

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

LABOR AND INDUSTRY COMMITTEE
PUBLIC HEARING

STATE CAPITOL
HARRISBURG, PA

IRVIS OFFICE BUILDING
ROOM G-50

WEDNESDAY, SEPTEMBER 5, 2018
10:02 A.M.

PRESENTATION ON
DEPARTMENT OF LABOR AND INDUSTRY PROPOSED RULEMAKING
IMPACT OF PROPOSED MINIMUM WAGE/OVERTIME REGULATION ON
EMPLOYERS

BEFORE:

HONORABLE ROB KAUFFMAN, MAJORITY CHAIRMAN
HONORABLE SHERYL DELOZIER
HONORABLE CRIS DUSH
HONORABLE SETH GROVE
HONORABLE DAWN KEEFER
HONORABLE FRED KELLER
HONORABLE KATE KLUNK
HONORABLE DAVID MALONEY
HONORABLE STEVEN MENTZER
HONORABLE ERIC NELSON
HONORABLE JESSE TOPPER
HONORABLE JOHN GALLOWAY, DEMOCRATIC CHAIRMAN
HONORABLE MORGAN CEPHAS
HONORABLE MARIA DONATUCCI
HONORABLE LEANNE KRUEGER-BRANEKY
HONORABLE JEANNE MCNEILL
HONORABLE DAN MILLER
HONORABLE GERALD MULLERY
HONORABLE ED NEILSON
HONORABLE PAM SNYDER

* * * * *

*Pennsylvania House of Representatives
Commonwealth of Pennsylvania*

ALSO IN ATTENDANCE:

REPRESENTATIVE DONNA OBERLANDER

COMMITTEE STAFF PRESENT:

JOHN SCARPATO

MAJORITY EXECUTIVE DIRECTOR

SHANNON WALKER

MAJORITY RESEARCH ANALYST

ELANA MAYNARD

MAJORITY LEGISLATIVE ADMINISTRATIVE ASSISTANT II

HALEY SALERA

DEMOCRATIC EXECUTIVE DIRECTOR

EVAN FRANZESE

DEMOCRATIC RESEARCH ANALYST

I N D E X

TESTIFIERS

* * *

<u>NAME</u>	<u>PAGE</u>
W. GERARD OLEKSIAK SECRETARY, LABOR AND INDUSTRY.....	7
JENNIFER BERRIER DEPUTY SECRETARY, SAFETY AND LABOR MANAGEMENT RELATIONS.....	12
KATHY SPEAKER MACNETT, ESQ. SKARLATOSZONARICH, LLC.....	47
ELIZABETH HAYS DIRECTOR OF HUMAN RESOURCES, MHY FAMILY SERVICES.....	53
MEREDITH BOLLHEIMER, ESQ. GENERAL COUNSEL AND VICE PRESIDENT FOR LEGAL AFFAIRS, MERCYHURST UNIVERSITY.....	57
SKY FOGAL PRESIDENT, SKIRMISH PAINTBALL.....	61
LEAH YAW SENIOR VICE PRESIDENT AND CHIEF STRATEGY OFFICER, DEVEREUX ADVANCED BEHAVIORAL HEALTH.....	64
ROBERT MCCAFFERTY NORTH COUNTRY BREWING COMPANY.....	69

SUBMITTED WRITTEN TESTIMONY

* * *

(See submitted written testimony and handouts online.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

* * *

MAJORITY CHAIRMAN KAUFFMAN: Good morning. Good morning. I'd like to call this meeting of the House Labor and Industry Committee to order. I like to try to keep things on time, and we're already two minutes behind, so -- yes. So let's get started. And if we could all rise as we're able for the Pledge of Allegiance.

(The Pledge of Allegiance was recited.)

MAJORITY CHAIRMAN KAUFFMAN: I'd like to welcome everybody to this meeting today. It's good to see a full house here at the House Labor and Industry Committee meeting. And the meeting is of course being recorded, so I want to remind all guests and Members present to please silence your cell phones and electronic devices.

And would the Secretary please call the roll?

(Roll was taken.)

MAJORITY CHAIRMAN KAUFFMAN: And Representative Grove entered the room after he was called on the roll.

And just as a note, I've invited Representative Oberlander, who is a Member of the House Republican

1 Leadership Team, to join us this morning. She was in the
2 building and stopped by, so she's joined us here with the
3 rest of the Members of the Committee.

4 Today, we will be discussing a rulemaking
5 proposal by the Department of Labor and Industry. This
6 proposal would revise the exemption criteria for the
7 executive, administrative, and professional exemptions for
8 minimum wage and overtime requirements. This proposal has
9 raised a lot of concerns from Pennsylvania employers, so I
10 wanted to have this hearing to shine some light on this
11 proposal and its possible impacts on a variety of different
12 types of employers.

13 We have our first presenters here. John, did you
14 have anything you wanted to -- I think you have an
15 introduction, I was told, this morning.

16 DEMOCRATIC CHAIRMAN GALLOWAY: Thank you,
17 Mr. Chairman. And thank you for the opportunity to speak.

18 First, I need to introduce a couple people. I
19 have a new research analyst for the Committee. His name is
20 Evan Franzese. I appreciate you coming on. And also we
21 named our new Executive Director for the Labor and Industry
22 Committee, and that's Haley Salera, who certainly is
23 deserving of it.

24 So can I say something? Are we going to talk
25 about the act first or --

1 MAJORITY CHAIRMAN KAUFFMAN: If you would like to
2 speak before the Secretary does, you're welcome to make any
3 opening --

4 DEMOCRATIC CHAIRMAN GALLOWAY: Just briefly.

5 MAJORITY CHAIRMAN KAUFFMAN: -- comments.

6 DEMOCRATIC CHAIRMAN GALLOWAY: Just briefly.

7 MAJORITY CHAIRMAN KAUFFMAN: Sure.

8 DEMOCRATIC CHAIRMAN GALLOWAY: The only point I'd
9 like to make is that this act, you know, it is important to
10 hear from employers as to how this act will impact the
11 employers but that we're only hearing from one side. As we
12 go through this whole day, what you're going to find is
13 that's all we're hearing from is employers. We're not
14 hearing from the actual employees themselves, and that was
15 disappointing. But I am looking forward to the testimony,
16 but as we go through this, just keep in mind you're only
17 going to hear one side. The employees themselves are not
18 going to be heard from today.

19 So thank you.

20 MAJORITY CHAIRMAN KAUFFMAN: Thank you for that
21 point. My hope is that the Secretary and the Department of
22 Labor and Industry can effectively articulate their
23 reasoning for bringing forth these new regulations, and so
24 thus we've opened it up for them to start this and give
25 their reasoning. And, you know, I think, you know, most of

1 us would like additional money in our paychecks, but it is
2 important to discern how these new rules will impact the
3 job creators, the folks who employ Pennsylvanians. And
4 we're attempting to continue to make sure Pennsylvania's
5 economy is moving forward and our job creators are
6 continuing to create jobs. And so that's generally the
7 perspective and the reasoning for how we put our agenda
8 together today.

9 And so with that, I will open it up to our first
10 presenter, which is our Secretary of Labor and Industry.
11 And he's going to explain the proposal and the Department's
12 rationale.

13 Joining him to assist with answering any
14 technical questions is his Deputy Secretary for Safety and
15 Labor Management Relations.

16 Mr. Secretary, I'll let you begin. If you can
17 just attempt to keep your oral testimony between 5 and 10
18 minutes so we can leave plenty of time for questions from
19 the Committee and then our second panel. Thank you, Mr.
20 Secretary.

21 SECRETARY OLEKSIAK: Good morning. Good morning,
22 Chairman Kauffman, Chairman Galloway, and Members of the
23 House Labor and Industry Committee. I am Gerry Oleksiak,
24 Secretary of Labor and Industry for the Commonwealth of
25 Pennsylvania.

1 I appreciate the opportunity to testify today on
2 the Department of Labor and Industry's efforts to update
3 overtime regulations under the Pennsylvania Minimum Wage
4 Act. This proposal aims to strengthen the middle class in
5 our Commonwealth by modernizing outdated rules to ensure
6 workers are fairly and justly compensated for their hard
7 work.

8 It's appropriate that this hearing occurs during
9 the week of Labor Day. The holiday was established over a
10 century ago to honor the labor movement and the social and
11 economic contributions of American workers. In the decades
12 after its creation, workers engaged in countless struggles,
13 many right here in Pennsylvania, to achieve fairness and
14 equality in the workplace. New laws and labor contracts
15 were enacted to protect employees from exploitation and
16 abuse and to create clear, consistent guidelines for
17 corporations large and small. This legal framework fueled
18 decades of economic growth and middle-class prosperity.
19 Many of the benefits the workers enjoy today stem from that
20 labor movement, including the 40-hour workweek, the
21 weekend, paid vacations, sick leave, minimum wage, and
22 occupational safety and health protections. Modern workers
23 still rely on these protections, and Labor Day is our
24 opportunity to celebrate these accomplishments.

25 In 2017, Governor Wolf convened the Middle Class

1 Task Force in an effort to similarly focus our attention on
2 working men and women. As a member of the task force, I
3 had the opportunity to hear firsthand from workers,
4 students, educational institutions, labor organizations,
5 and employers. A common theme emerged during these
6 meetings. Workers are struggling because of low or
7 stagnant wages, preventing them from joining the middle
8 class. Since day one, Governor Wolf has prioritized
9 Pennsylvania's working residents and families. The work of
10 the Middle Class Task Force reinforced this priority and
11 bolstered our efforts to modernize workplace laws and
12 protection for workers.

13 Originally enacted in 1968, Pennsylvania Minimum
14 Wage Act begins with a declaration of policy in which the
15 Legislature stated its intention to protect employees from
16 "unreasonably low wages not fairly commensurate with the
17 value of the services rendered." Among other things, the
18 act directed the Department of Labor and Industry to
19 establish and make periodic revisions to overtime rules
20 through regulatory action. That's what we are attempting
21 to do with this proposed change.

22 Regulations aim to achieve two fundamental goals:
23 one, to modernize the badly outdated minimum salary that a
24 salaried worker must earn to be exempt from overtime pay;
25 and two, to simplify the duties test to improve compliance

1 and more closely align them with Federal regulations. Both
2 changes will help the Department fulfill its statutory
3 obligations to protect workers from unpaid overtime and to
4 maintain fair and responsible guidelines for employers.

5 Because the overtime rules have not been updated
6 since 1977, employees are covered by an exemption that was
7 intended for higher-wage white-collar employees more than
8 40 years ago. Under the current law, the minimum annual
9 salary threshold for the exemption is about \$13,000. This
10 amount is so low that it is beneath the current minimum
11 wage of \$15,080 annually for a full-time worker.

12 Currently, a salaried worker earning a little less than
13 \$24,000 a year, which is below the poverty line for a
14 family of four, may work unlimited hours a week without a
15 guarantee of overtime. The current salary threshold has
16 become functionally obsolete, unfair, and unjust, and does
17 not in any scenario accurately describe an executive,
18 administrative, or professional employee.

19 In addition, the outdated protections have
20 negatively impacted compliance and caused confusion for
21 both employees and businesses. This proposed rule aims to
22 simplify the duties test while more closely aligning it
23 with Federal rule.

24 During this process, we worked to develop updated
25 regulations that recognize the needs of both employers and

1 workers. The rule is designed to be phased in, allowing
2 three years before full compliance. More than 1,000 public
3 comments were submitted, and I am pleased to report that
4 more than 60 percent of those comments were positive.

5 Again, we're pleased here today to receive input
6 from one of our stakeholder groups. I should note, as you
7 heard from Representative Galloway, that other
8 stakeholders, namely works and their families, should also
9 be invited to participate in this discussion, and a number
10 of those interested parties I know are in the audience here
11 today.

12 In the coming months, we plan to closely review
13 all public comments received during the IRRC process, the
14 independent regulatory and review process, and carefully
15 consider our next steps. L&I will continue to welcome
16 feedback from all parties affected by this proposed
17 regulation.

18 While everyone here today may not agree to the
19 proposed regulation in current form, I think we can all
20 agree that the existing threshold is not in line with
21 economic realities and does nothing to help many of our
22 fellow citizens break the cycle of poverty. The bottom
23 line is that four decades is far too long for
24 Pennsylvania's overtime regulations to remain stagnant.
25 Updating the overtime rules to keep pace with our 21st

1 century economy is simply the right thing to do. It is the
2 right thing to do for the hardworking men and women of the
3 Commonwealth. It will generate competitive salaries and
4 reduce turnover for employers, helping to create and keep
5 jobs that pay here in Pennsylvania, a benefit for employees
6 and employers alike, as well as the communities in which
7 they live.

8 I thank you again for the opportunity to speak
9 with you. Deputy Secretary Jen Berrier of the Department
10 of Safety and Labor Management is here with me to offer
11 more about the proposed regulation, and then we will be
12 happy to answer any questions you may have. Thank you, Mr.
13 Chairman.

14 MS. BERRIER: Good morning, Chairman Kauffman and
15 Chairman Galloway. I am Jennifer Berrier, the Deputy
16 Secretary for Safety and Labor Management Relations. I
17 began my career with the Department 12 years ago, serving
18 as legal counsel with the Department, and I also served as
19 legal counsel for the Bureau of Labor Law Compliance, which
20 is the bureau responsible for administering and enforcing
21 the Pennsylvania Minimum Wage Act.

22 As Deputy Secretary, I have the valuable
23 experience of previously providing guidance to the
24 Department on minimum wage and overtime issues and bringing
25 legal action against employers for violations. Over the

1 years, I have become very familiar with the exemptions that
2 are the subject of this discussion and can attest firsthand
3 that misapplication of the EAP exemptions, also known as
4 the white-collar exemptions, is one of the most common
5 overtime violations the Department encounters.

6 The executive, administrative, and executive,
7 administrative, and professional exemptions relieve
8 employers from paying minimum wage and overtime to
9 qualifying employees. To qualify, an employee must be paid
10 on a salary basis, and that salary must meet a threshold.
11 And also, there's another test that the employee must meet,
12 and that is the duties test that are specified in the
13 regulations. For the executive exemption, the duties
14 relate to managing employees. For the administrative
15 exemption, the duties are office work that directly relate
16 to the general operations of the business, not the
17 production, and it also relates to exercising independent
18 judgment in that role. For the professional exemption, the
19 duties relate to work requiring advanced knowledge of work
20 or work that is original and creative in nature.

