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**SENATE BILL 5725**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Keiser, Conway, Nguyen, and Valdez

Read first time 02/08/23. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to clarifying the application of the industrial  
2 welfare act and minimum wage act to airline cabin crews; amending RCW  
3 49.46.130; reenacting and amending RCW 49.12.187; creating a new  
4 section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature intends to codify, modify,  
7 and clarify certain current laws and administrative requirements  
8 regarding the application of overtime, meal period, rest period, and  
9 payment interval requirements for pay periods to airline cabin crews  
10 to increase transparency and knowledge for both airlines and their  
11 employees, and give effect to collectively negotiated agreements  
12 entered into under the railway labor act, 45 U.S.C. Sec. 151 et seq.  
13 The purpose of this act is to make technical amendments to clarify  
14 that provisions of chapters 49.12 and 49.46 RCW and the rules adopted  
15 thereunder related to overtime, meal periods, rest periods, and  
16 payment intervals do not apply to airline cabin crew employees who  
17 are covered by a valid collective bargaining agreement as negotiated  
18 by a labor organization certified by the national mediation board  
19 under the railway labor act, 45 U.S.C. Sec. 151 et seq., under the  
20 circumstances outlined herein.

1       **Sec. 2.** RCW 49.12.187 and 2003 c 401 s 3 and 2003 c 146 s 1 are  
2 each reenacted and amended to read as follows:

3       (1) This chapter shall not be construed to interfere with,  
4 impede, or in any way diminish the right of employees to bargain  
5 collectively with their employers through representatives of their  
6 own choosing concerning wages or standards or conditions of  
7 employment. However, rules adopted under this chapter regarding  
8 appropriate rest and meal periods as applied to employees in the  
9 construction trades may be superseded by a collective bargaining  
10 agreement negotiated under the national labor relations act, 29  
11 U.S.C. Sec. 151 et seq., if the terms of the collective bargaining  
12 agreement covering such employees specifically require rest and meal  
13 periods and prescribe requirements concerning those rest and meal  
14 periods.

15       (2) Employees of public employers may enter into collective  
16 bargaining contracts, labor/management agreements, or other mutually  
17 agreed to employment agreements that specifically vary from or  
18 supersede, in part or in total, rules adopted under this chapter  
19 regarding appropriate rest and meal periods.

20       (3) (a) Notwithstanding any other provision of law, the  
21 requirement to provide a meal or rest period pursuant to an  
22 applicable statute, regulation, ordinance, standard, or order does  
23 not apply to any cabin crew employee who is covered by a valid  
24 collective bargaining agreement as negotiated by a labor organization  
25 certified by the national mediation board under the railway labor  
26 act, 45 U.S.C. Sec. 151 et seq., if that agreement provides for rest  
27 and opportunities to eat while not interfering with federal safety  
28 duties. In any legal action by or on behalf of cabin crew asserting  
29 claims for alleged meal or rest break violations that occurred prior  
30 to the effective date of this section, such cabin crew employees do  
31 not have the right to collect fees, fines, or penalties on behalf of  
32 themselves or other parties and only those cabin crew members who are  
33 named plaintiffs have a right to recover damages. Such claims may not  
34 be pursued on a collective basis or certified class basis.

35       (b) Notwithstanding any other provision of law, any payment  
36 interval requirement for payment of wages or other compensation to  
37 employees pursuant to an applicable statute, regulation, ordinance,  
38 standard, or order does not apply to any cabin crew employee who is  
39 covered by a valid collective bargaining agreement as negotiated by a  
40 labor organization certified by the national mediation board under

1 the railway labor act, 45 U.S.C. Sec. 151 et seq. This subsection has  
2 retroactive effect to the date that an employee became covered by a  
3 collective bargaining agreement meeting the requirements of this  
4 section.

5 **Sec. 3.** RCW 49.46.130 and 2021 c 249 s 2 are each amended to  
6 read as follows:

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

13 (2) This section does not apply to:

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

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

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

22 (d) Seasonal employees who are employed at concessions and  
23 recreational establishments at agricultural fairs, including those  
24 seasonal employees employed by agricultural fairs, within the state  
25 provided that the period of employment for any seasonal employee at  
26 any or all agricultural fairs does not exceed fourteen working days a  
27 year;

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

31 (f) An individual employed as a truck or bus driver who is  
32 subject to the provisions of the Federal Motor Carrier Act (49 U.S.C.  
33 Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the  
34 compensation system under which the truck or bus driver is paid  
35 includes overtime pay, reasonably equivalent to that required by this  
36 subsection, for working longer than (~~forty~~) 40 hours per week;

37 (g) Any individual employed as an agricultural employee. This  
38 exemption from subsection (1) of this section applies only until  
39 December 31, 2021;

1 (h) Any industry in which federal law provides for an overtime  
2 payment based on a workweek other than forty hours. However, the  
3 provisions of the federal law regarding overtime payment based on a  
4 workweek 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  
13 to the provisions of subchapter II of the Railway Labor Act (45  
14 U.S.C. Sec. 181 et seq.), when such hours are voluntarily worked by  
15 the employee pursuant to a shift-trading practice under which the  
16 employee has the opportunity in the same or in other workweeks to  
17 reduce hours worked by voluntarily offering a shift for trade or  
18 reassignment or, retroactive to the date that the employee became  
19 covered by the collective bargaining agreement, when such hours are  
20 worked by cabin crew employees pursuant to a valid collective  
21 bargaining agreement as negotiated by a labor organization certified  
22 by the national mediation board under the railway labor act that  
23 contains provisions for certain hours or days involuntarily worked in  
24 excess of scheduled work to be paid at premium pay at no less than  
25 one and one-half times the contractual pay rate; and

26 (j) Any individual licensed under chapter 18.85 RCW unless the  
27 individual is providing real estate brokerage services under a  
28 written contract with a real estate firm which provides that the  
29 individual is an employee. For purposes of this subsection (2)(j),  
30 "real estate brokerage services" and "real estate firm" mean the same  
31 as defined in RCW 18.85.011.

