



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
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LT. GOVERNOR

May 17, 2019

Director Melissa Smith
Division of Regulations, Legislation,
and Interpretation, Wage and Hour Division
U.S. Department of Labor, Room S-3502,
200 Constitution Avenue, NW
Washington, DC 20210

RE: Notice of Proposed Rulemaking Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; RIN 1235-AA20

Dear Director Smith:

As Governor of the State of Michigan, I write to oppose the United States Department of Labor's proposed revision to the overtime rule because it is far too weak to provide Michigan's workers with the overtime pay protections that they need and deserve.

The proposed rule would strip guaranteed overtime pay away from salaried workers earning more than \$35,308 a year, which was guaranteed under the far stronger Obama era protections for workers earning up to \$47,476 by 2016, and would have been automatically updated every three years thereafter – for example it is projected to be \$55,068 in 2023.

In Michigan, approximately 192,000 working people would lose overtime protections under the department's weak proposal. Our state is already feeling the adverse effects from the decision to abandon the previous overtime rule altogether. As a result, Michigan workers have lost more than \$56 million in overtime pay — a pay cut that is hurting our state's working families and our economy – and this new proposal is more of the same.

I firmly believe that the weaker proposal put forth by the administration would hurt efforts to protect Michigan's middle-class workers and fails to ensure that workers who must work long hours away from their families are paid fairly for their time and dedication.

The new overtime proposal misses the mark in three crucial areas by not providing: (1) adequate salary protections; (2) increased duties test protections; or (3) guaranteed indexing protections.

First, the proposal substantially cuts the salary threshold for workers to receive overtime pay by nearly \$20,000. At a time when many workers are still living paycheck to paycheck, the proposed rule provides the least protection to workers in low wage industries who need these protections the most. The salary threshold should be raised to a level more comparable to the previous 2016 proposal, which would go a long way towards remedying this concern.

Second, the proposal fails to set a proper duties test for workers to receive overtime pay. The proposed rule treats workers who have limited professional or managerial duties in a similar fashion to executives, administrators and professionals, which leads to workers being inappropriately classified as exempt and underpaid. Strengthening the duties test would promote the proper classification of workers and guarantee overtime pay to those who meet this criteria.

Lastly, the proposal would not be indexed to increase in future years to keep pace with rising wages and living costs, and instead would remain frozen at just \$35,308. Many workers are struggling to make ends meet as costs have risen dramatically, but paychecks have remained stagnant. The department should propose a substantive method for updating the salary level regularly by indexing the overtime pay protections to inflation.

The proposed rule departs from decades of historical precedent and undercuts the purposes of the Fair Labor Standards Act's overtime provisions. The department's overtime proposal simply does not do enough to restore overtime pay for workers in Michigan or establish the type of strong national standard that the department's overtime rules set in decades past.

For these reasons, I strongly oppose any attempt by this administration to gut overtime protections or reduce the paychecks of working people in Michigan.

I respectfully urge the department to reconsider its proposal and substitute it for a more adequate salary level comparable to the Obama era proposal, or in the alternative, strengthen the duties test and include the addition of a clear proposal for indexing.

Sincerely,

A handwritten signature in blue ink, reading "Gretchen Whitmer". The signature is fluid and cursive, with the first name "Gretchen" and last name "Whitmer" clearly distinguishable.

Gretchen Whitmer
Governor of Michigan