21 It is important to understand that the original
22 thought behind the white-collar exemptions was based on the
23 belief that exempt workers earned salaries well above
24 minimum wage and enjoy other privileges that set them apart
25 from workers entitled to overtime. Exempt workers

1 typically have above-average fringe benefits, a better
2 hard-bargaining position for work time and pay, and more
3 opportunities for advancement.

4 The white-collar exemptions were set forth in
5 statute by the Legislature and intended to be used for
6 higher-salaried employees. Over the years, the spirit
7 behind these exemptions eroded as the salary test became
8 outdated, deficient, and ineffective. More employers began
9 to claim these exemptions for lower-waged employees while
10 ignoring the duties test. Increasing the salary threshold
11 not only helps to ensure that nonexempt workers receive
12 minimum wage and overtime but also helps employers to
13 identify which workers are truly covered by the white-
14 collar exemptions so that they can avoid costly litigation,
15 especially since the courts have often reiterated that the
16 Minimum Wage Act is aimed at protecting workers. It is the
17 Department's duty to reinstate the salary threshold portion
18 of this test so that employers have clearer guidance on
19 applying these exemptions.

20 I've had the opportunity to review many of the
21 public comments, and a prevailing theme was the
22 misunderstandings concerning the white-collar exemptions.
23 Just because a worker is paid a salary by his employer does
24 not mean that worker qualifies for these exemptions from
25 overtime. This appears to be a shared belief among

1 employers and workers. The main issue highlighted by the
2 public comments is the misclassification of workers as
3 exempt when they do not perform either executive,
4 administrative, or professional duties.

5 Job titles do not determine a worker's exempt
6 status. For example, an administrative assistant does not
7 necessarily meet the duties test of the administrative
8 exemption. This is a common mistake I came across in my
9 prior life as the Department's legal counsel. In fact, in
10 most cases, administrative assistants do not customarily
11 and regularly exercise discretion and independent judgment
12 with respect to matters of significance to the business.
13 The same is true for receptionist, bookkeepers, and other
14 workers who perform clerical duties. These are just some
15 examples that I've come across.

16 Other common misclassifications of the white-
17 collar exemptions include assistant managers, human
18 services advocates, caseworkers, case managers, inspectors,
19 LPNs, and CNAs. Again, the public comments lead me to
20 believe that these professions are being misclassified as
21 exempt when these workers do not meet the duties test of
22 the exemptions.

23 Admittedly, the Department's outreach and
24 educational materials are lacking, and that is something
25 the Department will work on remedying. The Department is

1 considering publishing materials like those published by
2 the Federal Department of Labor such as fact sheets and
3 PowerPoint presentations. They will also consider
4 promoting this material through social media or by
5 providing educational presentations to associations and
6 trade groups.

7 I recently had the privilege of meeting a
8 longtime employee of the Federal Department of Labor's Wage
9 and Hour Division who frequently traveled the region to
10 provide education on minimum wage and overtime issues, and
11 we discussed how the white-collar exemptions are commonly
12 misapplied under the Federal standard, too, which is why
13 the Federal Department of Labor attempted to raise its
14 threshold. The threshold ensures the purpose of the white-
15 collar exemptions is being effectuated.

16 I ventured to ask the DOL representative about
17 the status of their regulatory attempt to raise the
18 threshold, and it was indicated that there's some certainty
19 as to when the new proposal will be submitted even though
20 it is listed on the agenda for 2019.

21 More recently, I found that the Federal DOL is
22 now conducting listening sessions throughout the month of
23 September, more than a year after it requested information
24 from the public on this issue. Pennsylvania cannot wait
25 for the Federal Government to act on raising the national

1 salary threshold for the white-collar exemptions. There is
2 a reason that Pennsylvania enacted the Minimum Wage Act in
3 addition to the Federal Government's enactment of the
4 Federal Fair Labor Standards Act, and that was to provide
5 further protection for Pennsylvania's workers. Also,
6 Pennsylvania's law was meant to cover employees and
7 employees who are not covered under the Federal Fair Labor
8 Standards Act.

9 Thank you for encouraging this discussion with
10 some of our employer stakeholder groups and bringing this
11 important topic to the forefront. The Department looks
12 forward to reviewing constructive criticism on its proposed
13 regulations so that it can evaluate the best possible
14 course of action moving forward for hardworking
15 Pennsylvanians.

16 MAJORITY CHAIRMAN KAUFFMAN: Thank you very much.
17 And we'll move on to questions and answers. And first on
18 that list is Representative Keller.

19 REPRESENTATIVE KELLER: Thank you, Mr. Chairman.
20 And thank you for your testimony.

21 Just one question. I know we're talking about
22 raising a standard that was set in 1977 from what I've
23 gotten in the testimony, and while we're evaluating this,
24 Department of Labor also deals with prevailing wage
25 thresholds and so forth for projects, is that correct? Has

1 the Wolf Administration considered increasing the threshold
2 of projects that are exempt from prevailing wage that was
3 set in 1963? Are there any plans to look at that also
4 while we're looking at thresholds?

5 SECRETARY OLEKSIAK: None that I'm aware of.

6 REPRESENTATIVE KELLER: Because that would be a
7 huge benefit to our local municipalities and governmental
8 entities to get more done with dollars. I would just
9 encourage us -- and maybe we can talk with the Governor --
10 that along with this, as long as we're looking at doing
11 these things, I think it would be fair to look at the
12 prevailing wage threshold that was set in 1963, so I hope I
13 can get a commitment out of Department of Labor to work
14 with me on that, too.

15 SECRETARY OLEKSIAK: We're ready to work with the
16 Committee on that issue and the issue we're here about
17 today and any other concerns that the Committee may has.

18 REPRESENTATIVE KELLER: Thank you.

19 MAJORITY CHAIRMAN KAUFFMAN: Representative
20 Galloway.

21 DEMOCRATIC CHAIRMAN GALLOWAY: Thank you,
22 Mr. Chairman. And thank you, Secretary, for being here.
23 Thank you very much, really appreciate the testimony.

24 I got a question about the process,
25 misclassification. You know, somebody's out there, they're

1 misclassified, and they want to file a complaint. What is
2 the process? Where is it? Is it documented? Is there
3 some sort of process to go through? Thank you. I
4 appreciate it.

5 MS. BERRIER: Sure. The Department's website
6 actually has a fillable PDF that you can directly submit on
7 its website, and it'll be transferred to the Bureau of
8 Labor Law Compliance. And depending on where the
9 complainant is located, it will go to one of the Bureau's
10 five district offices to be assigned to an investigator.

11 DEMOCRATIC CHAIRMAN GALLOWAY: So, you know, what
12 happens then? It goes to a district office --

13 MS. BERRIER: Right. So it goes to a district
14 office. It's assigned to an investigator. Then, an
15 investigator will contact the employee, find out, you know,
16 additional information concerning their claims, and then --

17 DEMOCRATIC CHAIRMAN GALLOWAY: Okay. So they
18 will reach out to the employee?

19 MS. BERRIER: Correct. And then after that, they
20 will reach out to the employer and audit the employer's
21 payroll records for the previous two years for all
22 employees.

23 DEMOCRATIC CHAIRMAN GALLOWAY: I guess there's
24 one of two outcomes, right? There can only be one of two.
25 What happens if they are found to be misclassified? What

1 is the enforcement?

2 MS. BERRIER: Okay. So our enforcement's a
3 little bit different than the Federal Fair Labor Standards
4 Act. The Federal Fair Labor Standards Act provides for
5 penalties and all sorts of damages, but the Pennsylvania
6 Minimum Wage Act provides for the employees to be
7 compensated the wages that they're due under the law. So
8 that the Bureau does is tries to make the employee whole
9 again.

10 DEMOCRATIC CHAIRMAN GALLOWAY: When you say
11 bureau --

12 MS. BERRIER: The Bureau of Labor Law Compliance.

13 DEMOCRATIC CHAIRMAN GALLOWAY: And you have the
14 authority to do that?

15 MS. BERRIER: Yes.

16 DEMOCRATIC CHAIRMAN GALLOWAY: Okay. All right.
17 Thank you.

18 MAJORITY CHAIRMAN KAUFFMAN: And before I move
19 forward, I neglected to note members who had entered the
20 room since roll call, just wanted to make sure
21 Representative Cephas, Representative Delozier, and
22 Representative Donatucci are listed on the roll.

23 And moving on with questions, we have
24 Representative Dush.

25 REPRESENTATIVE DUSH: Thank you, Chairman.

1 I'd first like to get some clarification. I want
2 to use an example. I have a small town called Summerville
3 that has about a population of 500-and-some people in it
4 that the median family household income is about \$30,000
5 and \$19,000 per capita income. They have a public library
6 that the head librarian, as well as the people who work
7 there otherwise, they get paid, but they put in far more
8 hours. And mostly it's on a volunteer basis. They're
9 there but they know what they're going to get paid and
10 they're there much longer because they're devoted. It's a
11 small town. They're devoted to make sure that those kids
12 can have access to reading materials, as well as teaching
13 them how to do research projects, that sort of thing. And
14 they can't afford not to have some kind of an income with
15 the time that they're expending, but at the same time, this
16 type of a threshold could really seriously jeopardize them.
17 How does the Department address something like that?

18 MS. BERRIER: If you're referring to a
19 governmental entity, governmental entities are actually
20 exempt under the Pennsylvania Minimum Wage Act.

21 REPRESENTATIVE DUSH: This is a free library.

22 MS. BERRIER: This is a free library.

23 REPRESENTATIVE DUSH: The borough does provide
24 some money to them, but their library board sets the
25 salaries. How do you prevent that library from shutting

1 down with a rule like this?

2 MS. BERRIER: Okay. Well, I'd first have some
3 questions as to what employees are being paid salaries
4 because I kind of have a concern with that, but I think
5 that the library would have to adjust its business
6 practices. You know, this threshold is not a mandatory
7 threshold, so employers have many choices as to what avenue
8 they can take or how they can adjust their business
9 practices to account for this new regulation.

10 REPRESENTATIVE DUSH: Well, my understanding is
11 the reason that they're salaried is because they can't
12 afford an hourly rate for what these people put in. And
13 like I said, the people stay there longer than the library
14 board could ever afford to pay them for what they're worth.
15 They contribute far more than what they're worth, but
16 they're doing it because they are people who care about
17 those children and care about their community. Again, they
18 can't afford not to have something coming in, but by the
19 same token, they're contributing much more. And I think
20 this has the possibility of severely crippling or if not
21 shutting down this library.

22 SECRETARY OLEKSIAK: Well, Representative, that
23 clearly is not the intent of the changes to make that
24 happen. And based on my previous life as an educator, I
25 can certainly understand people who put in some extra time

1 and do the things that they need to do for their community.
2 What the intent of this act is is to help rebuild the
3 middle class. We have too many employees in Pennsylvania
4 that have not been part of the recovery that we have seen
5 here in Pennsylvania and nationwide. It's important that
6 -- again, in the act there are a lot of different ways that
7 businesses can look at how they can make the adjustments
8 they need to make. It doesn't mean that if, you know,
9 somebody -- you know, there's the duties test, there's the
10 changes, so businesses can find alternatives to how they
11 want to conduct their business or they can follow, you
12 know, the letter of the recommendations. So there are
13 options that they will have.

14 REPRESENTATIVE DUSH: Well, they've been
15 examining options for quite some time, and the role model
16 they came up with had to do with basically what they could
17 afford to do. And you said about the intention and the law
18 we deal with most often in this House and in this body is
19 the law of unintended consequences. And I have a feeling
20 that in this rush to get this thing through, they are going
21 to be a lot of unintended consequences that could severely
22 impact organizations like the Summerville Library.

23 SECRETARY OLEKSIAK: And I would respond that
24 there have been many, many unintended consequences of not
25 changing the act in 40 years. Our middle class is

1 struggling. Employees across the Commonwealth, many of
2 them particularly at lower-end salary occupations, have
3 just not kept up. And that is the intent of the
4 regulation.

5 REPRESENTATIVE DUSH: Well, my point is I think
6 we're in a bit of a rush here, and we're 48 hours from the
7 Federal Government beginning their listening sessions on
8 how it would go, and, like I said, I'm very concerned.
9 This is one thing that -- this is just one. I have a
10 feeling there are going to be more. So I would yield back,
11 Mr. Chairman.

12 MAJORITY CHAIRMAN KAUFFMAN: Thank you. Thank
13 you. Representative Neilson?

14 REPRESENTATIVE NEILSON: Thank you, Mr. Chairman.

15 Madam Secretary, thank you for pointing out about
16 the that titles given to people don't actually explain what
17 actually their duties are. In today's world, these kids
18 come out of colleges and all of a sudden they're Vice
19 President of this. And said, "Well, what do you do?" He
20 says, "Oh, I'm just selling for him. He sends me out to"
21 -- I'm like, "You're a Vice President?" And he says, "Yes,
22 we give it all." And this way, they're on that salary.

23 As far as rushing, I wanted to point out it's
24 been four decades, it's been 40 years. I don't think we're
25 rushing anything. I think we actually dragged our feet on

1 this.

2 But since we're being recorded, Mr. Secretary,
3 maybe you can let the public know because I didn't think we
4 actually spelled out the process of this rule change
5 because I don't think anybody ever addressed that. And
6 this being on TV, if someone watches it, they'll just
7 think, okay, here we go, we're passing another thing here.
8 There's a process that you have to go through to change
9 these regulations. Maybe one or two of you can explain
10 that, the process that we're going through now. We talked
11 about the thousands of letters that you received, and 60
12 percent were in favor and stuff like that, just an overall
13 process if you could. And the Chairman, since we started a
14 couple minutes late, Chairman, that's all I'm going to ask
15 here.

16 SECRETARY OLEKSIAK: Thank you, Representative
17 Neilson. Actually, we began receiving input on these
18 regulations after our Minimum Wage Advisory Board since
19 this is part of the Minimum Wage Act. It was discussed
20 there. That's a board made up of employees, employers,
21 labor, business, citizens, and they provided input on it.
22 It then went to -- we also received input, as I mentioned
23 before, the Governor's Middle Class Task Force. That was
24 composed of leaders of labor, business, higher ed, and
25 several Cabinet Members, and we toured around the State as

1 part of that Middle Class Task Force, at least eight
2 different areas of the State -- maybe there are a few that
3 I missed; there may have been more -- getting input from
4 citizens in those communities about the concerns they had.
5 And one of the concerns that came up often was minimum wage
6 and, you know, there's an obvious connection here with the
7 overtime. We then submitted the regulations based on the
8 input that we had and conversations at the Department.
9 They were submitted and open and available for public
10 comment, and that's where we received over 1,000 public
11 comments and, as you mentioned, 60 percent positive.

