

Harrisburg May Be on Cusp of Grand Compromise Regarding Employee Pay



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While the U.S. Congress continues to struggle with the question of changing the minimum wage, it appears that the Pennsylvania legislature and the Governor's Office may be close to a significant compromise on the subject that would be acceptable to both parties. The legislation that would close the deal (Senate Bill 79) is currently in the State House, awaiting final approval. In the meantime, Pennsylvania employers are hopeful that some closure is coming to a three year roller coaster of wage uncertainty.

It was in 2016 that the U.S. Department of Labor (DOL) first announced that it was going to dramatically increase the "salary test" for overtime exemption related to the Executive, Administrative and Professional (EAP) exemptions under the Fair Labor Standards Act. The DOL published a final rule that would raise the weekly salary threshold to qualify for the EAP exemption from \$455 to \$913. This caused employers to scramble and determine whether lower-paid exempt employees should be increased or made nonexempt. All that effort, however, was wasted when the regulation was declared invalid by a federal district court.

With a change in administration, the effort in Washington was put on hold. In early 2018, however, following years of unsuccessful effort to increase the state minimum wage, Governor Wolf announced his intention to increase by regulation the salary test for EAP exemptions under the Pennsylvania Minimum Wage Law. While the state had the same minimum wage as the federal law (\$7.25), its salary test for EAP exemptions had not been increased since 1977. The proposal by the governor, to increase the salary test to \$45,500, would be carried out via state regulation, and would not require action by the legislature. Following re-election, in early 2019, Governor Wolf also proposed to raise the minimum wage under state law to an ambitious level of \$12 an hour immediately, followed by annual 50-cent increases to \$15 an hour in 2025.

In the summer of 2019, the U.S. DOL issued a long-awaited rule on the federal EAP salary test replacing that which was declared invalid in 2016. Under this rule, the salary test for EAP exemptions will be a more modest \$684 weekly (\$35,568 annually). This rule will go into effect on January 1, 2020.

Meanwhile, throughout this year, discussions in Harrisburg focused on the more significant proposed increase in the salary test under state law (Regulation #12-106) along with the legislation for increase to the minimum wage (Senate Bill 79). With the proposed regulation and its salary test of \$45,500 scheduled for implementation in last week's meeting of the Regulatory Review Commission, the deal finally came together, with Senate Republicans agreeing to a modest increase in minimum wage and the governor agreeing to withdraw the proposed regulation on increase to the salary test. The increase in minimum wage would be 50-cents per hour in July 2020, followed by 50-cent increases each six months thereafter until the minimum wage is \$9.50 in January 2022. The deal is less than the governor sought, but would result in a wage increase for some 400,000 Pennsylvania workers.

At this point, the legislation is in the State House, where its fate is not certain. Stay tuned.
