



June 24, 2016

The Honorable Scott Tipton
House of Representatives
218 Cannon HOB
Washington, DC 20515

Dear Representative Tipton,

On behalf of several large groups of business interests in the state of Colorado, who represent the vast majority of Colorado employers of all sizes and are collectively focused on enhancing Colorado's global competitiveness, we are writing to express our opposition and concerns about the Wage and Hour Division regulations raising the salary thresholds for white collar workers. We are writing to respectfully request that your office thoroughly scrutinize the Wage and Hour Division's minimization of the new rules' negative impacts on business and see the rules for what they are: a burden on small businesses and a driver of increased litigation.

As you are aware, on May 18, 2016, the U.S. Department of Labor announced changes to the regulations interpreting the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et. seq. (FLSA). In a 505-page final rule, 81 F.R. 32391, the Wage and Hour Division exercised its rule-making authority to amend the well-known white collar exemptions to federal overtime requirements. The rule effectively made three major changes to existing law:

- The new regulations more than double the minimum salary test from \$23,660 a year to \$47,476.
- The new regulations lift the highly compensated employee threshold to \$134,004 a year from \$100,000.
- These thresholds will automatically rise every three years, indexed to a fixed percentile of weekly earnings for salaried, full-time workers.

While the Department of Labor made some important changes in the final regulation, the revised overtime regulation issued still represents a regrettable burden to employers large and small, as well as nonprofits, as they attempt to grow in a tepid economy.

Despite the modifications, the dramatic escalation of the salary threshold, below which employees must be paid overtime for working more than 40 hours a week, will mean a sizable number of employees who are salaried professionals will have to be reclassified to hourly wage workers. Throughout the state of Colorado, small businesses, nonprofits and public sector employers will be especially impacted, as they will have the hardest time finding more income to cover increased labor costs, even if they will have a longer time to implement the new requirement.

Furthermore, because the threshold will increase every three years, the impact on these employers will continue to ratchet up. This will result in charities providing fewer services to those in need, local governments having to reduce services and raise taxes and small businesses having to curtail operations or plans to expand.

We see this regulation having several unintended consequences:

- These rules will cause employers to restrict and redistribute hours.
- Younger and less experienced workers will lose opportunities to gain advancement and responsibility.
- Industries such as nonprofit, retail and education as well as rural, lower wage areas will be disproportionately impacted.
- Perhaps most notably, the new rules will discourage employers from implementing flexible scheduling and remote worker policies, the very sorts of family-friendly practices that improve worker productivity and satisfaction.

We are further concerned that the sudden and sharp escalation in the salary threshold places a target on the backs of well-meaning but under-informed employers, particularly smaller employers without professional legal or human resources departments. Plaintiff's lawyers will focus on these smaller employers, knowing that every third year many employers will miss the escalation of the salary level—organizations that are also least equipped to pay fines and penalties.

Despite the certainty that this rule change will increase the litigation risk for businesses, the Wage and Hour Division claims the final rule will lead to less litigation. Their conclusion cannot be reconciled with America's experience with plaintiffs' law firms targeting employers and the sudden, drastic change in the rules to take effect almost overnight.

Finally, we would like to appeal to your interest in maintaining Colorado's economic vibrancy. We urge you to request a review and scrutinize the rules and the understated negative effects they will have on the vast majority of job producers in our state.

Sincerely,

Associated Governments of Northern Colorado
Club 20
Colorado Competitive Council
Colorado Springs Regional Business Alliance
Denver Metro Chamber of Commerce
Downtown Denver Partnership
The Greater Pueblo Chamber of Commerce
Metro Denver Economic Development Corporation
National Federation of Independent Businesses – Colorado Chapter
South Metro Denver Chamber of Commerce
Vail Valley Partnership