

Pennsylvania Proposes Significant Changes to Its Minimum Wage and Overtime Rules

In January we reported on Pennsylvania Governor Wolf's announcement of his proposal to raise the salary required for an employee to be exempt from the Pennsylvania Minimum Wage Act's (PMWA) overtime pay requirements. The PMWA is the state law governing overtime pay and the minimum wage for Pennsylvania employers.

The Wolf administration has now rolled out its plans and, if adopted they will have significant impacts on Pennsylvania employers.

Minimum Wage Increase for Employees of the Commonwealth and Government Contractors

On June 28, 2018, Governor Wolf issued Executive Order 2016-02 that raises the minimum wage for employees of the commonwealth and its agencies, as well as for employees of certain government contractors and lessors of commonwealth property. For commonwealth employees, the new minimum rate of \$12.00 per hour goes into effect July 1, 2018, and for employees of government contractors and lessors it goes into effect upon the effective date of any new contract entered into or modified on or after July 1, 2018. Beginning July 1, 2019, and every year thereafter, the minimum wage will increase by \$0.50 for these workers, until July 1, 2024, when it reaches \$15.00. After that, automatic annual increases in the minimum wage will be based on any increases in the consumer price index. It is important to note that this executive order does not change the minimum wage generally applicable to all Pennsylvania employers who are not government contractors. That minimum wage rate remains at \$7.25 per hour.

Changes to Overtime Pay Rules, Including an Increase in the Salary Requirements for Exempt Workers

In a separate move that impacts virtually all Pennsylvania employers, last week the Pennsylvania Department of Labor and Industry (DOLI) finally submitted its proposed regulation updating the commonwealth's overtime pay rules. While the regulation proposes a number of changes to Pennsylvania law, the main change is a series of increases to the minimum salary threshold for employees to qualify for the executive, administrative, and professional exemptions to the PMWA's overtime requirements. These are commonly referred to as the "white collar" exemptions. The current minimum salary level for these exemptions is \$455 per week or \$23,660 annually. Under the proposed regulations these salary levels would be increased to:

- \$610 per week, or \$31,720 annually, effective on the date the final rule is published in the Pennsylvania Bulletin, likely sometime in 2019.
- \$766 per week, or \$39,832 annually, effective one year after publication of the final rule.
- \$921 per week, or \$47,892 annually, effective two years after publication of the final rule.

DOLI then proposes to automatically reset the threshold three years after the final regulation's publication, and once every three years thereafter, so that the minimum salary amount will be automatically updated to keep up with inflation.

One positive for employers is that the proposed regulation allows up to 10 percent of the required salary amount to be paid with "non-discretionary bonuses, incentives or commissions," so long as they are paid at least quarterly.

DOLI also proposed changes to the "duties tests" applicable to these exemptions. (To qualify for the white collar exemptions, an employee must both be paid on a salary basis at or above the minimum levels and perform certain job duties that qualify for the exemption). The new regulation



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would eliminate the separate “short” and “long” tests for the exemptions and replace them with a single, uniform set of criteria for each white-collar exemption. DOLI asserts that the purpose of the proposed changes is to more closely align Pennsylvania’s exemptions with the same exemptions contained in the federal Fair Labor Standards Act (FLSA), and in many cases, they do so. However, there remain many important differences. For example:

- The proposed regulations would require exempt executive employees to “customarily and regularly exercise discretionary powers.” There is no such requirement in the FLSA’s executive exemption.
- Exempt administrators would need to “customarily and regularly” exercise discretion and independent judgment regarding matters of significance. The FLSA regulations require only that an administrative employee’s primary duty “include” these tasks.
- Pennsylvania law still does not contain a computer professional exemption similar to the one contained in the FLSA.
- The applicable tests for the outside sales employee exemption are still different than federal law.

It is important to note that Pennsylvania employers must meet the requirements of both the FLSA and PMWA and, where Pennsylvania law is more favorable to employees, employers must ensure they are complying with the more stringent state requirements or they could be sued or subject to investigations for minimum wage and/or overtime violations. As a result, the differences highlighted above will continue to create confusion and compliance challenges for employers, and increase the likelihood that unwary employers will face litigation should they mistakenly rely upon federal exemptions where Pennsylvania’s requirements remain more stringent.

The Wolf administration has predicted that its overtime proposal would extend overtime eligibility to up to 460,000 additional salaried workers, or almost one in eight employees, over the next three and a half years. Almost half — 46 percent — of office and administrative support occupations in Pennsylvania could be affected. If the proposal is implemented “as is,” employers would either need to track hours and pay overtime to newly qualified workers or raise salaries above \$47,892 in the next three years to keep those workers exempt.

Employers who are affected by this overtime proposal may submit comments to DOLI by July 22, 2018, although a request for a 60-day extension of this deadline is being submitted by various business and trade groups. Comments will be a part of the public record and may be the best opportunity to provide input to regulators as they finalize the new overtime rules for Pennsylvania. These rules will have significant impacts not only on businesses but also on education and nonprofit employers in Pennsylvania. Public comments will be considered by the DOLI and the state’s Independent Regulatory Review Commission, where they will be evaluated to ensure they comply with the law and weigh their cost and benefit to the public and the regulated community. DOLI will then propose a final rule to the IRRC, which can accept or reject the proposal or recommend changes. Legislative committees may also weigh in on the proposal.

Your organization should review its employee classifications and employee compensation systems for Pennsylvania employees to assess the impact of these regulatory changes, and whether any compensation, scheduling or other changes will be required to address the new requirements.

Cozen O’Connor’s Labor & Employment and Public Strategies groups will be closely monitoring the overtime proposed regulations and working with the Pennsylvania Chamber of Commerce and other business groups to advocate for its clients in this process. Employers interested in submitting comments should reach out to any member of the firm’s Labor & Employment or Public Strategies groups.