S-1287.1

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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

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

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

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

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

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this chapter regarding appropriate rest and meal periods as applied to employees in the construction trades may be superseded by a collective bargaining agreement negotiated under the national labor relations act, 29 U.S.C. Sec. 151 et seq., if the terms of the collective bargaining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

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

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

(b) Notwithstanding any other provision of law, any payment interval requirement for payment of wages or other compensation to employees pursuant to an applicable statute, regulation, ordinance, standard, or order does not apply to any cabin crew employee who is covered by a valid collective bargaining agreement as negotiated by a labor organization certified by the national mediation board under the railway labor act, 45 U.S.C. Sec. 151 et seq. This subsection has retroactive effect to the date that an employee became covered by a collective bargaining agreement meeting the requirements of this section.

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

(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~~)) 40 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 or, retroactive to the date that the employee became covered by the collective bargaining agreement, when such hours are worked by cabin crew employees pursuant to a valid collective bargaining agreement as negotiated by a labor organization certified by the national mediation board under the railway labor act that contains provisions for certain hours or days involuntarily worked in excess of scheduled work to be paid at premium pay at no less than one and one-half times the contractual pay rate; 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~~)) 40 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~~)) 28 consecutive days the employee receives for tours of duty which in the aggregate exceed ((~~two hundred forty~~)) 240 hours; or (b) in the case of such an employee to whom a work period of at least seven but less than ((~~twenty-eight~~)) 28 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~~)) 28 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]~~)) 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.

NEW SECTION. **Sec.**  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 takes effect immediately.

**--- END ---**