



August 22, 2018

Mr. Bryan Smolock
Director, Bureau of Labor Law Compliance
Department of Labor and Industry
651 Boas Street, Room 1301
Harrisburg, PA 17121

Dear Mr. Smolock:

Thank you for this opportunity to submit comments on the Department of Labor and Industry's proposed regulation (Regulation #12-106: Minimum Wage) on behalf of the County Commissioners Association of Pennsylvania (CCAP), representing all 67 counties in the commonwealth. Counties have several concerns with the changes to the thresholds to determine overtime eligibility that are proposed in this regulation.

First, CCAP notes that the clear exemption for public employers, based on their coverage under the federal Fair Labor Standards Act, that was once in the Pennsylvania Minimum Wage Act has since been amended out of the law. Although we recognize that a 1970s interpretation of the Pennsylvania Minimum Wage Act (PMWA) by then-Attorney General Robert Kane indicated that the definition of "employer" in the law should not be interpreted to include the commonwealth and its political subdivisions, it would be helpful if political subdivisions were explicitly exempt from the definition of "employer" in the regulations so that there can be no confusion about the applicability of the proposed regulations.

Without clarification, counties could be impacted by these more complex regulations. For instance, as you have heard in comments from individual counties, many employ individuals in positions that are currently considered ineligible under the thresholds to determine overtime eligibility. Under the proposed regulation, this threshold would be increased from \$23,660 to \$31,720 annually on Jan. 1, 2020; \$39,832 on Jan. 1, 2021 and \$47,892 in 2020, meaning that many county employees who are currently ineligible for overtime pay because of their salary levels would become newly eligible.

The Department indicates that the proposed rule is not expected to have a disruptive effect on Pennsylvania's economy since business can mitigate impact of compliance based on their own decision making, and that there would be no costs and de minimis revenue losses for local government associated with the proposal. On the contrary, the resulting additional financial burden to implement this proposed regulation could cost counties across the commonwealth substantially in the first year alone due to the number of individuals who would now be entitled to overtime pay.

The potential costs could be more than financial. Pennsylvania counties deliver many services in partnership with the state, including crucial human services that protect the most vulnerable – among them children suffering from abuse, those fighting substance abuse addictions, individuals with mental illness and intellectual disabilities, and seniors in need of long-term care. However, county capacity to meet service needs has already been compromised by a steady decrease in state funding over more than a decade.

Unless the commonwealth appropriates additional funding to cover the increased staffing costs caused by this proposed regulation, it will fall to counties to pick up the difference – and their only source of local revenue is the property tax. This means counties would face the difficult decision to increase property taxes for local residents to be able to continue providing these services, or to face the prospect of cutting staffing levels, work hours and ultimately critical programs for Pennsylvanians.

The Department also proposes changes to the so-called “duties test” which is used in conjunction with the salary threshold to determine exempt status. These significant revisions create a need to review all employee positions and job descriptions, which could take an extended period of time. With such an abrupt change, it is difficult to assess the impact this will have overall on counties.

Each county is likely to experience the proposed regulations differently. Small and rural counties are likely to experience a greater impact. One-size-fits-all regulations often do not take into consideration the measurable differences in the cost of living of each area and availability of resources in the county. Small and rural counties must often spend a disproportionate amount of time and money to ensure that they are in compliance with regulations, because they have limited human resources personnel, legal counsel and financial advisory staff.

For counties, a priority for 2018 has been re-engaging the administration and General Assembly in understanding and respecting the state-county partnership in service delivery. This includes re-examining county mandates currently in place, and for any proposed new or expanded mandate, such as the Department’s proposed increases in overtime thresholds, must reflect state financial commitment and mutual determination of its scope, objectives and administration. CCAP strongly urges you to work with counties to clarify the applicability of these regulations and to conduct a more thorough analysis of the costs of this proposal to accurately understand its impacts and the resources that will be needed to implement it without sacrificing important service delivery to constituents.

CCAP again extends its appreciation for the opportunity to share these comments with DEP and the project management team. We would be happy to answer questions or to provide further discussion on any of these issues; please contact Melissa Anese, CCAP Government Relations Associate, at 717-736-4718 or manese@pacounties.org at your convenience.