

NFIB

The Voice of Small Business®

March 22, 2016

The Honorable Tim Walberg
U.S. House of Representatives
2436 Rayburn House Office Building
Washington, D.C. 20515

Chairman John Kline
Committee on Education & the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Walberg and Chairman Kline:

On behalf of the National Federation of Independent Business (NFIB), the nation's leading small business advocacy organization, I write in support of H.R. 4773, the *Protecting Workplace Advancement and Opportunity Act*. This legislation would protect small businesses and their employees from the U.S. Department of Labor's (DOL) forthcoming overtime expansion rule.

In a proposed rule, published in the *Federal Register* on July 6, 2015, DOL's Wage and Hour Division proposed major changes to the overtime standards for salaried employees. Currently, a salaried employee earning less than \$23,660 annually must be paid overtime for time worked over 40 hours in a week, regardless of the worker's duties. The proposed rule would more than double that minimum threshold to \$50,440. The proposed rule automatically adjusts the threshold at set intervals based on inflation. Such a provision would make it difficult for small businesses to budget adequately for payroll on a year-to-year basis. Also, though DOL implied it wants to make modifications to the executive, administrative, and professional (EAP) duties exemptions, it did not provide specific language for how it might make these adjustments. This ambiguity will leave small businesses guessing.

NFIB believes that the overtime rule will have a substantial negative effect on small businesses and their employees. The rule would result in higher costs for small businesses. At the same time, employees will not necessarily earn more money because small business owners will limit employees to 40 hours per week and switch them from salaried positions to hourly jobs. Converting employees to hourly wages also means reduced benefits and opportunities for career growth. In addition, a substantially similar final rule would violate the Administrative Procedure Act (APA) because it would change the EAP exemptions without giving the public the opportunity to comment on specific language.

Fortunately, H.R. 4773 would prevent finalization of the proposed rule. If DOL tries to promulgate a similar rule in the future, it must complete a more thorough small business economic analysis. Under the bill, any future overtime rule could not include automatic adjustments of the salary threshold. Lastly, H.R. 4773 addresses DOL's APA violation by requiring DOL to issue a specific proposal for public comment if it wishes to make changes to the EAP exemptions.

The *Protecting Workplace Advancement and Opportunity Act* is a solution that would make sure that DOL's overtime rule does not negatively affect small businesses. We appreciate your leadership on this key issue and look forward to working with you to ensure the enactment of H.R. 4773.

Sincerely,



Amanda Austin
Vice President
Public Policy