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**HOUSE BILL 1750**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Representatives Hoff, Walen, Rude, Ybarra, Klippert, Dent, Corry, Dufault, Goehner, Chambers, Chapman, Eslick, Kraft, Jacobsen, and Graham

Prefiled 01/04/22. Read first time 01/10/22. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to authorizing an agricultural employer to select  
2 any 12 weeks in a calendar year as special circumstance weeks for  
3 labor demand, during which in each of the selected 12 weeks, the  
4 agricultural employer may employ agricultural employees for up to 50  
5 hours before the requirement to pay overtime applies under RCW  
6 49.46.130; amending RCW 49.46.130; and creating a new section.

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

8 NEW SECTION. **Sec. 1.** In 2021, the legislature repealed the  
9 statute that exempted agricultural workers from overtime pay which  
10 had been in effect since 1959. With this historic legislation,  
11 Washington state became the first state in the nation to impose an  
12 overtime pay requirement for agricultural workers working in excess  
13 of 40 hours a week. Recognizing that such a change would be a  
14 sizeable shift in practice for all farmers and agricultural workers  
15 across the state, the legislature adopted a phased-in approach, but  
16 did not address the seasonal needs of Washington agriculture given  
17 the time-sensitive nature of growing and harvesting mature field  
18 crops and perishable fruits and vegetables. The agricultural industry  
19 is unique from other types of industry because of pressures on  
20 farmers, ranchers, and workers caused by issues mainly out of their  
21 control such as uncertainty of weather, yields, calving, national and

1 international shifts in trade policy, and transportation  
2 inconsistencies. Furthermore, farmers do not set their own prices and  
3 are price takers who cannot simply respond to increased production  
4 costs by increasing prices of their goods. Due to the tight margins  
5 that farms operate on, farm employers may be forced to limit overtime  
6 work, resulting in the full harvest not being collected and the  
7 worker being denied the opportunity to earn the wages for which they  
8 have become accustomed. The legislature believes it is reasonable to  
9 allow agricultural employers limited flexibility to shape work  
10 schedules during a narrow window of time to best fit the peaks of  
11 labor demand for their crops, thereby providing them some ability to  
12 weather the unpredictability of agricultural work and ensure that  
13 Washington's second largest industry remains vital and strong while  
14 also ensuring security for farm workers.

15 **Sec. 2.** RCW 49.46.130 and 2021 c 249 s 2 are each amended to  
16 read as follows:

17 (1) Except as otherwise provided in this section, no employer  
18 shall employ any of his or her employees for a workweek longer than  
19 forty hours unless such employee receives compensation for his or her  
20 employment in excess of the hours above specified at a rate not less  
21 than one and one-half times the regular rate at which he or she is  
22 employed.

23 (2) This section does not apply to:

24 (a) Any person exempted pursuant to RCW 49.46.010(3). The payment  
25 of compensation or provision of compensatory time off in addition to  
26 a salary shall not be a factor in determining whether a person is  
27 exempted under RCW 49.46.010(3)(c);

28 (b) Employees who request compensating time off in lieu of  
29 overtime pay;

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

32 (d) Seasonal employees who are employed at concessions and  
33 recreational establishments at agricultural fairs, including those  
34 seasonal employees employed by agricultural fairs, within the state  
35 provided that the period of employment for any seasonal employee at  
36 any or all agricultural fairs does not exceed fourteen working days a  
37 year;

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

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

10 (g) Any individual employed as an agricultural employee. This  
11 exemption from subsection (1) of this section applies only until  
12 December 31, 2021;

13 (h) Any industry in which federal law provides for an overtime  
14 payment based on a workweek other than forty hours. However, the  
15 provisions of the federal law regarding overtime payment based on a  
16 workweek other than forty hours shall nevertheless apply to employees  
17 covered by this section without regard to the existence of actual  
18 federal jurisdiction over the industrial activity of the particular  
19 employer within this state. For the purposes of this subsection,  
20 "industry" means a trade, business, industry, or other activity, or  
21 branch, or group thereof, in which individuals are gainfully employed  
22 (section 3(h) of the Fair Labor Standards Act of 1938, as amended  
23 (Public Law 93-259));

24 (i) Any hours worked by an employee of a carrier by air subject  
25 to the provisions of subchapter II of the Railway Labor Act (45  
26 U.S.C. Sec. 181 et seq.), when such hours are voluntarily worked by  
27 the employee pursuant to a shift-trading practice under which the  
28 employee has the opportunity in the same or in other workweeks to  
29 reduce hours worked by voluntarily offering a shift for trade or  
30 reassignment; and

31 (j) Any individual licensed under chapter 18.85 RCW unless the  
32 individual is providing real estate brokerage services under a  
33 written contract with a real estate firm which provides that the  
34 individual is an employee. For purposes of this subsection (2)(j),  
35 "real estate brokerage services" and "real estate firm" mean the same  
36 as defined in RCW 18.85.011.

