

HOUSE BILL REPORT

HB 2042

As Reported By House Committee On:

Commerce & Labor

Title: An act relating to exemptions from overtime compensation requirements.

Brief Description: Revising exemptions from overtime compensation requirements.

Sponsors: Representatives Lisk, Horn, Sheldon, Mielke and L. Thomas.

Brief History:

Committee Activity:

Commerce & Labor: 2/27/95, 3/1/95 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Lisk, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cairnes; Cody; Cole; Fuhrman; Goldsmith and Horn.

Staff: Chris Cordes (786-7117).

Background: Under the state overtime wage law, employers must pay nonexempt employees wages at one and one-half times the employees' regular rate of pay for all hours over 40 hours per week.

The overtime wage law exempts, among others, employees who are bona fide executive, administrative, or professional employees. These employees are defined in rules adopted by the Department of Labor and Industries. To satisfy part of the definition, these employees must be paid on a salary basis.

The state's overtime requirement and rules regarding exempt employees generally conform to the laws and regulations that apply under the federal Fair Labor Standards Act (FLSA). The FLSA applies (1) to businesses whose employees are engaged in interstate commerce activities and whose gross sales volume is not less than \$500,000, and (2) in any business, to individual employees engaged in interstate commerce activities.

A recent Washington Court of Appeals case interpreting the exemptions from the state overtime wage law held that the employee was not paid on a salary basis when the employee was paid a predetermined salary plus extra compensation for hours that were worked beyond 40 hours per week. The court referred to a Ninth Circuit Court of Appeals case interpreting the "salary basis" requirement under the FLSA and finding that overtime pay is generally inconsistent with a salary status. The Washington court also noted that the federal courts have taken different approaches to the salary basis requirement in the FLSA, some finding that extra compensation for hours over 40 hours per week does not necessarily defeat the exemption.

Summary of Substitute Bill: For the purposes of determining exemptions from the state overtime wage requirements, the employer's payment of additional compensation for overtime is not to be considered in determining whether the person is paid on a salary basis.

These provisions apply to all administrative and judicial proceedings pending on or commenced after the bill's effective date.

Substitute Bill Compared to Original Bill: The substitute bill adds that the bill applies to all administrative and judicial proceedings pending on or commenced after the bill's effective date.

Appropriation: None.

Fiscal Note: Requested February 23, 1995.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: The statute and the rules do not expressly prohibit the payment of extra compensation to employees who are paid on a salary basis. An employer who chooses to recognize the extra effort of an administrator, executive, or professional employee who works overtime should not be penalized. Many employers have bargained for this extra compensation in collective bargaining agreements affecting professional employees. Without this change, employers and employees will be forced to change their relationships and may not be able to agree to bonuses for extra hours. This issue is particularly critical for small employers who are trying to find ways to be good employers and compete for good employees. The exemption from overtime should be determined based on the type of work being performed. This bill is a correction needed to maintain the intent of the statute.

Testimony Against: None.

Testified: Doug Kight, The Boeing Company; Clif Finch, Association of Washington Business; and Jeff Cox, Washington Retail Association.