated to reflect adequately the earning capacity of the **handicapped** worker **WITH A DISABILITY**.
- (d) A money received by a **handicapped** worker **WITH A DISABILITY** by reason of a state or Federal pension or compensation program for **handicapped** persons **WITH A DISABILITY** may not be considered as offsetting any part of the wage due the **handicapped** worker **WITH A DISABILITY** by the employer.
- (e) Except as otherwise provided in section 5(a)—(c) of the act (43 P. S. § 333.105(a)-(c)), the **handicapped** worker **WITH A DISABILITY** shall be paid not less than 1 ½ times the regular rate for hours worked in excess of 40 in the workweek.

- (f) The terms of a certificate, including the subminimum wage rate specified therein, may be amended by the Secretary upon written notice to the parties concerned if the facts justify the amendment.

* * * * *

SPECIAL DEFINITIONS

§ 231.82. Executive.

Employment in a bona fide executive capacity means work by an individual:

- (1) Whose primary duty [consists of] is the management of the enterprise in which he is employed or of a customarily recognized department or subdivision.
 - (i) **FOR THIS SECTION THE TERM "MANAGEMENT" IS DEFINED AS FOLLOWS: TO INCLUDE, BUT IS NOT LIMITED TO, ACTIVITIES SUCH AS INTERVIEWING, SELECTING, AND TRAINING OF EMPLOYEES; SETTING AND ADJUSTING EMPLOYEES' RATES OF PAY AND HOURS OF WORK; DIRECTING THE WORK OF EMPLOYEES; MAINTAINING PRODUCTION OR SALES RECORDS FOR USE IN SUPERVISION OR CONTROL; APPRAISING EMPLOYEES' PRODUCTIVITY AND EFFICIENCY FOR THE PURPOSE OF RECOMMENDING PROMOTIONS OR OTHER CHANGES IN STATUS; HANDLING EMPLOYEE COMPLAINTS AND GRIEVANCES; DISCIPLINING EMPLOYEES; PLANNING THE WORK; DETERMINING THE TECHNIQUES TO BE USED TO PERFORM WORK; APPORTIONING THE WORK AMONG THE EMPLOYEES; DETERMINING THE TYPE OF MATERIALS, SUPPLIES, MACHINERY, EQUIPMENT OR TOOLS TO BE USED OR MERCHANDISE TO BE BOUGHT, STOCKED AND SOLD; CONTROLLING THE FLOW AND DISTRIBUTION OF MATERIALS OR MERCHANDISE AND SUPPLIES; PROVIDING FOR THE SAFETY AND SECURITY OF THE EMPLOYEES OR THE PROPERTY; PLANNING AND CONTROLLING THE BUDGET, AND MONITORING OR IMPLEMENTING LEGAL COMPLIANCE MEASURES.**
- (2) Who customarily and regularly directs the work of two or more other employees.
- (3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, ~~or firing, and as to the advancement, and~~ promotion or any other change of status of other employees ~~will be~~ **ARE** given particular weight.

~~(4) Who customarily and regularly exercises discretionary powers.~~

[(5) Who does not devote more than 20%, or, in the case of an employee of a retail or service establishment, who does not devote as much as 40% of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (1)—(4), provided that this paragraph may not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment or who owns at least 20% interest in the enterprise in which he is employed.

(6) Who is compensated for his services on a salary basis at a rate of not less than \$155 per week, exclusive of board, lodging or other facilities, provided that an employee who is compensated on a salary basis at a rate of not less than \$250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein shall be deemed to meet all the requirements of this section.]

~~(5)-(4) Who is compensated for his services on a salary basis at a rate of not less than:~~

(i) \$610 \$684 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).

(ii) \$766 \$780 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to 365 days ONE YEAR after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).

(iii) \$921 \$875 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to 730 days TWO YEARS after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).

