

Share Major Changes Proposed to Pennsylvania's Overtime Rules

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Employers with operations in Pennsylvania may want to take note of significant changes in the pipeline to the state's wage and hour rules. Specifically, on June 23, 2018, the Pennsylvania Department of Labor and Industry (PA DLI) published proposed rulemaking containing drastic changes to some of the state's white collar exemptions to the Pennsylvania Minimum Wage Act (PMWA).

Regulatory Changes. Under the PMWA, for an employer to classify an employee as exempt and ineligible for overtime, the employee must be paid on a salary basis and his or her job duties must meet the requirements of certain defined tests. The regulatory changes proposed by the PA DLI contain two primary components: (1) an updated salary level and (2) changes to the duties test. The PA DLI estimates that the changes it proposes, detailed below, could affect more than half a million salaried employees in Pennsylvania and hundreds of thousands of employers.

The Salary Threshold. Currently, to qualify for an executive, professional, or administrative exemption under the PMWA, an employee's pay must meet a salary threshold of \$250.00 per week (or \$13,000 annualized). This is well below the threshold of \$455 per week under the federal Fair Labor Standards Act (FLSA). The PA DLI proposes increasing the salary threshold as follows:

1. To \$610 per week (or \$31,720 annualized), effective on the date of the publication of the final regulations in the *Pennsylvania Bulletin* (projected to occur in 2019)
2. To \$766 per week (or \$39,832 annualized), effective one year after the date of publication
3. To \$921 per week (or \$47,892 annualized), effective two years after the publication

Then, three years after publication of the final rule, and on January 1 of every third year thereafter, the PA DLI proposes that the salary threshold would automatically reset to "the 30th percentile of weekly earnings of full-time non-hourly workers in the Northeast Census region in the second quarter of the prior year as published by the United States Department of Labor, Bureau of Labor Statistics."

Readers may recall that, under the Obama administration, the federal Department of Labor (DOL) [attempted to increase the salary threshold](#) under the FLSA from \$455 per week to \$913 per

week. This proposed regulatory change was [found unlawful and enjoined](#) by the United States District Court for the Eastern District of Texas because \$913 per week was so high it rendered the duties test for the exemptions irrelevant. Interestingly, the PA DLI has not articulated why it believes that the increased salary threshold it proposes—which goes beyond the federal proposal—will pass legal muster.

The Duties Tests. The PA DLI also proposes significant changes to the duties tests under the PMWA. According to the PA DLI, the proposed amendments are designed to align Pennsylvania's regulations with the duties tests under the federal DOL's regulations. Some of the proposed changes would, indeed, accomplish this goal. For example, the proposal eliminates certain requirements under the PMWA that are not present under the FLSA, like the requirement that exempt white collar employees must not devote more than 20 percent of their hours in a workweek to activities that are not directly and closely related to, or an essential part of, the duties outlined in the regulations.

Despite the stated objective, however, the proposed amendments contain requirements and language that place them at odds with the regulations under the FLSA. For example, the PA DLI amendments impose a higher threshold for the discretion and independent judgment that must be exercised by exempt administrative employees under the PMWA than is required under the FLSA. By way of further example, the PA DLI amendments do nothing to reconcile the outside sales exemption under the PMWA with its federal counterpart, nor do they include a computer professional or highly compensated employee exemption (two exemptions available under federal, but not state, law).

What's Next? The amendments to the PMWA were published in the *Pennsylvania Bulletin* on June 23, 2018. Written comments in support of, or in opposition to, the proposed amendments are due by August 22, 2018. The PA DLI must then consider all comments submitted during the comment period when preparing the final rule.

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