12 The next step is they will go to IRRC for
13 independent regulatory review, and based on that, we'll
14 look again at what we hear from IRRC, see if there's any
15 adjustments we need to make and open it up to hear from
16 other folks. And we have opportunities like this hearing
17 where we will be hearing later on from employers. So it
18 has been a -- I agree; it has not been a process that we
19 have rushed into. The comment period was extended from 30
20 days to 60 days. There was some request to go for 90 days,
21 but IRRC has never gone beyond 60 days and that's where it
22 was kept. So we did extend the comment period. But I
23 think we've done all we need to do thus far to get the
24 public comment that we feel is necessary.

25 MAJORITY CHAIRMAN KAUFFMAN: Thank you very much.

1 Representative Klunk?

2 REPRESENTATIVE KLUNK: Thank you, Mr. Chairman,
3 and thank you for joining us today.

4 First, quick question to follow up on
5 Representative Neilson, he had mentioned about the 60
6 percent of letters were in favor of it. Do you know how
7 many of those letters were from government employees so
8 State, Federal, you know, local employees, municipal
9 employees? Because it's my understanding, you know, this
10 regulation wouldn't impact them, so, you know, their
11 comments, while important, you know, it wouldn't directly
12 impact them and their work and their paycheck.

13 MS. BERRIER: Actually, to my knowledge, we
14 haven't received any public comments from public employees,
15 but we have received public comments from public employers.

16 REPRESENTATIVE KLUNK: Okay. Thank you. And
17 then my question really goes to, you know, why are we doing
18 this now? And I say that because last week we sat in a
19 hearing, the York County Delegation. We hosted a hearing
20 on the Trump tax cuts. And we heard from employers about,
21 you know, what the economy is doing right now and how
22 employees are receiving, you know, more in their paycheck.
23 They're receiving better benefits because of these Trump
24 tax cuts. And the Department of Labor at the very same
25 time at the Federal level is also undergoing their own

1 rulemaking.

2 So one of my concerns is, you know, we're seeing
3 all of this at the Federal level, the economy is doing very
4 well right now, and the Department of Labor is taking a
5 look at this. The task force was completed -- that study
6 was completed last year before the impact of, you know, the
7 Trump tax cuts and a lot of, you know, these positions that
8 we're talking about could be impacted positively by these
9 tax cuts.

10 And what I see happening is if Pennsylvania steps
11 out there and really goes forward with this rulemaking,
12 we're going to have a situation where you have the Federal
13 Government proposing rules, the Department of Labor here in
14 Pennsylvania imposing rules, and then our employers are
15 going to have to, you know, figure out the mix between
16 Federal and State regulation. And that burden right now
17 I'm sure is going to be -- we're going to hear from the
18 employer panel later. It's going to be very, very, very
19 costly to comply with. So, you know, why do we need to do
20 this right now? Why aren't we saying pause, let's see what
21 happens at the Federal level and then really try to make
22 sure we get this right for our employers and employees
23 across the State?

24 SECRETARY OLEKSIAK: Thank you for the question.
25 The Administration feels that 40 years is pause enough.

1 There have always been differences between the Federal law
2 and the State law, and this would be just a continuation of
3 any differences that may occur. And we know that the
4 Federal process has been delayed for quite some time and is
5 beginning again, but we have no idea of when and if that
6 will be resolved.

7 As far as the tax cuts go, I think if you look
8 historically, wages have remained -- even before the tax
9 cut, wages have not grown significantly, if at all, over
10 the past few decades. They've been stagnant. They remain
11 stagnant at about 2.7 percent a year growth. There are a
12 lot of independent looks at recent tax cuts, and I have
13 some information here from the Center for Budget and Policy
14 Priorities. Seventy percent of the benefits of the
15 legislation will benefit the top fifth of wage earnings,
16 including over \$17 billion in tax savings, nearly \$700
17 billion in stock buy-backs. Brookings Institute had
18 similar findings, that it would benefit high-income
19 households.

20 The economy as a whole, big picture, is doing
21 better, but when you go a few levels down and you look at
22 unemployment rates, for example, among minorities, people
23 with disabilities, women, those returning from
24 incarceration, those rates are much higher, ESL,
25 immigrants, those rates are much higher, and they are not

1 part of that recovery. And we believe that this change
2 that has been 40 years is long overdue to help bring those
3 people into the recovery. And that's why they're being
4 proposed now.

5 MS. BERRIER: Also, I'd like to follow up on what
6 the Secretary said. I think it's also important to
7 remember that the Federal law does not cover all employers
8 and employees. The Pennsylvania Minimum Wage Act is kind
9 of like a catchall for all employers and employees. And I
10 think it's only fair that all Pennsylvanians be protected
11 equally.

12 MAJORITY CHAIRMAN KAUFFMAN: Thank you.
13 Representative Krueger-Braneky.

14 REPRESENTATIVE KRUEGER-BRANEKY: Thank you,
15 Mr. Chairman.

16 Thank you, Mr. Secretary and Deputy Secretary,
17 for joining us here today. I want to say, first of all,
18 thank you for hearing from stakeholders and agreeing to
19 extend the public comment period. I think the fact that
20 we've heard from almost 1,000 people on this proposed
21 regulatory change is very important. And I know that
22 you've said previously that over 60 percent of the comments
23 were positive or in favor of the regulatory changes that
24 have been proposed by the Administration. Can you give us
25 some themes or sort of top lines on what the public

1 comments said? I don't know that many folks here have a
2 chance to read all 1,000 comments.

3 SECRETARY OLEKSIAK: Okay. Just some of the
4 highlights that we've -- and I'll ask Secretary Berrier to
5 jump in as well. But some folks who were told that they
6 would get a raise when the Federal rules changed, when the
7 Federal rules didn't change, no raise. Some of what
8 Representative Neilson referenced before were people that
9 are labeled as a, you know, Vice President or a Manager
10 when their duties are the same as the hourly employees but,
11 you know, being within that label exempts them. I guess
12 for me they're the two major themes that jumped out. And
13 the misclassification that we were discovering, most of it
14 unintentional I believe as people said, well, we thought
15 nobody salaried was allowed to get overtime.

16 I'll turn it over to you.

17 MS. BERRIER: No, I think that pretty much covers
18 it. I think a lot of the comments we've received kind of
19 reinforced the theme that if you're -- the misconception
20 that if you're paid a salary, you're not entitled to
21 overtime, and if you're paid a salary, you're automatically
22 exempt from, you know, overtime and minimum wage, which is
23 definitely not the case under the act or the regulations.

24 REPRESENTATIVE KRUEGER-BRANEKY: And I appreciate
25 you taking initiative to start to explore this issue. I

1 was born in 1977, and I can tell you that the cost of
2 living and wages and inflation and everything else has
3 changed significantly in the past 41 years.

4 My last question, I know that the next panel will
5 include a lot of testimony from nonprofit service
6 providers. What do you think the impact will be on
7 nonprofit service providers, especially folks who care for
8 seniors or children or folks with disabilities?

9 MS. BERRIER: So this is actually a topic that's
10 very near and dear to my heart. I have a brother who is a
11 severely autistic, unable to perform basic life functions,
12 and he is the recipient of many of these services. So I
13 was very interested in the public comments we received from
14 the agencies that provide these types of services. And we
15 reached out to DHS to kind of get an explanation of how
16 this would work. And it was our understanding that many of
17 these employees are hourly employees, and if they're not,
18 they probably should be hourly employees because they don't
19 meet the duties test of the exemption. However, you know,
20 we are willing to work with nonprofits and with the
21 Legislature also to try to get the funding that would be
22 necessary to make up any kind of difference or loss that
23 they would experience due to this threshold increase.

24 SECRETARY OLEKSIAK: And we have talked to DHS as
25 well.

1 MS. BERRIER: Right.

2 REPRESENTATIVE KRUEGER-BRANEKY: Okay. Thank you
3 so much.

4 MAJORITY CHAIRMAN KAUFFMAN: Thank you.

5 Representative Nelson.

6 REPRESENTATIVE NELSON: Thank you, Mr. Chairman,
7 and thank you for your testimony today.

8 I recognize the importance of, hey, we're taking
9 a look at a 40-year window. And I share some of the
10 Representatives' concern that we might jump out ahead of a
11 Federal rulemaking that may create additional gaps between
12 the two.

13 The first part of my question would be if you
14 could touch on how the Department determined these new
15 increases, you know, because it looks like, you know,
16 first, it would maybe be about \$30,000 assuming, you know,
17 50 weeks a year. Then it goes to 38, then it goes to like
18 \$46,000, which is really impacting a large portion of the
19 workforce, and if that is an adjustment of an equal cost of
20 living, the second side of it is touching on that
21 unintended consequence.

22 You know, in the report when they talk about .1
23 percent of payroll, if on one hand we're going to be
24 reestablishing a middle class because of all the extra work
25 or pay that workers are going to be getting, it seems like

1 the financial impact would be greater, that if employers
2 are going to be paying more to be recreating this middle
3 class, that the impact would be greater than that 1
4 percent.

5 My concern is under that unintended consequences,
6 you know, from my perspective one of the downsides of the
7 national health care was that 32-hour mark. And so what it
8 caused to a lot of workers was they lost time that they
9 were allowed to work and now they had to work two jobs in
10 order to achieve that same wage. So if an employer in an
11 area where we are hurting to find workers now has an
12 employee that can't go above a new government-established
13 threshold, this might also have a worse effect on the
14 employees themselves, you know, part of that unintended --
15 so I know it's a two-part question. It just seems like
16 this is a much bigger dollar amount, and the steps from the
17 salary increase is that parallel to cost of living over
18 this time period.

19 SECRETARY OLEKSIAK: Well, I'll get it started.
20 Then I'll refer to Secretary Berrier. These 1977
21 regulations covered 60 percent of salaried employees.
22 Currently, we cover 7 percent with those numbers that are
23 there. The numbers that have been recommended, when they
24 get to the end of that three years, the plan is to find
25 that 30th percentile, so we're covering about 30 percent of

1 workers, so it still does not do what the original
2 regulations -- the current regulations did.

3 We understand what you're saying about the
4 unintended consequences, but before I do that, can you talk
5 more about how we got those figures?

6 MS. BERRIER: Sure. We relied on the Bureau of
7 Labor Statistics on the census statistics for the Northeast
8 region. And I think that what we tried to do was tried to
9 kind of make it fit with what the Federal proposal did as
10 well. They used the 40th percentile of the South region,
11 so that's kind of how we came up with our threshold. And
12 we wanted to keep pace with the economy as well, which is
13 why we have it adjusted or tied in with the adjustment with
14 the census.

15 SECRETARY OLEKSIAK: One thing I'll add to answer
16 I think another part of your question -- and let me know if
17 this is doing that -- that 32-hour piece you talked about,
18 there was no requirement for businesses to do that. That
19 was a decision that businesses made. So they could have
20 raised salaries, they could have kept the hours where they
21 were, they could have hired more people. There's a lot of
22 different options that were available other than cutting
23 people's hours, and that would be the same under this act.

24 REPRESENTATIVE NELSON: Well, I think that kind
25 of underscores my concern for jumping ahead of the Federal

1 because what actually happened was it hurt workers because
2 now they had to have two jobs in order to achieve that same
3 minimum earnings. And my concern is that an employer may
4 say -- or, you know, hey, we've got to make sure you don't
5 go over this threshold because we just can't afford to
6 continue to do this, and so it may hurt workers.

7 I understand the direction that you're going, and
8 a great example of explaining the number of population
9 you're trying to capture. It's just from an employer
10 mindset, I'm thinking, wow, this could really create an
11 additional ceiling that the workers -- if you're a factory
12 worker, hey, boom, you're done at this point and somebody
13 else is going to be coming in here.

14 MS. BERRIER: With that example, sir, factory
15 workers would not fall under this exemption since that is
16 production work. These exemptions cover white-collar work.
17 So I think we have to make sure that we're addressing the
18 appropriate population when we're discussing this topic.

19 MAJORITY CHAIRMAN KAUFFMAN: Thank you very much.

20 Moving on to Representative Mullery, and I'm
21 going to remind folks we are officially behind schedule,
22 and so those of you who are asking questions, I'm here all
23 day, so you can continue to ask questions, but we are
24 behind schedule.

25 REPRESENTATIVE MULLERY: Thank you, Mr. Chairman.

1 Briefly, I have some questions about the investigation and
2 enforcement. You indicated that it is assigned to a
3 district office and then an investigator within the
4 district office. How many district offices are there? How
5 many investigators are there?

6 MS. BERRIER: So, currently, we have five
7 district offices, and unfortunately, due to budget cuts, we
8 have 27 investigators at this point. But we'd happily take
9 more money to hire more investigators and provide more
10 enforcement for the act.

11 REPRESENTATIVE MULLERY: Unfortunately, I figured
12 that your answers were going to be along those lines. If
13 you only have 27 investigators, what type of caseload are
14 each of those looking at?

15 MS. BERRIER: Oh, they have voluminous caseloads
16 because they also cover 12 other laws in addition to the
17 Minimum Wage Act.

18 REPRESENTATIVE MULLERY: If you could for us
19 could you give us an analysis. How has that staff changed,
20 let's say, over the last 10 years? I mean, have you lost
21 people and not replaced them? Is --

22 MS. BERRIER: We have. We have lost people
23 naturally through attrition and, you know, it's been
24 difficult with this economy and trying to find qualified
25 people for the salary that we're offering.

1 REPRESENTATIVE MULLERY: Briefly on the
2 investigation part, you indicated that when an investigator
3 receives a complaint, goes into the employer's facility and
4 conducts his review, he reviews the records of all
5 employees.

6 MS. BERRIER: Correct.

7 REPRESENTATIVE MULLERY: When that occurs, are
8 you able to give us any statistics, raw data as to how
9 often they find violations with noncomplainers for lack of
10 a better -- non-complainants?

11 MS. BERRIER: Right. I don't actually have
12 specific statistics with regards to that, but I could try
13 to get you those statistics. What I can tell you is that
14 since 2015 we have had 1,500 complaints, and the Bureau has
15 collected \$6 million in wages for workers in Pennsylvania.