(iv) Effective _____ (Editor's Note: The blank refers to 1,095 days THREE YEARS after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN), and January 1 of each 3rd year thereafter, the 30th percentile of weekly earnings of full-time

~~nonhourly workers in the Northeast Census region in the second quarter of the prior year as published by the United States Department of Labor, Bureau of Labor Statistics, exclusive of board, lodging or other facilities. The Department will publish this figure on its web site and in the Pennsylvania Bulletin.~~ AT A RATE EQUAL TO THE WEIGHTED AVERAGE 10TH PERCENTILE WAGES FOR PENNSYLVANIA WORKERS WHO WORK IN EXEMPT EXECUTIVE, ADMINISTRATIVE OR PROFESSIONAL CLASSIFICATIONS AS DETERMINED BY THE DEPARTMENT WITH ADVICE AND CONSULTATION BY THE MINIMUM WAGE ADVISORY BOARD AND BASED ON AN ANNUAL WAGE SURVEY OF ALL WORKER CLASSIFICATIONS CONDUCTED BY THE DEPARTMENT.

- (A) AT LEAST 90 DAYS PRIOR TO THE EFFECTIVE DATE OF EACH THREE-YEAR PERIOD IN SUBPARAGRAPH (iv), THE DEPARTMENT WILL SUBMIT TO THE MINIMUM WAGE ADVISORY BOARD, THE ADJUSTED WEEKLY SALARY RATE PURSUANT TO SUBPARAGRAPH (iv) AND THE INFORMATION SUPPORTING THE ADJUSTED SALARY RATE.
- (B) UPON REVIEW OF THE INFORMATION SUBMITTED BY THE DEPARTMENT AND AT A MEETING TO BE HELD NO LATER THAN 60 DAYS BEFORE THE EFFECTIVE DATE OF THE ADJUSTED WEEKLY SALARY RATE, THE MINIMUM WAGE ADVISORY BOARD MAY PROVIDE ADVICE AND CONSULTATION TO THE SECRETARY REGARDING THE ADJUSTED WEEKLY SALARY RATE.
- (C) AT LEAST 30 DAYS PRIOR TO THE EFFECTIVE DATE OF EACH THREE-YEAR PERIOD IN SUBPARAGRAPH (iv), THE DEPARTMENT WILL PUBLISH THE ADJUSTED WEEKLY SALARY RATE ON ITS WEB SITE AND IN THE *PENNSYLVANIA BULLETIN*.

~~(6)~~ (5) Up to 10% of the salary amount required under paragraph (5) (4) may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions that are paid quarterly ANNUALLY or more frequently. THE EMPLOYER MAY USE ANY 52-WEEK PERIOD AS THE YEAR, SUCH AS A CALENDAR YEAR, FISCAL YEAR, OR ANNIVERSARY OF HIRE YEAR. IF THE EMPLOYER DOES NOT IDENTIFY SOME OTHER YEAR PERIOD IN ADVANCE, THE CALENDAR YEAR WILL APPLY. If by the last pay period of the quarter YEAR the sum of the employee's weekly salary plus nondiscretionary bonus, incentive and commission payments received does not equal 13 52 times the weekly salary amount required under

this section, the employer may make 1 final payment sufficient to achieve the required level no later than the next pay period after the end of the quarter YEAR. A final payment made after the end of the 13-week period YEAR may count only toward the prior quarter's YEAR'S salary amount and not toward the salary amount in the quarter YEAR it was paid.

§ 231.83. Administrative.

Employment in a bona fide administrative capacity means work by an individual:

- (1) Whose primary duty [consists of] is the performance of office or nonmanual work directly related to management policies or general BUSINESS operation OPERATIONS of his THE employer or the customers of the employer.
 - (i) FOR THE PURPOSE OF THIS SECTION THE TERM "DIRECTLY RELATED TO MANAGEMENT OR GENERAL BUSINESS OPERATIONS" IS DEFINED AS FOLLOWS: TO INCLUDE, BUT IS NOT LIMITED TO, WORK IN FUNCTIONAL AREAS SUCH AS TAX; FINANCE; ACCOUNTING; BUDGETING; AUDITING; INSURANCE; QUALITY CONTROL; PURCHASING; PROCUREMENT; ADVERTISING; MARKETING; RESEARCH; SAFETY AND HEALTH; PERSONNEL MANAGEMENT; HUMAN RESOURCES; EMPLOYEE BENEFITS; LABOR RELATIONS; PUBLIC RELATIONS, GOVERNMENT RELATIONS; COMPUTER NETWORK, INTERNET AND DATABASE ADMINISTRATION; LEGAL AND REGULATORY COMPLIANCE.
- (2) ~~Who customarily and regularly exercises~~ WHOSE PRIMARY DUTY INCLUDES THE EXERCISE OF discretion and independent judgment with respect to matters of significance.
- [(3) Who regularly and directly assists an employer or an employee employed in a bona fide executive or administrative capacity, who performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge, or who executes under only general supervision special assignments and tasks.
- (4) Who does not devote more than 20% of time worked in a workweek, or, in the case of an employee of a retail or service establishment, who does not devote more than 40% of time worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (1)—(3).
- (5) Who is paid for his services a salary of not less than \$155 per week, exclusive of board, lodging, or other facilities, provided that an employee who is

