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HOUSE BILL 2722

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State of Washington

55th Legislature

1998 Regular Session

By Representatives Cairnes, Romero, Mielke, Sherstad, Thompson,  
Mulliken and Conway

Read first time 01/19/98. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the ability of employees in the airline industry  
2 to trade shifts voluntarily without creating overtime liability;  
3 reenacting and amending RCW 49.46.130; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that employees in the  
6 airline industry have a long-standing practice and tradition of trading  
7 shifts voluntarily among themselves. The legislature also finds that  
8 federal law exempts airline employees from the provisions of federal  
9 overtime regulations. This act is intended to specify that airline  
10 industry employers are not required to pay overtime compensation to an  
11 employee agreeing to work additional hours for a coemployee.

12 **Sec. 2.** RCW 49.46.130 and 1997 c 311 s 1 and 1997 c 203 s 2 are  
13 each reenacted and amended to read as follows:

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

1 (2) This section does not apply to:

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

6 (b) Employees who request compensating time off in lieu of overtime  
7 pay;

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

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

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

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

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

1 (h) Any industry in which federal law provides for an overtime  
2 payment based on a work week other than forty hours. However, the  
3 provisions of the federal law regarding overtime payment based on a  
4 work week other than forty hours shall nevertheless apply to employees  
5 covered by this section without regard to the existence of actual  
6 federal jurisdiction over the industrial activity of the particular  
7 employer within this state. For the purposes of this subsection,  
8 "industry" means a trade, business, industry, or other activity, or  
9 branch, or group thereof, in which individuals are gainfully employed  
10 (section 3(h) of the Fair Labor Standards Act of 1938, as amended  
11 (Public Law 93-259));

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

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

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

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

28 In determining the proportion of compensation representing  
29 commissions, all earnings resulting from the application of a bona fide  
30 commission rate is to be deemed commissions on goods or services  
31 without regard to whether the computed commissions exceed the draw or  
32 guarantee.

33 (4) No employer of commissioned salespeople primarily engaged in  
34 the business of selling automobiles, trucks, recreational vessels,  
35 recreational vessel trailers, recreational vehicle trailers,  
36 recreational campers, manufactured housing, or farm implements to  
37 ultimate purchasers shall violate subsection (1) of this section with  
38 respect to such commissioned salespeople if the commissioned  
39 salespeople are paid the greater of:

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

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

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

21 NEW SECTION. **Sec. 3.** This act does not alter the terms,  
22 conditions, or practices contained in any collective bargaining  
23 agreement.

24 NEW SECTION. **Sec. 4.** This act is remedial in nature and applies  
25 retroactively.

26 NEW SECTION. **Sec. 5.** If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

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