

CERTIFICATION OF ENROLLMENT

SENATE BILL 6220

Chapter 239, Laws of 1998

55th Legislature
1998 Regular Session

AIRLINE EMPLOYEES--TRADING SHIFTS WITHOUT CREATING OVERTIME
LIABILITY

EFFECTIVE DATE: 6/11/98

Passed by the Senate February 9, 1998
YEAS 49 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 6, 1998
YEAS 97 NAYS 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved March 30, 1998

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6220** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

Secretary

FILED

March 30, 1998 - 3:18 p.m.

GARY LOCKE

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 6220

Passed Legislature - 1998 Regular Session

State of Washington

55th Legislature

1998 Regular Session

By Senators Horn, Heavey, Schow, Fraser, Anderson, Franklin, Newhouse, Winsley and Patterson

Read first time 01/14/98. 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.

Passed the Senate February 9, 1998.

Passed the House March 6, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.