37 (3) No employer shall be deemed to have violated subsection (1)  
38 of this section by employing any employee of a retail or service  
39 establishment for a workweek in excess of the applicable workweek  
40 specified in subsection (1) of this section if:

1 (a) The regular rate of pay of the employee is in excess of one  
2 and one-half times the minimum hourly rate required under RCW  
3 49.46.020; and

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

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

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

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

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

25 (5) No public agency shall be deemed to have violated subsection  
26 (1) of this section with respect to the employment of any employee in  
27 fire protection activities or any employee in law enforcement  
28 activities (including security personnel in correctional  
29 institutions) if: (a) In a work period of twenty-eight consecutive  
30 days the employee receives for tours of duty which in the aggregate  
31 exceed two hundred forty hours; or (b) in the case of such an  
32 employee to whom a work period of at least seven but less than  
33 twenty-eight days applies, in his or her work period the employee  
34 receives for tours of duty which in the aggregate exceed a number of  
35 hours which bears the same ratio to the number of consecutive days in  
36 his or her work period as two hundred forty hours bears to twenty-  
37 eight days; compensation at a rate not less than one and one-half  
38 times the regular rate at which he or she is employed.

39 (6) (a) Beginning January 1, 2022, any agricultural employee shall  
40 not be employed for more than 55 hours in any one workweek unless the

1 agricultural employee receives one and one-half times that  
2 agricultural employee's regular rate of pay for all hours worked over  
3 55 in any one workweek.

4 (b) Beginning January 1, 2023, and except as provided in (d) of  
5 this subsection, any agricultural employee shall not be employed for  
6 more than 48 hours in any one workweek unless the agricultural  
7 employee receives one and one-half times that agricultural employee's  
8 regular rate of pay for all hours worked over 48 in any one workweek.

9 (c) Beginning January 1, 2024, and except as provided in (d) of  
10 this subsection, any agricultural employee shall not be employed for  
11 more than 40 hours in any one workweek unless the agricultural  
12 employee receives one and one-half times that agricultural employee's  
13 regular rate of pay for all hours worked over 40 in any one workweek.

14 (d) (i) Beginning January 1, 2023, an agricultural employer may  
15 select any 12 weeks in a calendar year as special circumstance weeks  
16 for labor demand. During each of the selected 12 weeks, the  
17 agricultural employer may employ agricultural employees for up to 50  
18 hours before the requirement to pay overtime under this section  
19 applies.

20 (ii) In addition to the records required to be kept under RCW  
21 49.30.020, an agricultural employer is responsible for maintaining  
22 records of which special circumstance weeks were utilized.

23 (iii) An agricultural employer must provide an annual initial  
24 disclosure of a good-faith estimate of the selected 12 weeks to their  
25 agricultural employees at least 30 days in advance of the first  
26 expected special circumstance week, or upon hiring for those who  
27 start work fewer than 30 days in advance. For agricultural employees  
28 employed under, and in compliance with federal requirements for,  
29 temporary work visas, the disclosure of a good-faith estimate must be  
30 made no later than the date of the worker's visa application,  
31 contemporaneous with required federal preemployment written  
32 disclosures to visa workers ordinarily due by the date of the  
33 worker's visa application.

34 (iv) An agricultural employee must be provided written notice, at  
35 least annually, of which weeks will be special circumstance weeks, no  
36 later than the seventh day before the first special circumstance  
37 week, or upon hiring for those starting work after the seventh day.  
38 The employer may change which are the special circumstance weeks  
39 after that notice if:

1 (A) The employer provides at least one week's written notice of  
2 any week being added or removed as a special circumstance week;

3 (B) The initial disclosure was the employer's good-faith,  
4 reasonable expectation of which weeks would be the special  
5 circumstance weeks; and

6 (C) The changes are based on circumstances not foreseeable at the  
7 time of the initial disclosure.

8 (7) (a) No damages, statutory or civil penalties, attorneys' fees  
9 and costs, or other type of relief may be granted against an employer  
10 to an agricultural or dairy employee seeking unpaid overtime due to  
11 the employee's historical exclusion from overtime under subsection  
12 (2)(g) of this section, as it existed on November 4, 2020.

13 (b) This subsection applies to all claims, causes of actions, and  
14 proceedings commenced on or after November 5, 2020, regardless of  
15 when the claim or cause of action arose. To this extent, this  
16 subsection applies retroactively, but in all other respects it  
17 applies prospectively.

18 (c) This subsection does not apply to dairy employees entitled to  
19 backpay or other relief as a result of being a member in the class of  
20 plaintiffs in *Martinez-Cuevas v. DeRuyter Bros. Dairy*, 196 Wn.2d 506  
21 (2020).

22 (8) For the purposes of this section, "agricultural employee"  
23 means any individual employed: (a) On a farm, in the employ of any  
24 person, in connection with the cultivation of the soil, or in  
25 connection with raising or harvesting any agricultural or  
26 horticultural commodity, including raising, shearing, feeding, caring  
27 for, training, and management of livestock, bees, poultry, and  
28 furbearing animals and wildlife, or in the employ of the owner or  
29 tenant or other operator of a farm in connection with the operation,  
30 management, conservation, improvement, or maintenance of such farm  
31 and its tools and equipment; (b) in packing, packaging, grading,  
32 storing or delivering to storage, or to market or to a carrier for  
33 transportation to market, any agricultural or horticultural  
34 commodity; or (c) (~~in~~) in commercial canning, commercial  
35 freezing, or any other commercial processing, or with respect to  
36 services performed in connection with the cultivation, raising,  
37 harvesting, and processing of oysters or in connection with any  
38 agricultural or horticultural commodity after its delivery to a  
39 terminal market for distribution for consumption. An agricultural  
40 employee does not include a dairy employee.

1           (9) For the purposes of this section, "dairy employee" includes  
2 any employee engaged in dairy cattle and milk production activities  
3 described in code 112120 of the North American industry  
4 classification system.

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