
HOUSE BILL 2979

State of Washington 60th Legislature 2008 Regular Session

By Representatives Williams, Conway, Moeller, and Simpson

Read first time 01/18/08. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to overtime compensation for agricultural
2 employees; and amending RCW 49.46.130.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 49.46.130 and 1998 c 239 s 2 are each amended to read
5 as follows:

6 (1) Except as otherwise provided in this section, no employer shall
7 employ any of his employees for a work week longer than forty hours
8 unless such employee receives compensation for his employment in excess
9 of the hours above specified at a rate not less than one and one-half
10 times the regular rate at which he is employed.

11 (2) This section does not apply to:

12 (a) Any person exempted pursuant to RCW 49.46.010(5). The payment
13 of compensation or provision of compensatory time off in addition to a
14 salary shall not be a factor in determining whether a person is
15 exempted under RCW 49.46.010(5)(c);

16 (b) Employees who request compensating time off in lieu of overtime
17 pay;

18 (c) Any individual employed as a seaman whether or not the seaman
19 is employed on a vessel other than an American vessel;

1 (d) Seasonal employees who are employed at concessions and
2 recreational establishments at agricultural fairs, including those
3 seasonal employees employed by agricultural fairs, within the state
4 provided that the period of employment for any seasonal employee at any
5 or all agricultural fairs does not exceed fourteen working days a year;

6 (e) Any individual employed as a motion picture projectionist if
7 that employee is covered by a contract or collective bargaining
8 agreement which regulates hours of work and overtime pay;

9 (f) An individual employed as a truck or bus driver who is subject
10 to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101
11 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system
12 under which the truck or bus driver is paid includes overtime pay,
13 reasonably equivalent to that required by this subsection, for working
14 longer than forty hours per week;

15 (g) Any individual employed (i) on a farm, in the employ of any
16 person, in connection with the cultivation of the soil, or in
17 connection with raising or harvesting any agricultural or horticultural
18 commodity, including raising, shearing, feeding, caring for, training,
19 and management of livestock, bees, poultry, and furbearing animals and
20 wildlife, or in the employ of the owner or tenant or other operator of
21 a farm in connection with the operation, management, conservation,
22 improvement, or maintenance of such farm and its tools and equipment;
23 or (ii) by the owner or operator of a farm in packing, packaging,
24 grading, storing or delivering to storage, or to market or to a carrier
25 for transportation to market, any agricultural or horticultural
26 commodity produced by the owner or operator; or (iii) by the owner or
27 operator of a farm in commercial canning, commercial freezing, or any
28 other commercial processing((7)) of any agricultural or horticultural
29 commodity produced by the owner or operator; or (iv) by the owner or
30 operator of a farm with respect to services performed in connection
31 with the cultivation, raising, harvesting, and processing of oysters
32 produced by the owner or operator; or (v) by the owner or operator of
33 a farm in connection with any agricultural or horticultural commodity
34 produced by the owner or operator after its delivery to a terminal
35 market for distribution for consumption;

36 (h) Any industry in which federal law provides for an overtime
37 payment based on a work week other than forty hours. However, the
38 provisions of the federal law regarding overtime payment based on a

1 work week other than forty hours shall nevertheless apply to employees
2 covered by this section without regard to the existence of actual
3 federal jurisdiction over the industrial activity of the particular
4 employer within this state. For the purposes of this subsection,
5 "industry" means a trade, business, industry, or other activity, or
6 branch, or group thereof, in which individuals are gainfully employed
7 (section 3(h) of the Fair Labor Standards Act of 1938, as amended
8 (Public Law 93-259));

9 (i) Any hours worked by an employee of a carrier by air subject to
10 the provisions of subchapter II of the Railway Labor Act (45 U.S.C.
11 Sec. 181 et seq.), when such hours are voluntarily worked by the
12 employee pursuant to a shift-trading practice under which the employee
13 has the opportunity in the same or in other work weeks to reduce hours
14 worked by voluntarily offering a shift for trade or reassignment.

15 (3) No employer shall be deemed to have violated subsection (1) of
16 this section by employing any employee of a retail or service
17 establishment for a work week in excess of the applicable work week
18 specified in subsection (1) of this section if:

19 (a) The regular rate of pay of the employee is in excess of one and
20 one-half times the minimum hourly rate required under RCW 49.46.020;
21 and

22 (b) More than half of the employee's compensation for a
23 representative period, of not less than one month, represents
24 commissions on goods or services.

25 In determining the proportion of compensation representing
26 commissions, all earnings resulting from the application of a bona fide
27 commission rate is to be deemed commissions on goods or services
28 without regard to whether the computed commissions exceed the draw or
29 guarantee.

30 (4) No employer of commissioned salespeople primarily engaged in
31 the business of selling automobiles, trucks, recreational vessels,
32 recreational vessel trailers, recreational vehicle trailers,
33 recreational campers, manufactured housing, or farm implements to
34 ultimate purchasers shall violate subsection (1) of this section with
35 respect to such commissioned salespeople if the commissioned
36 salespeople are paid the greater of:

37 (a) Compensation at the hourly rate, which may not be less than the

1 rate required under RCW 49.46.020, for each hour worked up to forty
2 hours per week, and compensation of one and one-half times that hourly
3 rate for all hours worked over forty hours in one week; or

4 (b) A straight commission, a salary plus commission, or a salary
5 plus bonus applied to gross salary.

6 (5) No public agency shall be deemed to have violated subsection
7 (1) of this section with respect to the employment of any employee in
8 fire protection activities or any employee in law enforcement
9 activities (including security personnel in correctional institutions)
10 if: (a) In a work period of twenty-eight consecutive days the employee
11 receives for tours of duty which in the aggregate exceed two hundred
12 forty hours; or (b) in the case of such an employee to whom a work
13 period of at least seven but less than twenty-eight days applies, in
14 his or her work period the employee receives for tours of duty which in
15 the aggregate exceed a number of hours which bears the same ratio to
16 the number of consecutive days in his or her work period as two hundred
17 forty hours bears to twenty-eight days; compensation at a rate not less
18 than one and one-half times the regular rate at which he or she is
19 employed.

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