16 REPRESENTATIVE MULLERY: And finally, if I
17 understood you correctly, there is no penalty. It is
18 strictly a reimbursement of past due and owing and then
19 what, a mandate that the payroll going forward meets the
20 criteria?

21 MS. BERRIER: I don't know if we have the
22 authority to mandate that, you know, payroll meets the
23 criteria, but I think what's most important is to educate
24 the employer to make sure that they understand the rules
25 and the regulations by which they need to apply under the

1 Minimum Wage Act, which is what we try to do.

2 REPRESENTATIVE MULLERY: Last question, I work
3 for a company, I feel that I'm being not paid adequately, I
4 make the phone call, the investigator comes in and says
5 you're absolutely right, I get my money, I get my
6 reimbursement, and I'm an at-will employee and two weeks
7 later and I'm terminated, and I am replaced by somebody who
8 they are paying what I was getting paid before I called and
9 made the complaint. In that instance, is there any penalty
10 or punishment for the employer? And that's my last
11 question. Thank you, Mr. Chairman.

12 MS. BERRIER: I'd have to look into that. I
13 don't believe the Minimum Wage Act has any whistleblower
14 protection, but I would have to look into that. And also,
15 I forgot to mention earlier that I do want to get out
16 there, if an employee disagrees with the Bureau's
17 determination or finding an underpayment under the act, the
18 employer can appeal the Department's determination.

19 MAJORITY CHAIRMAN KAUFFMAN: Representative
20 Delozier.

21 REPRESENTATIVE DELOZIER: Thank you.

22 Just to clarify, you were talking about
23 percentages you just mentioned. What's the average pay in
24 Pennsylvania right now, the average salary?

25 MS. BERRIER: I don't know the median right off

1 the top of my head, but I could get that for you.

2 REPRESENTATIVE DELOZIER: Okay. And the reason I
3 ask this is the ability to say -- well, can you explain a
4 little bit more. You were talking about the 6 percent and
5 you're trying to go up to 30 percent, but my understanding
6 for the average salary is less than what you're proposing.
7 So I'm just trying to figure out the percentages that
8 you're -- and I'm assuming it's going to go down to the
9 fact of who's included in this worker group that you're
10 talking about, but I guess -- do you understand what I'm
11 saying in the sense that you're saying we're only at 6
12 percent but these salaries that you're trying to increase
13 it to, to me look like it's going to go over the average
14 salary for Pennsylvania as a whole, so how are we only
15 going to be at 30 percent or that --

16 MS. BERRIER: Based on the BLS, the Bureau of
17 Labor Statistics data, that \$47,000 annual salary is the
18 30th percentile, so based on those statistics, I would have
19 to assume that the median would be higher than the \$47,000.

20 REPRESENTATIVE DELOZIER: Okay. Well, I'd be
21 interested in that number because my understanding was it
22 was lower than that, but that's fine.

23 And the second question that I have is you've
24 determined the increases, the three stages of the
25 increases. One of the biggest issues that is hanging out

1 there is the fact that, especially with the last one, in
2 the two years after the effective date of 9/21, the Federal
3 court case that has stayed that level when they tried to do
4 it at the Federal level, so why would we try to do
5 something that's already been stayed in the Federal courts?

6 MS. BERRIER: Sure. Yes. So the Texas District
7 Court struck down the Federal proposal, but that's also a
8 Federal court interpreting Federal law, and I think it's
9 important for us to move forward with Pennsylvania law and,
10 you know, protect Pennsylvania citizens.

11 REPRESENTATIVE DELOZIER: But wouldn't that be in
12 direct -- I mean, there'd be precedent set as to the fact
13 that this was not --

14 MS. BERRIER: No. No, actually, the Federal --
15 there would be for another Federal attempt, but the States
16 are not preempted from moving forward under their own
17 individual law.

18 REPRESENTATIVE DELOZIER: Okay. So even though
19 the Federal court said this is unlawful, the State can go
20 ahead and do it anyway?

21 MS. BERRIER: Well, it's a different law, right.

22 REPRESENTATIVE DELOZIER: Okay. I just think
23 that that would be kind of an uphill battle just when you
24 come to the arguments that were already made for the level
25 because they were talking about the fact that the tests

1 would be meaningless if it was at that level of pay.

2 MS. BERRIER: At that region in Texas, I mean,
3 because the -- and I'm not by any means very well-versed in
4 the Federal arena, but, you know, Federal courts --

5 REPRESENTATIVE DELOZIER: I'm just trying to
6 clarify the differences --

7 MS. BERRIER: No, that's fine. Federal courts
8 tend to hear what's in their region, so the Federal
9 district court heard appeals from, you know, whoever
10 appealed in the Texas region, so that's a regional court.
11 Regardless, it doesn't matter because this is State law and
12 State courts interpret State law, whereas Federal law is
13 interpreted by the Federal courts.

14 REPRESENTATIVE DELOZIER: Learning from other
15 States has been kind of how we've gone along, but that was
16 one of my -- okay. And I'd be interesting knowing that
17 average and understanding those percentages because the
18 math in my head, so thank you.

19 MS. BERRIER: Oh, and since you mentioned other
20 States, I just wanted to mention that also New York is
21 planning to have a salary threshold higher than the one
22 that we're proposing by 2020.

23 REPRESENTATIVE DELOZIER: Okay. And how far
24 along are they? Do you know?

25 MS. BERRIER: I'm not quite sure, but they're

1 already in the process.

2 REPRESENTATIVE DELOZIER: Okay. Thank you.

3 MAJORITY CHAIRMAN KAUFFMAN: Representative
4 Miller.

5 REPRESENTATIVE MILLER: Thank you, Mr. Chairman.

6 I'm sorry, and just so I can be a little clearer,
7 too, when you said 30th percentile, maybe just so I can get
8 it, if the broadest reach of your proposal were to be
9 enacted, what percentage of Pennsylvanians would be
10 protected by it?

11 SECRETARY OLEKSIAK: We know the number is about
12 460,000 people.

13 REPRESENTATIVE MILLER: Okay.

14 SECRETARY OLEKSIAK: So that's -- right now,
15 there are over 6 million people working in Pennsylvania, so
16 you can kind of have to do the math, but it's, you know, a
17 relatively small percentage.

18 REPRESENTATIVE MILLER: Okay. So if I get it
19 straight then, about 460,000 Pennsylvanians currently are
20 working in thresholds, some as low as around \$24,000 a
21 year, as salary employees with seemingly very little
22 limitations as to how many hours they would work beyond 40
23 hours. Am I correct? All right. So we're saying that
24 somebody's making \$24,000 a year, a poverty wage if you
25 have two kids, right? Somebody's making \$24,000 a year in

1 Pennsylvania, maybe doing 12 hours above the 40-hour
2 threshold, and that's allowable now?

3 MS. BERRIER: If they meet the criteria of
4 meeting the minimum --

5 REPRESENTATIVE MILLER: Yes.

6 MS. BERRIER: -- salary threshold and also the
7 duties test, then that is permissible.

8 REPRESENTATIVE MILLER: Okay. So I guess what
9 gets me a little bit -- and I think I would agree a little
10 bit there with the Secretary's comments. Listen, my belief
11 is basically my lifetime -- I'm a little bit older than
12 Leanne, but my lifetime here, the standard of living for
13 the middle class has barely -- depending on any calculation
14 -- barely moved in my lifetime, in my lifetime. And when
15 you go into the numbers of the middle class or what used to
16 be the middle class with it, it's actually worse-
17 performing. So I'm ecstatic to see some of the numbers of
18 some people's 401(k)'s and everything else are working for
19 it. In the meantime, for 40-plus years of my life, this is
20 happening in Pennsylvania where somebody's working for
21 \$24,000 a year and being told, well, hey, sorry, we're
22 going to cut you out because we classify you differently.
23 You have no protection. Good luck with it.

24 But \$24,000, don't worry because the Federal
25 Government or the State Government will then pick up what

1 we're not paying you. So we're going to dump the fact that
2 that's not a family-sustaining job, a full-time family-
3 sustaining job. It's not that. You're working more than
4 40 hours a week, and by the way, we're going to be sure
5 that the public will pick up the cost because you can't
6 afford to live without some assistance because you might
7 need help with childcare or something else that the
8 government will pick up because the industry won't pay for
9 it.

10 It amazes me the amount of these classified jobs
11 that end up being things that the public ends up paying for
12 because we seemingly accept from industry, well, hey, it's
13 okay for you to pay somebody \$24,000 a year and we'll pick
14 up the remaining of the tab to support the family. If
15 they're working 40 hours a week, if they're working for
16 \$24,000 a year, anything above 40 hours a week that they're
17 not getting paid for is abuse. It's abuse of that
18 individual. That's it. And the answer can't be, well,
19 hey, here's our problem, we have sectors of our economy
20 that are basically abuse-funded, that, hey, we structured
21 it so yes, please, public sector, pay for these people's
22 health care because we just can't do it. We're dumping it
23 on you. The answer can't be we'll create more sectors of
24 abuse or allow them to foster. The middle class isn't
25 growing, and the lower middle class is being screwed.

1 I appreciate the ranges, and Representative
2 Nelson was much more articulate than I am regarding some of
3 the higher-threshold jobs that you're qualifying, but there
4 should be no job in the State of Pennsylvania where you're
5 making less than \$35,000 a year and people are saying to
6 you, hey, you have no choice how many hours that you have
7 to work and we're not going to pay you for it. To me, it's
8 an abuse. I appreciate your effort in trying to rectify
9 it, and I strongly believe that this is something that
10 should be done.

11 Thank you for your testimony and your time, Mr.
12 Chairman.

13 SECRETARY OLEKSIAK: If I could, Representative
14 Miller, that is exactly the kind of thing we heard as part
15 of that Middle Class Task Force from the people who spoke
16 to us, not often with the same passion and intensity, but
17 their concerns were exactly what you're describing.

18 MAJORITY CHAIRMAN KAUFFMAN: Thank you very much.
19 This panel has taken up one half of today's hearing on this
20 issue, so anyone concerned about fairness, I think your
21 concerns should be allayed. And we're going to move on.

22 And the next panel --

23 SECRETARY OLEKSIAK: Thank you.

24 MAJORITY CHAIRMAN KAUFFMAN: -- I would like to
25 ask our employer panel to come forward. Joining us now to

1 provide insight into how this proposal will affect
2 employers and many of their employees, we have Kathy
3 Speaker MacNett; we have Elizabeth Hays, Director of Human
4 Resources at MHY Family Services; Meredith Bollheimer,
5 General Counsel and Vice President for Legal Affairs,
6 Mercyhurst University; Sky Fogal, President of Skirmish
7 Paintball; Leah Yaw, Senior Vice President and Chief
8 Strategy Officer of Devereux Advanced Behavioral Health;
9 and Robert McCafferty, North Country Brewing Company.

10 And I'd like to remind all of our panelists today
11 to please summarize their testimony in a five-minute
12 statement, and we'd like to leave a little bit of time for
13 questions and answers.

14 Our research analyst Shannon Walker at the end of
15 the table will give you a 30-second signal. Of course, you
16 don't need to take all five minutes because I'm sure this
17 panel can take up your time in asking questions. So we
18 will begin with Kathy Speaker MacNett and then just
19 hopefully go down the line as orderly as possible. Thank
20 you. You may proceed.

21 MS. MACNETT: Thank you, Mr. Chairman and Members
22 of the Committee.

23 I want to start with the fact that it's a
24 distinct pleasure for me to be here this morning because I
25 used to sit in John's seat many, many years ago and enjoyed

1 great relationships at that time with both labor and
2 business, and I very much appreciate being back.

3 I have the distinct pleasure today of speaking my
4 own voice, which doesn't happen very often for an attorney.
5 I am not lobbying on this issue, although I do lobby. I am
6 not lobbying this issue before the Legislature on behalf of
7 any client. The comments are my comments as a result of
8 working with the House Committee going into a legal career
9 in labor and employment law, sitting on the ADA Committee
10 and authoring a number of articles and a section of the
11 Pennsylvania book on the minimum wage. So enough about me.

12 Historically, I want the Committee Members to
13 know that you are talking about a law that started out as
14 what I call a "little" Fair Labor Standards Act, a "little"
15 FLSA. That is the only jurisdiction of this law was over
16 the smaller businesses that weren't covered by the Federal
17 law, so dividing line, Federal law on this side,
18 Pennsylvania law on this side. So Pennsylvania law could
19 do anything it wanted to cover the smaller businesses. You
20 could have accommodated your concerns about a library if
21 the library was small enough to only be under Pennsylvania
22 law. You could have done that sort of thing.

23 In 1988, after I left the Committee, the
24 Legislature made the decision to include all employers
25 under this law. And you have set up what I want to call

1 the noncompliance trap. I'm going to deviate from the
2 dollars, and I know that that's a hard sell for some
3 Members on the Committee, but I'm going to deviate a moment
4 from the dollars and go into the noncompliance strata. I
5 have no sympathy as an attorney, as a person, for people
6 who know what the minimum wage is, what the rules of the
7 game are, and violate those laws. If you're not paying
8 people \$7.25 an hour for hourly people, you got a problem.
9 And that's going to be a problem that can either be
10 reported to the Pennsylvania Department of Labor, the
11 Federal Department of Labor, or can wind up in what's
12 called a collective action or a class action in a lawsuit
13 or an individual lawsuit. So there are lots of ways to go
14 at enforcement.

15 What I call the noncompliance trap -- and I've
16 defined it at page 3 of my testimony -- is the time when
17 the employer is really trying to comply and just doesn't
18 know enough about the nuances of this law to know the
19 difference.

20 I must say that I agree with Deputy Secretary
21 Berrier when she says that there's probably a lot of
22 misclassification out there. A lot of people don't
23 understand that you cannot just pay salary and not pay
24 overtime. These are more nuances of the law that lots of
25 people still don't get in spite of the fact that the

1 Federal law's been in existence since the 1930s.

2 So now we've got this noncompliance trap set up.
3 If we adopt these levels, threshold levels as a State and
4 continue adopting them every three years under the
5 escalator clause, as the regs specify -- and I'm not
6 talking again about the dollars. I think that's a
7 legislative determination, regulatory determination that
8 needs to be made, what are the proper dollars. But if it's
9 different from the Federal, we run the risk that employers
10 trying to comply with Federal law, which is better
11 publicized, don't comply with State law and wind up in this
12 noncompliance trap.

