



**Written Testimony of Sean Ramaley
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Department of Labor & Industry

Before the Senate Labor and Industry Committee and the Senate Appropriations Committee

**Harrisburg, Pennsylvania
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Good morning, Chairman Brown, Chairman Hughes, Chairwoman Baker, and Chairwoman Tartaglione, committee members and committee staff. I appreciate the opportunity to testify today before the Labor and Industry Committee and the Appropriations Committee regarding the federal wage, hour and overtime regulations recently enacted by President Obama.

Background

In March of 2014, President Obama signed a presidential memorandum to update the overtime regulations under the federal Fair Labor Standards Act (FLSA). In response, the U.S. Department of Labor (DOL) submitted a proposed FLSA rule change to the Office of Management and Budget for review in May of 2015. On May 16, 2016, DOL announced changes to the FLSA's regulations governing overtime exemptions under the FLSA which will *extend* overtime eligibility to 4.2 million workers nationwide (185,000 workers in Pennsylvania), with 56% of those being women.

The FLSA applies to all businesses except those with annual revenues of less than \$500,000 which are not engaged in interstate commerce. The FLSA also applies to state and local government employees. The compliance date is December 1, 2016.

The Changes to the Federal Regulations

Specifically, these changes included the following:

- The minimum salary requirement for “white collar employees” (i.e. executive, administrative, professional and computer employees) to be exempt from overtime is raised from \$23,660/yr (\$455/wk) to \$47,476/yr (\$913/wk)
- The salary test for “highly compensated employees” to be exempt is increased from \$100,000/yr to \$134,000/yr
- Up to ten percent of the minimum salary requirement can include non-discretionary bonuses, incentive payments or commissions paid at least quarterly
- The minimum salary requirements are to be *automatically* adjusted every three years beginning January 1, 2020.

Pennsylvania's Minimum Wage Act

Pennsylvania's current Minimum Wage Act (PMWA) regulations have been in effect since 1977. They apply to all employers in the Commonwealth. A "white collar employee" is exempt from overtime under the PMWA if he or she makes \$250 per week and has primarily management duties including directing 2 or more employees. Pennsylvania does not have a "highly compensated employee" exemption. The Bureau of Labor Law Compliance (BLLC) is tasked with enforcing the PMWA, but not the FLSA.

Enforcement/Impact of New Regulations

None of the changes to the federal overtime regulations directly impacts the Department/BLLC since employers subject to the FLSA (which is the vast majority of businesses) must meet the higher federal standards. The BLLC will NOT be able to enforce the federal overtime provisions as it has no jurisdiction to enforce federal law. But it is expected that the BLLC will be impacted indirectly by the confusion in the general public about the new regulations. We have, since the announcement, received calls from both the employer and employee community. Employers trying to understand the impact of this change on their business; employees looking to see if they qualify and what their rights are. Because BLLC is not able to enforce the federal provisions, our current practice has been to direct all parties to the closest regional federal office, if someone is not located near a federal office, we direct them to DOL's toll free number.

Moving forward, we look to put in place a more formal process to ensure that all potential FLSA overtime claimants are properly referred to the federal Wage and Hour office; providing contact information and creating a link on the department's website to the Federal Wage and Hour division.

Assisting the Employer Community

In an attempt to provide additional assistance to the employer community the DOL has provided some insight as to how employers may want to consider implementing the new requirement.

Their website provides helpful commentary which we believe is worth mentioning here:

The Labor Department's overtime rule simplifies and modernizes the nation's overtime regulation – to ensure that extra work means extra pay. There is a misperception out there that there is only one way for employers to comply with our new overtime rule when they have white-collar employees who earn less than \$47,476 per year: change them from salaried to hourly employees. That is just not true.

First, Employers have a wide range of options for responding to the changes to the salary level. Employers can choose the one that works best for them. Options include:

- ***Raise salary and keep the employee exempt from overtime:*** *Employers may choose to raise the salaries of employees to at or above the salary level to maintain their exempt status, if those employees meet the duties test (that is, the duties are truly those of an executive, administrative or professional employee). This option works for employees who have salaries close to the new salary level and regularly work overtime.*

- **Pay overtime in addition to the employee's current salary when necessary:** *Employers also can continue to pay their newly overtime-eligible employees the same salary, and pay them overtime whenever they work more than 40 hours in a week. This approach works for employees who work 40 hours or fewer in a typical workweek, but have occasional spikes that require overtime for which employers can plan and budget the extra pay during those periods. Remember that there is no requirement to convert employees from salaried to hourly in order to calculate their overtime pay!*
- **Evaluate and realign hours and staff workload:** *Employers can ensure that workload distribution, time and staffing levels are all managed appropriately for their white-collar workers who earn below the salary threshold. For example, employers may hire additional workers.*

Second, based on feedback we heard from the employer community, the overtime rule broadens the definition of salary basis to allow nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary test requirement.

Third, as we've said before: Nothing in the Fair Labor Standards Act – or in the overtime rule – requires the choice between flexible work arrangements or opportunities for career advancement and complying with basic labor standards. There is no requirement that a worker must have a predetermined schedule, and nothing prohibits working whenever, wherever or however the worker and the employer agree.

This information as well as other useful resources can be found on the DOL's website at: <https://www.dol.gov/featured/overtime/> . I would encourage anyone who is trying to understand this new requirement to review this information.

In conclusion, I would again like to thank both of these committees for the opportunity to testify regarding the new federal wage, hour and overtime regulations. Labor & Industry, while not responsible for the enforcement of these regulations, is committed to ensuring that employers are provided with the necessary information needed to comply with the regulations and employees receive the appropriate wages for their work.

I would be glad to answer any questions that you may have.