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HOUSE BILL 2209

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State of Washington                      55th Legislature                      1997 Regular Session

By Representative Sherstad

Read first time 02/26/97. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to clarifying the exemption for the minimum wage  
2 act; amending RCW 49.46.130; creating a new section; and declaring an  
3 emergency.

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

5            NEW SECTION.    **Sec. 1.** This act is intended to clarify the original  
6 intent of RCW 49.46.130(2)(h). This act applies retroactively to all  
7 administrative and judicial actions filed on or after April 1, 1995.

8            **Sec. 2.** RCW 49.46.130 and 1995 c 5 s 1 are each amended to read as  
9 follows:

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

16            (2) This section does not apply to:

17            (a) Any person exempted pursuant to RCW 49.46.010(5). The payment  
18 of compensation or provision of compensatory time off in addition to a

1 salary shall not be a factor in determining whether a person is  
2 exempted under RCW 49.46.010(5)(c);

3 (b) Employees who request compensating time off in lieu of overtime  
4 pay;

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

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

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

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

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

37 (h) Any industry in which federal law provides for an overtime  
38 payment based on a work week other than forty hours. However, the  
39 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 Any employee who is: (i) A computer systems analyst, a computer  
10 programmer, a software engineer, or another similarly skilled worker;  
11 and (ii) who is compensated on an hourly basis at a rate of not less  
12 than six and one-half times the federal minimum wage and whose primary  
13 duty is:

14 (A) The application of systems analysis techniques and procedures,  
15 including consulting with users, to determine hardware, software, or  
16 system functional specifications;

17 (B) The design, development, documentation, analysis, creation,  
18 testing, or modification of computer systems or programs, including  
19 prototypes, based on and related to user or system design  
20 specifications;

21 (C) The design, documentation, testing, creation, or modification  
22 of computer programs related to machine operation systems; or

23 (D) A combination of duties described in (A) through (C) of this  
24 subsection.

25 (3) No employer of commissioned salespeople primarily engaged in  
26 the business of selling automobiles, trucks, recreational vessels,  
27 recreational vessel trailers, recreational vehicle trailers,  
28 recreational campers, or manufactured housing to ultimate purchasers  
29 shall violate subsection (1) of this section with respect to such  
30 commissioned salespeople if the commissioned salespeople are paid the  
31 greater of:

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

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

38 (4) No public agency shall be deemed to have violated subsection  
39 (1) of this section with respect to the employment of any employee in

1 fire protection activities or any employee in law enforcement  
2 activities (including security personnel in correctional institutions)  
3 if: (a) In a work period of twenty-eight consecutive days the employee  
4 receives for tours of duty which in the aggregate exceed two hundred  
5 forty hours; or (b) in the case of such an employee to whom a work  
6 period of at least seven but less than twenty-eight days applies, in  
7 his or her work period the employee receives for tours of duty which in  
8 the aggregate exceed a number of hours which bears the same ratio to  
9 the number of consecutive days in his or her work period as two hundred  
10 forty hours bears to twenty-eight days; compensation at a rate not less  
11 than one and one-half times the regular rate at which he or she is  
12 employed.

13 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
14 preservation of the public peace, health, or safety, or support of the  
15 state government and its existing public institutions, and takes effect  
16 immediately.

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