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

36 (a) The regular rate of pay of the employee is in excess of one  
37 and one-half times the minimum hourly rate required under RCW  
38 49.46.020; and

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

4 In determining the proportion of compensation representing  
5 commissions, all earnings resulting from the application of a bona  
6 fide commission rate is to be deemed commissions on goods or services  
7 without regard to whether the computed commissions exceed the draw or  
8 guarantee.

9 (4) No employer of commissioned salespeople primarily engaged in  
10 the business of selling automobiles, trucks, recreational vessels,  
11 recreational vessel trailers, recreational vehicle trailers,  
12 recreational campers, manufactured housing, or farm implements to  
13 ultimate purchasers shall violate subsection (1) of this section with  
14 respect to such commissioned salespeople if the commissioned  
15 salespeople are paid the greater of:

16 (a) Compensation at the hourly rate, which may not be less than  
17 the rate required under RCW 49.46.020, for each hour worked up to  
18 forty hours per week, and compensation of one and one-half times that  
19 hourly rate for all hours worked over (~~(forty)~~) 40 hours in one week;  
20 or

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

23 (5) No public agency shall be deemed to have violated subsection  
24 (1) of this section with respect to the employment of any employee in  
25 fire protection activities or any employee in law enforcement  
26 activities (including security personnel in correctional  
27 institutions) if: (a) In a work period of (~~(twenty-eight)~~) 28  
28 consecutive days the employee receives for tours of duty which in the  
29 aggregate exceed (~~(two hundred forty)~~) 240 hours; or (b) in the case  
30 of such an employee to whom a work period of at least seven but less  
31 than (~~(twenty-eight)~~) 28 days applies, in his or her work period the  
32 employee receives for tours of duty which in the aggregate exceed a  
33 number of hours which bears the same ratio to the number of  
34 consecutive days in his or her work period as two hundred forty hours  
35 bears to (~~(twenty-eight)~~) 28 days; compensation at a rate not less  
36 than one and one-half times the regular rate at which he or she is  
37 employed.

38 (6) (a) Beginning January 1, 2022, any agricultural employee shall  
39 not be employed for more than 55 hours in any one workweek unless the  
40 agricultural employee receives one and one-half times that

1 agricultural employee's regular rate of pay for all hours worked over  
2 55 in any one workweek.

3 (b) Beginning January 1, 2023, any agricultural employee shall  
4 not be employed for more than 48 hours in any one workweek unless the  
5 agricultural employee receives one and one-half times that  
6 agricultural employee's regular rate of pay for all hours worked over  
7 48 in any one workweek.

8 (c) Beginning January 1, 2024, any agricultural employee shall  
9 not be employed for more than 40 hours in any one workweek unless the  
10 agricultural employee receives one and one-half times that  
11 agricultural employee's regular rate of pay for all hours worked over  
12 40 in any one workweek.

13 (7) (a) No damages, statutory or civil penalties, attorneys' fees  
14 and costs, or other type of relief may be granted against an employer  
15 to an agricultural or dairy employee seeking unpaid overtime due to  
16 the employee's historical exclusion from overtime under subsection  
17 (2) (g) of this section, as it existed on November 4, 2020.

18 (b) This subsection applies to all claims, causes of actions, and  
19 proceedings commenced on or after November 5, 2020, regardless of  
20 when the claim or cause of action arose. To this extent, this  
21 subsection applies retroactively, but in all other respects it  
22 applies prospectively.

23 (c) This subsection does not apply to dairy employees entitled to  
24 back pay or other relief as a result of being a member in the class  
25 of plaintiffs in *Martinez-Cuevas v. DeRuyter Bros. Dairy*, 196 Wn.2d  
26 506 (2020).

27 (8) For the purposes of this section, "agricultural employee"  
28 means any individual employed: (a) On a farm, in the employ of any  
29 person, in connection with the cultivation of the soil, or in  
30 connection with raising or harvesting any agricultural or  
31 horticultural commodity, including raising, shearing, feeding, caring  
32 for, training, and management of livestock, bees, poultry, and  
33 furbearing animals and wildlife, or in the employ of the owner or  
34 tenant or other operator of a farm in connection with the operation,  
35 management, conservation, improvement, or maintenance of such farm  
36 and its tools and equipment; (b) in packing, packaging, grading,  
37 storing or delivering to storage, or to market or to a carrier for  
38 transportation to market, any agricultural or horticultural  
39 commodity; or (c) (~~in~~) in commercial canning, commercial  
40 freezing, or any other commercial processing, or with respect to

1 services performed in connection with the cultivation, raising,  
2 harvesting, and processing of oysters or in connection with any  
3 agricultural or horticultural commodity after its delivery to a  
4 terminal market for distribution for consumption. An agricultural  
5 employee does not include a dairy employee.

6 (9) For the purposes of this section, "dairy employee" includes  
7 any employee engaged in dairy cattle and milk production activities  
8 described in code 112120 of the North American industry  
9 classification system.

10 NEW SECTION. **Sec. 4.** This act is necessary for the immediate  
11 preservation of the public peace, health, or safety, or support of  
12 the state government and its existing public institutions, and takes  
13 effect immediately.

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