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SENATE BILL 6429

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State of Washington

65th Legislature

2018 Regular Session

By Senator Zeiger

1 AN ACT Relating to overtime compensation for seasonal employees  
2 at agricultural fairs; and 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 2013 c 207 s 1 are each amended to  
5 read as follows:

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

12 (2) This section does not apply to:

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

17 (b) Employees who request compensating time off in lieu of  
18 overtime pay;

19 (c) Any individual employed as a seaman whether or not the seaman  
20 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  
5 any or all agricultural fairs does not exceed (~~fourteen~~) twenty-one  
6 working days a year;

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

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

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

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

1 branch, or group thereof, in which individuals are gainfully employed  
2 (section 3(h) of the Fair Labor Standards Act of 1938, as amended  
3 (Public Law 93-259));

4 (i) Any hours worked by an employee of a carrier by air subject  
5 to the provisions of subchapter II of the Railway Labor Act (45  
6 U.S.C. Sec. 181 et seq.), when such hours are voluntarily worked by  
7 the employee pursuant to a shift-trading practice under which the  
8 employee has the opportunity in the same or in other workweeks to  
9 reduce hours worked by voluntarily offering a shift for trade or  
10 reassignment; and

11 (j) Any individual licensed under chapter 18.85 RCW unless the  
12 individual is providing real estate brokerage services under a  
13 written contract with a real estate firm which provides that the  
14 individual is an employee. For purposes of this subsection (2)(j),  
15 "real estate brokerage services" and "real estate firm" mean the same  
16 as defined in RCW 18.85.011.

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

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

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

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

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

39 (a) Compensation at the hourly rate, which may not be less than  
40 the rate required under RCW 49.46.020, for each hour worked up to

1 forty hours per week, and compensation of one and one-half times that  
2 hourly rate for all hours worked over forty hours in one week; or

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

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

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