
SUBSTITUTE HOUSE BILL 2845

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Heavey, Lisk and Ludwig)

Read first time 02/07/92.

1 AN ACT Relating to overtime work by automobile salespersons; and
2 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 1989 c 104 s 1 are each amended to read
5 as follows:

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

12 (2) This section does not apply to:

1 (a) Any person exempted pursuant to RCW 49.46.010(5) (~~as now or~~
2 hereafter amended and the provision of this subsection shall not apply
3 to))*i*

4 (b) Employees who request compensating time off in lieu of overtime
5 pay (~~nor to~~)*i*

6 (c) Any individual employed as a seaman whether or not the seaman
7 is employed on a vessel other than an American vessel(~~nor to~~)*i*

8 (d) Seasonal employees who are employed at concessions and
9 recreational establishments at agricultural fairs, including those
10 seasonal employees employed by agricultural fairs, within the state
11 provided that the period of employment for any seasonal employee at any
12 or all agricultural fairs does not exceed fourteen working days a
13 year(~~nor to~~)*i*

14 (e) Any individual employed as a motion picture projectionist if
15 that employee is covered by a contract or collective bargaining
16 agreement which regulates hours of work and overtime pay(~~nor to~~)*i*

17 (f) An individual employed as a truck or bus driver who is subject
18 to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101
19 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system
20 under which the truck or bus driver is paid includes overtime pay,
21 reasonably equivalent to that required by this subsection, for working
22 longer than forty hours per week(~~nor to~~)*i*

23 ~~(2) 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 institutions)~~
27 ~~if: (a) In a work period of twenty eight consecutive days the employee~~
28 ~~receives for tours of duty which in the aggregate exceed two hundred~~
29 ~~and forty hours; or (b) in the case of such an employee to whom a work~~
30 ~~period of at least seven but less than twenty eight days applies, in~~

1 his work period the employee receives for tours of duty which in the
2 aggregate exceed a number of hours which bears the same ratio to the
3 number of consecutive days in his work period as two hundred forty
4 hours bears to twenty-eight days; compensation at a rate not less than
5 one and one-half times the regular rate at which he is employed;
6 ~~PROVIDED, That this section shall not apply to))i~~

7 (g) Any individual employed (i) on a farm, in the employ of any
8 person, in connection with the cultivation of the soil, or in
9 connection with raising or harvesting any agricultural or horticultural
10 commodity, including raising, shearing, feeding, caring for, training,
11 and management of livestock, bees, poultry, and furbearing animals and
12 wildlife, or in the employ of the owner or tenant or other operator of
13 a farm in connection with the operation, management, conservation,
14 improvement, or maintenance of such farm and its tools and equipment;
15 or (ii) in packing, packaging, grading, storing or delivering to
16 storage, or to market or to a carrier for transportation to market, any
17 agricultural or horticultural commodity; or (iii) commercial canning,
18 commercial freezing, or any other commercial processing, or with
19 respect to services performed in connection with the cultivation,
20 raising, harvesting, and processing of oysters or in connection with
21 any agricultural or horticultural commodity after its delivery to a
22 terminal market for distribution for consumption(~~(:—PROVIDED FURTHER,~~
23 ~~That in))i~~

24 (h) Any industry in which federal law provides for an overtime
25 payment based on a work week other than forty hours (~~(then provisions~~
26 ~~of this section shall not apply:)).~~ However, the provisions of the
27 federal law regarding overtime payment based on a work week other than
28 forty hours shall nevertheless apply to employees covered by this
29 section without regard to the existence of actual federal jurisdiction
30 over the industrial activity of the particular employer within this

1 state(~~(:— PROVIDED FURTHER, That)~~). For the purposes of this
2 subsection, "industry" (~~(as that term is used in this section shall~~
3 ~~mean))~~ means a trade, business, industry, or other activity, or branch,
4 or group thereof, in which individuals are gainfully employed (section
5 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law
6 93-259).

7 (3) No employer of commissioned salespeople primarily engaged in
8 the business of selling automobiles and trucks to ultimate purchasers
9 shall violate subsection (1) of this section with respect to such
10 commissioned salespeople if the commissioned salespeople are paid the
11 greater of:

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

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

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

1 employed.