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Kathy Cooper

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IRRC  
I Support The New Overtime Rule

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Independent Regulatory  
Review Commission

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IRRC Commissioners,

I am writing to express my support for the regulation proposed by the Pennsylvania Department of Labor and Industry to restore overtime pay for about 200,000 additional workers by phasing in a requirement that Pennsylvania salaried workers earning below \$45,500 automatically be eligible for overtime.

For decades after the passage of federal and state laws on overtime it was accepted that moderately-paid salaried workers in the United States and Pennsylvania should receive overtime pay.

At one point, more than six out of 10 full-time salaried workers automatically received overtime pay or they could go home after a 40-hour work week. As a result of a failure to adequately update the federal and Pennsylvania salary levels below which all executive, administration and professional workers automatically receive overtime pay, fewer than one in 10 full-time salaried workers was automatically eligible for overtime before a recent federal change. Even after that change only 15% of full-time salaried workers will be eligible based on their pay.

Compared to a proposal advanced in 2016 by USDOL under President Obama, but derailed by a flawed Texas Court decision, the new federal rule takes the 40-hour work week, and the right to overtime pay, away from over 8 million US salaried workers and well over 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 and even though they perform the same duties as hourly personnel for most of their work week.

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. Governor Whitmer in October initiated a rulemaking process to change the Michigan 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 aim in four cases to exceed the Obama threshold and in two cases to match it. This observation leads to one reservation we have about that final proposed Wolf threshold: it's too low. The Obama threshold was, after all, a very moderate benchmark pegged to the 40th percentile 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—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 their workers as their greatest asset, such as Altoona-based Sheetz, show that paying salaried workers fairly can enhance productivity and profitability.

In closing, 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 the less adequate level of \$45,500, the Wolf proposed final rule is a vast improvement on the new federal rule. We thus applaud Gov. Wolf for his effort make us the third state economy a little less rigged against lower-paid salaried workers.

Many of the same forces that opposed the 40-hour work week a century ago—and opposed a minimum wage, child labor laws, health and safety standards and every other requirement that business treat employees decently—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 that new threshold in place.

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