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November 15, 2019

To: Dep. Secretary Jennifer Berrier (jeberrier@pa.gov) and Independent Regulatory Review Commission (IRRC) Commissioners (irrc@irrc.state.pa.us; cbrandt@irrc.state.pa.us)

Dear IRRC Commissioners and Deputy Secretary Berrier:

I am writing to express my support for the regulation proposed by the Pennsylvania Department of Labor and Industry to restore overtime pay and the 40-hour week for about 200,000 additional workers by requiring that most Pennsylvania salaried workers earning below \$45,500 automatically be eligible for overtime. As communicated earlier to Ms. Corinne Brandt, I also plan to attend the hearing November 21 at 10 am and would like to speak at that hearing.

For decades after the passage of federal and state overtime laws it was accepted that most U.S. salaried workers should receive overtime pay and that only highly paid salaried employees would be exempt. In 1975, [63% of US salaried workers](#) were automatically eligible to receive overtime pay. The failure to update the federal and state overtime pay thresholds means that, today, fewer than one in 10 U.S. salaried workers automatically receive overtime pay if they work over 40 hours. Even under the new Trump rule, only 15% of salaried workers will automatically get overtime pay.

Compared to a 2016 USDOL proposal under President Obama, the new federal rule takes the 40-hour week and overtime pay away from over 8 million US salaried workers and 200,000 in Pennsylvania. Department managers at big box stores, fast food shift supervisors, paralegals, manufacturing team leaders, office managers, and other salaried workers work for free over 40 hours. They often work 50 or 60 hours per week for an effective hourly rate that could be under \$12 per hour even with the new federal rule.

Fortunately, just as states have the right to establish a minimum wage higher than the federal minimum wage, they also have the right to set a higher overtime threshold. Both neighboring New York and the state of California have thresholds in place that will reach around \$60,000 in a few years. Washington State is expected to finalize this year a rule that would reach \$80,000 by 2026. Legislative proposals in Maine and Massachusetts will reach \$55,224 by 2022 (the Obama threshold) and \$64,000 by 2023, respectively. Michigan Governor Gretchen Whitmer in October initiated a rulemaking process to raise her state's threshold, pointing out that the 2016 federal proposed threshold would have reached \$51,000 by 2020 and that Michigan households of four need \$61,000 to afford the basics.

In sum, the other states pursuing a higher state overtime threshold already exceed or aim to exceed the Obama threshold in four cases, and in two cases to match the Obama threshold. This observation leads to one reservation we have about that final proposed Wolf threshold: it is too low. The Obama threshold was, after all, a very moderate benchmark pegged to the 40th percentile

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of weekly earnings in the nation's lowest-wage Southern region—a far cry from 1970s situation with more than 60% of full-time salaried workers automatically eligible for overtime. Governor Wolf's original proposed rule was near, or slightly below, the Obama threshold—the 30th percentile of the Northeast region. The Wolf proposed final rule is \$45,500 by Jan. 1, 2022—substantially below the Obama threshold—and there are questions about whether the rule's updating every three years will adequately keep pace with salaried wages. In sum, the Wolf final rule is a compromise of a compromise that partly accommodates a reality in which many employers have blatantly disregarded the law, cheated hundreds of thousands of Pennsylvania workers of overtime pay or time with their family and gotten away with it. Meanwhile, law-abiding businesses that genuinely treat workers as their greatest asset, such as Altoona-based Sheetz, show that paying salaried workers fairly can enhance productivity and profitability.

Considering the above, we respectfully suggest that Governor Wolf reconsider the decision to shift away from the 30th percentile of the NE region which he originally proposed. Over time, in fact, Pennsylvania should look to restore overtime rights for salaried workers to the mid-1970s level, with a salary threshold that moves up to the 40th, 50th and then 60th percentile of the NE salaried distribution.

Even at \$45,500, the Wolf proposed final rule is a vast improvement on the new federal rule. We applaud Gov. Wolf for his effort to make Pennsylvania's economy of the first to be a little less rigged against moderately-paid salaried workers.

Many of the same forces that opposed the 40-hour work week over a century ago—and every other requirement that businesses honor basic and fair labor standards—are still reflexively opposing Governor Wolf's common-sense proposal. Fortunately, however, the Governor has the authority under state law to implement a new threshold at or above \$45,500. We look forward to the expeditious finalization of the state regulation to put a higher threshold in place.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Herzenberg". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Stephen Herzenberg
Executive Director