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ATTORNEY GENERAL MADIGAN OPPOSES ADMINISTRATION'S ROLLBACK OF OVERTIME PAY PROTECTIONS

U.S. Dept. of Labor Won't Defend Expansion of Overtime Pay Protections for Illinois Workers and Millions of Americans

Chicago – Attorney General Lisa Madigan, along with eight other attorneys general, today filed comments opposing the federal administration's efforts to roll back overtime pay protections directly impacting workers across Illinois and the country.

Madigan and the other attorneys general submitted comments in response to the U.S. Department of Labor's (USDOL) Request for Information concerning an Obama administration rule updating the executive, administrative and professional (EAP) exemption to the overtime requirements of the Fair Labor Standards Act (FLSA). The EAP exemption currently provides that employees making at least \$455 a week may be exempt from overtime pay, leaving workers such as first-line supervisors at fast-food restaurants, car washes, retail stores, and construction sites subject to misclassification as executive employees; clerical and office workers subject to misclassification as exempt administrative employees; and medical and dental technicians, mid-level IT employees, and film and television production assistants subject to misclassification as exempt professional employees. If these workers are misclassified, they are then denied overtime pay that they earned.

Under the Obama administration, the USDOL issued a new rule raising the minimum weekly salary amount used in assessing the EAP exemption from \$455 to \$913 and created a mechanism for automatically updating the salary level based on actual changes in salary levels around the country. Several states and the U.S. Chamber of Commerce sued over the Obama administration's rule, and a Texas district court recently issued a decision prohibiting the rule. The federal administration has not yet made clear whether it intends to appeal the court's decision but has said that USDOL "has decided not to advocate for the specific salary level (\$913 per week) set in the 2016 Final Rule."

"The Department of Labor's overtime rule was a common-sense measure that ensured workers are paid what they deserve," Madigan said. "Leaving workers at risk of being exploited is unfair. This critical overtime protection should remain in place."

In their comments, Madigan and the other attorneys general asserted that the 2016 Final Rule struck an appropriate balance between employer and employee interests in setting the \$913 salary level, which was the outcome of a two-year federal rule-making process in which the USDOL reviewed more than 270,000 comments from a broad array of constituencies, including worker organizations and unions, small businesses, Fortune 500 corporations, state and local governments and economists.

The comments filed by the attorneys general explain that, despite federal and state enforcement efforts, rampant violations of labor laws have continued nationwide – and a study of low-wage workers in large cities, including Chicago, found that more than three-quarters were not paid overtime in accordance with federal law. Madigan and the other attorneys general argue that a meaningful salary test is essential to protecting workers from being misclassified as exempt from overtime pay when they are lawfully entitled to receive overtime for hours worked beyond 40 hours a week. They urge USDOL to set a salary level that is at least as protective as the 2016 Final Rule, which was in line with USDOL's longstanding historical practice.

The comments also argue that a meaningful salary level test makes state labor law enforcement more effective and efficient and that weakening the salary level test will force employees, employers, and states to rely instead on a fact-specific "duties" test that is more susceptible to exploitation. Because enforcement is more difficult without a salary level test, misclassification would be even more pervasive, due to employer and employee uncertainty, as well as intentional abuse by employers. Low-wage workers are particularly vulnerable to exploitation and generally cannot afford their own private counsel.

Madigan and the other attorneys general also urge USDOL to adopt an automatic updating formula that is at least as protective of workers as the one set forth in the 2016 Final Rule and not risk letting labor protections erode again due to legislative or regulatory inaction.

Joining Madigan in filing today's comments were the attorneys general from: California, Delaware, Iowa, Maryland, Massachusetts, New York, Vermont and Washington.

A copy of the comments can be found [here](#).

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