

AMERICAN PAYROLL ASSOCIATION

November 10, 2021

The Honorable Robert C. Scott
Chair
Committee on Education and Labor
U.S. House of Representatives
2328 Rayburn House Office Building
Washington, DC 20515

The Honorable Virginia Foxx
Ranking Member
Committee on Education and Labor
U.S. House of Representatives
2462 Rayburn House Office Building
Washington, DC 20515

Re: Comments on H.R. 4728, *Thirty-Two Hour Workweek Act*

Dear Representatives Scott and Foxx:

The American Payroll Association (APA)¹ supports resolution of the problems of unfair wages, employee burnout, and work-life imbalance expressed through the introduction of H.R. 4728, *Thirty-Two Hour Workweek Act*, but believes the reduction in hours before overtime pay is required will not resolve those issues. APA members are greatly interested in the welfare of the employees and employers they support through payroll management.

If the work schedule is changed from a 40- to a 32-hour workweek, the other parts of an employee's employment package will likely also change. Work hours are part of employers' larger workplace labor plan and should be viewed in that context. For example, an employee's package can include a wage or salary amount, wide range of benefits, options in pay method, and work schedule.

When the Fair Labor Standards Act (FLSA) became law in 1938, the intent was to force employers to hire more employees to pull the United States out of the Great Depression. This same effect is unlikely to occur today because of changes in the economy, labor

¹ The APA is a nonprofit professional association representing more than 20,000 payroll professionals in the United States. APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations. In addition, APA's Government Relations Task Force (GRTF) works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and workers. With more than 70% of federal employment tax collections through payroll management, the APA plays an important role as a stakeholder with the federal government.

markets, technological advances, and the employment packages offered to employees. The reduction in hours to define a workweek before overtime pay is required, as proposed in H.R. 4728, does not guarantee that an employee's gross pay will increase or that a second employee will be hired without impacting the existing employee's employment package.

The APA is concerned that the effect of a 32-hour workweek will result in a reduction of wages and benefits for employees whose hours are reduced, despite studies indicating that productivity levels will not be impacted or could increase. One potential benefit identified from reduced hours is the ability of employees to schedule doctors' appointments. If this is true, then employers may assume that employees will not need time off from work for these appointments.

In addition, if employers avoid overtime, reduced hours will result in employees receiving less pay. For example, if an employee currently works 40 hours in a workweek at \$15 per hour, they will earn gross pay of \$600. The same employee at 32 hours will earn \$480 in a workweek. The employer may not be willing to pay an additional \$60 in overtime wages or \$180 instead of the current \$120 for 8 hours of work [hourly pay rate (\$15) x 1.5 x overtime hours worked (8)]. H.R. 4728 does not ensure that this employee will work 40 hours and receive gross pay of \$780.

If an employer is able to hire a second employee, the existing and new employee could be part time further reducing pay, and the existing employee could lose benefits such as healthcare insurance and retirement plan opportunities. For example, both employees work hours could be set at 20 hours per week, which would lower the existing employee's gross pay to \$300 per week.

In writing about H.R. 4728 in August, bill sponsor Rep. Takano identified "very promising" pilot programs for a 32-hour workweek in other countries, including Iceland, New Zealand, Spain, and Japan. It is difficult to compare work hours in the United States to the work hours in other countries. The FLSA only applies to employers and employees in the United States. In addition, the American work ethic plays a unique and significant role in how employers and employees consider employment. Historically, employees who have never missed a day of work and have come to work when ill are often rewarded. Unclear is whether COVID-19 will change this mindset for long-term impacts. For example, we do not yet know the full impact of increases in remote work locations on employees' work-life balance.

For payroll professionals, the administrative burden caused by the potential impacts of a changed workweek will be significant and span multiple years. This burden includes

adjusting payroll software systems and retraining payroll personnel and business managers.

The APA also is concerned about the effective date of 180 days after enactment. This is too short a period of time for payroll professionals and their employers to accommodate. Payroll managers prefer an effective date that begins on the first day of a month and, ideally, at the beginning of the next tax year. The proposed legislation does not offer guidance on how to manage an effective date that begins in the middle of a workweek. For example, will the U.S. Department of Labor's rules on changing workweeks apply (see 29 C.F.R. § 778.100 *et seq.*)?

The APA encourages Congress to consider workweek hours as part of the overall employment packages offered to employees, within the framework of the American work ethic, and with sufficient time for implementation by payroll managers.

To discuss these comments further, please contact me at ajacobsohn@americanpayroll.org or 202-669-4001.

Sincerely,



Alice P. Jacobsohn, Esq.
Director, Government Relations

For: GRTF Federal Issues Subcommittee
Chairs Rebecca Harshberger, CPP, and Jon Schausten, CPP

Cc: The Honorable Mark Takano