December 31, 2019

Michael Primo  
Rule Coordinator  
Division of Labor Standards and Statistics  
633 17th Street, Suite 600  
Denver, CO 80202-2701

Dear Michael,

I am writing on behalf of Colorado Nonprofit Association to comment on the Colorado Overtime and Minimum Pay Standards Order (COMPS Order). Colorado Nonprofit Association represents 1,400 nonprofit member organizations throughout the state.

First, we support presumptively covering all employees in Colorado under Rule 3 to fill gaps between the existing Minimum Wage Order #35 and the Fair Labor Standards Act (FLSA). This ensures all Colorado workers, including all nonprofit staff, benefit from the minimum wage unless exempted by law or rule.

Second, we see some positive changes to exemption categories in the COMPS order but have some concerns about how nonprofit organizations will be affected going forward. The addition of the owners’ or proprietors’ exemption will be helpful for nonprofit CEOs who lead all-volunteer organizations or have fewer than two full-time staff members. Many nonprofits have fewer than three staff members and this exemption will help nonprofits that pay more than the salaries proposed in Rule 2.5.

We think that aligning the definitions of bona fide volunteers and work-study students with FLSA is a positive change as well. However, some students volunteer because they simply want to help their community and they may not be participating in work-study programs or seeking course credit. We ask for clarification that such student volunteers would be treated as bona fide volunteers.

We have concerns that many nonprofit staff that are exempt under FLSA, and paid more than the proposed minimum salary in Rule 2.5, will not be exempt under the state’s exemption categories:

- The definition of administrative employees under Rule 2.2.1 appears to limit application of this exemption to executive assistants and administrative staff that directly serve executives. Staff that provide integral administrative support for nonprofits’ specific programs or general operations would not be exempt, even if they meet the federal duties test.
- Requiring executives or supervisors under Rule 2.2.2 to spend at least fifty percent of the workweek on supervisory duties likely disqualifies many employees who supervise two or more full-time employees. Nonprofit executives and managers commonly spend much of their time on activities other than supervision, which may include fundraising, grant-writing, relationship-building, program management, and public relations. The sum of these activities may exceed fifty percent, even if more time is spent on supervision than any other single activity.
- The exemption for professional employees under Rule 2.2.3 appears to be limited to employees who work in the specific field for which they received an advanced degree. Most nonprofit professionals acquire advanced knowledge through on-the-job experience, applicable professional certifications, and trainings offered by professional associations rather than having a degree specific to working in the nonprofit sector. Certain jobs may require specific types of degrees (e.g. social work, public health, law, theology, etc.) but it is also common for nonprofit professionals to have liberal arts degrees, which provide essential analytical and communications skills.
Third, although we support increasing the minimum salary for exempt employees above the federal amount, we have concerns about how this is proposed specifically in Rule 2.5. Increasing the pay of people employed and served by nonprofits is a goal that we believe most nonprofits share. We agree that the $35,568 federal salary basis is too low, especially since this amount is not adjusted for the higher wages paid in our region of the country. Having an increased minimum salary in Colorado will help ensure exemption is not for just any position with more than a forty-hour work-week.

Being able to actually increase pay for nonprofit employees, however, depends largely on the generosity of donors, the funding priorities of foundations, the terms of government contracts, and public sensitivity to sliding scale fees and prices. Unlike for-profit companies, simply passing on these costs to consumers may neither be feasible nor palatable. We ask the Division to make several changes that will still establish a minimum salary for exemption while reducing burdens many nonprofits face due to this proposed rule:

• Allow for adjustment of reimbursement rates for state grants and contracts in place during implementation of the COMPS order. Nonprofits should not be expected to use private dollars to subsidize the state for unadjusted reimbursement rates.

• Delay implementation of the minimum salary for exempt employees to Jan. 1, 2021. Implementing the minimum salary in July of 2020 is disruptive because most nonprofits operate on a calendar year and have already budgeted for 2020. The proposed rule likely requires mid-year re-classification of employees, re-negotiation of wages, and modified budgets and revenue goals.

• Start the minimum salary at a lower amount for 2021. More than 5,000 jobs were reported in our 2018 Colorado Nonprofit Salary and Benefits Survey. 43 percent of all exempt jobs reported in the survey have annual salaries within the range of the proposed rule (between $42,500 and $57,500). In seven of Colorado’s ten regions, more than 50 percent of all exempt jobs reported have salaries within that range (Central Mountains, Eastern Plains, Larimer/Weld, San Juan, San Luis Valley, Southwest, and Western Slope). It could be more difficult for nonprofits in these primarily rural areas to pay higher wages because rural nonprofits tend to receive less support from governments and foundations outside of their regions.

• Reduce the annual increases in the minimum salary for exempt employees. Fewer than three out of every ten nonprofit organizations responding to the 2018 Salary Survey increased employee salaries by more than 3 percent over the previous year. The proposed rule increases the salary by 19 percent over the federal amount in 2020. Through 2026, annual increases range from 5 to 7 percent. Limiting annual increases to a modest amount over CPI (e.g. between 4 and 5 percent) could be more manageable for nonprofit organizations and still advance the goal of this policy.

Thank you for your consideration of our feedback and let me know if you have questions.

Sincerely,

Mark Turner,
Senior Director of Public Policy