13 So the initial levels, the 610, the 766 came
14 right out of the Federal regs that were stayed. The 921 I
15 believe is \$8 higher than the threshold which was actually
16 adopted in 2016 by the Feds before it was stayed, so you
17 have this weird idea of the different thresholds and
18 different years of implementations.

19 So now you've got listening sessions going on in
20 big cities around the country, and I don't know what comes
21 out of that. I suspect it will be lower than the
22 thresholds might have been had they continued on, but going
23 somewhat toward Representative Delozier's comment, you
24 know, how these sort out, I'm not sure because I haven't
25 seen the escalators. Nobody's seen the escalators that are

1 going to be applied. So that's going on.

2 At the same time I believe you have some
3 different percentiles. I think the State has been talking
4 about the 30th, at some point the Feds were talking about
5 the 40th percentile, so they may still go up. And then if
6 you're complying with the Pennsylvania law in good faith,
7 you may be what I call dirty under the Federal law, clean
8 under the State law but dirty under the Federal law because
9 of the noncompliance trap.

10 An example that's in my testimony -- and please,
11 please, please, I will be happy to talk to anyone
12 specifically about the fluctuating workweek, but I would
13 prefer not to describe it in great detail here because I
14 will bore you all beyond tears. It's a weird thing that's
15 allowed by Federal law to pay people on a salary, okay?
16 Federal law for years has said you can use fluctuating
17 workweeks, and under fluctuating workweek for Feds, the
18 salary covers all the time worked, and you pay an extra .5
19 percent for the overtime hours. The Feds have been doing
20 it for years. General nutrition had a case that went to
21 the Superior Court in December. Superior Court here said
22 uh-uh, can't do it, have to pay 1.5 times.

23 So under Federal law you could be paying somebody
24 making \$10 an hour \$5 for all the extra hours. If the case
25 is sustained, as it is with the Superior Court right now,

1 Pennsylvania employers and anyone doing business in
2 Pennsylvania would have to pay \$15 an hour for the overtime
3 hours. Again, if the rule is clear, you should obey it,
4 but I dislike this noncompliance where you go with a rule
5 and find out it isn't good.

6 So what can you do about it? One, my testimony
7 at footnote 18 talks about Senator Baker's bill where she
8 says do we really want to go along with the Feds or don't
9 we? Let's be clear about that. And I would ask that you
10 look at that.

11 The Feds also allow for a paid program where you
12 can voluntarily have an employer go into compliance if they
13 have misclassified someone for example. We have no similar
14 program. In my estimation, I would wait for the Feds to
15 act because it sounds like they are planning to act so we
16 don't exacerbate this trap.

17 I would not adopt all the bracketed portions of
18 the regulation. There are some very unintended
19 consequences in those brackets I believe, including what's
20 called the sole-charge exception. So be very careful of
21 those brackets. And also, brackets mean you change
22 something, and that can be a difference for court
23 interpretation.

24 And then I think you've got to solve the
25 underlying problem. Are we going to follow what the Feds

1 are doing or not? If we are, I think we need to say so.
2 If we're not, I think we have to say that clearly. We did
3 it in the health industry when you passed the overtime act
4 for the health industry several years ago.

5 So again, my thanks to you for being here. I
6 appreciate being here, and I hope you will at least take my
7 remarks verbally and in writing into consideration.

8 Mr. Chairman, if I may, if any of the Members
9 have questions that they'd like to reach out, or staff, to
10 me after this so as not to take the Committee's time,
11 please feel free to do so.

12 MAJORITY CHAIRMAN KAUFFMAN: Thank you very much.

13 Moving on to Elizabeth. Okay. I don't know
14 where we were on the -- okay.

15 MS. HAYS: Members of the Labor and Industry
16 Committee, thank you for the opportunity to join you today
17 to discuss the impact the proposed changes to the
18 Pennsylvania overtime regulations will have on my nonprofit
19 organization.

20 I'm Elizabeth Hays. I'm the Director of Human
21 Resources for MHY Family Services in Mars, Pennsylvania. I
22 appear before you today on behalf of my organization and
23 the Pennsylvania State Council of the Society for Human
24 Resource Management, or PA SHRM. The PA SHRM State Council
25 has more than 12,000 members in the Commonwealth of

1 Pennsylvania.

2 MHY Family Services is a nonprofit organization
3 serving youth and families by providing support and
4 services that afford opportunities for better lives. MHY
5 offers comprehensive residential, educational, and
6 community-based services, responding to an array of
7 hardships and traumas, including mental illness, behavioral
8 issues, abuse, and neglect.

9 For MHY literally this overtime proposal we're
10 discussing today to more than double the salary threshold
11 presents the risk of my organization closing its doors. As
12 a nonprofit with very limited flexibility to affect rate-
13 setting for our services, we already often find ourselves
14 unable to provide pay increases and hire additional
15 employees. In the worst-case scenario, I estimate that
16 these changes could result in more than \$750,000 in
17 unfunded costs. This would be nearly a 9 percent unfunded
18 increase to our budget.

19 Let me highlight some specific challenges my
20 organization will face if these proposed overtime
21 regulations are implemented. To be clear, most of MHY's
22 exempt employees, senior and middle managers and
23 professionals, are currently paid less than \$50,000 and
24 under the PA Department's proposal would become eligible
25 for overtime. As an underfunded nonprofit with limited

1 flexibility in the budget, I have serious concerns about
2 how MHY will cover potential overtime expenses while still
3 providing high-quality services for the at-risk youth and
4 the families they serve.

5 Our nonprofit's ability to provide critical
6 services will be negatively impacted. At MHY, we
7 prioritize the continuity-of-care model that ensures our
8 youth and families receive services and care from
9 designated therapists and supervisors. Therapeutic
10 services are driven by the relationships that our employees
11 have with the youth and the families to which they're
12 assigned. Months and sometimes years go into building that
13 trust and bond, and this can't be replicated by swapping in
14 another professional to avoid exceeding 40 hours on the
15 party of a primary professional. Under this overtime
16 proposal, continuity of care would be undermined by
17 limiting the ability of our employees to effectively
18 respond to client's clinical needs notably in times of
19 crisis.

20 Changes to the overtime regulations will likely
21 require employers to reclassify a significant number of
22 salaried employees to hourly staff. Hourly employees of
23 course are paid only for the hours they work and often are
24 forced to closely track their hours to ensure compliance
25 with overtime requirements, which can lead to less

1 workplace flexibility.

2 At MHY, our Residential Program Managers, for
3 example, are provided with workplace flexibility options.
4 If I had to reclassify this position to a nonexempt status,
5 these individuals would lose their ability to leave early
6 on calmer workdays to attend their children's soccer game
7 or take a Friday off for a long weekend, which they are
8 currently afforded to offset long work hours on other days.

9 Employee morale would not only be negatively
10 impacted by losing meaningful flexibility, employees are
11 likely to view the change to nonexempt status as a
12 demotion. In their eyes, the exempt classification is seen
13 as a promotion, providing a sense of workplace status in
14 addition to greater workplace flexibility to balance work-
15 life needs. I'm confident that our supervisors will view
16 reclassification as a demotion, requiring more oversight
17 from their own supervisors and resulting in a decline in
18 employee morale.

19 Clearly, the Department's overtime proposal would
20 have an adverse impact on my organization, but it would
21 also harm other employers across the State, as outlined in
22 PA SHRM's comment letter on the proposal included in my
23 written statement.

24 In closing, I can't overstate how concerned I am
25 with these proposed changes on MHY Family Services' ability

1 to fulfill its mission to serve youth and families in
2 Pennsylvania. Thank you for allowing me to join you today,
3 and I look forward to your questions.

4 MS. BOLLHEIMER: Good morning. Thank you. My
5 name is Meredith Bollheimer. I currently serve as General
6 Counsel and Vice President for Legal Affairs at Mercyhurst
7 University in Erie, Pennsylvania.

8 Mercyhurst is a Catholic private liberal arts
9 Mercy institution with over 3,000 students on two campuses
10 in both Erie and northeast Pennsylvania, and we are rapidly
11 approaching our centennial celebration. We offer master's,
12 bachelor's, and associate level, as well as certificate
13 degrees. We are home to 22 Division 2 sports, two Division
14 1 sports, and eight National Junior College Athletic
15 association teams. Some of our marquee academic programs
16 including intelligence studies and forensic science, both
17 housed in our Tom Ridge College for Intelligence Studies
18 and Applied Sciences. With approximately 400 full-time
19 employees and 200 part-time employees, we are one of the
20 top 25 employers in Erie County, contributing hundreds of
21 millions of dollars to the local and regional economy each
22 year. I sincerely appreciate the opportunity to
23 participate today.

24 I'd like to spend a few minutes just briefly in
25 my introductory comments summarizing the primary concerns

1 facing colleges and universities. They are not unlike what
2 the previous speaker outlined for her organization.

3 The negative effects are not unique necessarily
4 to private institutions like mine but will also be deeply
5 felt at the 14 State system schools. College are unique
6 businesses. The product we are selling is education. Our
7 ability to provide a quality product affects the entire
8 economy as businesses in the Commonwealth and beyond depend
9 on our ability to adequately prepare people for the
10 workforce, their chosen profession, and the economy of the
11 future.

12 Beyond the tangible and concrete career
13 preparation, we are also charged through our missions with
14 creating critical thinkers, ethical leaders, problem
15 solvers, and good citizens. We, like our colleagues across
16 the State, take that charge very seriously. The
17 Pennsylvania State System of Higher Education Schools, or
18 the PASSHE schools, as you know are funded through
19 Commonwealth dollars and tuition paid by enrolled students.
20 Most private institutions on the other hand are funded
21 almost exclusively through tuition dollars. In a business
22 that sells goods or services, when the cost of employment
23 rises, those costs are typically passed on to the consumer.
24 This is not different in higher education. If our
25 employment costs increase, the only place to turn is to the

1 consumer. In our case, that's our students and families of
2 the Commonwealth either through asking for more tuition
3 dollars or, in the PASSHE system, asking for an increase in
4 taxes.

5 If our institutions across the State are not able
6 to get the funding increases they need through increased
7 tuition or tax dollars, our only option is to change the
8 way that we pay our employees. So I think part of the
9 discussion today, there's been sort of I think false
10 dichotomy presented that if you raise the threshold to the
11 \$48,000 over three years, that employers will respond by
12 paying people the \$48,000 threshold. I can tell you that,
13 not unlike the library example, an institution like mine
14 whose cost to comply with the new regulations is about \$1
15 million, that \$1 million combined is more than the total of
16 our margins over the last four years of operation.

17 So we simply -- at our private institution,
18 again, a small private Catholic institution -- do not have
19 the funding and are probably already priced at the top of
20 the market in terms of what students and their families are
21 able to afford for tuition. So large groups of our
22 employees won't see that increase at the new threshold.
23 Rather, we will have to wage-smooth them down to hourly
24 employees. And I wanted to talk a little bit about why
25 that's so challenges in higher education, especially with

1 certain groups of employees.

2 I'm going to choose one just as an illustration,
3 which would be assistant coaches. I'll venture to say that
4 our assistant coaches, not unlike the vast majority who
5 work in PASSHE school systems, in most private institution
6 outside of perhaps the big Division 1 schools like Penn
7 State, those assistant coaches consistently make under the
8 threshold. Without some clear guidance from the State as
9 they're doing these regulations, that really puts us in a
10 very difficult position because they are very difficult to
11 pay on an hourly basis. As anyone who has children or who
12 has played sports, it is sort of a unique thing.

13 And I wanted to speak to Representative Miller's
14 point about the \$24,000 a year who are asking people to
15 work consistently more than 40 hours a week at a salaried
16 position. We may have coaches, you know, more closely to
17 the mid-30s or low 30s, and there are times when they do
18 work 80, maybe 90 hours a week. If they've had a playoff
19 season or really successful doubleheader weekend for
20 baseball that's very far away, they are working for maybe
21 four or five days straight by the time it's all said and
22 done except when they're sleeping because that is at the
23 height of their season. The other part of their season
24 when the students are not here, they're not recruiting,
25 there's no lifting or anything going on, the coaches are

1 maybe working 5 to 10 hours a week.

2 But as you know in Pennsylvania, we have no
3 ability to pay people on a fluctuating workweek, so we
4 can't take that into account. So our only choice, because
5 we don't have the funds in our budget to raise people to
6 the threshold, our only choice is to wage-smooth them down
7 to minimum wage employees.

8 So I just think it's important for people to
9 understand perhaps one of the unintended consequences for
10 all of the higher ed institutions across the State is that
11 we are not going to be able to compete with other colleges
12 in other States because we will be paying our assistance
13 coaches minimum wage.

14 So the Federal Department of Labor issued a fact
15 sheet specific to higher education as it went through its
16 process, which has been extraordinarily helpful to higher
17 ed. And the main thing I want to ask today is for
18 especially directed probably at the Secretary of Labor and
19 the rulemaking entity is to keep in mind that higher
20 education is desperately in need of guidance at the State
21 level for certain categories of employees, and we would ask
22 that they model that guidance on the Federal regulations.

23 So I see my time is up. Thank you again for
24 allowing my participation.

25 MR. FOGAL: Hello. My name is Sky Fogal. I'm

1 both the owner and manager of Skirmish Paintball and Pocono
2 Whitewater Rafting located in the Pocono Plateau of our
3 great Commonwealth. Like many other business, from local
4 ski areas to zip lines and waterparks, both businesses I
5 operate are small, highly seasonal, and rely heavily on
6 salaried staff to help us even out our labor costs on our
7 yearly budget. Our employees, similar to us, frequently
8 ask to be placed on salary to help them with their own
9 household budgeting. That being said, all of our employees
10 and myself put in very long hours about three months out of
11 the year and take much shorter, relaxed hours during the
12 rest of the year. No one's going rafting when you can go
13 skiing.

14 Our salaried employees find comfort in receiving
15 a stable and consistent paycheck throughout the year, as
16 many of them have families to care for and feed. The
17 proposed law would financially force us to return many of
18 our salaried employees to an hourly rate, cutting their
19 hours during the busy season and hiring more inexperienced
20 staff to fill in the gaps. Furthermore, we would be forced
21 to lay off the new hires and drastically cut the hours of
22 our original salaried employees for the shoulder seasons,
23 forcing both groups into unwanted second jobs.

