



1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

May 6, 2016

[Via email \(OIRA_submission@omb.eop.gov\)](mailto:OIRA_submission@omb.eop.gov)

Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: *Comments on the United States Department of Labor's Proposed Rule "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees"*

To the Office of Information and Regulatory Affairs:

The League of California Cities (League) respectfully requests consideration of the following comments regarding the proposed rule "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees" submitted by the Department of Labor (DOL) to the Office of Information and Regulatory Affairs (OIRA) for review.

The League is an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League monitors state and federal legislation of concern to municipalities and identifies legislation, including proposed rules and regulations, which have statewide significance. The League has identified this proposed rule as having a significant impact on cities and city employees in California unless modified.

The League is concerned that the DOL's proposed increase to the minimum annual salary level for exempt employees will necessitate the reclassification of many city employees from exempt to non-exempt. Unlike many of their private sector counterparts, cities often cannot effect an immediate change in the terms and conditions of their employees' employment. To reclassify their employees (or to adjust their salaries), cities may be required to fulfill obligations under California's Meyers-Milias-Brown Act (MMBA) (Cal. Gov. Code, § 3500 et seq.).

Under the MMBA, cities must meet and confer in good faith with employee organizations over matters relating to employment conditions such as wages, hours, and other terms of conditions of employment. After meeting and conferring in good faith, cities can only adopt new terms and conditions with the agreement of the employee organization, or – if the employee organization will not agree – by exhausting mandatory impasse procedures (involving such steps as submitting the proposed terms and conditions of employment to a factfinding panel).

Notwithstanding the financial impact of these additional procedures (which will reduce the amount available for employee salaries and benefits), the proposed rule does not appear to contemplate that cities may need time to fulfill any collective bargaining obligations under the MMBA. While some

cities have no trouble effecting an agreement with their recognized employee organizations, other cities meet and confer for months before they reach agreement with their recognized employee organizations. Some cities never reach agreement, and several additional months go by before the impasse procedures under the MMBA are finally exhausted. The proposed rule fails to take into account the complexities of employee relations and bargaining, especially in the public sector.


This is true also of the portion of the DOL's proposed rule which would include a mechanism for automatically adjusting the salary level *every year*. This portion of the rule is especially problematic for California cities from a logistical and timing perspective. Those cities who reach agreement with their employee organizations typically execute their agreement in a written memorandum of understanding or collective bargaining agreement intended to last for a period more than one year. This automatic update mechanism may require cities to reopen negotiations more frequently, costing additional time and public money that cities cannot afford to spend without cutting back on the provision of critical services to the public. It would also hinder the ability of cities to plan and budget on a long-term basis, and does not seem wise considering the volatility of the economy in recent years.

The League is also concerned with DOL's proposed rule because it fails to account for the finite public budgets of city employers. Cities – unlike some private employers – likely will not have the resources necessary to raise salaries to retain the exempt classification for their employees.¹ City employees who might currently enjoy a great deal of flexibility with respect to their work schedule will thus be required to track hours and work a less flexible schedule. Cities are likely to enforce the work schedule strictly, to avoid incurring additional overtime costs. City employees may view this as unduly restrictive and may feel as if they have been stripped of their independent judgment and autonomy without any resulting financial benefit.

Finally, although the DOL's proposed rule does not contain any actual language purporting to modify the duties test, the text accompanying the proposed rule suggests that amendments to the duties test could potentially emerge from the rulemaking process. The League strongly opposes any amendment to the duties test without further opportunity for meaningful comment based on actual language.

For all of these reasons, the League respectfully requests the OIRA modify the DOL's proposed rule, taking into account the unique problems the rule presents for public agencies such as cities, and specifically those cities in California who are already subject to extensive labor laws.

Sincerely,


Chris McKenzie
Executive Director

cc: Members, California Congressional Delegation

CM:jl

¹ It is worth noting that City employees, while typically receiving less compensation than their private sector counterparts in the form of salary or wages, typically receive more in the form of benefits, which are not factored into the salary level for purposes of exemption under the Fair Labor Standards Act.