compensated on a salary or fee basis at a rate of not less than \$250 per week, exclusive of board, lodging or other facilities and whose primary duty consists of the performance of work described in paragraph (1), which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.]

(3) Who is compensated for his services on a salary basis at a rate of not less than:

- (i) ~~\$610~~ \$684 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).**
- (ii) ~~\$766~~ \$780 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to 365 days ONE YEAR after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).**
- (iii) ~~\$921~~ \$875 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to 730 days TWO YEARS after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).**
- (iv) Effective _____ (Editor's Note: The blank refers to 1,095 days THREE YEARS after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN.), and January 1 of each 3rd year thereafter, the 30th percentile of weekly earnings of full-time nonhourly workers in the Northeast Census region in the second quarter of the prior year as published by the United States Department of Labor, Bureau of Labor Statistics, exclusive of board, lodging or other facilities. The Department will publish this figure on its web site and in the Pennsylvania Bulletin. AT A RATE EQUAL TO THE WEIGHTED AVERAGE 10TH PERCENTILE WAGES FOR PENNSYLVANIA WORKERS WHO WORK IN EXEMPT EXECUTIVE, ADMINISTRATIVE OR PROFESSIONAL CLASSIFICATIONS AS DETERMINED BY THE DEPARTMENT WITH ADVICE AND CONSULTATION BY THE MINIMUM WAGE ADVISORY BOARD AND BASED ON AN ANNUAL WAGE SURVEY OF ALL WORKER CLASSIFICATIONS CONDUCTED BY THE DEPARTMENT.**

- (A) AT LEAST 90 DAYS PRIOR TO THE EFFECTIVE DATE OF EACH THREE-YEAR PERIOD IN SUBPARAGRAPH (iv), THE DEPARTMENT WILL SUBMIT TO THE MINIMUM WAGE ADVISORY BOARD, THE ADJUSTED WEEKLY SALARY RATE PURSUANT TO SUBPARAGRAPH (iv) AND THE INFORMATION SUPPORTING THE ADJUSTED SALARY RATE.
- (B) UPON REVIEW OF THE INFORMATION SUBMITTED BY THE DEPARTMENT AND A MEETING TO BE HELD NO LATER THAN 60 DAYS BEFORE THE EFFECTIVE DATE, THE MINIMUM WAGE ADVISORY BOARD MAY PROVIDE ADVICE AND CONSULTATION TO THE SECRETARY REGARDING THE WEEKLY SALARY RATE.
- (C) AT LEAST 30 DAYS PRIOR TO THE EFFECTIVE DATE OF EACH THREE-YEAR PERIOD, THE DEPARTMENT WILL PUBLISH THIS FIGURE ON ITS WEB SITE AND IN THE *PENNSYLVANIA BULLETIN*.

(4) Up to 10% of the salary amount required under paragraph (3) may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions that are paid YEARLY or more frequently. THE EMPLOYER MAY USE ANY 52-WEEK PERIOD AS THE YEAR, SUCH AS A CALENDAR YEAR, FISCAL YEAR, OR ANNIVERSARY OF HIRE YEAR. IF THE EMPLOYER DOES NOT IDENTIFY SOME OTHER YEAR PERIOD IN ADVANCE, THE CALENDAR YEAR WILL APPLY. If by the last pay period of the quarter YEAR the sum of the employee's weekly salary plus nondiscretionary bonus, incentive and commission payments received does not equal 13 52 times the weekly salary amount required by this section, the employer may make 1 final payment sufficient to achieve the required level no later than the next pay period after the end of the quarter-YEAR. A final payment made after the end of the 13-week-period YEAR may count only toward the prior quarter's YEAR'S salary amount and not toward the salary amount in the quarter YEAR it was paid.

§ 231.84. Professional.