24 As I mentioned before, many of our salaried
25 employees have families, children, grandchildren, husbands,

1 and wives. The flexible, self-managed schedule they rely
2 on is a godsend for when one of the kids comes down with
3 the flu, has a once-in-a-lifetime dance recital, or makes
4 it to a basketball national finals, all of which happened
5 this year alone.

6 Skirmish and Pocono Whitewater are simply too
7 small to hire an H.R. specialist or compliance officer.
8 Trying to understand the new regulations and creating a
9 management/maintenance system for them would be a
10 monumental endeavor for myself and our company's
11 bookkeeper. This will greatly reduce the amount of time I
12 have to search out new business avenues and ensure our
13 company's continued growth.

14 Small-business owners like myself work tirelessly
15 to follow the rules, but State and Federal regulations are
16 different, so it's like playing a football game with two
17 separate rulebooks and two separate referees. Small
18 business simply don't have the resources to have a lawyer
19 on staff or even an H.R. person to help make sense of this
20 quagmire.

21 A multitude of studies have shown that a stable
22 regulatory environment is best for business growth. With
23 climate change wreaking havoc on the outdoor tourism and
24 entertainment industry, the last thing we need is for
25 government regulations to be changing as dramatically as

1 the weather patterns. All of our employees, salaried and
2 hourly, are counting on our elected officials to keep our
3 regulatory environment stable.

4 I also have some issues with how this rule
5 doesn't take into account the vast differences in cost of
6 living from region to region in Pennsylvania. Everything
7 is cheaper in Carbon County, especially compared to
8 Philadelphia, yet the rule blankets both regions in the
9 same way. I live in Jim Thorpe, and a three-bedroom home
10 only two doors down from mine just sold for \$40,000.

11 I didn't get into this business to shuffle papers
12 and try to understand and apply rules and regulations. I
13 got into it because I love sharing the experiences and
14 beauty of the great outdoors with my guests, many of whom
15 have become close friends. As a third-generation family
16 business owner, I'm begging you to cut the red tape, not
17 make more of it. That is why I ask the Committee and the
18 Department to withdraw their proposal and help keep at
19 least one of our small business legs on as firm a ground as
20 it can be.

21 Thank you for all your time, your hard work, and
22 for giving me a chance to speak.

23 MS. YAW: Chairmen Kauffman, Galloway, Members of
24 the Committee, my name is Leah Yaw. I serve as Senior Vice
25 President and Chief Strategy Officer for Devereux Advanced

1 Behavioral Health. Thank you for the opportunity to be
2 here and to attempt to represent the nonprofit dynamic. I
3 was delighted to see how much conversation there was on
4 that issue in the first part of these proceedings.

5 Very quickly about Devereux, with programs in 13
6 States and an annual budget that exceeds half a billion
7 dollars, Devereux employees, more than 7,500 people around
8 the country, about 2,400 here in Pennsylvania, this year
9 will care for about 25,000 individuals around the country
10 with intellectual and developmental disabilities. We have
11 a very strong specialty in autism, and we care for
12 children, adolescents, and teens in very serious mental
13 health crisis and child welfare situations.

14 Devereux is doing some really groundbreaking
15 work. We're working with some folks who've been through
16 the unimaginable, girls who've been commercially sexually
17 trafficked, foster children who've been in maybe 15 or more
18 foster homes over the course of 10 years of life, young
19 adults with autism really fighting for inclusion and a
20 place of community. It's important work. We do it around
21 the country, but for sure our hearts and our roots are here
22 in Pennsylvania.

23 For the nonprofit human services field Governor
24 Wolf's proposal is a complex one to evaluate. We are
25 acutely attuned to the fact that the caliber of the staff

1 we employ is directly related to the quality of the
2 services we can provide. There's really no more direct
3 line equivalent in the work that we do. The importance of
4 employing qualified, compassionate, well-trained staff
5 cannot be overstated, and we understand that offering good,
6 fair, meaningful compensation and a healthy work-life
7 balance is really a key piece of that equation.

8 When you couple the importance of that with this
9 really well-documented health care staffing crisis that we
10 are dealing with in Pennsylvania and around the country,
11 this issue just couldn't take on more significance for the
12 nonprofit health care environment. Devereux believes that
13 it is the responsibility of all employers to really
14 strengthen our middle class. We see that as part of our
15 obligation to the community. We also see it as really one
16 of the most important things we can do to improve the
17 quality of our services and to help more people. In fact,
18 regardless of the outcome of these proposed regulations,
19 Devereux is fully committed to increasing not just the
20 compensation of salaried employees, although absolutely,
21 but also the compensation of hourly employees who fall
22 below these thresholds we are discussing today.

23 In fact, for another conversation another day,
24 Devereux would submit that the most important thing perhaps
25 that we could do to improve the outcomes of health care and

1 particularly nonprofit health care in the State would be to
2 improve the compensation and the expertise of hourly
3 direct-care staff. They do the yeoman's work really in
4 this field. So I provide these details just to express our
5 sincere support for the fundamentals that underpin these
6 conversations and what the Governor and all of you are
7 trying to achieve. The question we believe it is not
8 whether we need to increase compensation. It's how to do
9 that without compromising an employer's ability to maintain
10 its status as a meaningful employer and a provider of
11 service.

12 The evaluation of this issue looks different for
13 us in the nonprofit realm than in the for-profit. And I
14 don't mean to suggest this is a simple calculation for
15 anyone, not for for-profits, not for nonprofits, but where
16 for-profits to have some ability or decision at least to
17 pass some of these increased costs onto their end-users,
18 nonprofits and particularly in the health care
19 reimbursement environment in partnership with the State
20 just don't have that ability. That's not even something we
21 can entertain as we think about how to manage these issues.

22 I know you're all acutely aware of the operating
23 challenges in the nonprofit environment. I know you've
24 discussed that a lot in this committee. And I won't
25 belabor today's discussion with too many details, but I

1 think it's important to note that the nonprofit health care
2 providers in Pennsylvania and particularly those of child
3 welfare services and medical-assistance-funded behavioral
4 health care do not and have not experienced any kind of
5 predictable service rate increase pattern that fairly
6 aligns with the reasonable and routine costs of recruiting
7 and retaining quality staff. This is a conversation that
8 we have with you every year. I know you understand it, but
9 it's very complex, and when you layer on requirements, it
10 becomes more complex.

11 So Devereux is in a unique position. We're a
12 large organization, we are well-funded, and we've had the
13 ability to build an endowment and meaningful fundraising
14 support. That is unique in many ways in this State in the
15 health care nonprofit environment. We are in the enviable
16 position of being able to look at this -- we've been
17 looking at this before the conversation started at the
18 Federal level. We really focusing on a AAA-plus goal. We
19 want to improve employee satisfaction while at the same
20 time improving the quality of care and the outcomes in the
21 health care environment.

22 We are in a position that most health care
23 nonprofits are not. They're really struggling to simply
24 operate successfully in an environment where reimbursement
25 for services doesn't meet the actual cost of treatment.

1 And so I see that my time has expired here. What
2 we would ask is for you to consider the impact of unfunded
3 mandates on the nonprofit health care environment. In a
4 general way, Devereux's fully in support of the goals here,
5 and we want to do this and we are going to do it regardless
6 of the decisions you make in this Committee. But this
7 unfunded mandate environment that the nonprofit environment
8 exists in is really very complex. And I think that all of
9 the unfunded mandates that have been passed in the last
10 decade are good and important pieces of doing better work
11 on behalf of those we serve, but unfunded is unfunded. And
12 so we would ask that you have discussions about how to work
13 with the Department perhaps on supporting rate adjustment
14 processes that would help support nonprofits that are
15 really not in the position of Devereux to continue to do
16 the work they do while meeting any of the regulations that
17 you propose today. Thank you very much for your time.

18 MR. MCCAFFERTY: Thank you, everybody, for
19 inviting us to speak today at the panel here and appreciate
20 your time and consideration on all this.

21 I'm Bob McCafferty. I own North Country Brewing
22 Company. I just want to give a little background onto my
23 business, you know, because this is a very personal issue
24 with me. Actually, you know, I try to keep it about math
25 and numbers because they don't lie and they don't have

1 emotions. But, you know, we just had a chance to do
2 something and followed a dream and it worked out. You
3 know, it doesn't always work out obviously, but we couldn't
4 have done that without our employees. And, you know, I
5 have 10 fingers and half a brain some days. So other than
6 that, we definitely appreciate our employees.

7 You know, I had four part-time jobs after high
8 school, and I got sick of a beer-soaked carpet, you know,
9 and roommates, so I knew I needed better skills really, and
10 so I got in the restaurant industry, started dishwasher,
11 made it through the stations, progressed up in pay doing
12 that, ended up paying for two-thirds of my college and my
13 cars that ran, my apartment, and my books. You know,
14 that's what I believe that, you know, the freedom to do
15 and, you know, prove yourself and do. I was in the field
16 for years, and I ended up in something that wasn't even my
17 degree that I had to learn more.

18 And I progressed in my field to crew chief to
19 field director, and by the time I left in 2001, I was at
20 \$35,000 a year. I put 60 hours a week into my company and
21 usually had to travel both ways to the job site, so I had
22 up to 18 hours of drive time a week that was on top of the
23 60.

24 You know, my decision at the time was to get back
25 to school and get a doctorate or, you know, do something

1 completely different, and obviously I did something
2 completely different and renovated a building and opened a
3 restaurant. And, you know, one thing with my employees
4 from day one -- you can ask all of them -- and honestly,
5 I'm willing to sit on any Committee or answer any questions
6 any time and my employees would as well. You know, I only
7 ask them for 40 hours. Some of them make 40, some make 45,
8 some do 50. I actually say in our handbook don't do 45-
9 plus. You know, I don't want that. I'm not going to be
10 the employer that I came from that like I strive to be
11 better than.

12 And, you know, so I'm just, you know, taking this
13 to heart because I always thought like our salary level is
14 based on reward. You're hourly and then you get a reward,
15 you're on a salary, you're on a pathway to a career. And
16 we choose people in our industry -- we try to choose people
17 that get it, want it, and can do it. And they have to
18 smile from within because you really can't train that.
19 It's the hospitality industry, so that's what we do.

20 You know, I have an executive chef that started
21 with us as a dishwasher 10 years ago. You know, he's a
22 great guy. He has a family now, graduated Slippery Rock
23 University but continued on in our company to this day.
24 There's a lot of examples that way. We turn a lot of
25 brewers that didn't know how to brew beer and now they're

1 brewing at other places at another position. They grew and
2 learned, and I didn't have anything to offer them in my
3 company anymore because the positions were already filled,
4 so they moved to other breweries and now they're brewing
5 excellent beer in our State. And that's the industry that
6 we are.

7 The unfortunate part of our industry is it does
8 exist on six pennies, and I almost closed a year and a half
9 into because of all my previous experience, I didn't
10 realize that restaurants exist on six pennies. That's six
11 percent. Every dollar that comes in, six pennies is what
12 we pay for a new cooler with. We abuse our equipment. We
13 heavily use our facilities and have to keep them clean and
14 maintained because we want to, but I'm just saying that's a
15 cost.

16 You know, lately, the past I'd say eight years --
17 like our municipality now is having a new regulation. It's
18 a fee. You have to get your backflow preventers inspected
19 every year. Again, all these regulations and mandates are
20 necessary obviously or they wouldn't be here, but I'm just
21 saying it's another cost. So in our world, if a burger is
22 gifted away or dropped, our plate cost on that burger is
23 \$5. We sell it up to \$15 on the menu. We actually
24 literally have to sell 83 more burgers to pick up that one
25 burger that we wasted. And the restaurant industry is

1 different that way. We also have retail; we sell hoodies.
2 So retail businesses, as far as I'm aware and what we do
3 and what I'm pretty sure retail does, they exist on 50
4 percent. Their profit margin is 50 percent. So if we have
5 a hoodie theft or damaged, we actually have to sell four of
6 those because it's a different margin. It's a different
7 profit margin.

8 So the only thing in closing that makes me
9 nervous about this particular bill is that it's a broad
10 paintbrush across all business and across all employers.
11 And I always believe that if you're a bad employer, you're
12 not going to be in business long. So, I mean, I just think
13 that there might be bad employers out there but, you know,
14 thank you for your time.

15 MAJORITY CHAIRMAN KAUFFMAN: Thank you very much.
16 And we're going to move on to questions for the panel, and
17 we're going to start where we left off. And that would
18 start with Representative Topper.

19 REPRESENTATIVE TOPPER: Thank you, Mr. Chairman.

20 I think we're all in agreement that we could use
21 a Committee tour of Mr. Fogal's establishment, following
22 that with a Committee tour at Mr. McCafferty's
23 establishment. I guess --

24 REPRESENTATIVE: [inaudible].

25 REPRESENTATIVE TOPPER: That's right. I think

1 it'd be great.

2 MAJORITY CHAIRMAN KAUFFMAN: We do those just in
3 case.

4 REPRESENTATIVE TOPPER: I'm concerned about the
5 threshold that will be adjusted, this threshold will be
6 adjusted every third year after the rule takes effect. I
7 mean, one of the things that we're able to do here from a
8 public policy perspective, I mean, this is not a bill that
9 we're getting ready to vote for. This isn't something that
10 will be implemented in what I would consider a non-
11 legislative way. One of the things that we can do when it
12 comes to bureaucracy, we at least have the opportunity as
13 the people's voice to ask questions like we're doing today
14 to actually bring stakeholders and just start to talk about
15 what effect it might have on our economy.

16 My concern is that just simply adopting a rule
17 and then having it take effect, you know, ad infinitum,
18 just continue to increase will not allow us that
19 opportunity. Is that a concern that any of you have when
20 you look at the rule and you see that this could go on, you
21 know, every third year, just continue to be increased and
22 more of an increased cost without knowing what the economy
23 is going to be any of those years unless -- I mean, we all
24 seem to have kind of a unicorn thought of what the
25 economy's going to be like, but we don't have to go back

1 into too far of history to see how those things can change.
2 So if some of you can just talk about that part of the
3 rule, please.

4 MS. MACNETT: I'll be happy to take the first
5 stab at it at least. A number of years ago some of you I
6 believe were there at the time when the Legislature decided
7 that increases in unemployment compensation for the maximum
8 benefit amount would not go up. You capped it because of
9 concerns about the growth of the economy and other things.
10 That is the sort of thing that I think you're talking
11 about.

