

September 1, 2015

Mary Ziegler
Director, Division of
Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

Re: RIN 1235-AA11—Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees

Dear Ms. Ziegler:

On behalf of our 158,000 members, we are pleased to comment on the Department of Labor proposed rule to expand the number of workers eligible for overtime pay by revising one of several tests—the salary level test—used to determine whether an employee is exempt (or not exempt) from federal overtime pay rules. We offer these comments in response to your Federal Register notice of July 6, 2015 (80 FR 38516).

The Fair Labor Standards Act requires that all employees be paid overtime for working more than 40 hours in a given work week. All hourly employees are entitled to overtime pay. Salaried workers are also entitled to overtime pay, unless they meet several tests that render them ineligible (or “exempt”). The Department of Labor is proposing to revise one of those tests—the salary level test.

Under the proposed rule, any dental practice with over \$500,000 in annual dollar volume would have to pay overtime wages to salaried employees who are currently exempt and paid between \$455 a week (\$23,660 annually) and \$921 a week (\$47,892 annually).

Responses from our volunteer leaders suggest around 39 percent of all dental offices have at least one employee in a salaried position. Factoring out annual dollar volume, the proposed rule could impact approximately 20 percent of all dental practices, depending on how many employees are currently exempt, the salaries they receive, and whether they typically work more than 40 hours per week.

As proposed, the revision to the salary level threshold would leave most employers with two options for controlling overhead costs. The first option would be to limit the hours currently exempt employees work (to less than 40 in a given work week). This is not an option for the 20 percent of dental practices that would be affected, due to after-hours emergencies and other patient problems that make working hours unpredictable.

The second option would be to raise fees, which could be detrimental to the millions of Americans already struggling to pay for the dental care they need.

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We urge the Department to reconsider its proposed change to the salary test as it applies to dental practices. Doing so will help prevent a rise in health care costs for our most vulnerable citizens.

Thank you for providing us the opportunity to comment. If you have any questions, please contact Mr. Robert J. Burns at 202-789-5176 or burnsr@ada.org. Information is also available at ADA.org/advocacy.

Sincerely,

/s/

Maxine Feinberg, D.D.S.
President

MF:KTO:rjb

/s/

Kathleen T. O'Loughlin, D.M.D., M.P.H.
Executive Director