Employment in a bona fide professional capacity means work by an individual:

- (1) Whose primary duty [consists of] is the performance of work requiring [knowledge] either of the following:
 - (i) Knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study [or the].

~~(ii) The performance of work that is original and creative in character in a recognized field of artistic endeavor~~ **INVENTION, IMAGINATION, ORIGINALITY OR TALENT IN A RECOGNIZED FIELD OF ARTISTIC OR CREATIVE ENDEAVOR.**

~~(2) Whose work requires the consistent exercise of discretion and judgment in its performance.~~

~~(3) Whose work is predominately intellectual and varied in character, as opposed to routine mental, manual, mechanical or physical work, and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.~~

[(4) Who does not devote more than 20% of time worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (1)—(3).

(5) Who is compensated for his services on a salary or fee basis at a rate of not less than \$170 per week, exclusive of board, lodging or other facilities, provided that an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance of work described in paragraph (1), which includes work requiring the consistent exercise of discretion and judgment, or the performance of work requiring invention, imagination or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.]

(4) (2) Who is compensated for his services on a salary or fee basis at a rate of not less than:

(i) \$610 \$684 per week exclusive of board, lodging or other facilities, effective (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).

(ii) \$766 \$780 per week exclusive of board, lodging or other facilities, effective (Editor's Note: The blank refers to 365 days ONE YEAR after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).

(iii) \$921 \$875 per week exclusive of board, lodging or other facilities, effective (Editor's Note: The blank refers to 730 days TWO YEARS after the effective date of adoption of this proposed rulemaking

**DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING
IN THE *PENNSYLVANIA BULLETIN*.**

(iv) **Effective** *(Editor's Note: The blank refers to 1,095 days THREE YEARS after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE *PENNSYLVANIA BULLETIN*), and January 1 of each 3rd year thereafter, the 30th percentile of weekly earnings of full-time nonhourly workers in the Northeast Census region in the second quarter of the prior year as published by the United States Department of Labor, Bureau of Labor Statistics, exclusive of board, lodging or other facilities. The Department will publish this figure on its web site and in the *Pennsylvania Bulletin*.* **AT A RATE EQUAL TO THE WEIGHTED AVERAGE 10TH PERCENTILE WAGES FOR PENNSYLVANIA WORKERS WHO WORK IN EXEMPT EXECUTIVE, ADMINISTRATIVE OR PROFESSIONAL CLASSIFICATIONS AS DETERMINED BY THE DEPARTMENT WITH ADVICE AND CONSULTATION BY THE MINIMUM WAGE ADVISORY BOARD AND BASED ON AN ANNUAL WAGE SURVEY OF ALL WORKER CLASSIFICATIONS CONDUCTED BY THE DEPARTMENT.**

- (A) **AT LEAST 90 DAYS PRIOR TO THE EFFECTIVE DATE OF EACH THREE-YEAR PERIOD IN SUBPARAGRAPH (iv), THE DEPARTMENT WILL SUBMIT TO THE MINIMUM WAGE ADVISORY BOARD, THE ADJUSTED WEEKLY SALARY RATE PURSUANT TO SUBPARAGRAPH (iv) AND THE INFORMATION SUPPORTING THE ADJUSTED SALARY RATE.**
- (B) **UPON REVIEW OF THE INFORMATION SUBMITTED BY THE DEPARTMENT AND A MEETING TO BE HELD NO LATER THAN 60 DAYS BEFORE THE EFFECTIVE DATE, THE MINIMUM WAGE ADVISORY BOARD MAY PROVIDE ADVICE AND CONSULTATION TO THE SECRETARY REGARDING THE WEEKLY SALARY RATE.**
- (C) **AT LEAST 30 DAYS PRIOR TO THE EFFECTIVE DATE OF EACH THREE-YEAR PERIOD, THE DEPARTMENT WILL PUBLISH THIS FIGURE ON ITS WEB SITE AND IN THE *PENNSYLVANIA BULLETIN*.**

(5) (3) Up to 10% of the salary or fee amount required under paragraph (4) (2) may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions that are paid quarterly YEARLY or more frequently. THE

EMPLOYER MAY USE ANY 52-WEEK PERIOD AS THE YEAR, SUCH AS A CALENDAR YEAR, FISCAL YEAR, OR ANNIVERSARY OF HIRE YEAR. IF THE EMPLOYER DOES NOT IDENTIFY SOME OTHER YEAR PERIOD IN ADVANCE, THE CALENDAR YEAR WILL APPLY. If by the last pay period of the quarter YEAR the sum of the employee's weekly salary plus nondiscretionary bonus, incentive and commission payments received does not equal 13 52 times the weekly salary amount required by this section, the employer may make 1 final payment sufficient to achieve the required level no later than the next pay period after the end of the quarter YEAR. A final payment made after the end of the 13-week-period YEAR may count only toward the prior quarter's YEAR'S salary amount and not toward the salary amount in the quarter YEAR it was paid.