12 My other concern is that whether or not it is
13 appropriate on an economic basis for this regulation to
14 continue to escalate. The numbers will probably continue
15 to be different than the Federal numbers, so my
16 noncompliance trap will continue potentially ad infinitum
17 because I doubt very much that we're going to guess at the
18 same exact number that the Feds are if they ever get a
19 regulation through that is no longer stayed. So yes, I've
20 got that concern.

21 MS. BOLLHEIMER: Yes, and from a practical
22 standpoint just in terms of getting back to the
23 institutional perspective for private institutions across
24 the State and also State institution, although funded by
25 tax dollars, is higher education, there are existential

1 threats across the country. For those of you who have
2 universities in your districts, small private schools in
3 your districts, I'm confident you understand the struggles
4 that they're dealing with. We see institutions closing and
5 struggling to stay alive across the State with lots of
6 existential threats coming from community college and the
7 debt crisis and all of these things. Again, these
8 institutions typically are not flush with cash.

9 And I can speak from my own institution's
10 perspective. So when we see a rule like this with every
11 year we're going to have to continue adding this cost to
12 our budget, we have to also on the flip side of that ledger
13 figure out what we're cutting and at some point the only
14 things left to cut are, again, student services and how
15 much we're able to do for our students. So we're asking
16 them to pay more, increase what they're paying to go to
17 college, and we're giving them less because we have to
18 continue to budget for these continued increases in the
19 salaries that, frankly, we can't afford and we don't have
20 the funding for.

21 MS. HAYS: Well, and if I could take that from a
22 human services standpoint just a little further. You know,
23 I heard references today from the Secretary of average
24 increases of 2.7 percent per year if I'm not mistaken. You
25 know, there are years we haven't given increases to our

1 staff. We have unfunded mandates that we're adapting and
2 responding to. There are organizations, human services
3 organizations in Pennsylvania that haven't had an increase
4 in their rates for over 20 years. We haven't had increases
5 in most of our rates in over 10, probably quite a bit
6 longer than that.

7 So while there's obviously increases in the cost
8 of living and now we're looking at a legislation that's
9 going to impose corrections on a regular basis, there's no
10 way human services industry can sustain that. We're
11 already starting out of the gate in the hole on this
12 matter.

13 REPRESENTATIVE TOPPER: Thank you, Mr. Chairman.

14 MAJORITY CHAIRMAN KAUFFMAN: Thank you. Moving
15 on, Representative Donatucci.

16 REPRESENTATIVE DONATUCCI: Thank you, Mr.
17 Chairman. And thank you, everybody, for being here. I
18 don't think this works. So I understand the concern for
19 flexibility, but I do have a question about compensatory
20 time. Is it currently legal for any businesses to provide
21 comp time?

22 MS. MACNETT: I'll take that for starters and
23 then certainly -- comp time, in lieu of required overtime
24 payment, is illegal in the private sector. And as you can
25 tell, I've taken a lot of specifics on that because

1 everybody thinks comp time is fine and it can be in any
2 workweek. No, that is not correct, but there are some
3 public-sector abilities to maneuver. The thing that is
4 legal is for an employer to say you've worked 15 hours
5 today, you worked 15 hours yesterday, we're in the same
6 workweek, you work 10 hours tomorrow and then you're done
7 for the week. An employer can schedule the number of hours
8 in a workweek to avoid overtime, even if that causes a lot
9 of morale problems and chaos for the employees. That is
10 legal. Comp time in lieu of overtime payment in the
11 private sector is not legal.

12 MS. BOLLHEIMER: Yes, in the example I gave of
13 coaches, we would not be permitted to say you worked a
14 double-header, playoffs, so you worked, you know, 80 hours
15 over the last two weeks; we'll let you take the following
16 week off to accommodate for that because it's not in the
17 same workweek. So our workweek starts at midnight on
18 Friday, and by 11:59 the following Friday night, any comp
19 time we give has to happen in the same week because we're a
20 private institution so we can't use comp time for later
21 out-of-season time.

22 REPRESENTATIVE DONATUCCI: Thank you.

23 MAJORITY CHAIRMAN KAUFFMAN: Thank you very much.
24 Moving on, Representative Grove.

25 REPRESENTATIVE GROVE: Thank you, Chairman. You

1 know, the first panel was I'll call it the government
2 panel. The Secretary of Labor and Industry and the Deputy
3 Secretary are still with us today. I won't attribute this
4 to one of them, but during that panel about this regulation
5 said, and, you know, I'll paraphrase, they -- private
6 sector businesses -- will just have to adjust their
7 business model for our rules. As individuals in the
8 business community, what does that say about the
9 Pennsylvania business climate? Is this the place that you
10 want to do business that government is just going to say
11 tough, just readjust?

12 MR. MCCAFFERTY: If I may answer that, you know,
13 right now, this is the first time -- we opened with health
14 care. I'm just going to use that real brief -- it's a
15 separate issue but it kind of relates. You know, we opened
16 with health care for our employees. A bartender that
17 didn't work 30 hours, a server that her whole family joined
18 our system, she worked 25 hours a week. Anyway, zero
19 deductible, great health care. This took four months of my
20 time to get health care for my employees this year, and,
21 you know, now that employees are 30 hours right now and
22 because we physically just couldn't offer the same health
23 care that like we used to to everybody. The rates go up
24 every year. Seventy-five percent rate is just not viable
25 for my employees or my business. Thankfully, the National

1 Restaurant Association got involved and we got a plan
2 through them.

3 To answer your specific question here about this
4 mandate is there's other companies near me that decided to
5 -- they have a kitchen manager, a general manager, and a
6 front-of-the-house manager, so instead of my company
7 training up line lead, sous chef, executive chef, front-of-
8 the-house manager, general manager, you know, we're a
9 brewer. We have six managers every day. Everybody gets
10 vacation. Everybody works 40 hours, 45 hours if they
11 choose. Yes, it would definitely -- I'd have to change or
12 I couldn't afford the increase. I'd have to change our
13 business model to be more like the folks around me because
14 I can't raise my menu prices.

15 REPRESENTATIVE GROVE: So in effect you're
16 actually letting people go or downgrading them to salary.

17 MR. MCCAFFERTY: The first time this was
18 mentioned two years ago, it already happened unfortunately.
19 We didn't replace three positions.

20 MR. FOGAL: And for me, besides Pocono Whitewater
21 and Skirmish, I attempted to open another small company to
22 work with the Skirmish numbers. Our paintball numbers in
23 general have been going down, which has meant less and less
24 hires for us every year. And yes, the regulatory
25 environment in Pennsylvania was hostile enough that after

1 spending a ton of money putting me back into debt, we
2 walked away from the entire project. It was going to open
3 up. We were going to have about 10 full-time nonseasonal,
4 which in my area is very, very important. I mean, everyone
5 in basically the whole county is a seasonal employee,
6 whether they're a ski area, whether they're a rafting
7 company, paintball, whatever. And the regulatory
8 environment and the amount of red tape that we had to jump
9 over, we determined that it just didn't work out. The
10 numbers simply don't work if you have too many regulations
11 or, most importantly to this meeting today, regulations
12 that do not match.

13 MS. YAW: Can I take that for the nonprofit
14 perspective as well? I can yell if that --

15 REPRESENTATIVE GROVE: No, you have to be
16 recorded.

17 MS. YAW: I'm good at that, too.

18 REPRESENTATIVE GROVE: Yes.

19 MS. YAW: So, you know, I was delighted to hear
20 the Deputy Secretary indicate they're talking with the
21 Department. That's really key. But adjusting business
22 model in a nonprofit environment, and particularly in a
23 cost-reimbursed environment, you know, you've got cost and
24 expense, right? Well, we can't raise our costs without a
25 full partnership with the Department, and that kind of a

1 structure in a system does not exist in an ongoing
2 systemized fashion. And we can't reduce expense because we
3 are governed by regulation that require the amount of
4 individuals that we employ to care for those children that
5 we love. And we wouldn't even if we could because that
6 would compromise quality of care to a point where we
7 weren't doing our job.

8 So that nonprofit balance in this is really very
9 complex, and business model adjustment then is left only to
10 things like fundraising, ancillary business product line
11 development, which then puts you in the position of talking
12 about unrelated business income and potentially
13 compromising your nonprofit status. So it's
14 extraordinarily complex, and it's really not something the
15 nonprofit environment can entertain. We have to make
16 things work with the rate reimbursement structure that
17 exists, and that's why it was wonderful to hear that there
18 are conversations with the Department. But it would be
19 wonderful if there was a special category of your
20 discussions around nonprofit. I don't mean to throw my
21 for-profit friends here under the bus at all. I understand
22 you've got your own unique complexities, but the
23 flexibility in the nonprofit environment really does not
24 exist.

25 MS. BOLLHEIMER: Yes, and in terms of for us

1 changing our business model again is reducing student
2 services and fundamentally also changing the way athletics
3 and sports are played at the college level in Pennsylvania.
4 We will have teams canceling in the middle of double-
5 headers because there's no overtime left in the budget so
6 they have to come home. They're not allowed to go to the
7 hospital to visit injured students. They're not allowed to
8 go on recruiting trips and go out to dinner with the family
9 because there's overtime in the budget to pay for that.

10 So in terms of how our business model will
11 change, we have trouble even wrapping our brain around what
12 that would look like in higher education because of the
13 sort of unique nature of the services we provide to
14 students.

15 MAJORITY CHAIRMAN KAUFFMAN: Thank you. Moving
16 on, Representative Krueger-Braneky.

17 REPRESENTATIVE KRUEGER-BRANEKY: Thank you, Mr.
18 Chairman. And thank you, each of you, for your testimony
19 today.

20 I've got a question specifically for Ms. Hays and
21 Ms. Yaw, the nonprofit service providers. I was an
22 Executive Director before I ran for office, so I understand
23 the challenges of managing staff and working with tight
24 budgets. And I'm curious. One of the things -- there was
25 a robust conversation with the Secretary and Deputy

1 Secretary about the impact on nonprofit service providers,
2 and I've met with direct-service workers in my office and
3 heard the challenges of doing work that they love with
4 clients that they care for, and yet not being able to
5 sustain their own families on the low wages that they're
6 making.

7 As the Secretary said, there are conversations
8 ongoing with DHS about this. I sit on the Appropriations
9 Committee and in budget hearings every year we push for
10 increased payment because we know that you're doing more
11 with less and that the folks that you employ who are the
12 direct-service providers for vulnerable individuals need to
13 be able to make a living wage.

14 What would your recommendations be for those
15 conversations with DHS that the Department is having right
16 now?

17 MS. YAW: I'll jump in and then hand it off to
18 you. For a very long time, we have been interested in
19 working with the Legislature and the Department on a
20 structured-increase environment that would make rate
21 schedules predictable. And so you've heard our other
22 panelists today talk about the issue of budgeting and being
23 able to understand how to manage these kinds of cost
24 increases year over year because they can do some
25 prediction of what they can sell their product for.

1 As a nonprofit provider, we are hampered in our
2 ability to do that because without a predictable rate-
3 increase structure that's tied directly to economic
4 measures, it's very, very hard for us to get to a place
5 where we can do that kind of effective budgeting.

6 And so we would ask for a very close partnership
7 with the Legislature and the Department that would make
8 reimbursement rate increases predictable and related to
9 economic indicators of expense and annualized. And we do
10 understand the complexities that you go through in your
11 budgeting processes, but the work of the nonprofit field is
12 really to wrap our arms around and pick up incredibly
13 vulnerable folks, and it's very hard to budget effectively,
14 and to make investment in staff.

15 And that is what we would like to do. We would
16 like to make investments in our staff so our hourly staff
17 are able to take advantage of things like STAP programs for
18 continuing education to go from being direct-care workers
19 to being managers, to being social workers. That's what
20 they want to do. That's what we want for them. But
21 budgeting toward that end is very hard without sort of a
22 predictable interrelated partnership that allows us to
23 budget year-over-year increases because costs are going to
24 go up every year regardless of whether our rates do or not.

25 MS. HAYS: Well, and with that I think that the

1 conversation has to go beyond DHS. You know, many of our
2 clients receive services that are funded through Medicare,
3 and so managed-care organizations have to be a part of this
4 dialogue and be on board, as well as DHS and counties
5 through which DHS funding is funneled. So certainly it
6 would be great if we could get commitments on the front end
7 rather than in arrears even as it's considered now when you
8 present last year's expenses and they consider whether or
9 not if they're even going to entertain the conversation,
10 whether or not they can do anything with your rates.

11 So, yes, the goal would be to get ahead of this
12 and to have all of these parties at the table because the
13 funding usually comes from some combination of these
14 sources.

15 MAJORITY CHAIRMAN KAUFFMAN: Thank you.

16 MS. YAW: May I make one quick comment on that?

17 MAJORITY CHAIRMAN KAUFFMAN: Okay.

18 MS. YAW: I think that the issue of managed care,
19 that was an excellent point to bring up, and my last
20 suggestion would be to generate an understanding that
21 managed-care entities have become almost quasigovernmental
22 entities in the way that they're managing funding. And so
23 I think that a greater engagement with the Legislature and
24 responsibility to report back to the Legislature around
25 rate-setting processes would be extremely important.

1 MAJORITY CHAIRMAN KAUFFMAN: Thank you. Well,
2 fortunately, managed care has nothing to do with the Labor
3 and Industry Committee. So we'll move on to Representative
4 Keefer.

5 REPRESENTATIVE KEEFER: Thank you, Chairman. And
6 thank you, guests, for attending today.

7 Mr. McCafferty, a question for you. As a small-
8 business owner, would you classify yourself as middle
9 income, high income, low income?

10 MR. MCCAFFERTY: I'd say middle income, yes.

11 REPRESENTATIVE KEEFER: Middle income. And
12 that's where I believe most -- I come from a family of
13 small businesses, and I believe that's where we're at, too.
14 So when we're talking about middle income, you're trying,
15 most small businesses are trying to keep their head above
16 water. And your employees are your backbone, so if you're
17 a bad employer, you're surely going to -- especially in
18 today's employment climate. So how do you navigate all of
19 these rules and regulations as a small-business owner, I
20 mean, trying to run the business and then determine each of
21 these levels of salaried employees, if they meet that
22 duties test, how do you determine that and navigate those
23 on a day-to-day basis?

