
SENATE BILL 6469

State of Washington

54th Legislature

1996 Regular Session

By Senators McCaslin, Fraser, Morton, Roach, Moyer, West, Hale, Swecker, Schow, Zarelli, Wood, Cantu, Sellar, Oke and Bauer

Read first time 01/15/96. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to exceptions from overtime requirements; and
2 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 1995 c 5 s 1 are each amended to read as
5 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) in packing, packaging, grading, storing or delivering to
24 storage, or to market or to a carrier for transportation to market, any
25 agricultural or horticultural commodity; or (iii) commercial canning,
26 commercial freezing, or any other commercial processing, or with
27 respect to services performed in connection with the cultivation,
28 raising, harvesting, and processing of oysters or in connection with
29 any agricultural or horticultural commodity after its delivery to a
30 terminal market for distribution for consumption;

31 (h) Any industry in which federal law provides for an overtime
32 payment based on a work week other than forty hours. However, the
33 provisions of the federal law regarding overtime payment based on a
34 work week other than forty hours shall nevertheless apply to employees
35 covered by this section without regard to the existence of actual
36 federal jurisdiction over the industrial activity of the particular
37 employer within this state. For the purposes of this subsection,
38 "industry" means a trade, business, industry, or other activity, or
39 branch, or group thereof, in which individuals are gainfully employed

1 (section 3(h) of the Fair Labor Standards Act of 1938, as amended
2 (Public Law 93-259).

3 (3) No employer of commissioned salespeople primarily engaged in
4 the business of selling automobiles, trucks, recreational vessels,
5 recreational vessel trailers, recreational vehicle trailers,
6 recreational campers, or manufactured housing to ultimate purchasers
7 shall violate subsection (1) of this section with respect to such
8 commissioned salespeople if the commissioned salespeople are paid the
9 greater of:

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

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

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

30 (5) An employer may employ an employee for an average of up to
31 forty hours per work week during a period of two consecutive work weeks
32 without paying the overtime premium required under subsection (1) of
33 this section, subject to the following conditions:

34 (a) The employee voluntarily agrees to the schedule, as evidenced
35 by a written statement kept on file by the employer. The employee may
36 withdraw such agreement at any time with two weeks written notice to
37 the employer;

1 (b) The employee receives compensation at a rate not less than one
2 and one-half times the regular rate at which he or she is employed for
3 any work in excess of eighty hours during the two-work-week period; and
4 (c) The hours an employee works during any one work week may be
5 used to calculate the work week average for only one two-work-week
6 period.

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