

September 3, 2015

Department of Labor
Wage and Hour Division
29 CFR Part 541
RIN 1235-AA11

Re: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees

Comments to Proposed Rulemaking to Revise FLSA Regulations

The Puerto Rico Manufacturers Association (PRMA) respectfully submits comments to the Notice of Proposed Rulemaking by the US Department of Labor to amend the Fair Labor Standards Act (FLSA) regulations. The proposed changes would implement the exemption from minimum wage and overtime pay for executive, administrative, professional, and computer employees.

The PRMA is a private, voluntary, non-profit organization established in 1928, with a specific mission, vision and objective. Our mission is to strengthen the industrial and entrepreneurial culture to advance the competitiveness of our members. Our vision is to stimulate the economic and social well-being through industrial and entrepreneurial competitiveness integrated to global activity. Our objective is to maximize the competitiveness of member companies to maintain profitability and continuity of business. The continuity of business is the main concern in our comments.

The PRMA represents the manufacturing and related services sector in the Island, including local and multinational entities, representing about 1,150 employers in Puerto Rico. Manufacturing represents 48.6% of Puerto Rico's GDP, 98% of Puerto Rico's exports and it has the largest multiplier effect with respect to employment. Each manufacturing job in Puerto Rico represents 2.67 and 1 in the United States indirect and induced jobs. Wages in the manufacturing sector are among the highest in the Island's economy, 30% higher than the overall average wage in Puerto Rico.

Although the PRMA generally supports any efforts to modernize FLSA regulations, a vast majority of our members have expressed their concern about the impact that these proposed changes would have in their operations. Our comments are focused on a reconsideration of the proposed changes that can redefine who is eligible for overtime pay as well as impose an automatic adjustment of the minimum salary level on an annual basis and a request to grant Puerto Rico a specific exemption from the application of this proposed rule. Raising the salary threshold across the board, without consideration to employers circumstances, would create a debacle in the Island. Most of our members would have to take drastic measures to absorb the costs of implementing the proposed regulations. At the end, these remedial actions would, more likely than not, have a negative impact in the employees' compensation, flexibility, morale, opportunities of development and career advancement.

The current regulation requires payment of time and a half for hours worked in excess of 40 hours a week, when the employee has an annual salary less than \$23,600 per year. Using as an example some of the major industries in Puerto Rico, the average difference between the average annual salaries in Puerto Rico and in the United States for the first line supervisors is approximately \$20,665 a year. Accordingly, employers in Puerto Rico would have to pay an average of \$20,665 more than its counterparts in the United States in order to keep their exempt employees in the same status. Below is a table detailing the difference in average yearly salaries between Puerto Rico and United States in some of the major industries in Puerto Rico:

	U.S average yearly salary	P.R. average yearly salary	Difference
Retail	\$42,190	\$28,290	\$13,900
Non-Retail	\$84,010	\$41,040	\$42,970
Housekeeping	\$39,110	\$23,640	\$15,470
Restaurants	\$32,420	\$22,100	\$10,320
Data from BLS for 2014		Average difference	\$20,665

According to our internal survey, over 60% of current exempt employees would immediately qualify for overtime pay. In Puerto Rico's particular situation, the average salary is substantially lower than the national average in the States. Setting a uniform minimum salary for Puerto Rico, without considering the fact that we have significantly lower annual salaries, will have substantially higher implications for smaller staffed organizations that do not have resources to bear this impact. Any changes to the rule should consider the regional differences in the level of income for middle class living standards in the Island.

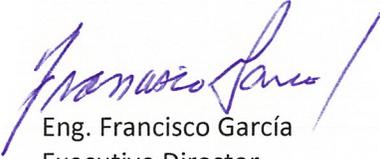
Members have already expressed concerns and are considering establishing rigorous systems to regulate the hours worked by eligible employees, even prohibiting the practice of working out of the office or responding to emails or conference calls after hours or during the weekends and holidays. Applying the proposed changes to every employer of exempt employees regardless of their size, where the salary threshold is not that high, would result in the conversion of exempt employees into nonexempt employees, layoff of newer employees to fund the increase in wages for employees with seniority, lower hourly wages for current nonexempt employees and excessively restrictive rulings for overtime hour approval, to name a few consequences. It would also affect the opportunities of professional development of those employees because employers would be forced to limit training sessions, seminars, etc., since they would need to consider them as working time. Additionally, in order to avoid increasing the employee's regular rate for overtime purposes, the employee's merit compensation would also be affected. The overall effects of most of the aforementioned restrictions on employees could result in other undesired situations such as: an increase in unemployment rates due to layoffs; morale, compliance and productivity issues for employees that perceive the change in exempt status as a demotion, and; loss of career growth opportunities because of lack of funds to approve overtime hours.

As a non-profit entity, the PRMA would also suffer serious changes because many of our employees are classified as exempt from overtime eligibility because their primary duties meet the test for the executive, administrative or professional exemptions under the FLSA, and they are paid on a salary basis higher than \$23,660 but lower than \$50,440. As per the comments of other entities, we would also prefer to establish a salary threshold based on government

produced data establishing a regional cost-of-living or the alternative of granting Puerto Rico an exemption from the application of this proposed rule.

The PRMA respectfully suggests that the proposed overtime rule changes are reconsidered in order to avoid the aforementioned negative consequences. Considering changes that are classified by the type and size of employer and consider the difference in minimum salary averages for exempt employees in Puerto Rico, the PRMA requests that a general exemption is granted to Puerto Rico from the applicability of the proposed overtime rule. In the alternative, a lower minimum salary for certain sectors, or a tiered system that acknowledged the size and type of employer in any proposed rule change.

Cordially,



Eng. Francisco García
Executive Director

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