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March 26, 2018

Director Joel Sacks and Assistant Director Elisabeth Smith  
Department of Labor & Industries  
PO Box 44000  
Olympia WA 98504-4000

Dear Director Sacks and Asst. Director Smith,

The Wenatchee Valley Chamber of Commerce (WVCC) represents over 600 businesses in the Wenatchee Valley, and throughout North Central Washington. Our mission is to champion our community's quality of life and economic vitality through collaborative leadership and sound business advocacy. The WVCC has been following the Department's proposed update to the Executive, Administrative, and Professional (EAP) exemptions from the Washington State's Minimum Wage Act, and we respectfully submit the following comments:

### **1. L&I Should Proceed Carefully and Deliberately with this Rule-Making**

It is WVCC's understanding this rulemaking will be modeled after the process used to develop the minimum wage-paid sick leave rules in 2017. We strongly disagree with this approach. The minimum wage and paid sick leave rulemaking followed a statewide vote to enact the change in law. The initiative had specific timelines for implementation, and L&I had statutory deadlines to meet. All employers were aware of the changes because of the state-wide vote. This is a much different situation. Currently, most employers in our region are unaware of this rulemaking; furthermore, most employers, whether public or private, are not well versed in the issue, nor in the consequences of policy choices that the Department might consider.

The process outlined by L&I does not allow for the education, outreach and input necessary from across the state to gauge impacts and develop a rule that meets the needs for both employers and employees. We don't believe the issue is well understood by stakeholders, nor has the rule-making effort been well communicated. We appreciate that the revised timeline adds a modest amount of time for data input and review; however, the WVCC believes that the Department should engage in outreach and education across the state before rules are drafted and put forward for public comment and review. A revised rulemaking process should include:

- Initial outreach and education to businesses and stakeholders across the state. In this instance, L&I could hold a series of hearings, or "listening" sessions to both educate and gather initial input. This could be particularly useful in smaller communities and rural regions of the state like ours.
- When options for possible changes to the rule are developed, create "easy to understand", real life examples and analysis on how the options would differ from current policies, and repeat the listening sessions to gather additional feedback and test assumptions/understanding of the rule's impact across the state.

The WVCC believes the current process L&I has outlined, which relies on four public hearings, is insufficient for such a complicated topic.

### **2. Significant Legislative Rule**

The WVCC appreciates that the Department recognizes that these proposed rules are a "significant legislative rule", requiring a full cost-benefit analysis. The cost-benefit analysis will be substantially impacted by whether, and to

what extent, a new salary level may be proposed that exceeds the existing FLSA standard of \$455/week. As a practical matter most Washington employers are already bound to follow the FLSA.

Additionally, in our area, it's crucial that the cost benefit analysis address the impact on the competitiveness of our local employers who must compete with businesses from adjacent states (Idaho) and British Columbia. The WVCC is also concerned that if the Department proposes a salary level above the FLSA standard, a significant factor in the cost-benefit analysis should be the negative impact on the morale of employees who currently enjoy the prestige and work flexibility of being a salaried exempt employee. Many will lose those benefits if their positions are "demoted" to hourly.

**3. The rule should reflect regional differences in wages/compensation**

There is clear and compelling data that there is a large disparity in wages and compensation between the metropolitan areas of the state, and the rural areas of Western, Eastern and Central Washington. A "one size fits all" standard, or rule, may not be appropriate because of these differences.

If the Department considers a salary level that deviates from federal standards, the Department must engage with the business community on a thoughtful analysis of the legitimate wage differences between rural and metropolitan areas of Washington State. Additionally, the Department must work with the business community over an extended period (longer than what is currently contemplated) the actual relationship between salary levels and exempt employee duties in Washington State.

This is a complicated issue that intersects with federal law, and it impacts both employers and employees. The WVCC urges the Department to provide adequate outreach, education, and stakeholder input to create the best outcome for all of Washington employers and employees.

Thank you for your consideration of this feedback. If you have questions, please don't hesitate to contact the WVCC's Executive Director, Shiloh Schauer, at (509) 264-4680.

Respectfully,

A handwritten signature in black ink, appearing to read "Josh Jorgensen". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Josh Jorgensen, Chair  
WVCC Advocacy Committee