
SENATE BILL 6165

State of Washington

56th Legislature

2000 Regular Session

By Senators Fairley, Kline and Kohl-Welles

Read first time 01/10/2000. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to overtime pay for high technology workers;
2 amending RCW 49.46.010; and creating new sections.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that workers in the
5 high technology industry are often required to work long days and even
6 longer weeks. Companies in the high technology industry profit from
7 these workers and their overtime hours. Yet these workers do not earn
8 overtime pay for overtime hours, and often sacrifice job security and
9 benefits. These practices hurt working families, make affordable child
10 care difficult to find, and lead to higher stress levels and industrial
11 injury and occupational disease rates. These practices limit
12 employment opportunities to a smaller number of workers rather than
13 extend employment opportunities to a larger number of workers. Thus,
14 it is the intent of the legislature that the overtime provisions of the
15 state minimum wage act apply to computer system analysts, computer
16 programmers, software engineers, software developers, and other
17 similarly skilled workers.

1 **Sec. 2.** RCW 49.46.010 and 1997 c 203 s 3 are each amended to read
2 as follows:

3 As used in this chapter:

4 (1) "Director" means the director of labor and industries;

5 (2) "Wage" means compensation due to an employee by reason of
6 employment, payable in legal tender of the United States or checks on
7 banks convertible into cash on demand at full face value, subject to
8 such deductions, charges, or allowances as may be permitted by rules of
9 the director;

10 (3) "Employ" includes to permit to work;

11 (4) "Employer" includes any individual, partnership, association,
12 corporation, business trust, or any person or group of persons acting
13 directly or indirectly in the interest of an employer in relation to an
14 employee;

15 (5) "Employee" includes any individual employed by an employer but
16 shall not include:

17 (a) Any individual (i) employed as a hand harvest laborer and paid
18 on a piece rate basis in an operation which has been, and is generally
19 and customarily recognized as having been, paid on a piece rate basis
20 in the region of employment; (ii) who commutes daily from his or her
21 permanent residence to the farm on which he or she is employed; and
22 (iii) who has been employed in agriculture less than thirteen weeks
23 during the preceding calendar year;

24 (b) Any individual employed in casual labor in or about a private
25 home, unless performed in the course of the employer's trade, business,
26 or profession;

27 (c) Any individual employed in a bona fide executive,
28 administrative, or professional capacity or in the capacity of outside
29 salesman as those terms are defined and delimited by rules of the
30 director. However, those terms may not be defined or delimited to
31 include a computer system analyst, a computer programmer, a software
32 engineer, a software developer, or another similarly skilled worker who
33 is compensated for his or her services on an hourly basis. However,
34 those terms shall be defined and delimited by the Washington personnel
35 resources board pursuant to chapter 41.06 RCW;

36 (d) Any individual engaged in the activities of an educational,
37 charitable, religious, state or local governmental body or agency, or
38 nonprofit organization where the employer-employee relationship does
39 not in fact exist or where the services are rendered to such

1 organizations gratuitously. If the individual receives reimbursement
2 in lieu of compensation for normally incurred out-of-pocket expenses or
3 receives a nominal amount of compensation per unit of voluntary service
4 rendered, an employer-employee relationship is deemed not to exist for
5 the purpose of this section or for purposes of membership or
6 qualification in any state, local government or publicly supported
7 retirement system other than that provided under chapter 41.24 RCW;

8 (e) Any individual employed full time by any state or local
9 governmental body or agency who provides voluntary services but only
10 with regard to the provision of the voluntary services. The voluntary
11 services and any compensation therefor shall not affect or add to
12 qualification, entitlement or benefit rights under any state, local
13 government, or publicly supported retirement system other than that
14 provided under chapter 41.24 RCW;

15 (f) Any newspaper vendor or carrier;

16 (g) Any carrier subject to regulation by Part 1 of the Interstate
17 Commerce Act;

18 (h) Any individual engaged in forest protection and fire prevention
19 activities;

20 (i) Any individual employed by any charitable institution charged
21 with child care responsibilities engaged primarily in the development
22 of character or citizenship or promoting health or physical fitness or
23 providing or sponsoring recreational opportunities or facilities for
24 young people or members of the armed forces of the United States;

25 (j) Any individual whose duties require that he or she reside or
26 sleep at the place of his or her employment or who otherwise spends a
27 substantial portion of his or her work time subject to call, and not
28 engaged in the performance of active duties;

29 (k) Any resident, inmate, or patient of a state, county, or
30 municipal correctional, detention, treatment or rehabilitative
31 institution;

32 (l) Any individual who holds a public elective or appointive office
33 of the state, any county, city, town, municipal corporation or quasi
34 municipal corporation, political subdivision, or any instrumentality
35 thereof, or any employee of the state legislature;

36 (m) All vessel operating crews of the Washington state ferries
37 operated by the department of transportation;

38 (n) Any individual employed as a seaman on a vessel other than an
39 American vessel;

1 (6) "Occupation" means any occupation, service, trade, business,
2 industry, or branch or group of industries or employment or class of
3 employment in which employees are gainfully employed;

4 (7) "Retail or service establishment" means an establishment
5 seventy-five percent of whose annual dollar volume of sales of goods or
6 services, or both, is not for resale and is recognized as retail sales
7 or services in the particular industry.

8 NEW SECTION. **Sec. 3.** The director of the department of labor and
9 industries shall repeal any rules inconsistent with the purposes and
10 provisions of this act.

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