

Joint Hearing of the Senate Labor and Industry Committee
and the Senate Appropriations Committee

Federal Overtime Rule

June 21, 2016

Testimony

Submitted By: Thomas J. Botzman, Ph.D., President of Misericordia University

The Honorable Lisa Baker, Chair, Senate Labor and Industry Committee

The Honorable Tina Tartaglione, Democratic Chair, Senate Labor and Industry Committee

The Honorable Patrick Browne, Chair, Senate Appropriations Committee

The Honorable Vincent J. Hughes, Democratic Chair, Senate Appropriations Committee

Senators Baker, Tartaglione, Browne, Hughes, and distinguished committee members, I want to thank you for this opportunity to address the impact of the final rule in federal wage, hour and overtime regulations on overtime pay for employers in nonprofit and higher education sectors. I am Thomas J. Botzman, Ph.D., president of Misericordia University in Dallas, Pennsylvania. Founded in 1924 by the Religious Sisters of Mercy, Misericordia is an independent Catholic university that provides caring, motivated students with a challenging education. Misericordia University, with a student base of over 3,000, offers 34 degree programs in three academic colleges: Arts and Sciences; Health Sciences; and Professional Studies and Social Sciences. And, Misericordia is the largest provider of trained health care practitioners in Northeast Pennsylvania.

I ask that you consider seeking modifications to this rule applied to the Fair Labor Standards Act (FLSA) through state legislative action that addresses the unique nature of nonprofit institutions; creates a fair, reasonable and gradual indexed salary level; adjusts the implementation timeline; and provides exemptions for fluctuating workweek methods of pay.

The U.S. Department of Labor in July 2015 proposed the FLSA rule change that would increase the level at which an employee is eligible for paid overtime. The current level, \$23,660, was set in 2004 and is, in my view, overdue for an increase. The new rule would apply to salaried employees who have primarily executive, administrative, or professional duties. The implementation date for the new rule is December 1, 2016.

It was quite a surprise to learn that the new level at which a professional employee is eligible for overtime pay is proposed to be \$47,476. This dramatic 100% increase grossly exceeds the rate of wage growth during the past decade. It was anticipated that the Department of Labor would set the new rate at something that is more in line with the increases in inflation. An adjustment for inflation would take the level to \$29,712, according to analysis by the American Council on Education.

An indexed, gradual increase and an exemption for fluctuating workweeks would produce an equitable outcome for both employee and employer. The mandated 100% increase and the imminent implementation timeline would cause unexpected and serious problems and challenges. For example, nonprofits and corporations that derive their revenue from a fixed source, such as Medicaid payments, would not have an ability to increase revenue. Facing increased costs, these enterprises would be forced to reduce services to clients. Many social service agencies spend most of their budget for salaries, so we can roughly imagine that they would have only one-half the available staff. It is difficult to imagine a way that these agencies could become so efficient that they can operate on one-half the staff.

For higher education, the challenges, while daunting, are not as overwhelming. Teachers and college faculty are exempt employees, so their salaries would not change. However, many of our colleagues, such as coaches, post-doctoral fellows, student affairs professionals, and admissions recruiters, would be impacted by the rule. A coach, for example, would likely be constrained from longer trips to play a game as we seek to limit the hourly travel expenses. Opportunities for professional development would also diminish as cost containment becomes the directive.

Of course, higher education is different from primary and secondary education. We charge tuition that covers most of our costs, the largest of which is salaries. For many colleges and universities, salaries are more than fifty percent of the total budget. Many institutions have almost eighty percent of their budget tied to paying employees as we are labor-intensive business. A rough estimate of the impact of a four hour per week overtime charge for Misericordia University employees would lead to an increase of over \$400,000 in our operational costs. Unfortunately, we know that students and their families pick up the cost for tuition increases. We've worked to contain our cost of attendance, which will rise about 2.1% next year for the average student. Covering the cost of this single rule change would double that increase, putting the dream of college education beyond the grasp of too many Pennsylvania residents.

In my opinion, the Department of Labor should increase the threshold amount, perhaps in gradual increments so that employers can plan more effectively for the increased costs. Further, the total increase should more closely approximate the inflation rate and future increases should be tied to the consumer price index, much as Social Security increases have been indexed. Paying a fair wage to all is good practice and the right thing to do. Forcing decreases in the services provided by essential non-profit services is not the right thing to do, nor is arbitrarily increasing the cost for a student to attend higher education.

Therefore, I respectfully ask that you consider seeking modifications to this rule through legislative that addresses the unique nature of nonprofit institutions; creates a fair, reasonable and gradual indexed salary level; adjusts the implementation timeline; and provides exemptions for fluctuating workweek methods of pay.

Thank you for your attention to this important issue and your commitment to the welfare of Pennsylvania residents and nonprofit institutions.