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SENATE BILL 6564

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State of Washington

60th Legislature

2008 Regular Session

By Senators Honeyford, Morton, Holmquist, Delvin, Parlette, Stevens,  
and McCaslin

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

1 AN ACT Relating to overtime compensation in agriculture, forestry,  
2 and fisheries; 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 or her employees for a work week longer than forty  
8 hours unless such employee receives compensation for his or her  
9 employment in excess of the hours above specified at a rate not less  
10 than one and one-half times the regular rate at which he or she is  
11 employed.

12 (2) This section does not apply to:

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

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

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

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

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

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

17 (g) Any individual employed (i) on a farm, in the employ of any  
18 person, in connection with the cultivation of the soil, in connection  
19 with dairying, or in connection with raising or harvesting any  
20 agricultural or horticultural commodity, including raising, shearing,  
21 feeding, caring for, training, and management of livestock, bees,  
22 poultry, and furbearing animals and wildlife, or in the employ of the  
23 owner or tenant or other operator of a farm in connection with the  
24 operation, management, conservation, improvement, or maintenance of  
25 such farm and its tools and equipment; ~~((or))~~ (ii) ~~((in))~~ by the owner  
26 or operator of a farm in any practices as an incident to or in  
27 conjunction with farming operations, including packing, packaging,  
28 grading, storing or delivering to storage, or to market or to a carrier  
29 for transportation to market, any agricultural or horticultural  
30 commodity produced by the owner or operator; ~~((or))~~ (iii) in  
31 transporting or preparing for transportation (A) fruit or vegetables in  
32 their raw or natural state from the farm to the place of first  
33 processing or marketing or (B) individuals employed in the harvesting  
34 of fruits and vegetables between the farm and any point within the  
35 state; (iv) by the owner or operator of a farm in connection with  
36 livestock auction operations as an adjunct to the raising of livestock  
37 if the individual is (A) primarily employed during the work week by the  
38 owner or operator of the farm who raises the livestock and (B) paid for

1 his or her employment in connection with such livestock auction  
2 operations at a wage rate not less than that prescribed by RCW  
3 49.46.020; (v) by the owner or operator of a farm in commercial  
4 canning, commercial freezing, or any other commercial processing  
5 with respect to services performed in connection with the cultivation,  
6 raising, harvesting, and processing of oysters)) of any agricultural or  
7 horticultural commodity produced by the owner or operator; or (vi) in  
8 connection with any agricultural or horticultural commodity after its  
9 delivery to a terminal market for distribution for consumption;

10 (h) Any individual employed in the catching, taking, propagating,  
11 harvesting, or farming of any kind of fish, shellfish, crustacea,  
12 sponges, seaweeds, or other aquatic forms of animal and vegetable life,  
13 or in the first processing, canning, or packing such marine products at  
14 sea as an incident to, or in conjunction with, such fishing operations,  
15 including the going to and returning from work and loading and  
16 unloading when performed by that individual;

17 (i) Any individual employed in planting or tending trees,  
18 surveying, or felling timber, or in preparing or transporting logs or  
19 other forestry products to the mill, processing plant, railroad, or  
20 other transportation terminal, if the number of employees in such  
21 forestry or lumbering operations does not exceed eight;

22 (j) Any industry in which federal law provides for an overtime  
23 payment based on a work week other than forty hours. However, the  
24 provisions of the federal law regarding overtime payment based on a  
25 work week other than forty hours shall nevertheless apply to employees  
26 covered by this section without regard to the existence of actual  
27 federal jurisdiction over the industrial activity of the particular  
28 employer within this state. For the purposes of this subsection,  
29 "industry" means a trade, business, industry, or other activity, or  
30 branch, or group thereof, in which individuals are gainfully employed  
31 (section 3(h) of the Fair Labor Standards Act of 1938, as amended  
32 (Public Law 93-259));

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

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

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

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

11 In determining the proportion of compensation representing  
12 commissions, all earnings resulting from the application of a bona fide  
13 commission rate is to be deemed commissions on goods or services  
14 without regard to whether the computed commissions exceed the draw or  
15 guarantee.

16 (4) No employer of commissioned salespeople primarily engaged in  
17 the business of selling automobiles, trucks, recreational vessels,  
18 recreational vessel trailers, recreational vehicle trailers,  
19 recreational campers, manufactured housing, or farm implements to  
20 ultimate purchasers shall violate subsection (1) of this section with  
21 respect to such commissioned salespeople if the commissioned  
22 salespeople are paid the greater of:

23 (a) Compensation at the hourly rate, which may not be less than the  
24 rate required under RCW 49.46.020, for each hour worked up to forty  
25 hours per week, and compensation of one and one-half times that hourly  
26 rate for all hours worked over forty hours in one week; or

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

29 (5) No public agency shall be deemed to have violated subsection  
30 (1) of this section with respect to the employment of any employee in  
31 fire protection activities or any employee in law enforcement  
32 activities (including security personnel in correctional institutions)  
33 if: (a) In a work period of twenty-eight consecutive days the employee  
34 receives for tours of duty which in the aggregate exceed two hundred  
35 forty hours; or (b) in the case of such an employee to whom a work  
36 period of at least seven but less than twenty-eight days applies, in  
37 his or her work period the employee receives for tours of duty which in  
38 the aggregate exceed a number of hours which bears the same ratio to

1 the number of consecutive days in his or her work period as two hundred  
2 forty hours bears to twenty-eight days; compensation at a rate not less  
3 than one and one-half times the regular rate at which he or she is  
4 employed.

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