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Supervisor Williams urges swift action on FLSA crisis

Washington, D.C. -- San Diego County (Calif.) Supervisor Leon Williams, testifying before a U.S. House of Representatives subcommittee today, called for immediate passage of legislation that would overturn several recent court decisions that require counties and other public employers to pay highly-paid executive employees overtime pay.

Williams said he does not believe these recent court rulings are consistent with congressional intent of the Fair Labor Standards Act (FLSA). He was testifying on behalf of the National Association of Counties before the House Labor Standards Subcommittee.

According to Williams, when this historic legislation was passed, it was intended to ensure fair and decent wages to the nation's "rank and file" workers and to provide an incentive for employers to hire more hourly employees rather than increase the working hours of existing workers. Nowhere in the act, Williams said, is it implied that Congress intended for highly-paid administrative, executive and professional employees to be paid overtime.

"Many state and local governments have been held liable for huge sums in back pay for overtime for these employees," Williams said. "Unless Congress moves quickly to enact a legislative solution, state and local liability will continue to add up very rapidly and adversely affect public services."

As an example, William's county of San Diego is already engaged in four FLSA lawsuits. The federal district court has ruled against the county in two of the lawsuits and is expected to rule the same way in the other two. The county is facing an obligation of approximately $10 million in back wages from these four lawsuits, he said.

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The courts have held that highly paid professional, administrative and executive public employees are not exempt and must be paid back wages in the form of time-and-a-half pay for all hours worked in excess of 40 hours per week for the past 2 to 3 years. The courts rulings said that public agency payroll systems, established "pursuant to principles of public accountability, do not satisfy the court's own views of the Department of Labor 'salary basis' regulations."

"These and other lawsuits will have a devastating impact on the financial resources of San Diego County. The county is already facing a severe financial crisis, and this FLSA liability will further cripple our ability to deliver adequate law enforcement, health and social services to county residents," Williams said. "Such a fiscal situation also prevents us from offering any wage increase to our employees, including our rank and file employees whom the FLSA is intended to benefit."

In addition, recent court rulings have prompted the county to begin making modifications to its payroll practices for managers and executives, and Williams says that they are unacceptable solutions.

In Williams' view, this is not the intent of the FLSA, but at this point, his county is left with little choice.

"Either we make the changes required by the courts or we pay time-and-a-half overtime to all of our professional, managers and executives. The most critical point," Williams continued, "is that any payroll changes made will be prospective in application and will not resolve the tremendous retroactive liability facing counties.

"Congress must therefore act immediately to resolve this crisis brought about by court interpretations of the FLSA," he said while calling for legislation that would permit state and local governments to continue with the payroll systems that are established on principles of public accountability...systems that local taxpayers understand and rely on to protect them.

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NACo is the only national organization representing county governments in the United States. Its goals are to improve county government, act as a liaison with other levels of government, present the county position on national issues and advance public understanding of the role of counties.