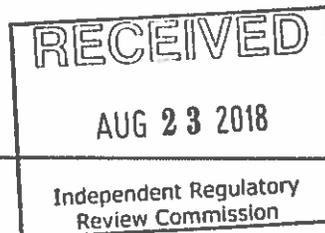


3202

**Kathy Cooper**

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**From:** Smolock, Bryan <bsmolock@pa.gov>  
**Sent:** Wednesday, August 22, 2018 9:36 PM  
**To:** IRRC; Kathy Cooper  
**Cc:** Rapach, Jennifer Buchanan; Schramm, Robert (LI-OCC); Lengel, Michelle  
**Subject:** Fw: comments to proposed regulations enforcing PWMA  
**Attachments:** PMWAregcomment.pdf



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**From:** Doris Dabrowski <dd@dabrowski-law.com>  
**Sent:** Wednesday, August 22, 2018 2:01 PM  
**To:** Smolock, Bryan  
**Subject:** comments to proposed regulations enforcing PWMA

Attached are comments supporting the proposed regulations regarding the exempt classifications for overtime required by the Pennsylvania Minimum Wage Act. Thank you for your consideration of the suggested clarifications.

—  
Doris J Dabrowski, attorney at law  
1525 Locust St., 14th floor  
Philadelphia, Pa. 19102  
215-790-1115

AUG 23 2018

Independent Regulatory  
Review Commission

To: Bryan Smolock, Director of Labor Law Compliance, Department of Labor & Industry

From: Doris J. Dabrowski, Dierdre Aaron, Alice Ballard, Joyce Collier, Christine Elzer, Michael Filoromo, III, Harold Goldner, Andrew Horowitz, Jeremy C. Rosenbaum

Re: Proposed regulations, 48 Pa. B. 3731

We members of the Eastern and Western Pennsylvania chapters of the National Employment Lawyers Association (NELA) support the proposed regulations to enforce the Pennsylvania Minimum Wage Act published at 48 Pa. B. 3731. NELA is a national professional organization of lawyers who advocate for equality and justice in the workplace. Many of our clients suffer from pay erosion and the difficulties of balancing work and family responsibilities.

An increase in the salary threshold ameliorates the effect of the erosion of the value of the dollar. The \$250.00/week executive salary threshold set in 1977 is an equivalent of approximately \$1,058.95 in 2018; the \$155.00 administrative threshold is an equivalent of approximately \$656.55 in 2018; the \$170.00 professional salary threshold is an equivalent of approximately \$720.09 in 2018.

The salary test is an easily applied test to identify bona fide executives, administrators and professionals. In contrast, the duties test has generated a significant volume of litigation that turns on individualized analyses of the nature of the work performed, the exercise of discretion and judgment in matters of significance. The increase in the salary threshold to realistic levels may result in a reduction of litigation to resolve the nuances of the duties test.

According to the background information, the proposed regulations will conform the duties test to the regulations of Fair Labor Standards Act, which require proof of all of the elements of the test. The rule should clarify the need to satisfy all the elements by adding the conjunctive "and" in the text of the regulation, §§ 231.82, 231.83 and 231.84.

We urge the Department of Labor and Industry to define "matters of significance" in § 231.83(2) consistently with 29 C.F.R. §541.202(b). Matters of significance include formulating, interpreting or implementing management policies or operating practices, conducting or affecting operations of the business to a substantial degree, committing the employer in matters that have significant financial impact, waiving or deviating from established policies and procedures without prior approval, negotiating and binding the company on significant matters, providing management or expert advice, developing long or short term business objectives, investigating and resolving matters of significance on behalf of management, handling complaints on behalf of the employer, arbitrating disputes, or resolving grievances.

Maximum hours laws are designed to promote employee health and welfare, not to punish employers. The overtime premium is intended to deter employers from compelling employees to work extraordinary hours. The abuse of the exemptions allows unscrupulous employers to exploit employees who fear job loss or discipline for refusal to work long hours.