24 MR. MCCAFFERTY: Well, we opened in 2005 with 52
25 employees, and, you know, I was washing dishes when the

1 dishwasher called off. I mean, I'll do anything if it
2 makes sense and needs done. But, you know, we slowly got
3 management and we slowly, you know, did the duties test. I
4 took some -- at the time it was classroom offered by
5 Manufacturing Business Association, but I tried to get as
6 much H.R. as I could because I wasn't familiar with any of
7 that.

8 You know, initially, I wanted to make sure that
9 we paid better than the local restaurants in our area just
10 because I wanted to and because I wanted to, you know,
11 maintain the best people I got in, especially, you know,
12 the move from washing dishes. So it starts there and you
13 have to have a competitive rate. And now, it's Cellar.com,
14 Glassdoor. I know my employees are looking. I know that
15 I'm looking because I welcome that source of information
16 actually.

17 So that's where the rates, you know, like the
18 \$48,000 threshold they're mentioning is actually like lower
19 on the executive chef arena like for starting as an
20 executive chef. So, you know, we have folks that are
21 making 52, 55. We've had employees making 81. You know,
22 and thankfully, they were able to be paid that. But they
23 had the experience level to make that salary level, you
24 know, and that's how business is structured actually, so, I
25 mean, you just have to -- you just don't walk into

1 executive chef pay. You actually learn how to do all the
2 stations and --

3 REPRESENTATIVE KEEFER: Right. And so that's
4 basic economics as well. So you have a store that's
5 producing \$100,000, you look at a salary that's
6 commensurate with that. So a salary that's commensurate
7 with that is usually around \$35,000 for a store that
8 produces that, so you're mandated now to take that up to
9 \$48,000 or \$50,000, whatever that may be. It's just not
10 sustainable. So we are setting up small businesses like
11 yours to fail. We are putting you below that benchmark.
12 You're always going to be fighting to keep your head above
13 water.

14 MR. MCCAFFERTY: Again, it goes back to that 6
15 percent that we live on in our industry, so it's not that
16 we don't want to do it. It's just that literally, you
17 know, the math of it doesn't work. You know, our lowest
18 salaried person right now is just a recent -- like from
19 line cook to line lead, and that's \$30,000, so that's
20 \$14.40 an hour. So that's still -- in the industry, you
21 know, anywhere from -- I mean, there's people out there
22 paying minimum wage, I'm sure, but really that's really
23 rare. I mean, you know, you have to be competitive with
24 your wages right now. It's hard to attract employees.

25 REPRESENTATIVE KEEFER: Right. I've been hearing

1 that across the board. Thank you.

2 MAJORITY CHAIRMAN KAUFFMAN: Thank you.

3 Representative Maloney.

4 REPRESENTATIVE MALONEY: Thank you, Mr. Chairman.

5 I didn't really plan on any questions. Very
6 good, interesting conversation here, and I want to thank
7 you, thank everybody for testifying today, but this second
8 panel I believe has sparked something that I believe paints
9 a better picture for what the environment is like and the
10 challenges for small business.

11 I came from small business. I also was forced
12 into really considering office because of the regulatory
13 climate that gets handed down on so many different levels.
14 I used to have a comment, many times frustrated when I came
15 home at night, and I used to say to my wife, "For some
16 reason or other, when you're in business for yourself,
17 people think you have a tree back at home that you pull
18 hundred-dollar bills off of."

19 And when I think of the restaurant business,
20 which is an extremely difficult business, very few banks
21 will finance restaurants for that reason. I opened up a
22 health club business years ago with somebody when I was a
23 competitive bodybuilder. It was the largest-growing
24 industry in America and the fastest-closing industry
25 because of the challenges that it took every single day to

1 bring that dollar in the door to pay your overhead.

2 And when I think of the monies that the small-
3 business person must try and predict not only to come in
4 but what the future will hold for that \$20 or that 20-year
5 rather, say, loan to break ground on a piece of property
6 that now your property taxes will go through the roof.

7 And so when you think of the bigger picture with
8 respect to we should all know that the market drives the
9 value. And when we think of the 8 or 15 hamburgers or
10 whatever that might be that it takes to make up that loss,
11 I don't know how we continue to hand down not just the
12 unfunded mandates that we hear but a small business does
13 not have endowments. Those endowments come from your
14 worth. They come from you leveling your household or any
15 value that you may have on your business for the bank to
16 say okay, we'll let you borrow more money.

17 And so I think what you guys did today was a
18 great example of the challenges that the small business
19 has. The regulatory climate in Pennsylvania is
20 disgraceful. There's really no other way to put it. And I
21 don't know of any employer, including myself and everybody
22 I know, who doesn't want to give good compensation for good
23 service. But to say that one classification requires this
24 when in fact how many times do you take bids on your
25 kitchen renovation and you don't even have any

1 consideration as to what those employees or employers are
2 doing? You just look at the bottom line.

3 And that's the challenges that I appreciate that
4 you folks brought forward today, and it's very interesting
5 that a government agency of any kind can just say no, you
6 shall do this. I think you saw my passion.

7 Thank you, Mr. Chairman.

8 MAJORITY CHAIRMAN KAUFFMAN: Thank you,
9 Representative Maloney.

10 Moving on to Representative Neilson.

11 REPRESENTATIVE NEILSON: Thank you, Mr. Chairman,
12 and I'll make it real quick.

13 Representative Braneky hit it on the head. We've
14 been trying to do an increase on the rate adjustment for
15 years up here, and we get fought every time, so we
16 understand those struggles. And we also understand the
17 little bit you can pay the workers that are taking care --
18 the people with special needs that need that special
19 attention. So we actually are here every year trying to
20 get that through in our budget, and hopefully, one day
21 we'll be able to do that.

22 Mr. McCafferty, hats off to you. From what it
23 sounds like that you put through today is, you know, you're
24 paying your people all above minimum wage, you're giving
25 your people health care. I always say there's three

1 different types of employers. There's the union, the
2 nonunion, and the nonhuman. Regulations like this are
3 going after the nonhuman employers that have to be pushed
4 and shoved a little bit to do it.

5 I have five boys, all played sports, still
6 playing sports. They go to Catholic school right now, and
7 their coaches get stipends down there unless they're full-
8 time employees. And we also looked at -- I mean, a simple
9 Google search on the salaries of your institution -- I'm
10 not going to put it on the record, but they're pretty high.
11 They're pretty high. So the 22 coaches that you might be
12 underpaying, your average salary is way above \$50,000.
13 Your President makes a whole lot of money, and that's
14 according to the Glassdoor. Like you said, your employees
15 are looking. I mean, that's just a quick search. I wanted
16 to point that out.

17 And in closing, Mr. Chairman, I'd like to give a
18 shout out to a former Secretary of Labor that's in the
19 audience today, Mr. Tom Foley, who's being nice and quiet
20 back there, because he did some great work during his
21 tenure as Secretary of Labor, and I think he ought to be
22 applauded for it. Thank you, Chairman.

23 MAJORITY CHAIRMAN KAUFFMAN: Thank you.

24 Anyone who would like to respond? Since you're
25 mentioned, you're welcome to respond if you'd like.

1 MS. BOLLHEIMER: Yes, no, I'm happy to. I would
2 just suggest -- I think probably the salaries for the
3 coaches that you're finding are our head coaches. And I
4 just wanted to make clear, too, that the category of
5 employees I'm talking about isn't just particular to
6 Mercyhurst assistant coaches. It is across the State at
7 public schools. Assistant coaches, my suspicion is our
8 average is probably in line with a lot of other schools,
9 and for our school, it is definitely under the threshold.
10 I suspect we don't have more than a handful of assistant
11 coaches that make currently over the threshold, so it's
12 that and --

13 REPRESENTATIVE NEILSON: Yes, I think that's why
14 they did the --

15 MS. BOLLHEIMER: -- also the classification
16 issue.

17 REPRESENTATIVE NEILSON: I think that's why they
18 did the season stipends because it is a seasonal job, and I
19 think that's why they did the season stipend and bonuses.
20 At least that's how they do it in Philadelphia in the
21 region down there, no matter what college, what coach. If
22 they're not full-time employees, that's what they get, they
23 get that -- almost like a consultant you're bringing in and
24 they're only for that season unless they're teachers where
25 they get a --

1 MS. BOLLHEIMER: For high school are you talking
2 about or --

3 REPRESENTATIVE NEILSON: For high school and some
4 of the colleges, yes.

5 MS. BOLLHEIMER: Yes, well, for colleges our
6 assistant coaches -- and it's common across the State, all
7 colleges and universities, assistant coaches are full-time
8 employees. They work 12 months. They have the season and
9 then they have recruiting responsibilities. Our assistant
10 coaches, 95 percent of them are full-time, 12-month
11 employees. And we don't have a mechanism currently under
12 the Pennsylvania law to pay them fluctuating work.

13 So I guess my larger point is the Department of
14 Labor fact sheet on academic counselors, admissions
15 representatives, and also assistant coaches was
16 extraordinarily helpful in allowing us to have a concrete
17 exemption category to put these folks in. The Pennsylvania
18 State law does not have any equally clear exemption. And I
19 think it goes back to the point about the compliance trap.

20 So I am not necessarily advocating against
21 threshold increases. Certainly, there are costs to us to
22 doing that we either have to pass on or things we have to
23 cut for students. We're asking for the clarification in
24 terms of being able to clearly exempt them so that we can
25 comply --

1 REPRESENTATIVE NEILSON: Maybe Kathy can address
2 that --

3 MS. BOLLHEIMER: -- in areas where we can.

4 REPRESENTATIVE NEILSON: -- if you could, Kathy,
5 real quick. Can that be done under regulation or would
6 that have to be a law change?

7 MS. MACNETT: Well, the problem right now is that
8 the Federal law states that the employer must comply with
9 the law that is better for the employee. So if
10 Pennsylvania raises its thresholds above the Federal, then
11 everyone doing business in Pennsylvania has to comply with
12 the State. And that can be done by regulation for these
13 overtime categories.

14 REPRESENTATIVE NEILSON: Okay. So --

15 MS. MACNETT: There are other things that can
16 only be done by statute, but this --

17 REPRESENTATIVE NEILSON: So that's a great
18 point --

19 MS. MACNETT: -- could be --

20 REPRESENTATIVE NEILSON: -- she brought up then.
21 That's something we have to look at as we go through this
22 regulation process. That's great, and I --

23 MS. MACNETT: That's --

24 REPRESENTATIVE NEILSON: -- appreciate that.

25 MS. MACNETT: That's --

1 REPRESENTATIVE NEILSON: Yes, that's --

2 MS. MACNETT: -- my point about it used to be a
3 clean divide, but it isn't --

4 REPRESENTATIVE NEILSON: Isn't anymore.

5 MS. MACNETT: -- a clean divide any longer. So,
6 for example, I am going through things where I very much
7 appreciate home care at the moment, and even if we wanted
8 to change something for home care at the State level, we
9 could be setting up another compliance trap at the Federal
10 level. So we've got to be very careful. If you are going
11 to adopt the Federal regulations -- and I applaud the
12 Department for trying to comply -- why not adopt them by
13 reference so that we adopt all the regulatory guidance that
14 goes along with it, the sort of thing that we're talking
15 about?

16 REPRESENTATIVE NEILSON: Well, I think that's why
17 the Chairman called for this hearing because this is a
18 complicated issue that we all need to look into, and
19 hopefully we'll get through this soon.

20 Thank you, Chairman.

21 MAJORITY CHAIRMAN KAUFFMAN: Thank you.

22 And finally, Representative Dush. And just to
23 remind you, you're the only thing standing between us and
24 our lunch break.

25 REPRESENTATIVE DUSH: You did that on purpose,

1 Chairman.

2 MAJORITY CHAIRMAN KAUFFMAN: I did that on
3 purpose. Sorry, Cris.

4 REPRESENTATIVE DUSH: No, you're not.

5 First of all, I want to start with -- the
6 Secretary brought up the 2.7 percent a year over the last
7 15 or 20 years. The only place I've seen that is in the
8 public sector. I went back, pay range for SEIU union
9 employees went from 26,414 to 33,429, which that amounts to
10 about 2.7 a year. That's for staying in the starting
11 range. If that same employee did not get a promotion,
12 stayed in there, he's now making 44-5, 45, and that's
13 before the \$900 million pay raise that went into effect in
14 September of last year or '16.

15 The thing that gets me is we keep building -- you
16 guys all touched on it, whether it's private sector,
17 nonprofits, public sector is the unfunded mandates. We are
18 creating positions in Harrisburg and other areas that a lot
19 of them are make-work jobs. The data that we're collecting
20 ends up going into -- it gets stamped, it's received, put
21 into a box, and when the box gets full, it gets put into a
22 closet and no benefit. It's happening in the public
23 sector. It's happening in the private sector. I've got
24 people in different departments telling me about what's
25 happening to these forms and what's not happening with

1 them.

2 My DSPs that are making \$8-something an hour up
3 in my area, they're paying for that \$900 million increase
4 plus that 2.7 that happened every year for 15 years while
5 they haven't seen it. Nationwide for the 15 years prior to
6 2016, it was an \$84 drop in median family income over that
7 15 years. In my district, it was \$1,140. And we were
8 asking those people to pay more for government.

9 Businesses and nonprofits, the people who are
10 actually out there taking care of our disabled people, our
11 in-home care nursing, as well as the businesses, they've
12 had to work and pinch pennies in order to stay alive, while
13 government hasn't.

14 God bless each one of you guys. This panel, I
15 want to thank you. And, Chairman, I want to thank you
16 because -- we'll get to lunch, but this is public, private,
17 and nonprofits all coming together and giving an excellent
18 example of where the bureaucracy is running amok. Thank
19 you.

20 MAJORITY CHAIRMAN KAUFFMAN: Thank you very much.
21 I think this was a very productive hearing, and we had
22 equal balance of time. And I want to remind you that we
23 will be reconvening promptly at 1:30, so you have exactly
24 one -- anyone who's returning, which hopefully everyone up
25 here is returning, you have an hour and 20 minutes. We'll

1 see you at 1:30.

2 This meeting is adjourned.

3 (The Committee recessed at 12:12 p.m., to
4 reconvene at 1:30 p.m.)

1 I hereby certify that the foregoing proceedings
2 are a true and accurate transcription produced from audio
3 on the said proceedings and that this is a correct
4 transcript of the same.

5

6

7

Christy Snyder

8

Transcriptionist

9

Diaz Transcription Services