December 9, 2019

The Honorable George D. Bedwick
Chairman, Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Notice of Final Rulemaking
Title 34 Labor and Industry
Regulations for Minimum Wage
34 Pa. Code, Part XII, Chapter 231

Dear Chairman Bedwick:

Enclosed is a final-form rulemaking package consisting of a Face Sheet, Preamble, Annex A, Regulatory Analysis Form and Comment and Response Document.

The Department of Labor & Industry (Department), Bureau of Labor Law Compliance is submitting this final-form rulemaking for Chapter 231 of 34 Pa. Code to update the executive, administrative and professional exemptions from the minimum wage and overtime requirements of the Minimum Wage Act of 1968.

The contact for this regulation, Deputy Secretary for Safety and Labor-Management Relations, Jennifer Berrier, can be reached at 651 Boas Street, Room 1700, Harrisburg, PA 17121, telephone no. (717) 787-8665, email address: jeberrier@pa.gov.

The Department's staff will provide your staff with any assistance required to facilitate your review of this regulation.

Sincerely,

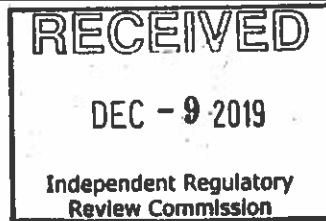


W. Gerard Oleksiak
Secretary

cc w/encl: The Honorable Meg Snead, Secretary of Planning & Policy
Robert V. O'Brien, Executive Deputy Secretary
Jennifer L. Berrier, Deputy Secretary Safety & Labor-Management Relations
Marsha A. Sajer, Chief Counsel
Marc Farrell, Regulatory Specialist, Governor's Office of Policy
Ronald Foster, Assistant Director of Legislative Affairs, Governor's Budget Office
Joanne Manganello, Director of Legislative Affairs
Kelly Martini, Policy Director
Kelly K. Smith, Executive Deputy Chief Counsel
Robert C. Schramm, Deputy Chief Counsel, Safety & Labor-Management Relations
Bryan M. Smolock, Director, Bureau of Labor Law Compliance

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**





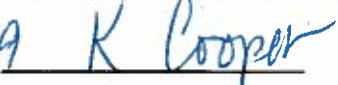
I.D. NUMBER: 12-106
SUBJECT: MINIMUM WAGE
AGENCY: DEPARTMENT OF LABOR AND INDUSTRY



TYPE OF REGULATION

- ☐ Proposed Regulation
☒ Final Regulation
☐ Final Regulation with Notice of Proposed Rulemaking Omitted
☐ 120-day Emergency Certification of the Attorney General
☐ 120-day Emergency Certification of the Governor
☐ Delivery of Tolled Regulation
 ☐ With Revisions ☐ Without Revisions

FILING OF REGULATION

| <u>DATE</u> | <u>SIGNATURE</u> | <u>DESIGNATION</u> |
|-------------|---|---|
| | | <u>HOUSE COMMITTEE - Labor + Industry</u> |
| 12/9/19 |  | MAJORITY CHAIR <u>Jim Cox</u> |
| 12/9/19 |  | MINORITY CHAIR <u>Patrick J. Harkins</u> |
| | | <u>SENATE COMMITTEE - Labor + Industry</u> |
| 12/9/19 |  | MAJORITY CHAIR <u>Camera Bartolotta</u> |
| 12/9/19 |  | MINORITY CHAIR <u>Christine Tartaglione</u> |
| 12/9/19 |  | |
| | | <u>INDEPENDENT REGULATORY REVIEW COMMISSION</u> |
| | | <u>ATTORNEY GENERAL (for Final Omitted only)</u> |
| | | <u>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</u> |