

RCW 49.46.130 Minimum rate of compensation for employment in excess of forty hour workweek—Exceptions. (1) Except as otherwise provided in this section, no employer shall employ any of his or her employees for a workweek longer than forty hours unless such employee receives compensation for his or her employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he or she is employed.

(2) This section does not apply to:

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

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

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

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

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

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

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

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

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

(j) Any individual licensed under chapter 18.85 RCW unless the individual is providing real estate brokerage services under a written contract with a real estate firm which provides that the individual is an employee. For purposes of this subsection (2)(j), "real estate

brokerage services" and "real estate firm" mean the same as defined in RCW 18.85.011.

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

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

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

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

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

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

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

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

(6) (a) Beginning January 1, 2022, any agricultural employee shall not be employed for more than 55 hours in any one workweek unless the agricultural employee receives one and one-half times that agricultural employee's regular rate of pay for all hours worked over 55 in any one workweek.

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

(c) Beginning January 1, 2024, any agricultural employee shall not be employed for more than 40 hours in any one workweek unless the agricultural employee receives one and one-half times that

agricultural employee's regular rate of pay for all hours worked over 40 in any one workweek.

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

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

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

(8) For the purposes of this section, "agricultural employee" means any individual employed: (a) On a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; (b) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (c) [in] commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption. An agricultural employee does not include a dairy employee.

(9) For the purposes of this section, "dairy employee" includes any employee engaged in dairy cattle and milk production activities described in code 112120 of the North American industry classification system. [2021 c 249 § 2; 2013 c 207 § 1; 2010 c 8 § 12045; 1998 c 239 § 2. Prior: 1997 c 311 § 1; 1997 c 203 § 2; 1995 c 5 § 1; 1993 c 191 § 1; 1992 c 94 § 1; 1989 c 104 § 1; prior: 1977 ex.s. c 4 § 1; 1977 ex.s. c 74 § 1; 1975 1st ex.s. c 289 § 3.]

Intent—2021 c 249: "In order to stabilize, strengthen, and protect our state's agricultural workforce and economy, it is the intent of the legislature to pass the laws necessary to protect farmworkers and to provide agricultural employers with certainty and predictability.

The legislature intends to address the historical exceptions of agricultural work from overtime standards from both the federal fair labor standards act and the state minimum wage act when they were enacted over 60 years ago. Excluded from the opportunity to earn overtime pay, farmworkers across our state remain among our state's poorest workers. A United States department of labor study in 2016 found that nationally, 30 percent of farmworker families live below the poverty line, almost double the poverty rate of American families

overall. The state department of health found that the current novel coronavirus pandemic has had a significant and disproportionate impact on farmworkers. The virus' risks to essential farmworkers from potential workplace exposures are compounded by systemic barriers to testing, prevention measures, and medical care.

The legislature also intends to avoid disruptions within the state's vital agricultural sector. While Washington is well-known as the national leader in apple production, the state's agricultural sector is incredibly diverse: Over 300 crops are harvested, and a variety of livestock are raised on over 35,000 farms across the state. The robust size of our agricultural sector means our state overall ranks in the top 10 nationally in the size of our farm labor force. Agriculture is a cornerstone of our state economy. Uncertainty from recent legal decisions regarding overtime standards are compounding the pandemic's disruptions to the food chain and the safety challenges of operating during a public health crisis.

The legislature intends to provide clear overtime standards to reduce litigation between parties in this key sector of the state's economy during the challenges and additional costs brought on by the novel coronavirus and to protect the security of our food supply chain. This act's transitional approach is reasonable to achieve the legislature's purpose of increasing the safety of an at risk and essential workforce, increasing the public welfare of low-income individuals by removing a historical barrier to their earning potential, and maintaining the food security and economic security provided by a stable agricultural sector." [2021 c 249 § 1.]

Findings—Intent—1998 c 239: "The legislature finds that employees in the airline industry have a long-standing practice and tradition of trading shifts voluntarily among themselves. The legislature also finds that federal law exempts airline employees from the provisions of federal overtime regulations. This act is intended to specify that airline industry employers are not required to pay overtime compensation to an employee agreeing to work additional hours for a coemployee." [1998 c 239 § 1.]

Intent—Collective bargaining agreements—1998 c 239: "This act does not alter the terms, conditions, or practices contained in any collective bargaining agreement." [1998 c 239 § 3.]

Retroactive application—1998 c 239: "This act is remedial in nature and applies retroactively." [1998 c 239 § 4.]

Severability—1998 c 239: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 239 § 5.]

Construction—1997 c 203: "Nothing in this act shall be construed to alter the terms, conditions, or practices contained in any collective bargaining agreement in effect at the time of the effective date of this act [July 27, 1997] until the expiration date of such agreement." [1997 c 203 § 4.]

Intent—Application—1995 c 5: "This act is intended to clarify the original intent of RCW 49.46.010(5)(c). This act applies to all

administrative and judicial actions commenced on or after February 1, 1995, and pending on March 30, 1995, and such actions commenced on or after March 30, 1995." [1995 c 5 § 2.]

Effective date—1995 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1995]." [1995 c 5 § 3.]