



May 22, 2025

The Honorable Madinah Wilson-Anton
Chair, Revenue & Finance Committee
Delaware General Assembly
411 Legislative Avenue
Dover, DE 19901

The Honorable William J. Carson
Vice-Chair, Revenue & Finance Committee
Delaware General Assembly
411 Legislative Avenue
Dover, DE 19901

Re: Comments on H.B. 126, An Act to Amend Title 30 of the Delaware Code Relating to
Personal Income Tax

Dear Representatives Wilson-Anton and Carson:

PayrollOrg appreciates the Delaware legislature's interest in changing the state tax code to exempt overtime pay from employment taxes for full-time hourly wage workers but is concerned about the amount of time given for employers to implement the changes, the limitation that the law would apply only to full-time hourly wage workers, and the detailed reporting requirements.

PayrollOrg asks for more time to implement the law. Preferably the data should be compiled beginning on the implementation date (January 1, 2026) and reported as part of an employer's state-specific quarterly and annual tax return filing schedule.

About PayrollOrg

PayrollOrg is a nonpartisan, nonpolitical association representing over 20,000 payroll professionals who manage the payroll function for employers of all sizes and industries across the U.S. PayrollOrg is dedicated to advancing the payroll industry through education, advocacy, networking, and collaboration.

PayrollOrg's Government Relations Task Force provides payroll professionals with the opportunity to partner with government to create efficiencies, open doors to new technologies, and provide opportunities for professional growth.

Implementation Considerations

Data collection

H.B. 126 excludes overtime pay from the adjusted gross income of full-time hourly wage workers beginning on January 1, 2026, and ending on January 1, 2028. Implementing this requirement for employers does not entail data from before the start date. Because overtime hours are not mandated, comparing data on overtime hours and pay from previous years is not an indicator of compliance; thus, the data will not be a good measure of tax change effectiveness.

Time to comply

PayrollOrg asks that employers be given more time to implement the tax change and collect the data, preferably collecting the data beginning on January 1, 2027, with an April 30, 2028, filing date. At minimum, a lead time of six months is needed after all rules and forms are finalized.

Payroll management systems are not programmed to compile the information or exclude overtime pay from employment taxes as envisioned in H.B. 126, especially for full-time employees only. It is already May, the bill has not yet passed, and payroll professionals have not been provided with reporting and interface specifications to begin upgrading systems, testing those changes, and educating payroll employees and employer managers. In addition, the reporting date is just after year-end payroll processing and the start of the tax filing season, the busiest time of year for payroll professionals.

Full-time hourly wage-paid employees

Delaware follows the federal Fair Labor Standards Act's (FLSA) definition of overtime. The FLSA does not differentiate overtime pay requirements between full-time and part-time, seasonal, and other non-full-time employees. A requirement to only exempt full-time employees' overtime from the definition of Delaware wages will require employers to add a code to the payroll systems identifying full-time employees receiving overtime pay. With the time it takes to add a code, test payroll systems, and train employees to ensure compliance, implementation of H.B. 126 will be difficult.

Definition of overtime pay

To avoid unintended consequences, the legislation should define whether the exemption applies to compensation for all overtime hours or only the premium portion. Legislation should also consider whether double time is exempt and if the exemption applies to shift premiums and differentials paid on overtime wages.

In addition, some employers establish overtime pay policies that are more generous than required by law, such as daily overtime or higher premiums. The legislation should recognize these employer policies and define how the tax exemption applies, i.e., only for overtime pay required by law or any overtime pay amounts.

Multistate situations

Some employees work in multiple locations. Employers need to know whether the exemption applies only to overtime work performed in the state or to all overtime pay by residents of the state regardless of where they work. For example, Alabama's overtime exemption law applies only to hours worked over 40 in Alabama. This adds significant complexities for payroll professionals to calculate exempt amounts for employees that work in multiple states.

Thank you for the opportunity to comment on H.B. 126. To discuss payroll management and these comments, please contact Alice Jacobsohn at 202-669-4001 or ajacobsohn@payroll.org.

Sincerely,



Alice P. Jacobsohn, Esq.
Director, Government Relations

For: Government Relations Task Force
State and Local Topics Subcommittee
Cochairs Carlanna Livingstone, CPP; Bruce Phipps, CPP; and Alma Stewart, CPP

Cc: Rep. Bryan W. Shupe