



SUBMITTED ELECTRONICALLY

September 4, 2015

Ms. Mary Ziegler
Director of the Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue, N.W.
Washington, D.C. 20210

RE: Proposed Rule Changes Defining and Delimiting the Exceptions for Executive,
Administrative, Professional, Outside Sales and Computer Employees

Dear Ms. Ziegler:

The U. S. Poultry & Egg Association, the National Chicken Council and the National Turkey Federation are non-profit trade associations representing the producers and processors of chickens, turkeys, other poultry, eggs and affiliated industry suppliers. Our associations appreciate the opportunity to submit these comments on the proposed rules issued by Department of Labor, Wage and Hour Division and published in the Federal Register on July 6, 2015.

For reasons discussed more fully below, our associations oppose the proposed regulation as drafted and respectfully request that the Department of Labor decline to adopt the proposed updates to the Fair Labor Standards Act.

Reduction in Employee Flexibility to Balance Work – Life Issues

As the Partnership to Protect Workplace Opportunity points out, “The change to nonexempt status means that many employees would lose the ability to structure their time to address needs such as attending their child’s school activities or scheduling doctors’ appointments. Many other employees would lose the opportunity to work from home or remotely, as it can be difficult for employers to track employees’ hours in those situations. Employers are also more reluctant to provide nonexempt employees with mobile devices or may place restrictions on their use, as employers need to account for any time employees spend on such devices.”

Disproportionate Impact of Geographic Cost of Labor Differences

The new annual wage being proposed for the overtime exemption, \$50,440, is the 40th percentile of earnings for all full time salaried workers throughout the U.S. This arbitrary, nationwide level fails to take into consideration variations in cost of living that can affect local wage levels. For example, the Bureau of Labor Standards data for May 2014 show the mean annual earnings for all occupations is \$40,890 in Alabama; \$37,940 in Arkansas, \$55,630 in New York, and \$53,890 in California. The average cost of a home in each of these states' capitols in 2014 was \$136,900 in Alabama, \$135,600 in Arkansas, \$198,500 in New York, and \$271,000 in California. If the cost of living in different geographical areas is not taken into account, employers in the states with lower costs of living will be more adversely affected compared to those in states like New York or California.

Reduction in Employee Opportunity to Excel

The change to nonexempt status may stifle advancement and recognition opportunities for ambitious employees seeking to advance their careers by exercising responsibility and demonstrating a commitment to partner in their employer's success. Today, many employees seek to add value to the organization and to differentiate themselves from others by going beyond the basic expectation of the employer. Salaried, exempt employees exercise more discretion and responsibility, and are less closely supervised and monitored than hourly employees, as the "duties test" reflects. If the employer must limit access to overtime to control expenses or take measures to prevent employees from checking email or voicemail after hours, those ambitious employees may lose their opportunity to differentiate themselves.

Unintended Consequence: Adjustment to Employee Pay Structure

While offering overtime pay to more individuals is beneficial in theory, for many businesses the implementation of the rule changes will unlikely be as the rule suggests. Employers determine the economic value of a specific job and may be unable to justify or afford additional overtime pay. They may have to cap or eliminate access to overtime work or adjust hourly rates downward to ensure employees' wages ultimately will remain the same. Employers may restructure job duties or hire additional, potentially part-time workers to perform the same job in order to reduce or eliminate overtime costs. In fact, newly classified non-exempt employees may receive an hourly wage that is lower than what they are currently making to account for the anticipated overtime. This means that in weeks in which they do not work the expected number of hours, they will receive less than they were making in the past.

Lost Status Symbol

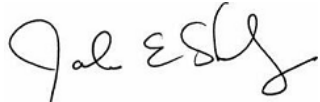
The Society for Human Resource Management's (SHRM) Labor Relations Special Expertise Panel suggests that employees often resent moving from exempt to nonexempt status. Part of the resentment is due to a perceived demotion in prestige. While some hard feeling comes from having to fill out time sheets, most is due to the lack of flexibility in their work hours impacting work life issues mentioned above. Others have reported that some employees view a reclassification from exempt to nonexempt as

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though they are no longer considered part of 'management' and others may consider their promotional opportunities to have been diminished.

Thank you for the opportunity to comment. If you have any questions or require additional information concerning our comments please do not hesitate to contact Paul Pressley of the U.S. Poultry & Egg Association at 678.514.1972, Ashley Peterson, Ph.D., of the National Chicken Council at 202.443.4122, or Lisa Picard of the National Turkey Federation at 202.898.0100.

Sincerely,



John Starkey
President, U.S. Poultry & Egg Association



Mike Brown
President, National Chicken Council



Joel Brandenberger
President, National Turkey Federation