

## **Pennsylvania Excludes Governmental Employers from State Overtime Regulations**

By: David E. Mitchell, Esq. & Gretchen K. Love, Esq.

The Department of Labor and Industry (“Department”) issued the final version of its new overtime regulations interpreting the Pennsylvania Minimum Wage Act (“Act”) on October 3, 2020, but there is good news for municipalities and other governmental employers.

In commentary issued with the new regulations, the Department confirmed its position that its overtime regulations “have been and continue to be inapplicable to public employers, including State-affiliated entities, counties, municipalities and public school systems” and that nothing in the new Pennsylvania overtime regulations changes that. Thus, in the Department’s view, although such employers are subject to the federal Fair Labor Standards Act and related federal regulations, they are not required to comply with the new Pennsylvania overtime regulations or the Pennsylvania Minimum Wage Act. The Department acknowledged that “no Pennsylvania court has specifically addressed whether the act applies to public employers” but based its conclusion on the legislative history of the Minimum Wage Act, which the Department views as indicating that the General Assembly did not intend for the Act to apply to governmental employers, and the Act’s definition of the term “employer” which “specifically omits public employers.” The Department concluded by expressly stating that “Commonwealth agencies, counties, cities, boroughs, townships, state-related schools, Penn State University, public schools, conservation districts and port authorities” are all exempt from the requirements of the Pennsylvania Minimum Wage Act and the new overtime regulations.

This result is consistent with a 1976 Pennsylvania Attorney General Opinion concluding that the Pennsylvania Minimum Wage Act does not apply to governmental employers. It is also consistent with prior decisions by Pennsylvania courts holding that the Pennsylvania Wage Payment and Collection Law, which has a similar definition of the term “employer,” does not apply to governmental employers. Although Pennsylvania courts are not bound by the views of the Department or the Attorney General and could reach a different conclusion in the future, the reasoning outlined in the Department’s commentary provides further support for the long-standing view that the Pennsylvania Minimum Wage Act does not apply to municipalities and other governmental employers. In contrast, municipalities and other governmental employers must continue to comply with the federal Fair Labor Standards Act and related federal regulations.