



National Newspaper Association – Washington Office

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November 19, 2019

Amy DeBisschop
Director
Division of Regulations, Legislation and Interpretation
Office of Policy, Wage and House Hour Division
United States Department of Labor
200 Constitution Avenue NW
Washington DC 20210

In Re: RIN1235-AA31

Dear Director DeBisschop:

The National Newspaper Association, a 134-year-old organization of community weekly and daily newspapers across America, hereby provides its comments on the Division's proposal on the Fluctuating Workweek Method of Computing Overtime.

The fluctuating workweek method of calculating overtime pay is well-suited to a problem that newspapers of all sizes face during every publication cycle: the news happens when it happens. It is impossible for an editor to create budgets that will adequately predict the need to cover wildfires, hurricanes, tornadoes, long city budget meetings, ecstatic high school sports teams in a statewide tournament, food poisoning outbreaks in a school cafeteria, election nights and any of a host of other breaking stories that occur in communities across the country. It is an even more difficult task when the underlying basis for a newspaper's business model is under attack and resources are tight enough to make even a regular work week achievable. Yet community journalists consider themselves to be professionals and seek from their employers the maximum flexibility they can have so they can do their jobs.

That is why NNA has repeatedly asked the Division and Congress to consider both regulatory and legislative changes to permit flexible and compensatory time for non-exempt newsroom employees so small newspapers could continue their missions as the primary news providers to their towns. NNA has also sought exempt salary thresholds that recognize the differences between urban economies and the rural/small town areas that NNA newspapers typically serve.

The new exempt salary threshold commencing on January 1, 2020, is posing a serious challenge to the viability of small town newspapers. Therefore, NNA seeks and supports any changes the Division is able to provide that will assist these newspapers in compliance with the Fair Labor Standards Act overtime rules. NNA agrees that the proposed rules change to

National Newspaper Association, founded in 1885, represents community newspapers across the United States. Our members are primarily weeklies and small dailies in America's small towns and communities. Write us at info@nnaweb.org.

permit bonuses and premium pay for non-exempt workers on a fluctuating salary compensation plan will provide a welcomed new tool for compliance.

In a recent survey of member publishers, NNA found the following:

- Nearly 60% of publishers would consider using bonuses in fluctuating salary bases if permitted to do so;
- More than 90% support giving publishers additional flexibility in calculating salaries;
- Approximately 11% are shifting employees to a fluctuating salary basis because of the new threshold rules while nearly 60% are reclassifying exempt employees as non-exempt, setting rigid 40-hour work weeks, moving full-time employees to part-time or downsizing their staffs to comply with the threshold.

Added to these responses, the NNA governing body has frequently noted that permitting the fluctuating work “week” to be calculated on a biweekly or monthly basis commensurate with the pay periods in many small businesses would allow newspaper employers some needed flexibility. Such a change would give editors and reporters the ability to adapt to changing work weeks to cover the news without depriving non-exempt employees of the opportunity for time off or overtime pay. In its consideration of the bonuses and premium pay change, the Division could assist struggling newspapers by allowing the denominator of the work “week” to be commensurate with the pay period. In other words, the regular rate for a newspaper employee on a fluctuating salary basis with a biweekly pay period would be set on a basis of 80 hours, or, with a monthly pay period, on a basis of 160 hours. Such a change would allow for some modest amount of flex time to accommodate a news cycle.

Most publishers responding to the membership survey said the new overtime rule was imposing a burden on an industry that is already struggling to provide news and information to their communities.

NNA appreciates the Division’s mission of enforcing the Fair Labor Standards Act in a way that is fair to both employees and their employers’ viability, and acknowledges the work that the Division has already done to adapt the minimum threshold requirement to the economic realities in today’s publishing world.

Sincerely,



Counsel to National Newspaper Association
CNLC, LLC
November 21, 2019